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DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

9 CFR Part 206

RIN 0580–AB06

Swine Contract Library

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Final rule.

SUMMARY: On August 11, 2003, the Grain Inspection, Packers and Stockyards Administration (GIPSA) implemented new Subtitle B of Title II of the Packers and Stockyards Act, which was added by the Livestock Mandatory Reporting Act of 1999 (1999 Act) by establishing the Swine Contract Library (SCL). The statutory authority for the library lapsed on September 30, 2005. On October 5, 2006, the Livestock Mandatory Reporting Reauthorization Act (Reauthorization Act) reauthorized the 1999 Act until September 30, 2010, and also amended the swine reporting requirements of the 1999 Act. This final rule re-establishes the regulatory authority for the SCL's continued operation and incorporates certain changes contained within the Reauthorization Act that impact the SCL, as well as makes other changes to enhance the SCL's overall effectiveness and efficiency in response to input from regulated entities and the public.

DATES: *Effective Date:* May 3, 2010.

FOR FURTHER INFORMATION CONTACT: S. Brett Offutt, Director, Policy and Litigation Division, P&SP, GIPSA, 1400 Independence Ave., SW., Washington, DC 20250, (202) 720–7363, *s.brett.offutt@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

GIPSA is responsible for the enforcement of the Packers and Stockyards Act of 1921, as amended and supplemented, (7 U.S.C. 181 *et seq.*) (P&S Act). Under authority delegated to GIPSA by the Secretary of Agriculture (Secretary) in section 407(a) of the P&S Act (7 U.S.C. 228), we are authorized to create regulations necessary to carry out the provisions of the P&S Act.

The 1999 Act (Pub. L. 106–78) amended Title II of the P&S Act to include Subtitle B—Swine Packer Marketing Contracts. The 1999 Act mandated the creation and maintenance of a library of marketing contracts offered by certain packers to producers for the purchase of swine. To implement this legislation, GIPSA established the SCL and promulgated SCL regulations (9 CFR Part 206) requiring that packers, as defined in Subtitle B of Title II of the P&S Act, file example marketing contracts with GIPSA along with monthly estimates of the number of swine to be delivered under contract. GIPSA compiles this information and makes summary reports available to the public.

On October 22, 2004, the 1999 Act expired and was not reauthorized until December 3, 2004 (Pub. L. 108–444). Authority for the 1999 Act was extended, however, to September 30, 2005. The 1999 Act lapsed again in 2005 and was reauthorized and amended on October 5, 2006, when the Reauthorization Act (Pub. L. 109–296) was signed into law. The 1999 Act is scheduled to once again expire on September 30, 2010.

When the 1999 Act expired in October 2004, GIPSA asked swine packers to continue to comply with the SCL regulations voluntarily. With the information submitted voluntarily by packers, GIPSA continued to make summary reports available to the public.

Notice of Proposed Rulemaking and Final Action

GIPSA published a Notice of Proposed Rulemaking in the **Federal Register** on October 26, 2009 (74 FR 54928), inviting interested parties to comment on the re-authorization of the SCL regulations. GIPSA received no comments on the proposed rule during the comment period that ended on December 28, 2009. Accordingly, GIPSA is publishing the final rule as it was proposed.

This final rule re-establishes authority for the SCL regulations (9 CFR Part 206) by amending the regulations' authority citation to include Subtitle B of Title II of the P&S Act (7 U.S.C. 198–198b). In addition to amending the SCL regulations to make them consistent with the Reauthorization Act, we are also amending the SCL regulations to incorporate suggestions received from the public and regulated entities. Specifically, we are doing the following:

(1) Revising the definition of "packer" to be consistent with the Reauthorization Act;

(2) Revising the definitions of several contract types;

(3) Adding definitions of terms used in several contract types to describe the market price that is being paid for swine;

(4) Adding a new requirement that an example contract submission, a notification of contract expiration, and a notification of a contract withdrawal include a standard cover sheet; and

(5) Adding a waiver for packers that do not utilize marketing contracts.

The purpose of these amendments is to make the information collected more uniform and more useful, while reducing the burden on the reporting entities.

Options Considered

We considered asking packers to continue to voluntarily comply with regulations that are not enforceable and are no longer consistent with the authorizing legislation. Since that is not a viable option, we have no alternative but to revise the SCL regulations to carry out provisions of the P&S Act.

In addition, we considered not waiving the requirement that packers that do not purchase swine under contract report information to GIPSA for the SCL. We also considered a waiver of longer than 1 year, but did not wish to provide such a blanket waiver since business conditions change over time. Packers with a waiver that commence purchasing swine under marketing contracts will now be required to begin filing contracts on the first business day of the following month as described in § 206.2, and commence submitting monthly reports as required by § 206.3 of the regulations.

Effects on Regulated Entities

Under this final rule, the reporting burden for most packers will remain about the same or be slightly less than the reporting burden for the expired SCL regulations. Swine packers will have to comply with regulations that they have complied with in the past. We anticipate that 35 swine packers that operate or have swine slaughtered at 55 plants will be required to comply with the SCL regulations. This represents only 8.5 percent of all federally inspected swine plants; the others do not meet the size and capacity definition of "packer" for the purpose of this final rule. Nearly half of the 35 swine packers now comply with the SCL requirements voluntarily. Three of the entities that will be subject to this proposed rule are new respondents, and their anticipated burden is under 4 hours to initiate the reporting process. For the 32 remaining swine packers, the expected burden is .25 hours per packing plant to submit an example of each new or amended contract to GIPSA.

The change in the definition of the term "packer" will require reporting by one additional firm. That firm otherwise does not meet the previous size and capacity definition of "packer."

This final rule will benefit swine producers by increasing their knowledge about contract terms and the number of swine under contract, improve market transparency, and gives swine producers the ability to make more informed marketing decisions. GIPSA believes that market transparency facilitates market efficiency by reducing price information search costs for market participants. Availability of market information also contributes to considerations of equity and fairness in the marketplace.

Executive Order 12866 and Regulatory Flexibility Act

The Office of Management and Budget (OMB) has designated this final rule as not significant for the purposes of Executive Order 12866.

We have determined that this final rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This final rule will apply to approximately 35 packers operating at 55 plants. This represents only 8.5 percent of all federally inspected swine plants; the others are too small to meet the size and capacity definition of the term "packer" for the purpose of this proposed rule. Of those 35 packers, 18 have fewer than 500 employees and will therefore meet the applicable size standard for small entities in the Small Business Administration (SBA) regulations (13 CFR 121.201). For the North American Industry Classification System (NAICS) code 311611 "Animal (except poultry) Slaughtering," the SBA size standard is 500 employees. However, the firms to which this final rule applies are the largest of the firms in this industry that meet the size standard for small businesses. We estimate that eight of those 18 small entities will be eligible for an annual waiver, thus reducing the required reporting burden on those entities from 12 monthly reports to one annual waiver request. For the remaining 10 small entities that are not eligible for a waiver, the requirement to submit marketing contracts to GIPSA is estimated at .25 hours (15 minutes) per contract. The monthly report is estimated to average 2 hours per report when prepared and submitted by mail or facsimile, and 1 hour per report when prepared and submitted electronically, which does not represent a significant economic burden or impact.

The change in the definition of the term "packer" will require reporting by one additional firm that does not otherwise meet the previous size and capacity definition of "packer."

This final rule requires that swine packers submit certain information to GIPSA. It does not impose any restrictions on the form, timing, or location of contracts in which regulated entities may engage. It places no additional burden or limit on current or future business relationships into which affected firms may enter.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. These actions are not intended to have retroactive effect. This final rule will not pre-empt state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. In addition, the 1999 Act, as amended, does not restrict or modify the authority of the Secretary to administer or enforce the P&S Act, as amended. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this information collection package (#0580–0021) was approved by OMB on March 7, 2010, and expires on March 31, 2013.

E-Government Act Compliance

GIPSA 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.

List of Subjects in 9 CFR Part 206

Swine, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, we are amending 9 CFR Chapter II as follows:

■ 1. Revise Part 206 to read as follows:

PART 206—SWINE CONTRACT LIBRARY

Sec.

206.1 Definitions.
206.2 Swine contract library.
206.3 Monthly report.

Authority: 7 U.S.C. 198–198b; 7 U.S.C. 222.

§ 206.1 Definitions.

The definitions in this section apply to the regulations in this part. The definitions in this section do not apply to other regulations issued under the Packers and Stockyards Act (P&S Act) or to the P&S Act as a whole.

Accrual account. (Synonymous with the term "ledger," as defined in this section.) An account held by a packer on behalf of a producer that accrues a running positive or negative balance as a result of a pricing determination included in a contract that establishes a minimum and/or maximum level of base price paid. Credits and/or debits for amounts beyond these minimum and/or maximum levels are entered into the account. Further, the contract specifies how the balance in the account affects producer and packer rights and obligations under the contract.

Base price. The price paid for swine before the application of any premiums or discounts, expressed in dollars per unit.

Boar. A sexually-intact male swine.

Ceiling price. The maximum market price that will be paid for swine. Adjustments may be made to the base price if the market price rises above this price.

Contract. Any agreement, whether written or verbal, between a packer and a producer for the purchase of swine for slaughter, except a negotiated purchase (as defined in this section).

Contract type. The classification of contracts or risk management agreements for the purchase of swine committed to a packer, by the determination of the base price and the

presence or absence of an accrual account or ledger (as defined in this section). The contract type categories are:

(1) Swine or pork market formula purchases with a ledger,

(2) Swine or pork market formula purchases without a ledger,

(3) Other market formula purchases with a ledger,

(4) Other market formula purchases without a ledger,

(5) Other purchase arrangements with a ledger, and

(6) Other purchase arrangements without a ledger.

Floor price. The minimum market price that will be paid for swine. Adjustments may be made to the base price if the market price falls below this price.

Formula price. A price determined by a mathematical formula under which the price established for a specified market serves as the basis for the formula.

Ledger. (Synonymous with "accrual account," as defined in this section.) An account held by a packer on behalf of a producer that accrues a running positive or negative balance as a result of a pricing determination included in a contract that establishes a minimum and/or maximum level of base price paid. Credits and/or debits for amounts beyond these minimum and/or maximum levels are entered into the account. Further, the contract specifies how the balance in the account affects producer and packer rights and obligations under the contract.

Negotiated purchase. A purchase, commonly known as a "cash" or "spot market" purchase, of swine by a packer from a producer under which:

(1) The buyer-seller interaction that results in the transaction and the agreement on actual base price occur on the same day; and

(2) The swine are scheduled for delivery to the packer not later than 14 days after the date on which the swine are committed to the packer.

Noncarcass merit premium or discount. An increase or decrease in the price for the purchase of swine made available by an individual packer or packing plant, based on any factor other than the characteristics of the carcass, if the actual amount of the premium or discount is known before the purchase and delivery of the swine.

Other market formula purchase. A purchase of swine by a packer in which the pricing determination is a formula price based on any market other than the markets for swine, pork, or a pork product. This includes a formula purchase where the price formula is based on one or more futures or options contracts.

Other purchase arrangement. A purchase of swine by a packer that is not a negotiated purchase, swine or pork market formula purchase, or other market formula purchase, and does not involve packer-owned swine. This contract type includes long term contract agreements, fixed price contracts, cost of production formulas, and formula purchases with a floor, window or ceiling price.

Packer. Any person engaged in the business of buying swine in commerce for purposes of slaughter, of manufacturing or preparing meats or meat food products from swine for sale or shipment in commerce, or of marketing meats or meat food products from swine in an unmanufactured form, acting as a wholesale broker, dealer, or distributor in commerce. The regulations in this part apply only to a packer that meets the conditions in either paragraph (1) or (2) of this definition:

(1) A packer purchasing at least 100,000 swine per year and slaughtering swine at one or more federally inspected processing plants that meet either of the following conditions:

(i) A swine processing plant that slaughtered an average of at least 100,000 head of swine per year during the immediately preceding 5 calendar years, with the average based on those periods in which the plant slaughtered swine; or

(ii) A swine processing plant that did not slaughter swine during the immediately preceding 5 calendar years that has the capacity to slaughter at least 100,000 swine per year, based on plant capacity information.

(2) Any packer purchasing an average of at least 200,000 sows, boars, or any combination thereof, per year and slaughtering at least 200,000 sows, boars, or any combination thereof at one or more federally inspected processing plants during the immediately preceding 5 calendar years, with the average based on those periods in which the plant slaughtered swine.

Producer. Any person engaged, either directly or through an intermediary, in the business of selling swine to a packer for slaughter (including the sale of swine from a packer to another packer).

Sow. An adult female swine that has produced one or more litters.

Swine. A porcine animal raised to be a feeder pig, raised for seedstock, or raised for slaughter.

Swine or pork market formula purchase. A purchase of swine by a packer in which the pricing mechanism is a formula price based on a market for swine, pork, or pork product, other than any formula purchase with a floor, window or ceiling price, or a futures or option contract for swine, pork, or a pork product.

Window price. The range of market prices that will be paid for swine. Adjustments may be made to the base price if the market prices fall outside this range. The window price contains both the floor and ceiling prices.

§ 206.2 Swine contract library.

(a) *Do I need to provide swine contract information?* Each packer, as defined in § 206.1, must provide information for each swine processing plant that it operates or at which it has swine slaughtered that has the slaughtering capacity, alone or in combination with other plants, specified in the definition of packer in § 206.1.

(b) *What existing or available contracts do I need to provide and when are they due?* Each packer must send, to the Grain Inspection, Packers and Stockyards Administration (GIPSA), an example of each contract it currently has with a producer or producers or that is currently available at each plant that it operates or at which it has swine slaughtered that meets the definition of packer in § 206.1. This initial submission of example contracts is due to GIPSA on the first business day of the month following the determination that the plant has the slaughtering capacity, alone or in combination with other plants, specified in the definition of packer in § 206.1.

(c) *What available contracts do I need to provide and when are they due?* After the initial submission, each packer must send GIPSA an example of each new contract it makes available to a producer or producers within 1 business day of the contract being made available at each plant that it operates or at which it has swine slaughtered that meets the definition of packer in § 206.1.

(d) *What criteria do I use to select example contracts?* For purposes of distinguishing among contracts to determine which contracts may be represented by a single example, contracts will be considered to be the same if they are identical with respect to all of the following four example-contract criteria:

(1) Base price or determination of base price;

(2) Application of a ledger or accrual account (including the terms and conditions of the ledger or accrual account provision);

(3) Carcass merit premium and discount schedules (including the determination of the lean percent or other merits of the carcass that are used

to determine the amount of the premiums and discounts and how those premiums and discounts are applied); and

(4) Use and amount of noncarcass merit premiums and discounts.

(e) *Where and how do I send my contracts?* Each packer may submit the example contracts, notifications required by this section, and Form P&SP 342, Contract Submission Cover Sheet, by either of the following two methods:

(1) *Electronic report.* Example contracts and notifications required by this section may be submitted by electronic means. Electronic submission may be by any form of electronic transmission that has been determined to be acceptable to the Administrator. To obtain current options for acceptable methods to submit example contracts electronically, contact GIPSA through the Internet on the GIPSA Web site (*http://www.gipsa.usda.gov*) or at USDA GIPSA, Suite 317, 210 Walnut Street, Des Moines, Iowa 50309.

(2) *Printed report.* Each packer that chooses to submit printed example contracts and notifications must deliver the printed contracts and notifications to USDA GIPSA, Suite 317, 210 Walnut Street, Des Moines, Iowa 50309.

(f) *What information from the swine contract library will be made available to the public?* GIPSA will summarize the information it has received on contract terms, including, but not limited to, base price determination and the schedules of premiums or discounts. GIPSA will make the information available by region and contract type, as defined in § 206.1, for public release 1 month after the initial submission of contracts. Geographic regions will be defined in such a manner to provide as much information as possible while maintaining confidentiality in accordance with section 251 of the Agricultural Marketing Act (7 U.S.C. 1636).

(g) *How can I review information from the swine contract library?* The information will be available on the Internet on the GIPSA Web site (*http://www.gipsa.usda.gov*) and at USDA GIPSA, Suite 317, 210 Walnut Street, Des Moines, Iowa 50309. The information will be updated as GIPSA receives information from packers.

(h) *What do I need to do when a previously submitted example contract is no longer a valid example due to contract changes, expiration, or withdrawal?* Each packer must submit a new example contract when contract changes result in changes to any of the four example-contract criteria specified in paragraph (d) of this section and notify GIPSA if the new example contract replaces the previously submitted example contract. Each packer must notify GIPSA when an example contract no longer represents any existing or available contract (expired or withdrawn). Each packer must submit these example contracts and notifications within 1 business day of the change, expiration, or withdrawal.

§ 206.3 Monthly report.

(a) *Do I need to provide monthly reports?* Each packer, as defined in § 206.1, must provide information for each swine processing plant that it operates or at which it has swine slaughtered that has the slaughtering capacity, alone or in combination with other plants, specified in the definition of packer.

(b) *When is the monthly report due?* Each packer must send a separate monthly report for each plant that has the slaughtering capacity, alone or in combination with other plants specified in the definition of packer in § 206.1. Each packer must deliver the report to the GIPSA Regional Office in Des Moines, Iowa, by the close of business on the 15th of each month, beginning at least 45 days after the initial submission of example contracts. If the 15th day of a month falls on a Saturday, Sunday, or federal holiday, the monthly report is due no later than the close of the next business day following the 15th.

(c) *What information do I need to provide in the monthly report?* The monthly report that each packer files must be reported on Form P&SP–341, which will be available on the Internet on the GIPSA Web site (*http://www.gipsa.usda.gov*) and at USDA GIPSA, Suite 317, 210 Walnut Street, Des Moines, Iowa 50309. In the monthly report, each packer must provide the following information:

(1) *Number of swine to be delivered under existing contracts.* Existing contracts are contracts the packer currently is using for the purchase of swine for slaughter at each plant. Each packer must provide monthly estimates of the number of swine committed to be delivered under all of its existing contracts (even if those contracts are not currently available for renewal or to additional producers) in each contract type as defined in § 206.1.

(2) *Available contracts.* Available contracts are the contracts the packer is currently making available to producers, or is making available for renewal to currently contracted producers, for the purchase of swine for slaughter at each plant. On the monthly report, a packer will indicate each contract type, as defined in § 206.1, that the packer is currently making available.

(3) *Estimates of committed swine.* Each packer must provide an estimate of the total number of swine committed under existing contracts for delivery to each plant for slaughter within each of the following 12 calendar months beginning with the 1st of the month immediately following the due date of the report. The estimate of total swine committed will be reported by contract type as defined in § 206.1.

(4) *Expansion clauses.* Any conditions or circumstances specified by clauses in any existing contracts that could result in an increase in the estimates specified in paragraph (c)(3) of this section. Each packer will identify the expansion clauses in the monthly report by listing a code for the following conditions:

(i) Clauses that allow for a range of the number of swine to be delivered.

(ii) Clauses that require a greater number of swine to be delivered as the contract continues.

(iii) Other clauses that provide for expansion in the numbers of swine to be delivered.

(5) *Maximum estimates of swine.* The packer's estimate of the maximum total number of swine that potentially could be delivered to each plant within each of the following 12 calendar months, if any or all of the types of expansion clauses identified in accordance with the requirement in paragraph (c)(4) of this section are executed. The estimate of maximum potential deliveries must be reported for all existing contracts by contract type as defined in § 206.1.

(d) *What if a contract does not specify the number of swine committed?* To meet the requirements of paragraphs (c)(3) and (c)(5) of this section, the packer must estimate expected and potential deliveries based on the best information available to the packer. Such information might include, for example, the producer's current and projected swine inventories and planned production.

(e) *When do I change previously reported estimates?* Regardless of any estimates for a given future month that may have been previously reported, current estimates of deliveries reported as required by paragraphs (c)(3) and (c)(5) of this section must be based on the most accurate information available at the time each report is prepared.

(f) *Where and how do I send my monthly report?* Each packer must submit monthly reports required by this section by either of the following two methods:

(1) *Electronic report.* Information reported under this section may be reported by electronic means, to the

maximum extent practicable. Electronic submission may be by any form of electronic transmission that has been determined to be acceptable to the Administrator. To obtain current options for acceptable methods to submit information electronically, contact GIPSA through the Internet on the GIPSA Web site (*http://www.gipsa.usda.gov*) or at USDA GIPSA, Suite 317, 210 Walnut Street, Des Moines, Iowa 50309.

(2) *Printed report.* Each packer may deliver its printed monthly report to USDA GIPSA, Suite 317, 210 Walnut Street, Des Moines, Iowa 50309.

(g) *What information from monthly reports will be made available to the public and when and how will the information be made available to the public?*

(1) *Availability.* GIPSA will provide a monthly report of estimated deliveries by contract types as reported by packers in accordance with this section, for public release on the first business day of each month. The monthly reports will be available on the Internet on the GIPSA Web site (*http://www.gipsa.usda.gov*) and at USDA GIPSA, Suite 317, 210 Walnut Street, Des Moines, Iowa 50309.

(2) *Regions.* Information in the report will be aggregated and reported by geographic regions. Geographic regions will be defined in such a manner to provide as much information as possible while maintaining confidentiality in accordance with section 251 of the Agricultural Marketing Act (7 U.S.C. 1636) and may be modified from time to time.

(3) *Reported information.* The monthly report will provide the following information:

(i) The existing contract types for each geographic region.

(ii) The contract types currently being made available to additional producers or available for renewal to currently contracted producers in each geographic region.

(iii) The sum of packers' reported estimates of the total number of swine committed by contract for delivery during the next 6 and 12 months beginning with the month the report is published. The report will indicate the number of swine committed by geographic reporting region and by contract type.

(iv) The types of conditions or circumstances as reported by packers that could result in expansion in the numbers of swine to be delivered under the terms of expansion clauses in the contracts at any time during the following 12 calendar months.

(v) The sum of packers' reported estimates of the maximum total number of swine that potentially could be delivered during each of the next 6 and 12 months if all expansion clauses in current contracts are executed. The report will indicate the sum of estimated maximum potential deliveries by geographic reporting region and by contract type.

(h) *Where and how do I file a waiver request?* The waiver request must be submitted in writing and include a statement that the packer does not procure swine using marketing agreements. The packer must send the waiver request to the GIPSA Regional Office in Des Moines, Iowa. If the waiver request is approved, GIPSA will inform the packer in writing that it has been granted a waiver for 12 months following the date of receipt of the waiver request unless the status of the packer changes during that year. The packer will be notified to submit the information required in this part if it begins using marketing agreements during the waiver period or if GIPSA determines that the packer utilizes marketing agreements.

J. Dudley Butler,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 2010–7382 Filed 4–1–10; 8:45 am]

BILLING CODE 3410–KD–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 140

[NRC–2009–0516]

RIN 3150–AI74

Increase in the Primary Nuclear Liability Insurance Premium

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations that govern financial protection requirements and indemnity agreements to increase the primary nuclear liability insurance layer from $300 million to $375 million for liability insurance coverage in the event of nuclear incidents at licensed, operating, commercial nuclear power plants with a rated capacity of 100,000 kW or more.

DATES: *Effective Date:* May 3, 2010.

FOR FURTHER INFORMATION CONTACT: Anneliese Simmons, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–2791, e-mail *Anneliese.Simmons@nrc.gov.*

SUPPLEMENTARY INFORMATION: The NRC regulations at 10 CFR part 140, "Financial Protection Requirements and Indemnity Agreements," provide requirements and procedures for implementing the financial protection requirements for certain licensees and other persons under section 170 of the Atomic Energy Act (AEA) of 1954, as amended. Section 140.11(a)(4) specifies the amount of financial protection required of a licensee for a nuclear reactor that is licensed to operate, is designed for the production of electrical energy, and has a rated capacity of 100,000 kW or more. This amount is currently $300 million and will increase to $375 million, based on an adjustment by American Nuclear Insurers (ANI), which currently writes all nuclear liability policies. On a periodic basis, ANI assesses current insurance levels to insure that adequate financial protection is available, and adjusts insurance levels as required. This adjustment is required by the Price-Anderson Amendments Act of 1988.

To implement this adjustment, the Commission is revising 10 CFR 140.11(a)(4), effective 30 days after publication in the **Federal Register**, to require large nuclear power plant licensees to maintain $375 million in primary financial protection. Because this adjustment by the Commission is essentially ministerial in nature, the Commission finds that there is good cause for omitting notice and public comment (in the form of a proposed rule) on this action as unnecessary, under the Administrative Procedure Act of 1946 (5 U.S.C. 553b).

Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires agencies to use technical standards developed or adopted by voluntary consensus standards bodies unless the use of such standards is inconsistent with applicable law or is otherwise impractical. The NRC is amending its regulations to increase the primary premium for liability insurance coverage in the event of nuclear incidents at licensed, operating, commercial nuclear power plants with a rated capacity of 100,000 kW or more. This action does not constitute the establishment of a standard that contains generally applicable requirements.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or an amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0039.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

Because this increase is required by statute, no other alternatives were considered. See also the discussion in the Regulatory Flexibility Certification for this rule.

Regulatory Flexibility Certification

Under the Regulatory Flexibility Act of 1980, (5 U.S.C. 605(b)), the Commission certifies that this final rule will not have a significant economic impact on a substantial number of small entities. This final rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

Backfit Analysis

The NRC has determined that the backfit rule does not apply to this final rule. A backfit analysis is not required for this final rule because this amendment is mandated by the Price-Anderson Amendments Act of 1988 (Pub. L. 100–408).

Congressional Review Act

Under the Congressional Review Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects in 10 CFR Part 140

Criminal penalty, Extraordinary nuclear occurrence, Insurance, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendment to 10 CFR part 140.

PART 140—FINANCIAL PROTECTION REQUIREMENTS AND INDEMNITY AGREEMENTS

■ 1. The authority citation for Part 140 continues to read as follows:

Authority: (42 U.S.C. 2201, 2210); secs. 161, 170, 68 Stat. 948, 71 Stat. 576, as amended; (42 U.S.C. 2201, 2210); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842); Sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Pub. L 109–58.

■ 2. In § 140.11, paragraph (a)(4) is revised to read as follows:

§ 140.11 Amounts of financial protection for certain reactors.

(a) * * *

(4) In an amount equal to the sum of $375,000,000 and the amount available as secondary financial protection (in the form of private liability insurance available under an industry retrospective rating plan providing for deferred premium charges equal to the pro rata share of the aggregate public liability claims and costs, excluding costs payment of which is not authorized by Section 170o.(1)(D), in excess of that covered by primary financial protection) for each nuclear reactor which is licensed to operate and which is designed for the production of electrical energy and has a rated capacity of 100,000 electrical kilowatts or more: Provided, however, that under such a plan for deferred premium charges for each nuclear reactor which is licensed to operate, no more than $111,900,000 with respect to any nuclear incident (plus any surcharge assessed under Subsection 170o.(1)(E) of the Act) and no more than $17,500,000 per incident within one calendar year shall be charged. *Except that,* where a person is authorized to operate a combination of 2 or more nuclear reactors located at a single site, each of which has a rated capacity of 100,000 or more electrical kilowatts but not more than 300,000 electrical kilowatts with a combined rated capacity of not more than 1,300,000 electrical kilowatts, each such combination of reactors shall be considered to be a single nuclear reactor for the sole purpose of assessing the applicable financial protection required under this section.

* * * * *

Dated at Rockville, Maryland, this 4th day of March 2010.

For the Nuclear Regulatory Commission.

R.W. Borchardt,

Executive Director for Operations.

[FR Doc. 2010–7394 Filed 4–1–10; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1214; Directorate Identifier 2009–NM–091–AD; Amendment 39–16251; AD 2010–07–06]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Model BD–100–1A10 (Challenger 300) Airplanes

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

ACTION: Final rule.

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:

There has been an incident during a production flight test where the proximity-sensor electronic unit (PSEU) failed. This resulted in unannunciated loss of:

- Wheel brakes below 10 knots;
- Thrust reverser;
- Nose wheel steering; and
- Auto-deployment of the multi-function spoilers.

A similar condition, if not corrected, may result in reduced controllability of the aircraft upon landing and possible overrun of the runway.

* * * * *

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

DATES: This AD becomes effective May 7, 2010.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of May 7, 2010.

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

FOR FURTHER INFORMATION CONTACT: Bruce Valentine, Aerospace Engineer, Avionics and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7328; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on December 29, 2009 (74 FR 68741). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> There has been an incident during a production flight test where the proximity-sensor electronic unit (PSEU) failed. This resulted in unannunciated loss of:
> - Wheel brakes below 10 knots;
> - Thrust reverser;
> - Nose wheel steering; and
> - Auto-deployment of the multi-function spoilers.
>
> A similar condition, if not corrected, may result in reduced controllability of the aircraft upon landing and possible overrun of the runway.
>
> The original issue of this [Canadian] directive mandated the introduction of non-normal procedures to the airplane flight manual (AFM) as an interim corrective action to address PSEU failures.
>
> Revision 1 of this directive amends the aircraft applicability and introduces a note providing terminating action, for use at operator discretion, if the aircraft has incorporated a PSEU with software version 12 in accordance with Bombardier Service Bulletin (SB) 100–32–12.

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

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.

Explanation of Change Made to This AD

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

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD with the change described previously. We determined that this change will not increase the economic burden on any operator or increase the scope of the AD.

Differences Between This AD and the MCAI or Service Information

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

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

Explanation of Change to Costs of Compliance

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

Costs of Compliance

We estimate that this AD will affect 162 products of U.S. registry. We also estimate that it will take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $13,770, 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 AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–07–06 Bombardier, Inc.: Amendment 39–16251. Docket No. FAA–2009–1214; Directorate Identifier 2009–NM–091–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective May 7, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier, Inc. Model BD–100–1A10 (Challenger 300) airplanes, certificated in any category, serial numbers 20002 through 20153 inclusive.

Subject

(d) Air Transport Association (ATA) of America Code 32: Landing gear.

Reason

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

There has been an incident during a production flight test where the proximity-sensor electronic unit (PSEU) failed. This resulted in unannunciated loss of:

- Wheel brakes below 10 knots;
- Thrust reverser;
- Nose wheel steering; and
- Auto-deployment of the multi-function spoilers.

A similar condition, if not corrected, may result in reduced controllability of the aircraft upon landing and possible overrun of the runway.

The original issue of this directive mandated the introduction of non-normal procedures to the airplane flight manual (AFM) as an interim corrective action to address PSEU failures.

Revision 1 of this directive amends the aircraft applicability and introduces a note providing terminating action, for use at operator discretion, if the aircraft has incorporated a PSEU with software version 12 in accordance with Bombardier Service Bulletin (SB) 100–32–12.

Actions and Compliance

(f) Unless already done, within 14 days after the effective date of this AD: Revise the Limitations Section of the Bombardier Challenger 300 AFM, CSP 100–1, to include the information in Bombardier Temporary Revision TR–39, dated March 2, 2005, as specified in the temporary revision. This temporary revision introduces a procedure for "PROX SYS FAULT (A)" and modifies the "WOW FAIL (C)" and "GEAR SYS FAIL (C)" procedures.

Note 1: This may be done by inserting a copy of Bombardier Temporary Revision TR–39, dated March 2, 2005, in the AFM. When this temporary revision has been included in general revisions of the AFM, the general revisions may be inserted in the AFM, provided the relevant information in the general revision is identical to that in Bombardier Temporary Revision TR–39, dated March 2, 2005.

Note 2: If the aircraft has incorporated a PSEU, part number (P/N) 30227–0401, 30227–0402, or 30227–0403, with software version 12, installed in accordance with Bombardier Service Bulletin 100–32–12, dated June 4, 2007, it is permissible to follow the revised AFM procedures included in Bombardier Temporary Revision TR–46, dated March 27, 2008, in lieu of using Bombardier Temporary Revision TR–39, dated March 2, 2005, specified in paragraph (f) of this AD.

FAA AD Differences

Note 3: 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, 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 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.

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

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

Related Information

(h) Refer to MCAI Transport Canada Civil Aviation Airworthiness Directive CF–2005–12R1, dated December 23, 2008; and Bombardier Temporary Revision TR–39, dated March 2, 2005; for related information.

Material Incorporated by Reference

(i) You must use Bombardier Temporary Revision TR–39, dated March 2, 2005, to the Bombardier Challenger 300 Airplane Flight Manual, CSP 100–1, 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 Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; e-mail *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.*

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

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

Issued in Renton, Washington, on March 19, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–6785 Filed 4–1–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0230; Directorate Identifier 2010–NM–071–AD; Amendment 39–16250; AD 2010–06–51]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER Series Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting airworthiness directive (AD) 2010–06–51 that was sent previously to all known U.S. owners and operators of The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes by individual notices. This AD requires doing a detailed inspection of the inboard and outboard aft attach lugs of the left and right elevator control tab mechanisms for gaps between the swage ring and the aft attach lug, and between the spacer and the aft attach lug; trying to move or rotate the spacer using hand pressure; and replacing any discrepant elevator tab control mechanism, including performing the detailed inspection on the replacement part before and after installation. This AD is prompted by a report of failure of the aft attach lugs on the left elevator tab control mechanism, which resulted in severe elevator vibration. We are issuing this AD to detect and correct a loose bearing in the aft lug of the elevator tab control

mechanism, which could result in unwanted elevator and tab vibration. The consequent structural failure of the elevator or horizontal stabilizer could result in loss of aircraft control and structural integrity.

DATES: This AD becomes effective April 7, 2010 to all persons except those persons to whom it was made immediately effective by emergency AD 2010–06–51, issued March 12, 2010, which contained the requirements of this amendment.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of April 7, 2010.

We must receive comments on this AD by May 17, 2010.

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

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

For service information identified in this 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.*

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: Kelly McGuckin, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle ACO, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6490; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: On March 12, 2010, we issued emergency AD 2010–06–51, which applies to all The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes.

Background

The FAA received a report of failure of the aft attach lugs on the left elevator tab control mechanism, which resulted in severe elevator vibration. The flightcrew diverted from the intended route and made an uneventful landing. Subsequent investigation revealed extensive damage to the elevator tab control system. Severe vibration in this attach point is suspected of allowing rapid wear of the joint, and resulted in failure of the attach lugs. This condition, if not corrected, could result in a loss of aircraft control and structural integrity.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 737–27A1296, dated March 12, 2010. The service bulletin describes procedures for a detailed inspection to detect discrepancies of the inboard and outboard aft attach lugs of the elevator tab control mechanism. Discrepancies include movement or rotation of the spacer, and gaps between the swage ring and the aft attach lug or between the spacer and the aft attach lug. The service bulletin describes procedures for replacing any discrepant elevator tab control mechanism, including performing the detailed inspection on the replacement part before and after installation. For certain airplanes, the compliance time for the inspection is 12 or 30 days, depending on airplane line number, total accumulated flight cycles, and approval for operation under extended twin operations (ETOPS).

FAA's Determination and Requirements of This AD

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design, we issued emergency AD 2010–06–51 to detect and correct a loose bearing in the aft lug of the elevator tab control mechanism, which could result in unwanted elevator and tab vibration. The consequent structural failure of the elevator or horizontal stabilizer could result in loss of aircraft control and structural integrity. The AD requires accomplishing the actions specified in the service information previously described, except as described in "Differences Between this AD and the Service Bulletin." This AD also requires reporting the inspection results to Boeing.

We found that immediate corrective action was required; therefore, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual notices issued on March 12, 2010, to all known U.S. owners and operators of The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

Differences Between This AD and the Service Bulletin

The effectivity of Boeing Alert Service Bulletin 737–27A1296, dated March 12, 2010, includes all Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes. The inspection requirements of this AD, however, affect only those airplanes subject to a short compliance time (within 12 or 30 days). Because the suspect components may be installed as replacements on all airplanes subject to this AD, paragraph (l) of this AD requires that the part be inspected before and after installation. We may consider superseding this AD to apply the inspection requirements to the remaining airplanes, which would be subject to a longer compliance time that would allow enough time to provide notice and opportunity for prior public comment on the merits of the inspection for these airplanes.

Interim Action

This AD is considered to be interim action. The inspection reports that are required by this AD will enable the manufacturer to obtain better insight into the nature, cause, and extent of the issue, and eventually to develop final action to address the unsafe condition. Once final action has been identified, we might consider further rulemaking.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments before it becomes effective. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0230; Directorate Identifier 2010–NM–071–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 have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If this emergency regulation is later deemed significant under DOT Regulatory Policies and Procedures, we will prepare a final regulatory evaluation and place it in the AD Docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation, if filed.

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):

2010–06–51 The Boeing Company: Amendment 39–16250. Docket No. FAA–2010–0230; Directorate Identifier 2010–NM–071–AD.

Effective Date

(a) This AD becomes effective April 7, 2010, to all persons except those persons to whom it was made immediately effective by emergency AD 2010–06–51, issued on March 12, 2010, which contained the requirements of this amendment.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes; certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 27: Flight controls.

Unsafe Condition

(e) This AD results from a report of failure of the aft attach lugs on the left elevator tab control mechanism, which resulted in severe elevator vibration. The Federal Aviation Administration is issuing this AD to detect and correct a loose bearing in the aft lug of the elevator tab control mechanism, which could result in unwanted elevator and tab vibration. The consequent structural failure of the elevator or horizontal stabilizer could result in loss of aircraft control and structural integrity.

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 Corrective Action

(g) For Groups 1, 2, and 3; and Group 4, Configuration 2; as identified in Boeing Alert Service Bulletin 737–27A1296, dated March 12, 2010: At the applicable time specified in paragraph 1.E. Compliance of Boeing Alert Service Bulletin 737–27A1296, dated March 12, 2010, except as required by paragraph (i) of this AD, do a detailed inspection of the inboard and outboard aft attach lugs of the left and right elevator control tab mechanisms for gaps between the swage ring and the aft attach lug, and between the spacer and the aft attach lug; and try to move or rotate the spacer using hand pressure, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–27A1296, dated March 12, 2010.

(h) If, during accomplishment of the actions required by paragraph (g) of this AD, any gap is found between the swage ring and the aft attach lug, or between the spacer and the aft attach lug; or if the spacer moves or rotates: Before further flight, do the actions required by paragraphs (h)(1) and (h)(2) of this AD, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–27A1296, dated March 12, 2010.

(1) Inspect the replacement elevator tab control mechanism for discrepancies, as specified in paragraph (g) of this AD; and, if no discrepancy is found, install the replacement elevator tab control mechanism.

(2) Re-inspect the installed elevator tab control mechanism, as required by paragraph (g) of this AD.

Exception to Service Bulletin Specifications

(i) Where Boeing Alert Service Bulletin 737–27A1296, dated March 12, 2010, specifies a compliance time after the date of the original issue of the service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD.

Inspection Done According to Multi Operator Message (MOM)

(j) An inspection done before the effective date of this AD according to Boeing Multi Operator Message Number MOM–MOM–10–0159–01B, dated March 10, 2010, is considered acceptable for compliance with the corresponding inspection specified in paragraph (g) of this AD.

Reporting

(k) At the applicable time specified in paragraph (k)(1) or (k)(2) of this AD: Submit a report of the findings (both positive and negative) of the inspections required by paragraph (g) of this AD to Boeing Commercial Airplanes Group, Attention: Manager, Airline Support, e-mail: *rse.boecom@boeing.com.* The report must include the inspection results including a description of any discrepancies found, the airplane line number, and the number of flight cycles and flight hours accumulated 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 10 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report

within 10 days after the effective date of this AD.

Parts Installation

(l) For all airplanes: As of the effective date of this AD, no person may install an elevator tab control mechanism, part number 251A2430–( ), on any airplane, unless the mechanism has been inspected before and after installation, in accordance with the requirements of paragraph (g) of this AD, and no discrepancies have been found.

Special Flight Permit

(m) Special flight permits, as described in Section 21.197 and Section 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199), are not allowed.

Alternative Methods of Compliance (AMOCs)

(n)(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: Kelly McGuckin, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle ACO, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone 425–917–6490; 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 refer to 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.

Material Incorporated by Reference

(o) You must use Boeing Alert Service Bulletin 737–27A1296, dated March 12, 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 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 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 March 18, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–6786 Filed 4–1–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0684; Directorate Identifier 2008–NM–149–AD; Amendment 39–16247; AD 2010–07–03]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 747–200C and –200F Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to certain Model 747–200C and –200F series airplanes. That AD currently requires repetitive inspections to find fatigue cracking in the floor panel attachment fastener holes of the upper chord of certain upper deck floor beams in Section 41 (*i.e.,* body station 520 and forward), and repair if necessary. The existing AD also provides optional modifications, which extend the threshold for initiating certain repetitive inspections. This new AD requires additional repetitive inspections to find fatigue cracking in the floor panel attachment fastener holes of the upper chord of certain other upper deck floor beams in Section 41 and Section 42 (*i.e.,* aft of body station 520); repetitive inspections to find fatigue cracking in the permanent fastener holes of the upper chord of certain upper deck floor beams in Section 41; and related investigative and corrective actions. This new AD also provides a new optional modification, which terminates certain repetitive inspections. This AD results from new reports of cracking in the upper chord of the upper deck floor beams in Sections 41 and 42, and new analysis that shows the permanent fastener holes of the upper chord of certain upper deck floor beams in Section 41 are also susceptible to fatigue cracking. We are issuing this AD to detect and correct cracking in the upper chord of the upper deck floor beams. Such cracking could extend and sever the floor beams, which could result in rapid decompression and loss of controllability of the airplane.

DATES: This AD becomes effective May 7, 2010.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of May 7, 2010.

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.*

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 (telephone 800–647–5527) is 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 FURTHER INFORMATION CONTACT: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6437; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 2006–08–02, amendment 39–14556 (70 FR 18618, April 12, 2006). The existing AD applies to certain Model 747–200C and –200F series airplanes. That NPRM was published in the **Federal Register** on August 12, 2009 (74 FR 40529). That NPRM proposed to continue to require repetitive inspections to find fatigue cracking in the floor panel attachment fastener

holes of the upper chord of certain upper deck floor beams in Section 41 (*i.e.,* body station 520 and forward), and repair if necessary. That NPRM also proposed to continue to provide optional modifications, which extend the threshold for the initiation of certain repetitive inspections. That NPRM also proposed to add repetitive inspections to find fatigue cracking in the floor panel attachment fastener holes of the upper chord of certain other upper deck floor beams in Section 41 and Section 42 (*i.e.,* aft of body station 520); repetitive inspections to find fatigue cracking in the permanent fastener holes of the upper chord of certain upper deck floor beams in Section 41; and related investigative and corrective actions. Additionally, that NPRM proposed to provide a new optional modification, which would terminate certain repetitive inspections.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments that have been received on the NPRM from the single commenter.

Request To Revise Procedure Location Specified in Step (5) of Table 2 of the NPRM

Boeing requests that we revise Table 2 of the NPRM to update the location in the referenced service bulletin for the modification provided in Step (5) of Table 2 of the NPRM. Boeing points out that the modification referred to in paragraph (h)(2) of AD 2006–08–02, provided in Step (5) in Table 2 of the NPRM, was defined in Figure 5 of the original issue of Boeing Alert Service Bulletin 747–53A2439, dated July 5, 2001. Boeing further points out that the instructions for this modification were moved to Part 3 and Part 4 of the Work Instructions of Revision 2, dated July 17, 2008, of Boeing Alert Service Bulletin 747–53A2439.

We do not agree to revise Table 2 of this AD. Step (5) of Table 2 references paragraph (i)(2) of this AD, and requires only the fastener hole modification per Figure 5 and the open-hole high-frequency eddy current (HFEC) inspection per Part 1 of the Work Instructions of Boeing Alert Service Bulletin 747–53A2439, Revision 2, dated July 17, 2008. The fastener hole slot repair per Part 4 of the Work Instructions of Boeing Alert Service Bulletin 747–53A2439, Revision 2, dated July 17, 2008, is not required by paragraph (i)(2) of this AD. We note that the fastener hole slot repair per Part 4 of the Work Instructions of Boeing Alert Service Bulletin 747–53A2439, Revision 2, dated July 17, 2008, which is referenced in Part 2 of the Work Instructions of Boeing Alert Service Bulletin 747–53A2439, Revision 2, dated July 17, 2008, is required by paragraph (i)(1) of this AD. We have made no change to the final rule in this regard.

Request To Update Name of Boeing's Delegation Option Authorization Organization

Boeing requests that we revise paragraphs (h)(1) and (o)(4) of the NPRM to change "Boeing Commercial Airplanes Delegation Option Authorization Organization" to "Boeing Commercial Airplanes Organization Designation Authorization Organization." Boeing points out that they changed the name of this organization at the end of August 2009.

We partially agree. Boeing Commercial Airplanes has received an Organization Designation Authorization (ODA), which replaces their previous designation as a Delegation Option Authorization holder. We have revised paragraph (o)(4) of this AD to delegate the authority to approve an alternative method of compliance for any repair required by this AD to the Boeing Commercial Airplanes ODA rather than an Authorized Representative under the former Delegation Option Authorization (DOA) program. However, we have also revised paragraph (h)(1) of this AD to reference paragraph (o) of this AD and to continue to provide allowance for those operators that have used a repair approved by a Boeing Company Designated Engineering Representative (DER) or by an Authorized Representative for the Boeing Commercial Airplanes DOA.

Explanation of Changes Made to This AD

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

Conclusion

We have carefully reviewed the available data, including the comments that have been received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Explanation of Change to Costs of Compliance

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

Costs of Compliance

There are about 68 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspections (required by AD 2006–08–02).	29	$85	$2,465 per inspection cycle	25	$61,625 per inspection cycle.
Inspection of Area 5 and permanent fastener hole in Areas 1, 2, 3, and 4 (new required action).	78	85	$6,630 per inspection cycle	25	$165,750 per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that 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. *See* the **ADDRESSES** section for a location to examine the regulatory evaluation.

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 Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–14556 (70 FR 18618, April 12, 2006) and by adding the following new airworthiness directive (AD):

2010–07–03 The Boeing Company: Amendment 39–16247. Docket No. FAA–2009–0684; Directorate Identifier 2008–NM–149–AD.

Effective Date

(a) This AD becomes effective May 7, 2010.

Affected ADs

(b) This AD supersedes AD 2006–08–02, Amendment 39–14556.

Applicability

(c) This AD applies to The Boeing Company Model 747–200C and –200F series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 747–53A2439, Revision 2, dated July 17, 2008.

Subject

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

Unsafe Condition

(e) This AD results from new reports of cracking in the upper chord of the upper deck floor beams in Sections 41 and 42, and new analysis that shows the permanent fastener holes of the upper chord of certain upper deck floor beams in Section 41 are also susceptible to fatigue cracking. We are issuing this AD to detect and correct cracking in the upper chord of the upper deck floor beams. Such cracking could extend and sever the floor beams, which could result in rapid decompression and loss of controllability 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.

Requirements of AD 2006–08–02

Initial Compliance Time at a New Reduced Threshold

(g) At the earliest of the times specified in paragraphs (g)(1) through (g)(3) of this AD, do the inspection required by paragraph (h) of this AD.

(1) Before the accumulation of 22,000 total flight cycles, or within 1,000 flight cycles after March 15, 2004 (the effective date of AD 2004–03–11, which was superseded by AD 2006–08–02), whichever occurs later.

(2) For airplanes with 17,000 or more total flight cycles as of May 17, 2006 (the effective date of AD 2006–08–02): Before the accumulation of 18,000 total flight cycles, or within 90 days after May 17, 2006, whichever occurs later.

(3) For airplanes with fewer than 17,000 total flight cycles as of May 17, 2006: Before the accumulation of 15,000 total flight cycles, or within 1,000 flight cycles after May 17, 2006, whichever occurs later.

Inspections at Reduced Intervals for Certain Floor Beams and Repair

(h) Do the applicable inspection to find fatigue cracking in the upper chord of the upper deck floor beams as specified in Part 1 (Open-Hole High Frequency Eddy Current (HFEC) Inspection Method) or Part 2 (Surface HFEC Inspection Method) of the Work Instructions of Boeing Alert Service Bulletin 747–53A2439, dated July 5, 2001. Do the inspections per the Boeing Alert Service Bulletin 747–53A2439, dated July 5, 2001, except as provided by paragraph (k) of this AD. Any combination of the applicable inspection methods specified in Parts 1 and 2 may be used, provided that the corresponding repetitive inspection interval is used.

(1) If any crack is found, before further flight, repair per Part 3 (Upper Chord Repair) of the Work Instructions of Boeing Alert Service Bulletin 747–53A2439, dated July 5, 2001; except where Boeing Alert Service Bulletin 747–53A2439, dated July 5, 2001, specifies to contact Boeing for appropriate action, before further flight, repair using a method approved in accordance with the procedures specified in paragraph (o) of this AD or repair according to data meeting the certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) or by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization. For a repair method to be approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, as required by this paragraph, the Manager's approval letter must specifically reference this AD. Do the applicable inspection of the repaired area per Part 1 of the Work Instructions of Boeing Alert Service Bulletin 747–53A2439, dated July 5, 2001, at the applicable time per Part 3 of the Work Instructions of Boeing Alert Service Bulletin 747–53A2439, dated July 5, 2001, and repeat the applicable inspection at the applicable interval per Figure 1 of Boeing Alert Service Bulletin 747–53A2439, dated July 5, 2001.

(2) If no crack is found, repeat the applicable inspection per paragraph (h) of this AD at the applicable time specified in paragraphs (h)(2)(i) through (h)(2)(iii) of this AD. As an option to the repetitive inspections, accomplishment of paragraph (i)(1) or (i)(2) of this AD, before further flight, extends the threshold for the initiation of the repetitive inspections required by this paragraph.

(i) If the immediately preceding inspection was conducted using an open-hole HFEC inspection method: Conduct the next inspection of that area within 3,000 flight cycles of the last inspection.

(ii) If the immediately preceding inspection was conducted using a surface HFEC inspection method at stations 340 through 420 inclusive and station 500: Conduct the next inspection of that area within 750 flight cycles of the last inspection.

(iii) If the immediately preceding inspection was conducted using a surface HFEC inspection method at stations 440 and 520: Conduct the next inspection of that area at the earlier of the times specified in paragraphs (h)(2)(iii)(A) and (h)(2)(iii)(B) of this AD, and thereafter at intervals not to exceed 250 flight cycles.

(A) Within 750 flight cycles since the last surface HFEC inspection required by paragraph (h) of this AD.

(B) Within 250 flight cycles after May 17, 2006.

Optional Repair/Modification

(i) For areas on which the inspection required by paragraph (h) of this AD is done per Part 1 of the Work Instructions of Boeing Alert Service Bulletin 747–53A2439, dated July 5, 2001; and on which no cracking is found: Accomplishment of the actions specified in either paragraph (i)(1) or (i)(2) of this AD extends the threshold for the initiation of the repetitive inspections required by paragraph (h)(2) of this AD. For areas on which the inspection required by paragraph (h) of this AD is done per Part 2 of Boeing Alert Service Bulletin 747–53A2439, dated July 5, 2001; and on which no cracking is found: Accomplishment of the actions specified in paragraph (i)(1) of this AD extends the threshold for the initiation of the repetitive inspections required by paragraph (h)(2) of this AD.

(1) Do the applicable repair per Part 3 of the Work Instructions of Boeing Alert Service Bulletin 747–53A2439, dated July 5, 2001, except as provided by paragraph (k) of this AD. At the applicable time specified in Table 1 of Part 3 of the Work Instructions of Boeing Alert Service Bulletin 747–53A2439, dated July 5, 2001, do the applicable inspection of the repaired area per Part 1 of the Work Instructions of Boeing Alert Service Bulletin 747–53A2439, dated July 5, 2001. Repeat the inspection thereafter within the applicable interval of 3,000 flight cycles per Figure 1 of Boeing Alert Service Bulletin 747–53A2439, dated July 5, 2001.

(2) Do the modification of the attachment hole of the floor panel per Figure 5 of Boeing Alert Service Bulletin 747–53A2439, dated July 5, 2001, except as provided by paragraph (k) of this AD. Within 10,000 flight cycles after accomplishment of the modification, do the inspection of the modified area per Part 1 of the Work Instructions of Boeing Alert Service Bulletin 747–53A2439, dated July 5, 2001. Repeat the inspection thereafter within the applicable interval of 3,000 flight cycles per Figure 1 of Boeing Alert Service Bulletin 747–53A2439, dated July 5, 2001.

Determining the Number of Flight Cycles for Compliance Time

(j) For the purposes of calculating the compliance threshold and repetitive intervals for actions required by paragraph (g), (h), or (i) of this AD: As of May 17, 2006 (the effective date of AD 2006–08–02), all flight cycles, including the number of flight cycles in which cabin differential pressure is at 2.0 pounds per square inch (psi) or less, must be counted when determining the number of flight cycles that have occurred on the airplane.

New Requirements of This AD

Applicable Revisions of Service Bulletins

(k) Use the information in Tables 1 and 2 of this AD, at the applicable time specified in paragraphs (k)(1) and (k)(2) of this AD, to determine the part of the applicable service bulletin to use to accomplish the actions required by this AD.

(1) On or after May 17, 2006, but before the effective date of this AD, use only the service information listed in Table 1 or Table 2 of this AD.

TABLE 1—SERVICE INFORMATION GIVEN IN BOEING ALERT SERVICE BULLETIN 747–53A2439, REVISION 1, DATED MARCH 10, 2005

Do—	In accordance with—
(1) The actions required by paragraph (h) of this AD.	Parts 1 and 2 of the Work Instructions of Boeing Alert Service Bulletin 747–53A2439, Revision 1, dated March 10, 2005; as applicable.
(2) The applicable inspection of the repaired area required by paragraph (h)(1) of this AD.	Parts 1 and 6 of the Work Instructions of Boeing Alert Service Bulletin 747–53A2439, Revision 1, dated March 10, 2005; as applicable; at the applicable time specified in Table 1 of Part 3 of the Work Instructions of that service bulletin.
(3) The actions required by paragraph (i)(1) of this AD.	Parts 1, 3, and 6 of the Work Instructions of Boeing Alert Service Bulletin 747–53A2439, Revision 1, dated March 10, 2005; as applicable.
(4) The actions required by paragraph (i)(2) of this AD.	Figure 5 and Part 1 of the Work Instructions of Boeing Alert Service Bulletin 747–53A2439, Revision 1, dated March 10, 2005; as applicable.

(2) On or after the effective date of this AD, use only the service information listed in Table 2 of this AD.

TABLE 2—SERVICE INFORMATION GIVEN IN BOEING ALERT SERVICE BULLETIN 747–53A2439, REVISION 2, DATED JULY 17, 2008

Do—	In accordance with—
(1) The actions required by paragraph (h) and (l) of this AD.	Part 1 (open-hole or surface HFEC inspection, as applicable) of the Work Instructions of Boeing Alert Service Bulletin 747–53A2439, Revision 2, dated July 17, 2008.
(2) The applicable inspection of the repaired area required by paragraph (h)(1) of this AD.	Part 1 (open-hole HFEC inspection only) and Part 5 of the Work Instructions of Boeing Alert Service Bulletin 747–53A2439, Revision 2, dated July 17, 2008; at the applicable time specified in Table 1 of Part 2 of the Work Instructions of that service bulletin.
(3) The applicable repair required by paragraph (h)(1) of this AD.	Part 2 (upper chord repair at floor panel attach holes) of the Work Instructions of Boeing Alert Service Bulletin 747–53A2439, Revision 2, dated July 17, 2008.
(4) The actions required by paragraph (i)(1) of this AD.	Part 1 (open-hole HFEC inspection only), Part 2, and Part 5 of the Work Instructions of Boeing Alert Service Bulletin 747–53A2439, Revision 2, dated July 17, 2008.
(5) The actions required by paragraph (i)(2) of this AD.	Figure 5 and Part 1 (open-hole HFEC inspection only) of the Work Instructions of Boeing Alert Service Bulletin 747–53A2439, Revision 2, dated July 17, 2008.

New Inspections and Related Investigative and Corrective Actions

(l) For all airplanes, except as provided by paragraphs (k)(1) and (k)(2) of this AD: At the applicable time specified in Paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 747–53A2439, Revision 2, dated July 17, 2008, do the applicable open-hole or surface HFEC inspections for fatigue cracking in the upper chord of the upper deck floor beams in Area 5, and the inspection for fatigue cracking in the permanent fastener holes of the upper chord of certain upper deck floor beams in Areas 1, 2, 3, and 4, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2439, Revision 2, dated July 17, 2008. Do all applicable related investigative and corrective actions before further flight. Repeat the applicable inspection thereafter at the applicable interval specified in Paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 747–53A2439, Revision 2, dated July 17, 2008.

(1) Where Boeing Alert Service Bulletin 747–53A2439, Revision 2, dated July 17, 2008, specifies a compliance time relative to the date of issuance of that service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD.

(2) Where Boeing Alert Service Bulletin 747–53A2439, Revision 2, dated July 17, 2008, specifies contacting Boeing for repair data: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (o) of this AD.

Optional New Modification for Areas 1, 2, 3, and 4

(m) For areas 1, 2, 3, and 4 as defined in Boeing Alert Service Bulletin 747–53A2439, Revision 2, dated July 17, 2008: Doing the modification and post-modification actions specified in Boeing Alert Service Bulletin 747–53A2696, dated October 16, 2008, terminates the repetitive inspection requirements of paragraphs (g) and (h) of this AD. Doing the modification and post-modification actions specified in Boeing Alert Service Bulletin 747–53A2696, dated October 16, 2008, terminates the repetitive inspection requirements of paragraph (l) of this AD, except at the upper deck floor beam at body station (BS) 460 and 480 and the upper deck floor beams aft of BS 520.

No Reporting Requirement

(n) Although Boeing Alert Service Bulletin 747–53A2439, Revision 1, dated March 10, 2005; and Boeing Alert Service Bulletin 747–53A2439, Revision 2, dated July 17, 2008; specify to submit certain information to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

(o)(1) The Manager, Seattle 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: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6437; fax (425) 917–6590. Or, e-mail information to *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov*.

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

(3) AMOCs approved previously in accordance with AD 2006–08–02, are approved as AMOCs for the corresponding provisions of this AD.

(4) 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.

Material Incorporated by Reference

(p) You must use Boeing Alert Service Bulletin 747–53A2439, Revision 2, dated July 17, 2008, to do the actions required by this AD, unless the AD specifies otherwise. If you accomplish the new optional actions specified by this AD, you must use Boeing Alert Service Bulletin 747–53A2696, dated October 16, 2008, to perform those actions, 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 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 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 March 17, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–6546 Filed 4–1–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–19559; Directorate Identifier 2004–NE–03–AD; Amendment 39–16254; AD 2010–07–09]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc RB211–Trent 700 Series Turbofan Engines

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for Rolls-Royce plc RB211–Trent 700 series turbofan engines. That AD currently requires initial and repetitive borescope inspections of the high-pressure-and-intermediate pressure (HP–IP) turbine internal and external oil vent tubes for coking and carbon buildup, and cleaning or replacing the vent tubes if necessary. This AD requires the same actions, but adds additional inspections of the vent flow restrictor. This AD results from further analysis that the cleaning of the vent tubes required by AD 2007–02–05 could lead to loosened carbon fragments, causing a blockage downstream in the vent flow restrictor. We are issuing this AD to prevent internal oil fires due to coking and carbon buildup that could cause uncontained engine failure and damage to the airplane.

DATES: This AD becomes effective May 7, 2010. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of May 7, 2010.

ADDRESSES: You can get the service information identified in this AD from Rolls-Royce plc, P.O. Box 31, Derby, England; telephone: 011–44–1332–249428; fax: 011–44–1332–249223.

The Docket Operations office is located at Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *james.lawrence@faa.gov;* telephone (781) 238–7176; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 by superseding AD 2007–02–05, Amendment 39–14892 (72 FR 2603, January 22, 2007), with a proposed AD. The proposed AD applies to Rolls-Royce plc RB211–Trent 700 series turbofan engines. We published the proposed AD in the **Federal Register** on October 26, 2009 (74 FR 54940). That action proposed to require initial and repetitive borescope inspections of the HP–IP turbine internal and external oil vent tubes for coking and carbon buildup, cleaning or replacing the vent tubes if necessary, and inspections of the vent flow restrictor.

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 provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

Request to Reference the Latest Service Bulletin

One commenter, Rolls-Royce plc, requests that we incorporate by reference the latest alert service bulletin (ASB) in the AD, which is ASB No. RB.211–72–AE302, Revision 8, dated October 21, 2009.

We agree. We changed the AD to incorporate by reference Revision 8 of that ASB.

Request To Allow Previous Credit

Rolls-Royce plc requests that we allow previous credit to operators that performed the initial inspections specified in paragraph (f) of the proposed AD before the AD effective date, using Revision 4, Revision 5, Revision 6, or Revision 7 of ASB No. RB.211–72–AE302.

We agree and added a previous credit paragraph to the AD.

Request to Change Initial Inspection Threshold

Rolls-Royce plc requests that we change the initial inspection threshold from 3 months to 2 months, to agree with the ASB.

We agree and changed the AD.

Clarification of AD Compliance Section

We clarified paragraphs (g) and (h) of the AD compliance section to better align with the Rolls-Royce plc ASB.

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

Based on the service information, we estimate that this AD will affect about 33 engines of U.S. registry. We also estimate that it will take about one work-hour per engine to comply with this AD. The average labor rate is $80 per work-hour. Required parts will cost about $2,000 per engine. Based on these figures, we estimate the cost of the AD on U.S. operators to be $68,640.

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

For the reasons discussed above, I certify that 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 summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES**.

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 Federal Aviation Administration 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 39–14892 (72 FR 2603, January 22, 2007), and by adding a new airworthiness directive, Amendment 39–16254, to read as follows:

2010–07–09 Rolls-Royce plc: Amendment 39–16254. Docket No. FAA–2005–19559; Directorate Identifier 2004–NE–03–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective May 7, 2010.

Affected ADs

(b) This AD supersedes AD 2007–02–05, Amendment 39–14892.

Applicability

(c) This AD applies to Rolls-Royce plc RB211–Trent 768–60, RB211–Trent 772–60, and RB211–Trent 772B–60 series turbofan engines. These engines are installed on, but not limited to, Airbus A330–243, –341, –342 and –343 series airplanes.

Unsafe Condition

(d) This AD results from further analysis that the cleaning of the vent tubes required by AD 2007–02–05 could lead to loosened carbon fragments, causing a blockage downstream in the vent flow restrictor. We are issuing this AD to prevent internal oil fires due to coking and carbon buildup that could cause uncontained engine failure and damage to the airplane.

Compliance

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

Initial Inspections, Cleaning, and Replacements

(f) Using the schedule in Table 1 of this AD, borescope-inspect and clean as necessary, the high-pressure-and-intermediate pressure (HP–IP) turbine internal oil vent tubes, external oil vent tubes, and bearing chamber.

TABLE 1—INITIAL INSPECTION SCHEDULE

If the engine or the 05 Module	Then initially inspect
Has reached 10,000 hours time-since-new (TSN) or reached 2,500 cycles-since-new (CSN) on the effective date of this AD.	Within 2 months after the effective date of this AD.
Has fewer than 10,000 hours TSN and fewer than 2,500 CSN on the effective date of this AD.	Within 2 months after reaching 10,000 hours TSN or 2,500 CSN, whichever occurs first.
Is returned for an engine shop visit	Before returning to service.

(1) If after cleaning, there is still carbon in the vent tube that prevents cleaning tool number HU80298 from passing through the tube, then replace the internal oil vent tube within 10 cycles-in-service (CIS).

(2) If after cleaning, there is still carbon of visible thickness in either of the two external oil vent tubes, then replace the external oil vent tube before further flight.

(3) Use paragraphs 3.A. through 3.A.(7) of the Accomplishment Instructions and Appendix A of Rolls-Royce plc Alert Service Bulletin (ASB) No. RB.211–72–AE302, Revision 8, dated October 21, 2009, to do the borescope inspections and cleaning of the oil vent tubes and bearing chamber.

Initial Visual Inspection of the Vent Flow Restrictor

(g) For engines that, on the effective date of this AD, have not accumulated 25 service cycles since the last cleaning and inspection specified in paragraphs (f) through (f)(3) of this AD, visually inspect the vent flow restrictor:

(1) Either after a high-power ground run immediately following the cleaning and inspection; or

(2) Within 25 service cycles of the last cleaning and inspection.

(h) For engines that, on the effective date of this AD, have accumulated 25 or more service cycles since the last cleaning and inspection specified in paragraphs (f) through (f)(3) of this AD, visually inspect the vent flow restrictor within 25 service cycles after the effective date of this AD.

(i) Use paragraph 3.A.(8) of the Accomplishment Instructions of Rolls-Royce plc ASB No. RB.211–72–AE302, Revision 8, dated October 21, 2009, to do the visual inspections.

Repetitive Inspections, Cleaning, and Replacements

(j) Within 6,400 hours time-in-service since last inspection and cleaning, or within 1,600 cycles-since-last inspection and cleaning, or at the next engine shop visit, whichever occurs first, borescope-inspect the HP–IP turbine internal and external oil vent tubes and bearing chamber, and clean the oil vent tubes as necessary.

(1) If after cleaning there is still carbon in the internal oil vent tube that prevents cleaning tool, number HU80298, from passing through the tube, then replace the internal oil vent tube within 10 CIS.

(2) If after cleaning there is still carbon of visible thickness, in either of the two external oil vent tubes, then replace the external oil vent tube before further flight.

(3) Use paragraphs 3.A. through 3.A.(7) of the Accomplishment Instructions and Appendix A of Rolls-Royce plc ASB No. RB.211–72–AE302, Revision 8, dated October 21, 2009, to do the borescope inspections and cleaning of the oil vent tubes and bearing chamber.

(k) Visually inspect the vent flow restrictor either after a high-power ground run or within 25 service cycles after performing the cleaning and inspection specified in paragraph (f) through (f)(3) of this AD. Use paragraph 3.A.(8) of the Accomplishment Instructions of Rolls-Royce plc ASB No. RB.211–72–AE302, Revision 8, dated October 21, 2009, to do the visual inspection.

Definition

(l) For the purpose of this AD, an engine shop visit is induction of the engine into the engine shop for any cause.

Previous Credit

(m) Initial inspections specified in paragraph (f) of this AD and performed before the effective date of this AD using Rolls-Royce plc ASB No. RB.211–72–AE302, Revision 4, dated April 30, 2007, or Revision 5, dated May 22, 2007, or Revision 6, dated January 29, 2009, or Revision 7, dated April 30, 2009, satisfy the initial inspection requirements in paragraph (f) of this AD.

Alternative Methods of Compliance

(n) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(o) European Aviation Safety Agency AD 2007–0201, dated August 1, 2007, and AD 2007–0202 (corrected August 8, 2007), also address the subject of this AD.

(p) Contact James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *james.lawrence@faa.gov;* telephone (781) 238–7176; fax (781) 238–7199, for more information about this AD.

Material Incorporated by Reference

(q) You must use Rolls-Royce plc Alert Service Bulletin No. RB.211–72–AE302, Revision 8, dated October 21, 2009, including Appendix A, to perform the actions required by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Rolls-Royce plc, P.O. Box 31, Derby, England; telephone: 011–44–1332–249428; fax: 011–44–1332–249223 for a copy of this service information. You may review copies at the FAA, New England Region, 12 New England Executive Park, Burlington, MA; or 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/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on March 25, 2010.

Robert J. Ganley,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2010–7283 Filed 4–1–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1166; Directorate Identifier 2009–NM–107–AD; Amendment 39–16255; AD 2010–07–10]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2–1C, B2K–3C, B2–203, B4–2C, B4–103, and B4–203 Airplanes

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

ACTION: Final rule.

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:

One operator reported loss of both pitch trims following autopilot disengagement after take off. Subsequent shop findings revealed severe damage to the power gears. Mal-phasing between the hydraulic motors was suspected to have induced excessive loads into the gear train, leading to collapse of one bearing on a shaft of the main gear, causing severe tooth damage. The combination of tooth damage and gear tilting caused the disconnection of two of the three hydraulic motors, resulting in jamming of the THSA [trimmable horizontal stabilizer actuator] gearbox and consequent loss of THSA control.

This condition, if not detected and corrected, could lead to further cases of mal-phasing of the hydraulic motors of the THSA, causing degradation of the power gears and potentially resulting in reduced control of the aeroplane.

* * * * *

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

DATES: This AD becomes effective May 7, 2010.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of May 7, 2010.

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

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

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 December 11, 2009 (74 FR 65699). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

One operator reported loss of both pitch trims following autopilot disengagement after take off. Subsequent shop findings revealed severe damage to the power gears. Mal-phasing between the hydraulic motors was suspected to have induced excessive loads into the gear train, leading to collapse of one bearing on a shaft of the main gear, causing severe tooth damage. The combination of tooth damage and gear tilting caused the disconnection of two of the three hydraulic motors, resulting in jamming of the THSA [trimmable horizontal stabilizer actuator] gearbox and consequent loss of THSA control.

This condition, if not detected and corrected, could lead to further cases of mal-phasing of the hydraulic motors of the THSA, causing degradation of the power gears and potentially resulting in reduced control of the aeroplane.

For the reasons described above, this AD requires repetitive checks [on-airplane phasing inspections and magnetic plug inspections for metal particles on the drain plug using detailed inspection methods] of the THSA and corrective actions [replacement of the THSA with a serviceable unit], depending on findings.

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

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comment received from the Air Line Pilots Association, International (ALPA). ALPA supports the NPRM.

Conclusion

We reviewed the available data, including the comment received, 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 our FAA policies. Any such differences are highlighted in a NOTE within the AD.

Explanation of Change to Costs of Compliance

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

Costs of Compliance

We estimate that this AD will affect 12 products of U.S. registry. We also estimate that it will take about 5 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $5,100, or $425 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–07–10 Airbus: Amendment 39–16255. Docket No. FAA–2009–1166; Directorate Identifier 2009–NM–107–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective May 7, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A300 B2–1C, B2K–3C, B2–203, B4–2C, B4–103, and B4–203 airplanes, certificated in any category, all serial numbers.

Subject

(d) Air Transport Association (ATA) of America Code 27: Flight Controls.

Reason

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

One operator reported loss of both pitch trims following autopilot disengagement after take off. Subsequent shop findings revealed severe damage to the power gears. Mal-phasing between the hydraulic motors was suspected to have induced excessive loads into the gear train, leading to collapse of one bearing on a shaft of the main gear, causing severe tooth damage. The combination of tooth damage and gear tilting caused the disconnection of two of the three hydraulic motors, resulting in jamming of the THSA [Trimmable Horizontal Stabilizer Actuator] gearbox and consequent loss of THSA control.

This condition, if not detected and corrected, could lead to further cases of mal-phasing of the hydraulic motors of the THSA, causing degradation of the power gears and potentially resulting in reduced control of the aeroplane.

For the reasons described above, this AD requires repetitive checks [on-airplane phasing inspections and magnetic plug inspections for metal particles on the drain plug using detailed inspection methods] of the THSA and corrective actions [replacement of the THSA with a serviceable unit], depending on findings.

Actions and Compliance

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

(1) Within 4,000 flight hours after the last THSA overhaul or within 250 flight hours after the effective date of this AD, whichever occurs later: Perform an on-airplane phasing inspection of the THSA, and a magnetic plug inspection for metal particles on the drain plug of the THSA, using detailed inspection methods, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–27–0201, dated March 9, 2009.

(i) If the THSA passes the phasing inspection, but the magnetic plug inspection reveals metal particles that are equal to or less than 1.5 mm (0.059 in.) × 0.5 mm (0.0196 in.), and the depth of the particle layer does not exceed 1 mm (0.0393 in.), repeat the inspections thereafter at intervals not to exceed 2,500 flight hours in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–27–0201, dated March 9, 2009.

(ii) If the THSA passes the phasing inspection, but the magnetic plug inspection reveals metal particles with dimensions greater than 1.5 mm (0.059 in.) × 0.5 mm (0.0196 in.), or a layer of particles with a depth greater than 1 mm (0.0393 in.) is found, before further flight, replace the THSA with a serviceable unit, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–27–0201, dated March 9, 2009.

(iii) If the THSA fails the phasing inspection and the magnetic plug inspection reveals metal particles that are equal to or less than 1.5 mm (0.059 in.) × 0.5 mm (0.0196 in.), and the depth of the particle layer does not exceed 1 mm (0.0393 in.), within 500 flight hours after the inspection, replace the THSA with a serviceable unit, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–27–0201, dated March 9, 2009.

(iv) If the THSA fails the phasing inspection and the magnetic plug inspection reveals metal particles with dimensions greater than 1.5 mm (0.059 in.) × 0.5 mm (0.0196 in.), or a layer of particles with a depth greater than 1 mm (0.0393 in.) is found, before further flight, replace the THSA with a serviceable unit, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–27–0201, dated March 9, 2009.

Note 1: For the purposes of this AD, a detailed inspection is: "An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as a mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required."

Note 2: A "serviceable" THSA is one that has a correct hydraulic motor phasing and no particles or few particles with maximum dimensions of 1.5 mm (0.059 in.) x 0.5 mm (0.0196 in.) and a layer of particles with a maximum depth of 1 mm (0.0393 in.) found on the magnetic plug.

(2) Within 2,500 flight hours after replacing any THSA, perform a phasing inspection of the THSA, and a magnetic plug inspection for metal particles on the drain plug of the THSA, as specified in paragraph (f)(1) of this AD. Replacing the THSA, as required by paragraphs (f)(1)(ii), (f)(1)(iii), and (f)(1)(iv) of this AD, as applicable, does not constitute terminating action for the repetitive inspections as required by paragraph (f)(1)(i) of this AD.

(3) As of the effective date of this AD, do not install a replacement THSA on any airplane, unless it has been inspected in accordance with the requirements of paragraphs (f)(1)(i) through (f)(1)(iv), as applicable, of this AD.

(4) Within 3 weeks after removal of a THSA unit from an airplane, send it to the THSA manufacturer, Goodrich Actuation Systems, Stafford Road Fordhouses, Wolverhampton, West Midlands WV10 7EH, England.

(5) Submit a report of the findings (both positive and negative) of the inspections required by paragraph (f)(1) of this AD to the Manager, Airbus Customer Service Directorate, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex France; telephone +33 5 61 93 33 33; telex AIRBU 530526F; fax +33 5 61 93 42 51; at the applicable time specified in paragraph (f)(5)(i) or (f)(5)(ii) of this AD. The report must include the inspection results (including no findings), and replacement or actions to be done.

(i) For any inspection done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(ii) For any inspection done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

FAA AD Differences

Note 3: 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, 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, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149. 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.

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

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

Related Information

(h) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2009–0111, dated May 13, 2009; and Airbus Mandatory Service Bulletin A300–27–0201, dated March 9, 2009; for related information.

Material Incorporated by Reference

(i) You must use Airbus Mandatory Service Bulletin A300–27–0201, including Appendices 1, 2, and 3, dated March 9, 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 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—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.*

(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 March 25, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–7371 Filed 4–1–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1256 Directorate Identifier 2009–CE–064–AD; Amendment 39–16252; AD 2010–07–07]

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 adopting a new 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:

It has been discovered that the foam inside the towing bar box is not conformed to the certification specification, and especially the flame resistance properties.

In case of fire in the front baggage compartment, the non conformed foam could rapidly propagate the flames and/or emit toxic fumes in the cabin.

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

DATES: This AD becomes effective May 7, 2010.

On May 7, 2010, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at 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: Albert Mercado, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, 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 January 4, 2010 (75 FR 89). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

It has been discovered that the foam inside the towing bar box is not conformed to the certification specification, and especially the flame resistance properties.

In case of fire in the front baggage compartment, the non conformed foam could rapidly propagate the flames and/or emit toxic fumes in the cabin.

For the reason stated above the AD 2009–0238–E, as a temporary measure, mandated the removal of the foam, pending a foam change.

This AD revision is issued to reduce the original AD applicability and to introduce the optional installation of new foam pads in the tow bar stowage box.

Comments

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

Comment Issue No. 1: Optional Final Solution

DAHER–SOCATA comments that SOCATA Service Bulletin (SB) 70–179, Amendment 1, dated January 2010, was issued. That amendment contains a final solution. If the EASA AD issues before the comment end date of the NPRM for this AD action, the commenter requests that we include the required terminating action in our AD as specified in the amended service information.

The FAA partially agrees with this comment. The FAA agrees that following the issuance of the NPRM, EASA issued a revision to the AD to allow the optional installation of new foam pads part number (P/N) T700C091000610100 in the tow bar storage box in accordance with the Accomplishment Instructions of SB No. 70–179, Amendment 1, dated January 2010. The FAA disagrees with making the installation of the new foam pads P/N T700C091000610100 a required action since the EASA AD made it an optional action.

We are changing the final rule AD action to include this option.

Comment Issue No. 2: Costs of Compliance

DAHER–SOCATA comments that the costs in the Costs of Compliance section are not in accordance with those given in the service bulletin. It would take about 10 work-minutes per product instead of .5 work-hour to remove the wrong foam pad and to replace it with the new one. The cost should be only $13 for an average labor rate and consequently $2,132 for all U.S. operators.

The FAA agrees that it would only take 10 work-minutes. However, in regards to cost, our practice is to apply .5 hour as the minimum estimated work-hour for labor. This minimum was used in determining the cost of compliance for the AD.

We are not changing this final rule AD action based on this comment.

Conclusion

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

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But

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

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

Costs of Compliance

We estimate that this AD will affect 164 products of U.S. registry. We also estimate that it will take about .5 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of this AD to the U.S. operators to be $6,970 or $42.50 per product.

In addition, we estimate that the optional follow-on action would take about .5 work-hour and require parts costing $164, for a cost of $206.50 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this 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 adding the following new AD:

2010–07–07 SOCATA: Amendment 39–16252; Docket No. FAA–2009–1256; Directorate Identifier 2009–CE–064–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective May 7, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model TBM 700 airplanes, serial numbers (S/N) 331 through 530, 534, and 539, certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 9: Towing and Taxiing.

Reason

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

It has been discovered that the foam inside the towing bar box is not conformed to the certification specification, and especially the flame resistance properties.

In case of fire in the front baggage compartment, the non conformed foam could rapidly propagate the flames and/or emit toxic fumes in the cabin.

For the reason stated above the Airworthiness Directive (AD), as a temporary measure, mandates the removal of the foam, pending a foam change.

Actions and Compliance

(f) Unless already done, within the next 20 hours time-in-service after May 7, 2010 (the effective date of this AD) or within the next 30 days after May 7, 2010 (the effective date of this AD), whichever occurs first, remove the foam from the towing bar stowage box following either SOCATA Mandatory Service Bulletin SB 70–179, dated October 2009, or SOCATA Mandatory Service Bulletin SB 70–179, Amendment 1, dated January 2010.

(g) You may as an option, install new foam pads part number T700C091000610100 in the tow bar storage box following the Accomplishment Instructions of SOCATA Mandatory Service Bulletin SB 70–179, Amendment 1, dated January 2010.

FAA AD Differences

Note: 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, 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.

Related Information

(i) Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2009–0238R1, dated February 11, 2010; SOCATA Mandatory Service Bulletin SB 70–179, dated October 2009, and SOCATA Mandatory Service Bulletin SB 70–179, Amendment 1, dated January 2010, for related information.

Material Incorporated by Reference

(j) You must use either SOCATA Mandatory Service Bulletin SB 70–179, dated October 2009; or SOCATA Mandatory Service Bulletin SB 70–179, Amendment 1, dated January 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 DAHER–SOCATA, Direction des Services, 65921—TARBES CEDEX 9, France; telephone: +33 (0)5 62.41.73.00; fax: 33 (0)5 62.41.76.54; Internet: *http://mysocata.com*.

(3) You may review copies of the service information incorporated by reference for this AD at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the Central Region, call (816) 329–3768.

(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 March 22, 2010.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–6788 Filed 4–1–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1259; Directorate Identifier 2009–NE–41–AD; Amendment 39–16253; AD 2010–07–08]

RIN 2120–AA64

Airworthiness Directives; Kelly Aerospace Energy Systems, LLC Rebuilt Turbochargers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Kelly Aerospace Energy Systems, LLC (KAES) rebuilt turbochargers. This AD requires removal from service of certain part number (P/N) and serial number (S/N) rebuilt turbochargers. This AD results from three reports of infant mortality turbine wheel failure in rebuilt turbochargers, since June of 2007. We are issuing this AD to prevent separation or seizure of the turbocharger turbine, which could result in full or partial engine power loss, loss of engine oil, and smoke in the airplane cabin.

DATES: This AD becomes effective April 19, 2010. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of April 19, 2010.

We must receive any comments on this AD by June 1, 2010.

ADDRESSES: Use one of the following addresses to comment on this AD:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* U.S. Docket Management Facility, Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Contact Kelly Aerospace Energy Systems, LLC, 2900 Selma Highway, Montgomery, Alabama 36108; telephone (334) 386–5400; fax (334) 386–5450; or go to: *http://www.kellyaerospace.com,* for the service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Gary Wechsler, Aerospace Engineer, Propulsion, Atlanta Aircraft Certification Office, 1701 Columbia Avenue, College Park, GA 30337; telephone (404) 474–5575; fax (404) 474–5606.

SUPPLEMENTARY INFORMATION: In October 2009, we were made aware by KAES that since June 2007, three turbochargers rebuilt by KAES have failed. Two had turbine wheel head separation and the third had a turbine shaft seizure. Investigation revealed that a steel wire brush was used to remove the accumulated coking that had built up on these turbine wheels being reclaimed for re-use in rebuilt turbochargers. This procedure created a rough surface finish on the turbine wheel shaft that exceeded allowable limits. The rough surface finish can disrupt the required formation of a hydrodynamic layer of oil between the shaft and mating bearings. This condition, if not corrected, could result in separation or seizure of the turbocharger turbine, which could result in full or partial engine power loss, loss of engine oil, and smoke in the airplane cabin.

Relevant Service Information

We have reviewed and approved the technical contents of Kelly Aerospace Energy Systems, LLC Service Bulletin (SB) No. 039 A, dated February 10, 2010. That SB identifies the rebuilt turbochargers by P/N and S/N that are suspect of having a rough shaft surface finish exceeding allowable limits.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other KAES rebuilt turbochargers of the same type design. For that reason, we are issuing this AD to prevent separation or seizure of the turbocharger turbine, which could result in full or partial engine power loss, loss of engine oil, and smoke in the airplane cabin. This AD requires removal from service of certain P/N and S/N rebuilt turbochargers. You must use the service information described previously to determine what S/N rebuilt turbochargers are affected by this AD.

FAA's Determination of the Effective Date

Since an unsafe condition exists that requires the immediate adoption of this AD, we have found that notice and opportunity for public comment before issuing this AD are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to send us any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include "AD Docket No. FAA–2009–1259; Directorate Identifier 2009–NE–41–AD" in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it.

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

personnel concerning this AD. Using the search function of the Web site, anyone can find and read the comments in any of our dockets, including, if provided, the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

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 the same as the Mail address provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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

For the reasons discussed above, I certify that 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 summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–07–08 Kelly Aerospace Energy Systems, LLC (formerly Kelly Aerospace Power Systems): Amendment 39–16253. Docket No. FAA–2009–1259; Directorate Identifier 2009–NE–41–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective April 19, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to certain serial numbers (S/Ns) of Kelly Aerospace Energy Systems, LLC (KAES) rebuilt turbochargers listed by part number (P/N) in the following Table 1 of this AD. The affected S/Ns are listed in Table III of Kelly Aerospace Energy Systems, LLC Service Bulletin (SB) No. 039 A, dated February 10, 2010.

TABLE 1—PART NUMBERS OF REBUILT TURBOCHARGERS AFFECTED

406610–9005	406610–9015	406610–9018	406610–9019	406610–9020	406610–9021
406610–9025	406610–9026	406610–9028	406610–9029	406610–9030	406610–9032
407810–9001	406990–9004	408610–9001	409170–9001	409680–9011	465680–9001
465680–9004	465680–9005	465930–9002	465930–9003	465292–9002	465292–9004
465398–9002	407540–9003	466881–9001	466642–9001	466642–9002	466642–9005
466304–9003	600572–9000*	600573–9000*	600574–9001*	600575–9001*	600575–9002*
600576–9000*	600700–9001*	600803–9001*	600803–9002*	N/A	N/A

* P/Ns with an asterisk may have a CF prefix.

These rebuilt turbochargers are installed on, but not limited to, the engines and aircraft listed in Table IV of Kelly Aerospace Energy Systems, LLC SB No. 039 A, dated February 10, 2010.

Unsafe Condition

(d) This AD results from three reports of infant mortality turbine wheel failure in rebuilt turbochargers, since June of 2007. We are issuing this AD to prevent separation or seizure of the turbocharger turbine, which could result in full or partial engine power loss, loss of engine oil, and smoke in the airplane cabin.

Compliance

(e) You are responsible for having the actions required by this AD performed within 10 hours time-in-service after the effective date of this AD, unless the actions have already been done.

Turbocharger Removal From Service

(f) Remove from service the rebuilt turbochargers listed by P/N in paragraph (c) of this AD that have a S/N listed in Table III of Kelly Aerospace Energy Systems, LLC SB No. 039 A, dated February 10, 2010.

Installation Eligibility of Removed Turbochargers

(g) Removed turbochargers listed in Table III of Kelly Aerospace Energy Systems, LLC SB No. 039 A, dated February 10, 2010, are eligible for installation once they are overhauled by an FAA-approved repair station. That overhaul must include replacing the turbine wheels listed by P/N in Table II of Kelly Aerospace Energy Systems, LLC SB No. 039 A, dated February 10, 2010, replacing the turbine wheel mating bushings, and marking the attached Return To Service Tag with this AD number, which is AD 2010–07–08.

Installation Prohibition

(h) After the effective date of this AD, do not install any of the turbochargers listed in Table III of Kelly Aerospace Energy Systems, LLC SB No. 039 A, dated February 10, 2010, unless the turbocharger is overhauled as specified in paragraph (g) of this AD.

Alternative Methods of Compliance

(i) The Manager, Atlanta Aircraft Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Special Flight Permits

(j) Under 14 CFR 39.23, we are limiting the special flight permits for this AD by the following conditions:

(1) Use of minimum crew.

(2) Flight made during daytime, using visual flight rule conditions.

(3) Maximum flight altitude of 12,000 feet mean-sea-level, based upon terrain.

Related Information

(k) Contact Gary Wechsler, Aerospace Engineer, Propulsion, Atlanta Aircraft Certification Office, 1701 Columbia Avenue, College Park, GA 30337; telephone (404) 474–5575; fax (404) 474–5606, for more information about this AD.

Material Incorporated by Reference

(l) You must use Kelly Aerospace Energy Systems, LLC Service Bulletin No. 039 A, dated February 10, 2010, to determine which turbocharger(s) are affected by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Kelly Aerospace Energy Systems, LLC, 2900 Selma Highway, Montgomery, Alabama 36108, telephone (334) 386–5400, fax (334) 386–5450, or go to: *http://www.kellyaerospace.com,* for a copy of this service information. You may review copies at the FAA, New England Region, 12 New England Executive Park, Burlington, MA; or 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/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on March 23, 2010.

Robert J. Ganley,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2010–7056 Filed 4–1–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0302; Directorate Identifier 2009–NE–09–AD; Amendment 39–16245; AD 2009–08–08R1]

RIN 2120–AA64

Airworthiness Directives; Turbomeca ARRIEL 1B, 1D, 1D1, 2B, and 2B1 Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are revising 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:

During production of Arriel 1 and Arriel 2 Power Turbine (PT) wheels, geometric non-conformances on blade fir tree roots have been detected by Turboméca. Potentially non-conforming PT blades have been traced as having been installed on Module M04 (PT) listed in Mandatory Service Bulletin (MSB) A292 72 0827 for Arriel 1 engines and A292 72 2833 for Arriel 2 engines.

The geometric non-conformities of the blades may potentially lead to a reduction in the fatigue resistance of PT blades to a lower level than their authorized in service use limit. This reduction of fatigue resistance can potentially result in blade release, which could cause an uncommanded in-flight shutdown.

We are issuing this AD to prevent release of PT blades, which could result in an uncommanded in-flight shutdown and emergency autorotation landing.

DATES: This AD becomes effective May 7, 2010. The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of May 7, 2010.

ADDRESSES: The Docket Operations office is located at Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Kevin Dickert, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *kevin.dickert@faa.gov;* telephone (781) 238–7117, fax (781) 238–7199.

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 December 23, 2009 (74 FR 68194). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

Since issuance of initial version of AD 2009–0112 additional information is available:

—The list of Modules M04 concerned by the restriction of the cycle use limit of these PT blades has been updated again: The serial numbers of Modules M04 which have been retrofitted are crossed out. However, no new affected Modules M04 have been identified. See figure 1 of the referenced Turboméca MSB.

—Additional testing and analysis had been carried out by Turboméca which allows increasing the cyclic use limit of these PT blades to 5 000 flight cycles.

Therefore this AD revises AD 2009–0112 and requires establishing the cyclic use limit of these PT blades to 5 000 flight cycles.

For PT blades having reached a number of flight cycles superior or equal to 5 000, removal of Module M04, or PT wheel assembly, or PT blades is required prior to next flight.

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 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 the actions copied from the MCAI.

Costs of Compliance

Based on the service information, we estimate that this AD will affect about 10 products of U.S. registry. We also estimate that it will take about 8 work-hours per product to comply with this AD. The average labor rate is $80 per work-hour. Required parts will cost about $43,000 per product. Based on

these figures, we estimate the cost of the AD on U.S. operators to be $436,400.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is provided 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 39–15881, and adding the following new AD:

2009–08–08R1 Turbomeca S.A.: Amendment 39–16245. Docket No. FAA–2009–0302; Directorate Identifier 2009–NE–09–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective May 7, 2010.

Affected ADs

(b) This AD revises AD 2009–08–08, Amendment 39–15881.

Applicability

(c) This AD applies to:

(1) Turbomeca Arriel 1B, 1D, and 1D1 turboshaft engines with the power turbine (PT) modules M04 installed, as listed by serial number (S/N) in Figure 1 of Turbomeca Alert Mandatory Service Bulletin (MSB) No. A292 72 0827, Version C, dated July 15, 2009; and

(2) Turbomeca Arriel 2B and 2B1 turboshaft engines with the power turbine modules M04 installed, as listed by S/N in Figure 1 of Turbomeca Alert MSB No. A292 72 2833, Version C, dated July 15, 2009.

(3) These engines are installed on, but not limited to, Eurocopter AS 350 B, AS 350 BA, AS 350 B1, AS 350 B2, AS 350 B3, and EC 130 B4 helicopters.

Reason

(d) European Aviation Safety Agency (EASA) AD No. 2009–0112R1, dated July 30, 2009, states:

Since issuance of initial version of AD 2009–0112 additional information is available:

—The list of Modules M04 concerned by the restriction of the cycle use limit of these PT blades has been updated again: The serial numbers of Modules M04 which have been retrofitted are crossed out. However no new affected Modules M04 have been identified. See figure 1 of the referenced Turboméca MSB.

—Additional testing and analysis had been carried out by Turboméca which allows increasing the cyclic use limit of these PT blades to 5,000 flight cycles.

We are issuing this AD to prevent release of PT blades, which could result in an uncommanded in-flight shutdown and emergency autorotation landing.

Actions and Compliance

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

(1) For engines with an affected Module M04 (PT module), which has accumulated 5,000 total PT cycles or more on the effective date of this AD, remove the PT blades from service before further flight.

(2) For engines with an affected Module M04, which has accumulated fewer than 5,000 total PT cycles on the effective date of this AD, remove the PT blades from service before accumulating 5,000 total PT cycles.

(3) After the effective date of this AD, do not install any PT blades removed as specified in paragraph (e)(1) or (e)(2) of this AD, into any engine.

FAA AD Differences

(f) Although the compliance section of EASA AD No. 2009–0112R1, dated July 30, 2009, states to replace the Module M04, or PT wheel assembly, or PT blades, this AD states to remove the PT blades from service.

(g) Although EASA AD No. 2009–0112R1, dated July 30, 2009, applies to the Arriel 2B1A engine, this AD does not apply to that model because it has no U.S. type certificate.

Other FAA AD Provisions

(h) Alternative Methods of Compliance (AMOCs): The Manager, Engine Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(i) Refer to MCAI EASA Airworthiness Directive 2009–0112R1, dated July 30, 2009, for related information.

(j) Contact Kevin Dickert, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *kevin.dickert@faa.gov;* telephone (781) 238–7117, fax (781) 238–7199, for more information about this AD.

Material Incorporated by Reference

(k) You must use the service information specified in Table 1 of this AD 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 Turbomeca, 40220 Tarnos, France; telephone 33 05 59 74 40 00, fax 33 05 59 74 45 15.

(3) You may review copies at the FAA, New England Region, 12 New England Executive Park, Burlington, MA; or 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/cfr/ibr-locations.html.*

TABLE 1—MATERIAL INCORPORATED BY REFERENCE

Service Bulletin No.	Page	Revision	Date
Mandatory Service Bulletin A292 72 0827	All	Version C	July 15, 2009.
Mandatory Service Bulletin A292 72 2833	All	Version C	July 15, 2009.

Issued in Burlington, Massachusetts, on March 16, 2010.

Francis A. Favara,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2010–6628 Filed 4–1–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 17, 19, 20, 22, 24, 25, 26, 27, 28, 31, 40, 44, 46, and 70

[Docket No. TTB–2009–0003; T.D. TTB–84; Re: Notice No. 96 and T.D. TTB–79]

RIN 1513–AB63

Liquor Dealer Recordkeeping and Registration, and Repeal of Certain Special (Occupational) Taxes

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: This Treasury decision adopts as a final rule, without change, a temporary rule that amended the regulations administered by the Alcohol and Tobacco Tax and Trade Bureau to reflect the repeal of certain special (occupational) taxes effected by section 11125 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users. The regulatory amendments involved the repeal of special taxes on alcohol beverage producers and dealers, tax-free alcohol users, denatured spirits users and dealers, and persons claiming drawback for the manufacture of nonbeverage alcoholic products, and the inclusion of recordkeeping and registration requirements for dealers in distilled spirits, wines, and beer, and for manufacturers of nonbeverage products who claim drawback.

DATES: *Effective Date:* Effective May 3, 2010, the temporary rule published in the **Federal Register** at 74 FR 37394 on July 28, 2009, is adopted as a final rule without change, and by this regulatory action the temporary rule, which was effective from July 28, 2009, through July 30, 2012, is effective indefinitely.

FOR FURTHER INFORMATION CONTACT: Ben Birkhill, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau (202–453–2268 or *benjamin.birkhill@ttb.gov*).

SUPPLEMENTARY INFORMATION:

Background

Section 11125 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Public Law 109–59, 119 Stat. 1144 ("the Act") was signed by the President on August 10, 2005. Section 11125 of the Act amended Chapters 51 and 52 of the Internal Revenue Code of 1986 (IRC), 26 U.S.C., to repeal the provisions covering special (occupational) tax (SOT) on alcohol beverage producers and dealers, tax-free alcohol users, denatured spirits users and dealers, and persons claiming drawback for the manufacture of nonbeverage alcoholic products.

The Act did not eliminate the recordkeeping and registration requirements that applied to alcohol beverage dealers (including all persons in the business of selling alcohol products fit for beverage use) and nonbeverage drawback claimants prior to the SOT repeal. Further, the Act did not eliminate the SOT and related registration requirements for certain tobacco occupations (manufacturer of tobacco products, manufacturer of cigarette papers and tubes, and export warehouse proprietor).

The Alcohol and Tobacco Tax and Trade Bureau (TTB) is responsible for the administration of the provisions in Chapters 51 and 52 of the IRC relating to these tax, recordkeeping, and registration requirements, including the promulgation of regulations thereunder in chapter 1 of title 27 of the Code of Federal Regulations.

Publication of Temporary Rule

On July 28, 2009, TTB published in the **Federal Register** (74 FR 37394) a temporary rule, T.D. TTB–79, amending certain provisions in 27 CFR parts 17, 19, 20, 22, 24, 25, 26, 27, 28, 31, 40, 44, 46, and 70. The temporary rule eliminated the regulatory provisions related to the SOT on the producers, dealers, users, and other persons referred to above. The temporary rule also included various amendments relating to registration and recordkeeping in order to clarify the application of these requirements to the persons subject to them.

With regard to tobacco products and cigarette papers and tubes, the temporary rule added a new subpart D to 27 CFR part 46 (Miscellaneous Regulations Relating to Tobacco Products and Cigarette Papers and Tubes) in order to consolidate in one place the SOT provisions contained in 27 CFR parts 40 (Manufacture of Tobacco Products, Cigarette Papers and Tubes, and Processed Tobacco) and 44 (Exportation of Tobacco Products and Cigarette Papers and Tubes, without Payment of Tax, or with Drawback of Tax). This new subpart D also borrowed regulations from 27 CFR part 31 (Alcohol Beverage Dealers) to reflect SOT policy positions developed through rulemaking involving the alcohol beverage dealer's tax, including provisions relating to multiple businesses conducted by the same person at the same place, liability of partners, payment of the special tax, special tax stamps, and abatement or refund of special taxes.

In addition, the temporary rule included a number of miscellaneous regulatory amendments to remove no longer needed references to the SOT. The amendments made by T.D. TTB–79 are discussed in more detail in the preamble of that document.

In conjunction with the publication of the temporary rule, TTB also published on July 28, 2009, a notice of proposed rulemaking, Notice No. 96, in the **Federal Register** (74 FR 37426). This notice invited the submission of public comments on the regulatory amendments contained in the temporary rule, with the comment period closing on September 28, 2009. The Bureau did not receive any comments on the temporary rule in response to Notice No. 96. Accordingly, for the reasons set forth in the preamble of T.D. TTB–79, we have determined that it is appropriate to adopt that temporary rule as a final rule without change.

Regulatory Flexibility Act

We certify that this regulation will not have a significant impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. The relevant collections of information derive directly from the Internal Revenue Code

of 1986, as amended, and the regulations in this rule concerning these collections merely implement the statutory requirements. Likewise, any secondary or incidental effects, and any reporting, recordkeeping, or other compliance burdens flow directly from the statute. Pursuant to 26 U.S.C. 7805(f), the temporary regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration (SBA) for comment regarding its impact on small business, and TTB has not received any comments from SBA.

Paperwork Reduction Act

TTB has provided estimates of the burdens that the collections of information contained in these regulations impose, and these estimated burdens have been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and assigned control numbers 1513–0088, 1513–0112, and 1513–0113. Under the Paperwork Reduction Act of 1995, 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.

Comments concerning suggestions for reducing the burden of the collections of information in this document should be directed to Mary A. Wood, Alcohol and Tobacco Tax and Trade Bureau, at any of these addresses:

- P.O. Box 14412, Washington, DC 20044–4412;
- 202–927–8525 (facsimile); or
- *formcomments@ttb.gov* (e-mail).

Executive Order 12866

We have determined that this document is not a significant regulatory action as defined by Executive Order 12866. Therefore, a regulatory assessment is not required.

Drafting Information

Ben Birkhill of the Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, drafted this document.

List of Subjects

27 CFR Part 17

Administrative practice and procedure, Claims, Cosmetics, Customs duties and inspection, Drugs, Excise taxes, Exports, Imports, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Spices and flavorings, Surety bonds, Virgin Islands.

27 CFR Part 19

Administrative practice and procedures, Caribbean Basin Initiative, Claims, Electronic funds transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Surety bonds, Vinegar, Virgin Islands, Warehouses.

27 CFR Part 20

Alcohol and alcoholic beverages, Claims, Cosmetics, Excise taxes, Labeling, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Surety bonds.

27 CFR Part 22

Administrative practice and procedure, Alcohol and alcoholic beverages, Excise taxes, Reporting and recordkeeping requirements, Surety bonds.

27 CFR Part 24

Administrative practice and procedure, Claims, Electronic fund transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavoring, Surety bonds, Vinegar, Warehouses, Wine.

27 CFR Part 25

Administrative practice and procedure, Beer, Claims, Electronic funds transfers, Excise taxes, Exports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Research, Surety bonds.

27 CFR Part 26

Administrative practice and procedure, Alcohol and alcoholic beverages, Caribbean Basin Initiative, Claims, Customs duties and inspection, Electronic funds transfers, Excise taxes, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Surety bonds, Virgin Islands, Warehouses.

27 CFR Part 27

Alcohol and alcoholic beverages, Beer, Cosmetics, Customs duties and inspection, Electronic funds transfers, Excise taxes, Imports, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Wine.

27 CFR Part 28

Aircraft, Alcohol and alcoholic beverages, Armed forces, Beer, Claims, Excise taxes, Exports, Foreign trade zones, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Surety bonds, Vessels, Warehouses, Wine.

27 CFR Part 31

Alcohol and alcoholic beverages, Excise taxes, Exports, Packaging and containers, Reporting and recordkeeping requirements.

27 CFR Part 40

Cigars and cigarettes, Claims, Electronic funds transfers, Excise taxes, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Surety bonds, Tobacco.

27 CFR Part 44

Aircraft, Armed forces, Cigars and cigarettes, Claims, Customs duties and inspection, Excise taxes, Exports, Foreign trade zones, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Surety bonds, Tobacco, Vessels, Warehouses.

27 CFR Part 46

Administrative practice and procedure, Cigars and cigarettes, Claims, Excise taxes, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds, Tobacco.

27 CFR Part 70

Administrative practice and procedure, Claims, Excise taxes, Freedom of information, Law enforcement, Penalties, Reporting and recordkeeping requirements, Surety bonds.

The Regulatory Amendment

■ For the reasons discussed in the preamble, the temporary rule amending 27 CFR parts 17, 19, 20, 22, 24, 25, 26, 27, 28, 31, 40, 44, 46, and 70, published in the **Federal Register** at 74 FR 37394 on July 28, 2009, is adopted as a final rule without change and by this regulatory action the temporary rule, which was effective from July 28, 2009, through July 30, 2012, is effective indefinitely.

Signed: February 5, 2010.

John J. Manfreda,

Administrator.

Approved: March 19, 2010.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

[FR Doc. 2010–7269 Filed 4–1–10; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF EDUCATION

34 CFR Subtitle B, Chapter II

[Docket ID ED–2010–OESE–0005]

RIN 1810–AB10

Race to the Top Fund

ACTION: Interim final requirements; request for comments.

SUMMARY: The U.S. Secretary of Education (Secretary) amends the final requirements for the Race to the Top Fund to incorporate and make binding for Phase 2 of the competition State budget guidance.

DATES: These requirements are effective April 2, 2010. We must receive your comments by May 3, 2010.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by e-mail. Please submit your comments only one time, in order to ensure that we do not receive duplicate copies. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "How To Use This Site."
- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about these interim final requirements, address them to James Butler, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E108, Washington, DC 20202.
- *Privacy Note:* The Department's policy for comments received from members of the public (including those comments submitted by mail, commercial delivery, or hand delivery) is to make these submissions available for public viewing in their entirety on the Federal eRulemaking Portal at *http://www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available on the Internet.

FOR FURTHER INFORMATION CONTACT: James Butler, Telephone: 202–205–3775 or by e-mail: *racetothetop@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 this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding these interim final requirements and to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these interim final requirements.

During and after the comment period you may inspect all public comments about these interim final requirements by accessing Regulations.gov. You may also inspect the comments, in person, in room 3W100, 400 Maryland Avenue, SW., Washington, DC between the hours of 8:30 a.m. and 4 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid 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 accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Background: The Secretary published final requirements for the Race to the Top Fund in the **Federal Register** on November 18, 2009 (74 FR 59688). In the same issue of the **Federal Register**, the Secretary also published the Race to the Top Fund NIA for Fiscal Year (FY) 2010 (74 FR 59836). The NIA provides two application deadlines for the FY 2010 Race to the Top Fund competition: Phase 1, due January 19, 2010, and Phase 2, due June 1, 2010.

Through Race to the Top, the Department seeks to spur reform of the country's education system. This mission can be met by achieving two key goals. First, we seek to ensure that States that put forth the highest-quality reform plans and demonstrate the capacity to implement those plans have sufficient funding to make their plans a reality. Second, we seek to recognize a number of States that can serve as models of change through their Race to the Top plans. Funding for Race to the Top is not unlimited. For this reason, the Department must balance these competing goals to maximize the Race to the Top investment while ensuring that the highest-quality plans can be implemented.

In an effort to achieve these goals, in the NIA, the Department provided direction and flexibility to States in planning their budgets. Specifically, the NIA contained nonbinding budget ranges for each State. The NIA provided that States could use these ranges as rough blueprints to guide the development of their budgets, but that States could also prepare budgets that were above or below the ranges specified. States were encouraged to develop budgets that were appropriate to implement the plans they outlined in their applications. In developing the budget ranges, the Department grouped the States into five categories by ranking every State according to its share of the national population of children ages 5 through 17 and identifying natural breaks in the population numbers. The Department then developed overlapping budget ranges for each category based on the student population data.

The Department received 41 applications in Phase 1. States' budget requests ranged from 90 percent to 297 percent of the suggested budget maximums. There was significant variability in the extent to which State budget requests conformed to the Department's suggested budget ranges, including significant variability among the budget requests from similarly sized States.

Following the peer review of Phase 1 applications, we analyzed the rank order of States based upon their scores and compared the rank order with the extent to which the State conformed with or exceeded the Department's suggested budget ranges. We found no relationship between a State's rank and its budget request.

In light of this analysis, we conclude that States can propose high-quality Race to the Top plans within the Department's suggested budget ranges, particularly given that, as part of their reform plans, States are expected to coordinate, reallocate, or repurpose other Federal, State, and local sources of funding to support their Race to the Top goals. To ensure a robust competition in Phase 2 and to stimulate comprehensive education reform throughout the country, we are establishing the suggested budget ranges as mandatory funding limits for Phase 2 of the competition.

Race to the Top grantees will serve as models of best reform practices across their States and the country; accordingly, we want to ensure that the Secretary can fund, at an adequate level, a sufficient number of high-quality applications within this finite ARRA

funding. Requiring States to conform to the Department's budget ranges will allow more grants to be awarded. Accordingly, these interim final requirements make the previously suggested budget ranges binding on State applicants applying in Phase 2 of the competition.

Waiver of Rulemaking and Delayed Effective Date: Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department is generally required to publish a notice of proposed rulemaking and provide the public with an opportunity to comment on proposed regulations prior to establishing a final rule. However, we are waiving the notice-and-comment rulemaking requirements under the APA. Section 553(b) of the APA provides that an agency is not required to conduct notice-and-comment rulemaking when the agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. Although these requirements are subject to the APA's notice-and-comment requirements, the Secretary has determined that it would be impracticable and contrary to the public interest to conduct notice-and-comment rulemaking.

As noted above, these interim final requirements are needed to establish mandatory budget ranges in the final Race to the Top Fund requirements published on November 18, 2009. The Department believes that mandatory budget ranges are necessary due, in part, to the extent to which Phase 1 applications exceeded the recommended budget ranges. Additionally, as previously indicated, Phase 2 Race to the Top applications are due on June 1, 2010. We chose this date to allow sufficient time for States to prepare their applications and for the Department to conduct Phase 2 of the competition, so that grant awards can be made by September 30, 2010, when all ARRA funds must be obligated. Even on an extremely expedited timeline, it would be impracticable for the Department to conduct notice-and-comment rulemaking and then promulgate final requirements before the June 1, 2010 deadline for Phase 2 applications. Publishing a notice of proposed rulemaking, reviewing the public comments, and issuing final regulations normally takes at least four to six months. We are concerned that, when added to the time the Department will need to conduct Phase 2 of the competition in addition to the time that States will need to plan and draft applications that conform to these budget ranges, the Department might not be able to award Race to the Top grants by the obligation deadline of September 30, 2010. With billions of public dollars at stake, it would be impracticable and contrary to the public interest for the Department to take this risk of not obligating all funds by September 30.

Accordingly, and in order to make timely grant awards with ARRA funds, the Secretary is issuing these interim final requirements without first publishing proposed requirements for public comment. These interim final requirements govern Phase 2 of the Race to the Top competition.

Although the Department is adopting these requirements on an interim final basis, the Department requests public comment on these requirements. After consideration of public comments, the Secretary will publish final requirements. The final requirements would govern any subsequent competition conducted under the Race to the Top program.

The APA also requires that a substantive rule be published at least 30 days before its effective date, except as otherwise provided for good cause (5 U.S.C. 553(d)(3)). For the reasons outlined in the preceding paragraphs, the Secretary has determined that a delayed effective date for these interim final requirements would be unnecessary and contrary to the public interest, and that good cause exists to waive the requirement for a delayed effective date. As such, this rule is effective on the date it is published.

Summary of the Interim Final Requirements

Current final requirements: The current final requirements do not contain any requirements related to the total amount a State may request in its Race to the Top budget.

Interim final requirements: The interim final requirements add a section entitled "Budget Requirements," specifying that State Race to the Top budgets must conform to the budget ranges developed by the Department.

Reasons: In Phase 1 of the Race to the Top competition, States' budget requests varied widely and almost every applicant exceeded the budget ranges suggested in the NIA. The Department did not expect that States would propose budgets that differed so significantly from the suggested budget ranges, which, as indicated previously, were developed based on current State population data. We believe that States can propose successful Race to the Top plans within these ranges because we did not find a relationship between States' scoring ranks and the extent to which States exceeded the Department's suggested budget ranges. By requiring States to conform to specific budget ranges, we will ensure that the Secretary can fund, at an adequate level, multiple high-quality applications.

Interim Final Requirements

34 CFR CHAPTER 2

■ For the reasons discussed previously, the Secretary amends the final Race to the Top Fund requirements published in the **Federal Register** on November 18, 2009 (74 FR 59836) to include a new section as follows:

Budget Requirements: For Phase 2 of the Fiscal Year 2010 competition, and for any subsequent competitions, the State's budget must conform to the following budget ranges: [1]

Category 1—$350–700 million: California, Texas, New York, Florida.

Category 2—$200–400 million: Illinois, Pennsylvania, Ohio, Georgia, Michigan, North Carolina, New Jersey.

Category 3—$150–250 million: Virginia, Arizona, Indiana, Washington, Tennessee, Massachusetts, Missouri, Maryland, Wisconsin.

Category 4—$60–175 million: Minnesota, Colorado, Alabama, Louisiana, South Carolina, Puerto Rico, Kentucky, Oklahoma, Oregon, Connecticut, Utah, Mississippi, Iowa, Arkansas, Kansas, Nevada.

Category 5—$20–75 million: New Mexico, Nebraska, Idaho, West Virginia, New Hampshire, Maine, Hawaii, Rhode Island, Montana, Delaware, South Dakota, Alaska, North Dakota, Vermont, Wyoming, District of Columbia.

The State should develop a budget that is appropriate for the plan it outlines in its application; however we will not consider a State's application if its request exceeds the maximum in its budget range.

Executive Order 12866: Under Executive Order 12866, the Secretary must determine whether a regulatory action is "significant" and therefore subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may (1) have an annual effect

[1] The Department developed budget ranges for each State by ranking every State according to its share of the national population of children ages 5 through 17 based on data from "Estimates of the Resident Population by Selected Age Groups for the United States, States, and Puerto Rico: July 1, 2008" released by the Population Division of the U.S. Census Bureau. The Department identified the natural breaks in the population data and then developed overlapping budget ranges for each category taking into consideration the total amount of funds available for awards.

on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities in a material way (also referred to as an "economically significant" rule); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement grants, user fees, or local 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 Secretary has determined that this regulatory action is significant under section 3(f) of the Executive order.

Potential Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action and have determined that this rule will not impose additional costs to State applicants, grantees, or the Federal government. The Department is regulating only to incorporate mandatory budget ranges into the final Race to the Top requirements. It may take a State applicant time to create or revise its Race to the Top budget so that it conforms to the required budget range contained in this regulatory action if the State had intended to request more than the maximum in the range. We believe, however, that the benefits of this action outweigh any potential burden that it may cause. Additionally, the Department has determined that this regulatory action does not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

Regulatory Flexibility Act Certification: The Secretary certifies that these interim final requirements will not have a significant economic impact on a substantial number of small entities. The Secretary makes this certification because the only entities eligible to apply for grants are States, and States are not small entities.

Paperwork Reduction Act of 1995: The interim final requirements contain information collection requirements that are subject to review by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The Department had received previously emergency approval for the information collections in the final Race to the Top Fund requirements published on November 18, 2009, under OMB Control Number 1810–0697. The Department will submit to OMB a Paperwork Reduction Act Change Worksheet for this collection that will include the changes described in this notice.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR 79. One of the objectives of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism. The Executive Order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides notification of our specific plans regarding budget requirements for this program.

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/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: March 29, 2010.

Arne Duncan,

Secretary of Education.

[FR Doc. 2010–7409 Filed 4–1–10; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 721

[EPA–HQ–OPPT–2008–0918; FRL–8816–9]

RIN 2070–AB27

1-Propene, 2,3,3,3-tetrafluoro-; Withdrawal of Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is withdrawing a significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for the chemical substance identified as 1-Propene, 2,3,3,3-tetrafluoro- (CAS No. 754–12–1), which was the subject of premanufacture notice (PMN) P–07–601. EPA published the SNUR using direct final rulemaking procedures. EPA received a notice of intent to submit adverse comments on the rule. Therefore, the Agency is withdrawing the SNUR, as required under the expedited SNUR rulemaking process. Elsewhere in today's **Federal Register**, EPA is publishing (under separate notice and comment rulemaking procedures) a proposed SNUR for this substance.

DATES: This final rule is effective April 2, 2010.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Karen Chu, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8773; e-mail address: *chu.karen@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

A list of potentially affected entities is provided in the **Federal Register** of February 1, 2010 (75 FR 4983) (FRL–8438–4). If you have questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

II. What Rule is Being Withdrawn?

In the **Federal Register** of February 1, 2010 (75 FR 4983), EPA issued several direct final SNURs, including a SNUR for the chemical substance that is the subject of this withdrawal. These direct final rules were issued pursuant to the procedures in 40 CFR part 721, subpart D. In accordance with 40 CFR 721.170(d)(4)(i), EPA is withdrawing the rule issued for 1-Propene, 2,3,3,3-tetrafluoro- (PMN P–07–601; CAS No. 754–12–1) at 40 CFR 721.10182 because the Agency received a notice of intent to submit adverse comments. Elsewhere in today's **Federal Register**, EPA is proposing a SNUR for this chemical substance via notice and comment rulemaking.

For further information regarding EPA's expedited process for issuing SNURs, interested parties are directed to 40 CFR part 721, subpart D, and the **Federal Register** of July 27, 1989 (54 FR 31314). The record for the direct final

SNUR for the chemical substance being withdrawn was established at EPA–HQ–OPPT–2008–0918. That record includes information considered by the Agency in developing the rule and the notice of intent to submit adverse comments.

III. How Do I Access the Docket?

To access the electronic docket, please go to *http://www.regulations.gov* and follow the online instructions to access docket ID no. EPA–HQ–OPPT–2008–0918. Additional information about the Docket Facility is provided under **ADDRESSES** in the **Federal Register** document of February 1, 2010 (75 FR 4983). If you have questions, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

IV. What Statutory and Executive Order Reviews Apply to this Action?

This final rule revokes or eliminates an existing regulatory requirement and does not contain any new or amended requirements. As such, the Agency has determined that this withdrawal will not have any adverse impacts, economic or otherwise. The statutory and executive order review requirements applicable to the direct final rule were discussed in the **Federal Register** document of February 1, 2010 (75 FR 4983). Those review requirements do not apply to this action because it is a withdrawal and does not contain any new or amended requirements.

V. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: March 25, 2010.

Barbara A. Cunningham,

Acting Director, Office of Pollution Prevention and Toxics.

■ Therefore, 40 CFR parts 9 and 721 are amended as follows:

PART 9—[AMENDED]

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 2. The table in § 9.1 is amended by removing under the undesignated center heading "Significant New Uses of Chemical Substances" § 721.10182.

PART 721—[AMENDED]

■ 3. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

§ 721.10182 [Removed]

■ 4. Remove § 721.10182.

[FR Doc. 2010–7194 Filed 4–1–10; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2008–0089; FRL–9132–3]

Approval and Promulgation of Implementation Plans; Texas; Revisions to Chapter 116 Which Relate to the Voiding of Permits and Extension of Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking a direct final action to approve severable portions of a submittal from the State of Texas, through the Texas Commission on Environmental Quality (TCEQ), on September 25, 2003, to revise the Texas Major and Minor New Source Review (NSR) State Implementation Plan (SIP). EPA is approving the State's repeal of a paragraph of the SIP rule pertaining to Texas Major and Minor NSR SIP and to approve the consequent renumbering of the SIP rule's paragraphs. We also are approving the new replacement rule as meeting the Minor and Major NSR SIP requirements for voiding of permits.

We are approving the portion of the revision that addresses the recodification of the provision relating to the granting of one 18-month extension of a permit as meeting the Minor and Major NSR SIP requirement for extensions of permits. The revision imposes requirements on permitees, requiring a review of the permit's underlying permit determinations before this SIP-approved extension can be granted. Finally, the revision provides for a second permit extension if certain conditions are met, including a health effects review. EPA is approving the new replacement rule for this second permit extension as meeting the Major and Minor NSR and NNSR SIP requirements.

EPA finds that these changes to the Texas SIP comply with the Federal Clean Air Act (the Act or CAA) and EPA regulations, are consistent with EPA policies, and will improve air quality. This action is being proposed under section 110 and parts C and D of the Act.

DATES: This direct final rule is effective on *June 1, 2010* without further notice, unless EPA receives relevant adverse comment by May 3, 2010. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R06–OAR–2008–0192 by one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

(2) *E-mail:* Mr. Jeff Robinson at *robinson.jeffrey@epa.gov.* Please also cc the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below.

(3) *U.S. EPA Region 6* "*Contact Us*" *Web site: http://epa.gov/region6/r6coment.htm.* Please click on "6PD" (Multimedia) and select "Air" before submitting comments.

(4) *Fax:* Mr. Jeff Robinson, Chief, Air Permits Section (6PD–R), at fax number 214–665–6762.

(5) *Mail:* Mr. Jeff Robinson, Chief, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.

(6) *Hand or Courier Delivery:* Mr. Jeff Robinson, Chief, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such

deliveries are accepted only between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R06–OAR–2008–0192. 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 that 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.

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 Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittals, which are part of the EPA docket, are also available for public inspection at the State Air Agency during official business hours by appointment: Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Ms. Melanie Magee, Air Permits Section (6PD–R), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7161; fax number (214) 665–6762; e-mail address *magee.melanie@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever any reference to "we," "us," or "our" is used, we mean EPA.

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I. The State's Submittals

On September 25, 2003, Texas submitted a SIP revision that included an amended section 116.115 that would delete the language in the SIP's section 116.115(b)(2)(A) relating to the voiding of permits and extensions of time to begin construction, renumber the paragraphs because of the deletion of (A), and transfer the substance to a new section 116.120. The new section 116.120 addresses the voiding of permits and the first 18-month permit extension and contains language from the SIP-approved section 116.115 with revisions. It is EPA's position that the Texas Permit Voiding Program is severable from all the other elements in the September 2003 submittal, including the Texas Permit Extension Program because it addresses the voiding and extensions of permits. The new section also adds criteria that must be met for the first permit extension to be granted and adds the opportunity for a second extension if certain conditions are met.

The table below summarizes the changes that are in the September 25, 2003 SIP submittal that EPA is addressing in today's action. A summary of EPA's evaluation of each section and the basis for this proposal is discussed in section III of this preamble. The Technical Support Document (TSD) includes a detailed evaluation of the referenced SIP submittal.

Summary of each regulation that is affected by this action:

Section	Title	Date submitted	Date adopted by the State	Changes adopted by State	Comments
Chapter 116—Control of Air Pollution by Permits for New Construction of Modification Subchapter B—New Source Review Permits Division 1—Permit Application					
30 TAC 116.115	General and Special Conditions.	9/25/03	8/20/03	Revisions and Recodification of 30 TAC 116.115.	Removed Section (b)(2)(A). Renumbered Section (b)(2)(B)–(I) to Section (b)(2)(A)–(H) as a consequence of the removal.

Section	Title	Date submitted	Date adopted by the State	Changes adopted by State	Comments
30 TAC 116.120	Voiding of Permits and Extensions of Permits.	9/25/03	8/20/03	New 30 TAC 116.120	New Section. Subsection 116.120(a) is substantially the same as the SIP rule codified in Subsection 116.115(b)(2)(A). Part of subsection (b) is substantially the same as the SIP rule codified in subsection 116.115(b)(2)(A). Subsections (b) and (c) add new authority; they provide for the granting of more than one 18-month extension to a permit.

II. What Action Is EPA Taking?

We are approving the Texas Permit Voiding Program, as submitted by TCEQ on September 25, 2003, in Title 30 of the Texas Administrative Code (30 TAC) at 30 TAC Chapter 116—Control of Air Pollution by Permits for New Construction or Modification. This includes the following under Chapter 116: removal of 30 TAC 116.115(b)(2)(A) from the Texas SIP; renumbering of the SIP's 30 TAC 116.115(b)(2)'s subparagraphs as a consequence of the removal of subparagraph (A); and approval into the Texas SIP of the new 30 TAC 116.120(a) and (b). The existing Texas SIP at 30 TAC 116.115(b)(2)(A) and the newly submitted rule at 30 TAC 116.120(a) both require that persons issued a NSR permit under Chapter 116 begin construction of the facility within 18 months of permit issuance or the permit will be voided. Consequently, this action is merely a recodification of the SIP Permit Voiding requirements. It is EPA's position that the Texas Permit Voiding Program is severable from all the other elements in the September 2003 submittal, including the Texas Permit Extension Program.

In addition, the current SIP provision at 30 TAC 116.115(b)(2)(A) authorizes the Executive Director to grant an 18-month extension to this period. This language was transferred to this new subsection and relates to the grant of authority to the Executive Director to extend permits for 18 months. Thus, this action is a recodification of the SIP Permit Extension requirements.

The new 30 TAC 116.120(b) and (c) add new criteria that must be met before the Executive Director may issue the first 18-month extension. The new criteria are that the permit will be reviewed for its underlying best available control technology (BACT), lowest achievable emission rate (LAER), offsets, and netting determinations before the first extension will be granted.

The two new subsections also add new authority for the Executive Director to issue a second 18-month extension. EPA interprets section 116.120(b) to require that the permit holder will comply with all the rules and regulations of the commission, Texas Clean Air Act, including protection of public health and physical property before this second permit extension may be granted. This second permit extension would be available in the case of a construction delay caused by litigation, not of the permit holder's initiation regarding the issuance of the permit. The Executive Director could also issue an extension if the permit holder has spent, or has committed to spend, 10% of the estimated cost of construction to a maximum of $5 million. As part of the Texas Permit Extension Program, EPA is approving 30 TAC 116.120(b) and (c), as meeting the Major and Minor NSR and NNSR SIP.

We are publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no relevant adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if relevant adverse comments are received. This rule will be effective on *June 1, 2010* without further notice unless we receive relevant adverse comment by *May 3, 2010.* If we receive relevant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. EPA's Evaluation

A. How Does the Current SIP Address the Voiding of Permits?

The current SIP includes 30 TAC 116.115 as adopted by the TCEQ on November 20, 2002, and approved by EPA on September 6, 2006 (71 FR 52664). This section addresses the voiding of permits under 30 TAC subsection 116.115(b)(2)(A). This SIP rule provides that a permit or permit amendment under 30 TAC Chapter 116 is automatically void if the permit holder does one of the following: (1) Fails to begin construction within 18 months of the date of issuance; (2) discontinues construction for more than 18 consecutive months prior to completion of the project; or (3) fails to complete the project within a reasonable time.

B. What Revisions Did Texas Submit Relating to the Voiding of Permits?

On August 20, 2003, TCEQ adopted revisions to 30 TAC Section 116.115, and submitted them to EPA for SIP approval on September 25, 2003. This amendment recodifies the language relating to the voiding of permits and transfers this rule language from 30 TAC Subsection 116.115(b)(2)(A) to a new 30 TAC Subsection 116.120(a). The new 30 TAC Section 116.120(a) is located in 30 TAC Chapter 116, Subchapter B, Division 1, Permit Application.[1] The

[1] A separate and unrelated 30 TAC Section 116.120 as adopted by TCEQ on June 17, 1998, Division 2: Compliance History, and approved by EPA on September 18, 2002 (67 FR 58697) remains in the SIP. The State has not requested that EPA remove this SIP rule from the Texas NSR SIP. There is no legal impediment to having two separate unrelated SIP requirements, each with the same rule number. If this action is finalized as proposed,

Continued

new 30 TAC 116.120(a) addresses the voiding of permits and contains language that already was SIP approved in 30 TAC 116.115(b)(2)(A). Because this is merely a recodification of an existing SIP requirement, EPA is approving the recodification of 30 TAC 116.115(b)(2)(A) in the Texas NSR SIP, as the new 30 TAC 116.120(a).

C. How Does the Current SIP Address the Extension of Permits?

The current SIP includes 30 TAC 116.115 as adopted by the TCEQ on November 20, 2002, and approved by EPA on September 6, 2006 (71 FR 52664). This section addresses the granting of an 18-month extension of the date to begin construction under 30 TAC subsection 116.115(b)(2)(A). The Executive Director may grant a one-time 18-month extension of the date to begin construction if the permit holder fails to begin construction within 18 months of the date of issuance of the permit.

D. What Revisions Did Texas Submit Relating to the Extensions of Permits?

On August 20, 2003, TCEQ adopted revisions to 30 TAC Section 116.115, and submitted them to EPA for SIP approval on September 25, 2003. This amendment recodifies the language relating to the granting of the additional 18-month extension of a permit and transfers this rule language from 30 TAC Subsection 116.115(b)(2)(A) to a new 30 TAC subsection 116.120(b), introductory paragraph, third sentence. The language relating to the Executive Director's authority to grant an 18-month extension of the permit was transferred to this new subsection, third sentence in the introductory paragraph. Because this is merely a recodification of an existing SIP requirement, EPA is approving the removal of 30 TAC 116.115(b)(2)(A) from the Texas NSR SIP, approving the consequent renumbering of the paragraphs in 30 TAC 116.115(b)(2), and approving the new 30 TAC subsection 116.120(b) as part of the Texas NSR SIP.

The new section 116.120 subsections (b) and (c), would allow more than one 18-month extension, as is currently provided for in the Texas NSR SIP. First, the permit holder may be granted a second extension to begin construction in the case of a construction delay caused by litigation, not of the permit holder's initiation, associated with the issuance of a permit. The Executive Director also can issue a second extension if the permit holder has spent, or has committed to spend 10% of the estimated cost of construction to a maximum of $5 million.

EPA interprets this revision to require that before a permit holder can obtain this second extension, however, the State must perform a new health effects analysis and the permittee must demonstrate that emissions from the facility will comply with all rules and regulations of the commission and the intent of the TCAA, including protection of the public's health and physical property. The State will also review again the present permit's BACT, LAER, netting or offsets as applicable, determinations.

EPA is also interpreting subsection 116.120(b) to subject a permit for which a second extension is requested to public notice and comment as a permit amendment if the health effects analysis or original determination regarding BACT, LAER, netting or offsets as applicable, is changed.

IV. Final Action

EPA is taking direct final action to approve revision of the SIP Texas submitted on September 25, 2003, that relate to Voiding of Permits, as part of the Texas NSR SIP. EPA is approving the revisions that relate to Extensions of Permits as part of the Texas NSR SIP for Major and Minor NSR and are merely the recodification of the existing SIP requirement. EPA also is approving some substantive portions of the revisions that add new criteria for the granting of the first permit extension as part of the Texas Major and Minor NSR and NNSR SIP. Finally, we are approving the new substantive portions of the revisions that add the authority to grant a second extension as part of the Texas NSR SIP for Major and Minor NSR and NNSR.

V. 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.

The Congressional Review Act, 5 U.S.C. section 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

the CFR regulatory language will show there are two 30 TAC 116.120's in the Texas SIP; the State adoption date and EPA's approval date will inform the public which 30 TAC 116.120 relates to Permit Voiding and Permit Extensions.

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).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 1, 2010. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 24, 2010.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart SS—Texas

■ 2. The table in § 52.2270(c) entitled "EPA Approved Regulations in the Texas SIP" is amended under Chapter 116—Control of Air Pollution by Permits for New Construction or Modification, Subchapter B—New Source Review Permits, Division 1—Permit Application, to read as follows:

■ a. By revising the entry for Section 116.115, General and Special Conditions; and

■ b. Immediately following the entry for Section 116.116, by adding a new entry for Section 116.120, Voiding of Permits, under Division 1.

The revision and addition read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State approval/submittal date	EPA approval date	Explanation
*	*	*	*	*
Chapter 116—Control of Air Pollution by Permits for New Construction or Modification				
*	*	*	*	*
Subchapter B—New Source Review Permits Division 1—Permit Application				
*	*	*	*	*
Section 116.115	General and Special Conditions	8/20/2003	4/2/2010 [Insert *FR* page number where document begins].	
*	*	*	*	*
Section 116.120	Voiding of Permits	8/20/2003	4/2/2010 [Insert *FR* page number where document begins].	
*	*	*	*	*

[FR Doc. 2010–7214 Filed 4–1–10; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 75, No. 63
Friday, April 2, 2010

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 23, 25, 27, and 29

[Docket No. FAA–2010–0224; Notice No. 10–05]

RIN 2120–AJ57

Airworthiness Standards; Electrical and Electronic System Lightning Protection

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to amend the lightning protection airworthiness standards by establishing new lightning protection regulations for electrical and electronic systems installed on aircraft certificated under parts 23, 27, and 29, and revising lightning protection regulations for electrical and electronic systems installed on airplanes certificated under part 25. The proposed rulemaking would establish two levels of lightning protection for aircraft systems based on consequences of system function failure: Catastrophic consequences which would prevent continued safe flight and landing and hazardous or major consequences which would reduce the capability of the aircraft or the ability of the flightcrew to respond to an adverse operating condition. The proposed rulemaking would also establish lightning protection for aircraft systems according to the aircraft's potential for lightning exposure. Compliance with the new requirements would be based on demonstration of effective lightning protection for electrical and electronic systems. The proposed airworthiness standards would establish consistent lightning protection requirements for electrical and electronic systems.

DATES: Send your comments on or before July 1, 2010.

ADDRESSES: You may send comments identified by Docket Number [Insert docket number, for example, FAA–200X–XXXXX] using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

For more information on the rulemaking process, *see* the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the electronic form of all comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketsInfo.dot.gov.*

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time and follow the online instructions for accessing the docket or Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this proposed rule contact Lee Nguyen, AIR–130, Federal Aviation Administration, Suite 4102, 470 L'Enfant Plaza, Washington, DC 20591; telephone (202) 385–4676; facsimile (202) 385–4651, e-mail *lee.nguyen@faa.gov.* For legal questions concerning this proposed rule contact Viola Pando, AGC–220, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 493–5293; facsimile (202) 267–7971, e-mail *viola.pando@faa.gov.*

SUPPLEMENTARY INFORMATION:

Later in this preamble under the Additional Information section, we discuss how you can comment on this proposal and how we will handle your comments. Included in this discussion is related information about the docket, privacy, and the handling of proprietary or confidential business information. We also discuss how you can get a copy of related rulemaking documents.

Authority for This Rulemaking

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, Section 44701(a)(1). Under that section, the FAA is charged with prescribing regulations to promote safe flight of civil aircraft in air commerce by prescribing minimum standards in the interest of safety for appliances and for the design, material, construction, quality of work, and performance of aircraft, aircraft engines, and propellers. By prescribing standards to protect aircraft electrical and electronic systems from the effects of lightning, this regulation is within the scope of the Administrator's authority.

Background and History

Existing regulations for lightning protection of electrical and electronic systems installed on aircraft certificated under 14 CFR parts 23, 27 and 29 require the type certification applicant only to "consider" the effects of lightning. Unlike system lightning protection regulations for part 25 airplanes, these regulations have not been significantly amended since they were first adopted, and do not reflect current advances in technology.

A. History of Lightning Regulations

In the 1960s, regulations applicable to lightning protection for aircraft design, construction, and fuel systems were adopted for aircraft certificated under

parts 23, 25, 27 and 29. The regulations required that the aircraft be protected against catastrophic effects of lightning, but did not have specific requirements for electrical and electronic system lightning protection. At the time, most aircraft were designed with mechanical systems, or simple electrical and electronic systems. Airframe components were made from aluminum materials, with high electrical conductivity, and offered good protection against lightning.

The early 1980s ushered in part 25 transport airplane designs that routinely included more complex electrical and electronic systems. Flight-critical electronic primary flight controls, electronic primary flight displays, and full-authority electronic engine controls became common on transport airplanes certificated under part 25. At this time, the FAA began to impose lightning protection requirements for critical and essential electrical and electronic systems through special conditions, when appropriate, for part 25 airplane certification projects.

As electrical and electronic systems became more common on part 25 airplanes, the FAA issued § 25.1316, specifically requiring protection for electrical and electronic systems on part 25 transport category airplanes. The final rule was published on April 28, 1994 (59 FR 22112). This regulation, in effect today, requires lightning protection for electrical and electronic systems based on the consequences of failure for functions these systems perform. The present regulation provides specific considerations that the applicant must design for to validate that the electrical and electronic systems and functions are protected from the effects of lightning strikes.

B. Related Rulemaking Activity

The FAA tasked the Aviation Rulemaking Advisory Committee (ARAC) on Transport Airplane and Engine Issues (57 FR 58843; December 11, 1992) to develop recommendations for specific electrical and electronic systems lightning protection requirements for aircraft certificated under parts 23, 27, and 29 standards.

The ARAC submitted recommendations to the FAA in November 1998. The recommendations included lightning protection requirements, based on the consequences of the failure of system functions, similar to the requirements in § 25.1316. The ARAC also recommended changes to § 25.1316 consistent with its recommendations for classification of the failure conditions for parts 23, 27, and 29. ARAC recommended the same requirements for all four parts.

The FAA considered the ARAC recommendations in developing this notice of proposed rulemaking (NPRM) and agrees with these recommendations, with one exception. After careful consideration, the FAA is unable to endorse the ARAC recommendation to provide an exception to the requirement for automatic and timely recovery of a system that performs a function for which failure is catastrophic. ARAC recommended an exception to recovery of such a system in instances where the recovery of the system would conflict with other operational or functional requirements of the system. We are unable to identify a situation where such an exception would be appropriate, nor could we justify the need for such an exception and propose requirements that could ensure an equivalent level of safety.

The recommendations of the ARAC are available at the following Web address: *http://www.faa.gov/regulations_policies/rulemaking/committees/arac/issue_areas/tae/eeh/.*

C. Advisory Material

In the absence of performance standards for protection of electrical and electronic systems from lightning effects, the FAA has issued Advisory Circular (AC) 20–136A, "Protection of Aircraft Electrical/Electronic System against the Indirect Effects of Lightning." Since advisory circulars are not mandatory, a type certificate applicant may elect to ignore or deviate from the guidance therein, while still satisfying the requirement to "consider" lightning. The lack of specific performance standards has resulted in a variety of different interpretations and means of compliance for system lightning protection.

General Discussion of the Proposal

The proposed rulemaking would establish type certification standards for lightning protection of electrical and electronic systems for aircraft certificated under parts 23, 27 and 29. This action also proposes to revise § 25.1316 for transport category airplanes to be consistent in format with the proposed regulations applicable to other aircraft.

This rulemaking reflects a change in our approach to achieving lightning protection for aircraft by protecting functions of electrical and electronic systems. The current part 25 regulation for lightning protection focuses on protection of electrical and electronic systems that perform critical and essential functions and are no longer compatible or consistent with the latest classification concepts, terminology, and practices. Parts 23, 27 and 29 regulations for lightning protection are less precise, and require the applicant only to "consider" lightning. While the focus on protection of electrical and electronic systems that perform critical or essential functions was fundamental to the wording of earlier airworthiness standards regarding systems, and associated advisory circulars, this proposal focuses on the effects that failure conditions would have on aircraft safety. The FAA proposes that lightning protection design required for each aircraft would be determined by the type of electrical and electronic systems installed on the aircraft, and how critical the system or function is to either continued flight and landing, or the aircraft capability and flightcrew's ability to respond to adverse operating conditions.

In aircraft, the term "electrical and electronic system" refers to the electrical and electronic equipment, associated software, and interconnecting wires installed on aircraft to perform one or more functions. The term "function" refers to the action that the system performs. An aircraft system may perform multiple functions with different failure conditions. For example, an engine control system may perform the function of the engine thrust control—for which failure could have catastrophic effects on the continued safe flight and landing of the aircraft. The engine control system may also perform the function of engine condition monitoring—for which failure could have hazardous or major effects on continued safe operation of the aircraft. A function may also be performed by multiple systems or subsystems. For example, the function of controlling engine thrust may be provided by an electronic engine control subsystem, with a separate backup mechanical control subsystem.

A. Proposed Performance Standards

The proposed regulations would establish consistent performance standards to design lightning protection for those aircraft electrical and electronic systems that provide:

1. Functions for which failure would *prevent* the continued safe flight and landing of the aircraft: Failure of these functions could result in catastrophic consequences such as loss of life and loss of the aircraft;

2. Functions for which failure would *reduce the capability* of the aircraft or the ability of the flightcrew to cope with adverse operating conditions: Failure of

these functions could have hazardous or major consequences.

This NPRM identifies system lightning performance standards for item 1 as "protection against catastrophic failure." These standards are addressed by paragraph (a) of the proposed regulations. System lightning performance standards for item 2 will be referenced as "protection against hazardous or major failure." These standards are addressed by paragraph (b) of the proposed regulations.

The proposed standards for protection against catastrophic failure would require an applicant to show that the function would not be adversely affected during or after the time the aircraft is exposed to lightning. Compliance with the standard would depend on the specific aircraft function, the system that performs that function, and the effects of failure on the system and function. Further guidance on defining the adverse effects for specific aircraft system functions can be found in various FAA advisory materials.

The system could be affected during lightning exposure because a backup system continues to provide the function, even though the function may not be adversely affected. Accordingly, the applicant would be required to show that the system would automatically recover normal operation after the lightning exposure in a timely manner. "Normal operation" means the ability of the system to perform functions to the extent necessary to continue safe flight and landing. For systems that provide one or more functions, the proposal would require the system to automatically recover normal operations of those functions for which failure could be catastrophic. Other functions would not be required to return to normal operation. The FAA would determine what constitutes "timely" automatic recovery on a case-by-case evaluation, based on engineering judgment of the specific function and its failure effects.

The aircraft engine thrust/power control is an example of a function for which failure would have catastrophic effects on the aircraft's ability to continue safe flight and landing. A full-authority electronic engine control system may provide this function, and perform aircraft engine thrust/power control by automatically regulating fuel flow and airflow to the engine(s). The loss or malfunction of this function could stop the engines or result in engine overspeed, which could result in a catastrophic failure condition. In this situation, the applicant would be required to ensure the aircraft engine thrust/power control function is not adversely affected during or after lightning exposure.

The aircraft display is another function for which failure would have catastrophic effects on continued safe flight and landing. This function provides aircraft attitude, altitude, and airspeed information to the pilot, which are required for continued safe flight and landing of the aircraft. The aircraft display may be provided by two systems: An electronic primary display and an electromechanical standby display. In this situation, the primary display may momentarily blank while the aircraft is exposed to lightning, provided the information is available from a standby display. The applicant would be required to demonstrate that the primary display system automatically recovers normal operation in a timely manner with no adverse effect on providing the attitude, altitude, and airspeed information.

The proposed requirements for protection against hazardous or major failure would require the applicant to show that the system would not be damaged, and the function would recover normal operation in a timely manner after the aircraft is exposed to lightning. This proposed requirement would primarily focus on the recovery of the function to normal operation. For these systems, "damaged" refers to the inability to recover. As with the proposed standard for protection against catastrophic failure, the FAA would determine what constitutes a "timely" recovery of normal function based on engineering judgment of the specific function and its failure effects upon the design submitted for certification.

An example of a function for which failure could result in or have a hazardous or major effect on aircraft operation is voice communication provided by radio. Failure of this function would increase the flightcrew's normal workload and affect their ability to maintain situational awareness, as the flightcrew would no longer be able to transmit or receive voice communication information with other pilots or air traffic control. As proposed, the applicant would be required to ensure the radio system is not damaged after lightning exposure and the voice communication function would recover in a timely manner. Recovery may require flightcrew interaction.

B. Applicability of the Proposed Lightning Protection Requirements

Application of the proposed standards for aircraft electrical and electronic system lightning protection would be based on the aircraft's potential for lightning exposure and the consequences of system failure. The proposed requirements for parts 25 and 29 would apply to all aircraft certificated under part 25 and part 29. The proposed requirements would also apply to part 23 and part 27 aircraft approved for operations under instrument flight rules (IFR). In addition, the proposed requirements would apply to part 23 airplanes and part 27 rotorcraft approved solely for operations under visual flight rules (VFR); for those electrical and electronic systems that perform functions for which failures would be catastrophic.

Parts 25 and 29 Aircraft

Parts 25 and 29 transport category aircraft are now routinely equipped with complex electrical and electronic systems. These systems are highly integrated, and provide a range of flight-critical functions. The FAA has tentatively determined that these transport category aircraft should be required to provide full protection for those systems that perform functions for which failure could result in both catastrophic and hazardous or major failure effects.

Part 23 Airplanes

Application of the proposed requirements for airplanes certificated to part 23 standards depends on whether the airplane is approved for IFR or VFR-only operations. This difference exists because, compared to part 23 VFR-only airplanes, part 23 IFR-approved airplanes are more likely equipped with complex electrical and electronic systems that allow them to operate into instrument meteorological conditions (IMC), where lightning strikes are prevalent. As a result, part 23 IFR-approved airplanes are designed for, and expected to operate into, weather conditions that present greater potential for exposure to lightning.

In contrast, part 23 VFR-only airplanes are prohibited by regulation from operating into IMC. Nevertheless, there is still some likelihood of the airplanes being exposed to lightning. Therefore, the FAA has determined that the resulting risk to part 23 VFR-only airplanes for which failure would be catastrophic may be sufficiently great to require lightning protection to prevent catastrophic failures. However, the FAA has tentatively determined that the resulting risk to part 23 VFR-only airplanes with electrical or electronic systems installed for which failure would be hazardous or major remains sufficiently low as to not require lightning protection.

Part 27 Rotorcraft

Similar to the applicability of proposed changes to part 23, application of the proposed requirements for part 27 would depend on whether the rotorcraft is approved for IFR or VFR-only operations. The proposed lightning protection requirements would apply to IFR-approved rotorcraft in the same way, and for the same reasons. Likewise, part 27 VFR-only rotorcraft would be required to protect those systems that perform functions where failure could have catastrophic effects. This requirement is intended to address the unique performance capabilities that make rotorcraft VFR operations vulnerable to lightning. Rotorcraft are inherently more maneuverable, and have more versatile landing capability than fixed wing aircraft. Accordingly, they are permitted to operate with low minimum altitude, low flight visibility, and nearer to clouds. Although prohibited from operating directly into IMC, part 27 VFR-only rotorcraft are able to operate close to meteorological conditions that have a high potential for lightning strikes. This means rotorcraft certificated to part 27 standards in VFR-only operations are likely to encounter lightning exposure. The FAA has determined that the resulting risk to part 27 VFR-only rotorcraft systems for which failure would be catastrophic is sufficiently great to propose requiring lightning protection to prevent catastrophic failures. As with part 23 VFR-only airplanes, the FAA has determined that the resulting risk to rotorcraft certificated to part 27 standards that operate in VFR-only operations with electrical or electronic systems installed for which failure would be hazardous or major likely remains sufficiently low as to not require lightning protection.

C. Specific Changes to Part 25

The proposed changes to § 25.1316 are intended to rephrase the existing regulation to clarify intent, to reformat it so that it is in keeping with the other three parts, and to delete § 25.1316(c) which sets forth specific requirements for compliance. If adopted, the proposal would not change the current part 25 practices for lightning protection. Rather, the proposal would shift the emphasis placed on protecting functions of electrical and electronic systems, and focus on the effects that systems and equipment failure conditions have on aircraft safety. The most significant change would be to clearly set forth lightning protection performance standards for the function and the system, based on the failure effects of the function.

Section 25.1316(a) currently requires those electrical and electronic systems that provide functions where failure would be catastrophic to be designed and installed so their operation and operational capabilities are not adversely affected when the airplane is exposed to lightning. Section 25.1316(b) requires that lightning protection for electrical and electronic systems that perform functions for which failure would be hazardous or major must be designed and installed to ensure that these functions can be timely recovered after exposure to lightning.

The proposed regulation is distinguishable from existing § 25.1316 in that it places the emphasis on the function and also sets forth specific standards for the function and the system respectively. By focusing on functions performed by systems, rather than the systems themselves, the proposed revision would allow the applicant to choose appropriate system configurations and designs to comply with this regulation, but would also require that the applicant demonstrate that the proposed configuration provides effective protection.

Finally, the proposal would remove § 25.1316(c), which contains specific step-by-step actions required to show compliance. The ARAC recommended removing § 25.1316(c) because this information is more appropriately addressed in guidance for means of compliance. Since § 25.1316 was adopted in 1994, significant guidance has been developed by the FAA and lightning technical committees. Advisory circulars 20–136A and 20–155 provide much more comprehensive guidance on means of compliance with the lightning regulations. Removing § 25.1316(c) allows for the use of means of compliance that achieve the intent of § 25.1316(a) and (b) without the prescriptive list that is currently in § 25.1316(c). The technology for showing compliance with § 25.1316(a) and (b) has progressed substantially since § 25.1316 was adopted in 1994, which makes the prescriptive list in § 25.1316(c) obsolete.

D. Miscellaneous Changes

This rulemaking would remove §§ 27.1309(d) and 29.1309(h), and delete "lightning and" from §§ 27.610(d)(4) and 29.610(d)(4). Section 27.1309(d) currently governs lightning protection for part 27 electrical and electronic systems, and requires only that the applicant "consider" the effects of lightning according to § 27.610. Section 29.1309(h) requires only that the applicant "consider" the effects of lightning. Sections 27.610(d)(4) and 29.610(d)(4) both address general design requirements for electrical bonding and protection against lightning and static electricity. They require electrical bonding against lightning to reduce to an acceptable level the effects of lightning on the functioning of essential electrical and electronic equipment. Adoption of the proposed §§ 27.1316 and 29.1316 would replace these references to lightning with specific performance standards for lightning protection of parts 27 and 29 electrical and electronic systems.

Also, we propose to add a cross reference to § 27.1316 in Appendix B of Part 27 on electrical and electronic system lightning protection for rotorcraft approved for IFR operation.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there is no new information collection requirement associated with this proposed rule.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of

U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or Tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impact of the proposed rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it be included in the preamble. Such a determination has been made for this proposed rule. The reasoning for this determination follows:

In a cost survey of industry conducted by the FAA, six of the seven replying firms reported no incremental cost from this proposed rule. One firm reported "little or no cost." The reason for little or no incremental cost is that these firms (six out of seven) reported usage of Advisory Circular (AC) 20–136A, "Protection of Aircraft Electrical/Electronic Systems Against the Indirect Effects of Lightning," as guidance for demonstrating compliance with lightning requirements. Consequently, these firms are already in compliance with the proposed rule as it represents a codification of AC 20–136A. For manufacturers of Part 25 airplanes, cost changes should be minimal in any case, as the proposed changes in the rule are clarifying only. Moreover, four of the seven respondents reported at least some expected benefits from the proposed rule (*See* "Benefits" section below). The FAA therefore has determined that this proposed rule would have minimal costs with positive net benefits and does not warrant a full regulatory evaluation. The FAA requests comments with supporting justification on the FAA determination of minimal impact. Our analysis follows below.

The FAA has also determined that this proposed rule is not a "significant regulatory action" as defined in section 3(f) of Executive Order 12866, and is not "significant" as defined in DOT's Regulatory Policies and Procedures.

Total Costs and Benefits of This Rulemaking

As noted above, there are little or no expected costs for this proposed rule and some benefits. The benefits therefore justify the costs. *See* details in the separate costs and benefits sections below.

Who Is Potentially Affected by This Rulemaking?

Manufacturers of Parts 23, 25, 27, and 29 aircraft and manufacturers of electrical and electronic systems for those aircraft.

Assumptions and Sources of Information

- We use a ten-year period of analysis, 2009–2018.
- Data on costs of compliance and benefits of this rule were obtained from an FAA survey of industry.
- Firms are defined as "small" or "large" using Small Business Administration (SBA) size standards (U.S. SBA. Table of Small Business Size Standards Matched to North American Industry Classification System Codes, July 21, 2006).

Costs of This Rulemaking

On February 9, 2009, we sent a detailed cost survey to six manufacturers of Parts 23, 25, 27, and 29 aircraft and three manufacturers of electrical and electronic systems for those aircraft. In addition to several detailed cost questions, the survey also asked one question about potential benefits from the proposed rule. We received four responses to this initial survey. On March 17, 2009, we resurveyed the five non-respondents and received three additional replies, although the last response came only on August 8, 2009. The seven responses we received were from manufacturers ranging from a small aircraft manufacturer (less than 1,500 employees) to the largest U.S. aircraft manufacturer. As shown in the table below, the respondents indicated little or no cost from the proposed rule.

Summary of Cost Survey Results

Firm	Type	Products certified to:	Costs	Benefits
A	Airplane manufacturer	Part 23	No cost	"The certification process will be less ambiguous and slightly streamlined by writing some of the AC 20–136A requirements directly into the regulations."
B	Airplane manufacturer	Parts 23 & 25	No cost	"The commonality between parts and the ability to use the same substantiation across product lines is a very large benefit."
C	Airplane manufacturer	Parts 23 & 25	No cost	"Harmonization of Part 23 and Part 25 rules will simplify our certification process as our internal procedures benefit from any similarity of the two Parts."
D	Airplane manufacturer	Part 25	Little or no cost	No response to benefits question.
E	Electrical/electronic systems manufacturer.	Parts 23 & 25	No cost	"NA."
F	Electrical/electronic systems manufacturer.	Parts 23, 25, 27, & 29	No cost	"None."
G	Electrical/electronic systems manufacturer.	Parts 23, 25, 27, & 29	No cost	"Standardization of the rule across all aircraft types may simplify requirements capture resulting in some limit[ed] non-recurring cost reduction."

Benefits of This Rulemaking

As supported by the responses to the benefits question, shown in the table, the proposed rule and the standardization of rule language would reduce firm costs by clarifying and simplifying the certification process.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes "as a principle of regulatory issuance that

agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration." The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

As noted above, in a cost survey of industry, the FAA found little or no expected costs from this proposed rule. The reason for this finding is that all but one respondent reported usage of AC 20–136A, "Protection of Aircraft Electrical/Electronic Systems Against the Indirect Effects of Lightning," as guidance for complying with system lightning requirements. Accordingly, this proposed rule represents current practice and imposes no more requirements than those previously recommended by AC 20–136A. Consequently, these firms are already in compliance with the proposed rule as it represents a codification of AC 20–136A. For manufacturers of Part 25 airplanes, cost changes should, in any case, be minimal as the proposed changes in the rule are clarifying only. Therefore, the FAA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. The FAA solicits comments regarding this determination.

International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreement Act (Pub. L. 103–465), prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard have a legitimate domestic objective, such as the protection of safety, and do not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA notes the purpose is to ensure the safety of the American public, and has assessed the effect of this proposed rule to ensure that it does not exclude imports that meet this objective. As a result, this proposed rule is not considered as creating an unnecessary obstacle to foreign commerce because the FAA found little or no expected costs from this proposed rule.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of $136.1 million in lieu of $100 million.

This proposed rule does not contain such a mandate. The requirements of Title II do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action 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, and, therefore, would not have federalism implications.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this proposed rulemaking action qualifies for the categorical exclusion identified in paragraph 308(c)(1) and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this NPRM under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a "significant energy action" under the executive order, it is not a "significant regulatory action" under Executive Order 12866 and DOT's Regulatory Policies and Procedures.

Additional Information

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, please send only one copy of written comments, or if you are filing comments electronically, please submit your comments only one time.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Proprietary or Confidential Business Information

Do not file in the docket information that you consider to be proprietary or confidential business information. Send or deliver this information directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document. You must mark the information that you consider proprietary or confidential. If you send the information on a disk or CD–ROM, mark the outside of the disk or CD–ROM and also identify electronically within the disk or CD–ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), when we are aware of proprietary information filed with a comment, we do not place it in the docket. We hold it in a separate file to which the public does not have access, and we place a note in the docket that we have received it. If we receive a request to examine or copy this information, we treat it as any other request under the Freedom of Information Act (5 U.S.C. 552). We process such a request under the DOT procedures found in 49 CFR part 7.

Availability of Rulemaking Documents

You can get an electronic copy of rulemaking documents using the Internet by—

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

2. Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies* or

3. Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html*.

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket or notice number of this rulemaking.

You may access all documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, from the Internet through the Federal eRulemaking Portal referenced in paragraph (1).

List of Subjects

14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 27

Aircraft, Aviation safety.

14 CFR Part 29

Aircraft, Aviation safety.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend parts 23, 25, 27, and 29 of Title 14, Code of Federal Regulations, as follows:

PART 23—AIRWORTHINESS STANDARDS: NORMAL, UTILITY, ACROBATIC, AND COMMUTER CATEGORY AIRPLANES

1. The authority citation for part 23 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

2. Add new § 23.1306 to read as follows:

§ 23.1306 Electrical and electronic system lightning protection.

(a) Each electrical and electronic system that performs a function, for which failure would prevent the continued safe flight and landing of the airplane, must be designed and installed so that—

(1) The function is not adversely affected during and after the time the airplane is exposed to lightning; and

(2) The system automatically recovers normal operation of that function in a timely manner after the airplane is exposed to lightning.

(b) For airplanes approved for instrument flight rules operation, each electrical and electronic system that performs a function, for which failure would reduce the capability of the airplane or the ability of the flightcrew to respond to an adverse operating condition, must be designed and installed so that—

(1) The system is not damaged after the airplane is exposed to lightning; and

(2) The function recovers normal operation in a timely manner after the airplane is exposed to lightning.

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

3. The authority citation for part 25 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

4. Revise § 25.1316 to read as follows:

§ 25.1316 Electrical and electronic system lightning protection.

(a) Each electrical and electronic system that performs a function, for which failure would prevent the continued safe flight and landing of the airplane, must be designed and installed so that—

(1) The function is not adversely affected during and after the time the airplane is exposed to lightning; and

(2) The system automatically recovers normal operation of that function in a timely manner after the airplane is exposed to lightning.

(b) Each electrical and electronic system that performs a function, for which failure would reduce the capability of the airplane or the ability of the flightcrew to respond to an adverse operating condition, must be designed and installed so that—

(1) The system is not damaged after the airplane is exposed to lightning; and

(2) The function recovers normal operation in a timely manner after the airplane is exposed to lightning.

PART 27—AIRWORTHINESS STANDARDS: NORMAL CATEGORY ROTORCRAFT

5. The authority citation for part 27 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

6. Amend § 27.610 by revising paragraph (d)(4) to read as follows:

§ 27.610 Lightning and static electricity protection.

* * * * *

(d) * * *

(4) Reduce to an acceptable level the effects of static electricity on the functioning of essential electrical and electronic equipment.

§ 27.1309 [Amended]

7. Amend § 27.1309 by removing paragraph (d).

8. Add a new § 27.1316 to read as follows:

§ 27.1316 Electrical and electronic system lightning protection.

(a) Each electrical and electronic system that performs a function, for which failure would prevent the continued safe flight and landing of the rotorcraft, must be designed and installed so that—

(1) The function is not adversely affected during and after the time the rotorcraft is exposed to lightning; and

(2) The system automatically recovers normal operation of that function in a timely manner after the rotorcraft is exposed to lightning.

(b) For rotorcraft approved for instrument flight rules operation, each electrical and electronic system that performs a function, for which failure would reduce the capability of the rotorcraft or the ability of the flightcrew to respond to an adverse operating condition, must be designed and installed so that—

(1) The system is not damaged after the rotorcraft is exposed to lightning; and

(2) The function recovers normal operation in a timely manner after the rotorcraft is exposed to lightning.

9. Add paragraph X. to Appendix B of part 27 to read as follows:

Appendix B to Part 29—Airworthiness Criteria for Helicopter Instrument Flight

* * * * *

X. *Electrical and electronic system lightning protection.* For regulations concerning lightning protection for electrical and electronic systems, *see* § 27.1316.

PART 29—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY ROTORCRAFT

10. The authority citation for part 29 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

11. Amend § 29.610 by revising paragraph (d)(4) to read as follows:

§ 29.610 Lightning and static electricity protection.

* * * * *

(d) * * *

(4) Reduce to an acceptable level the effects of static electricity on the functioning of essential electrical and electronic equipment.

§ 29.1309 [Amended]

12. Amend § 29.1309 by removing paragraph (h).

13. Add new § 29.1316 to read as follows:

§ 29.1316 Electrical and electronic system lightning protection.

(a) Each electrical and electronic system that performs a function, for which failure would prevent the continued safe flight and landing of the rotorcraft, must be designed and installed so that—

(1) The function is not adversely affected during and after the time the rotorcraft is exposed to lightning; and

(2) The system automatically recovers normal operation of that function in a timely manner after the rotorcraft is exposed to lightning.

(b) Each electrical and electronic system that performs a function, for which failure would reduce the capability of the airplane or the ability of the flightcrew to respond to an adverse operating condition, must be designed and installed so that—

(1) The system is not damaged after the rotorcraft is exposed to lightning; and

(2) The function recovers normal operation in a timely manner after the rotorcraft is exposed to lightning.

Issued in Washington, DC, on March 29, 2010.

Kalene C. Yanamura,

Acting Director, Aircraft Certification Service.

[FR Doc. 2010–7525 Filed 4–1–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0280; Directorate Identifier 2009–NM–259–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 777–200LR and –300ER Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Model 777–200LR and –300ER series airplanes. This proposed AD would require doing a high frequency eddy current inspection for cracking of the keyway of the fuel tank access door cutout on the left and right wings between wing rib numbers 8 (wing station 387) and 9 (wing station 414.5), and related investigative and corrective actions if necessary. This proposed AD results from reports of cracks emanating from the keyway of the fuel tank access door cutout of the lower wing skin between wing rib numbers 8 and 9. We are proposing this AD to prevent loss of the lower wing skin load path, which could cause catastrophic structural failure of the wing.

DATES: We must receive comments on this proposed AD by May 17, 2010.

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

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

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Duong Tran, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6452; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0280; Directorate Identifier 2009–NM–259–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We have received reports of cracks emanating from the keyway of the fuel tank access door cutout of the lower wing skin between wing rib numbers 8 and 9. The keyway is found on Model 777–200LR and 777–300ER airplanes at this location as the access door has a fuel measuring stick installed. The keyway is used to ensure that the fuel measuring stick is oriented properly in the access door cutout. The crack is the result of fatigue due to the position of the keyway. After the crack initiates, if

it grows unchecked, it could result in the loss of the lower wing skin load path with catastrophic structural failure of the wing.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 777–57A0069, dated November 5, 2009. The service bulletin describes procedures for doing a high frequency eddy current (HFEC) inspection for cracking at the keyway of the fuel tank access door cutout on the left and right wings between wing rib numbers 8 and 9, and corrective actions if necessary. Corrective actions include making an insurance cut of the keyway of the fuel tank access door cutout on the left and right wings; contacting Boeing for repair instructions and doing the repair; and changing the profile of the keyway of the fuel tank access door cutout on the left and right wings including doing a related investigative action. The related investigative action is an HFEC inspection of the machined areas for cracks.

FAA's Determination and Requirements of This Proposed AD

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

Differences Between the Proposed AD and Service Bulletin

Boeing Alert Service Bulletin 777–57A0069, dated November 5, 2009, specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

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

Other Rulemaking

The lower wing skins on The Boeing Company Model 737–900ER airplanes have fuel tank access door cutouts with the same configuration as those of the affected fuel tank access door cutouts on Model 777–200LR and 777–300ER airplanes. Therefore, Model 737–900ER airplanes may be subject to the identified unsafe condition. We are considering similar rulemaking related to the identified unsafe condition for certain Model 737–900ER airplanes.

Costs of Compliance

We estimate that this proposed AD would affect 16 airplanes of U.S. registry. We also estimate that it would take 2 work-hours per product to comply with this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this proposed AD to the U.S. operators to be $2,720, or $170 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2010–0280; Directorate Identifier 2009–NM–259–AD.

Comments Due Date

(a) We must receive comments by May 17, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all The Boeing Company Model 777–200LR and –300ER series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 777–57A0069, dated November 5, 2009.

Subject

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

Unsafe Condition

(e) This AD results from reports of cracks emanating from the keyway of the fuel tank access door cutout of the lower wing skin between wing rib numbers 8 and 9. The Federal Aviation Administration is issuing this AD to prevent loss of the lower wing skin load path, which could cause catastrophic structural failure of the wing.

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 time specified in paragraphs (g)(1) and (g)(2) of this AD, do a high frequency eddy current (HFEC) inspection for cracking of the keyway of the fuel tank access door cutout on the left and right wings between wing rib numbers 8 (wing station 387) and 9 (wing station 414.5), and do all applicable corrective actions including applicable related investigative action (an HFEC inspection for cracking of machined areas), in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–57A0069, dated November 5, 2009, except as required by

paragraph (h) of this AD. Do all applicable related investigative and corrective actions before further flight.

(1) For Group 1, Configuration 1 airplanes, as identified in Boeing Alert Service Bulletin 777–57A0069, dated November 5, 2009: Before the accumulation of 3,500 total flight cycles, or within 500 flight cycles after the effective date of this AD, whichever occurs later.

(2) For Group 1, Configuration 2 airplanes and Group 2 airplanes, as identified in Boeing Alert Service Bulletin 777–57A0069, dated November 5, 2009, on which a crack was found in the cutout keyway when the cutout keyway was changed: Within 1,125 days after the effective date of this AD.

Note 1: For Group 1, Configuration 2 airplanes and Group 2 airplanes, as identified in Boeing Alert Service Bulletin 777–57A0069, dated November 5, 2009, on which no crack was found in the cutout keyway when the cutout keyway was changed: No further action is required by this AD.

Exceptions to Service Bulletin

(h) If any cracking is found during any inspection required by this AD, and Boeing Alert Service Bulletin 777–57A0069, dated November 5, 2009, specifies to contact Boeing for appropriate action: Before further flight, repair the crack using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Duong Tran, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle ACO, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6452; fax (425) 917–6590. Or, e-mail information to *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

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

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

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

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–7458 Filed 4–1–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0281; Directorate Identifier 2009–NM–184–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300–600 and A310 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: Surface defects were visually detected on the rudder of one Airbus A319 and one A321 in-service aeroplane. Investigation has determined that the defects reported on both rudders corresponded to areas that had been reworked in production. The investigation confirmed that the defects were the result of de-bonding between the skin and honeycomb core. Such reworks were also performed on some rudders fitted on A310 and A300–600 aeroplanes. An extended de-bonding, if not detected and corrected, may degrade the structural integrity of the rudder. The loss of the rudder leads to degradation of the handling qualities and reduces the controllability of the aeroplane.

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 May 17, 2010.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 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, Transport Airplane Directorate, FAA, 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–2010–0281; Directorate Identifier 2009–NM–184–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 have lengthened the 30-day comment period for proposed ADs that address MCAI originated by aviation authorities of other countries to provide

adequate time for interested parties to submit comments. The comment period for these proposed ADs is now typically 45 days, which is consistent with the comment period for domestic transport ADs.

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 European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2010–0002, dated January 5, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> Surface defects were visually detected on the rudder of one Airbus A319 and one A321 in-service aeroplane. Investigation has determined that the defects reported on both rudders corresponded to areas that had been reworked in production. The investigation confirmed that the defects were the result of de-bonding between the skin and honeycomb core. Such reworks were also performed on some rudders fitted on A310 and A300–600 aeroplanes.
>
> An extended de-bonding, if not detected and corrected, may degrade the structural integrity of the rudder. The loss of the rudder leads to degradation of the handling qualities and reduces the controllability of the aeroplane.
>
> To address this unsafe condition [this EASA AD] requires inspections of specific areas and, depending on findings, the application of corrective actions for those rudders where production reworks have been identified.
>
> This * * * [EASA] AD * * * also requires for the vacuum loss hole restoration:
>
> —A local ultrasonic inspection for reinforced area instead of the local thermographic inspection, which is maintained for non-reinforced areas, and
>
> —Additional work performance for rudders on which this thermographic inspection has been performed in the reinforced area.

The inspections include vacuum loss inspections and elasticity laminate checker inspections for defects including de-bonding between the skin and honeycomb core of the rudder, and ultrasonic inspections for rudders on which temporary restoration with resin or permanent vacuum loss hole restoration has been performed. The corrective action is contacting the manufacturer for repair instructions and doing the repair. We are considering similar rulemaking action on Models A319 and A321 airplanes. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued All Operators Telex (AOT) A300–55A6047, Revision 02, dated October 12, 2009; and AOT A310–55A2048, Revision 02, dated October 12, 2009. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of 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 194 products of U.S. registry. We also estimate that it would take about 4 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $65,960, or $340 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:

Airbus: Docket No. FAA–2010–0281; Directorate Identifier 2009–NM–184–AD.

Comments Due Date

(a) We must receive comments by May 17, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A300 B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, F4–605R, F4–622R, and C4–605R Variant F airplanes; and Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes; certificated in any category; equipped with carbon fiber reinforced plastic rudders having part numbers and serial numbers listed in Table 1 of this AD.

TABLE 1—RUDDER INFORMATION

Rudder part No.	Affected rudder serial No.	Core density 24 kg/m^3
A554–71500–016–91	HF–1017	Yes.
A554–71500–016–91	HF–1020	No.
A554–71500–016–91	HF–1059	No.
A554–71500–016–91	HF–1061	No.
A554–71500–016–91	HF–1064	No.
A554–71500–014–00	HF–1087	Yes.
A554–71500–014–00	HF–1119	Yes.
A554–71500–016–00	HF–1189	Yes.
A554–71500–016–00	HF–1203	Yes.
A554–71500–016–00	HF–1266	Yes.
A554–71500–026–00	TS–1405	No.
A554–71710–000–00	TS–2001	No.
A554–71710–000–00	TS–2004	No.
A554–71710–000–00	TS–2007	No.
A554–71710–000–00	TS–2009	No.
A554–71710–000–00	TS–2011	No.
A554–71710–000–00	TS–2012	No.
A554–71710–000–00	TS–2013	No.
A554–71710–000–00	TS–2014	No.
A554–71710–000–00	TS–2016	No.
A554–71710–000–00	TS–2017	No.
A554–71710–000–00	TS–2018	No.
A554–71710–000–00	TS–2020	No.
A554–71710–000–00	TS–2021	No.
A554–71710–000–00	TS–2022	No.
A554–71710–000–00	TS–2024	No.
A554–71710–000–00	TS–2025	No.
A554–71710–000–00	TS–2026	No.
A554–71710–000–00	TS–2028	No.
A554–71710–000–00	TS–2029	No.
A554–71710–002–00	TS–2031	No.
A554–71710–002–00	TS–2032	No.
A554–71710–002–00	TS–2035	No.
A554–71710–002–00	TS–2040	No.
A554–71710–002–00	TS–2041	No.
A554–71710–002–00	TS–2044	No.
A554–71710–002–00	TS–2046	No.
A554–71710–004–00	TS–2050	No.
A554–71710–004–00	TS–2056	No.
A554–71710–004–00	TS–2058	No.
A554–71710–004–00	TS–2060	No.
A554–71710–004–00	TS–2062	No.
A554–71710–004–00	TS–2065	No.
A554–71710–004–00	TS–2066	No.
A554–71710–004–00	TS–2074	No.
A554–71710–004–00	TS–2075	No.
A554–71710–004–00	TS–2076	No.
A554–71710–004–00	TS–2079	No.

Subject

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

Reason

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

Surface defects were visually detected on the rudder of one Airbus A319 and one A321 in-service aeroplane. Investigation has determined that the defects reported on both rudders corresponded to areas that had been reworked in production. The investigation confirmed that the defects were the result of de-bonding between the skin and honeycomb core. Such reworks were also performed on some rudders fitted on A310 and A300–600 aeroplanes.

An extended de-bonding, if not detected and corrected, may degrade the structural integrity of the rudder. The loss of the rudder leads to degradation of the handling qualities and reduces the controllability of the aeroplane.

To address this unsafe condition [this EASA AD] requires inspections of specific areas and, depending on findings, the application of corrective actions for those rudders where production reworks have been identified.

This * * * [EASA] AD * * * also requires for the vacuum loss hole restoration:

—A local ultrasonic inspection for reinforced area instead of the local thermographic inspection, which is maintained for non-reinforced areas, and

—Additional work performance for rudders on which this thermographic inspection has been performed in the reinforced area.

The inspections include vacuum loss inspections and elasticity laminate checker inspections for defects including de-bonding between the skin and honeycomb core of the rudder, and ultrasonic inspections for rudders on which temporary restoration with resin or permanent vacuum loss hole restoration has been performed. The corrective action is contacting the manufacturer for repair instructions and doing the repair. We are considering similar rulemaking action on Models A319 and A321 airplanes.

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 and Compliance

(g) For rudders with a honeycomb core density of 24 kg/m^3, as identified in Table 1 of this AD, do the actions required in paragraphs (g)(1) through (g)(10) of this AD, in accordance with Airbus All Operators Telex (AOT) A310–55A2048 or A300–55A6047, both Revision 02, both dated October 12, 2009, as applicable.

(1) In the reinforced location: Within 8 months after the effective date of this AD, do a vacuum loss inspection to detect defects including de-bonding.

(2) In the trailing edge location: Within 24 months after the effective date of this AD, do an elasticity laminate checker inspection to detect defects including de-bonding.

(3) Repeat the inspection required by paragraph (g)(2) of this AD two times at intervals not to exceed 4,500 flight cycles, but not fewer than 4,000 flight cycles from the last inspection.

(4) In other locations (lower rib/upper edge/leading edge/other locations): Within 8 months after the effective date of this AD, do an elasticity laminate checker inspection to detect defects including de-bonding.

(5) Repeat the inspection required by paragraph (g)(4) of this AD at intervals not to exceed 8 months from the last inspection.

(6) Within 24 months after the effective date of this AD, do a vacuum loss inspection on the other locations (lower rib/upper edge/leading edge/other locations) to detect defects including de-bonding.

(7) Accomplishment of the inspection required by paragraph (g)(6) of this AD terminates the initial and repetitive inspections required by paragraphs (g)(4) and (g)(5) of this AD.

(8) If any defect is found during any inspection required by paragraph (g)(1), (g)(2), (g)(4), or (g)(6) of this AD, before further flight, contact Airbus for repair instructions and do the repair.

(9) If no defects are found during any inspection required by paragraphs (g)(1) and (g)(6) of this AD, before further flight, restore the vacuum loss holes with temporary restoration with self-adhesive patches, temporary restoration with resin, or permanent restoration with resin and surface protection, and repeat the inspection required by paragraph (g)(3) of this AD at intervals not to exceed 4,500 flight cycles until permanent restoration is completed.

(10) If any defect is found during any inspection required by paragraphs (g)(1), (g)(2), (g)(4), and (g)(6) of this AD, at the applicable time in paragraph (g)(10)(i) or (g)(10)(ii) of this AD: Report the inspection results to Airbus SAS, SEER1/SEER2/SEER3, Customer Services, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; fax +33 (0) 5 61 93 28 73; or e-mail to *region1.StructureRepairSupport@airbus.com, region2.StructureRepairSupport@airbus.com,* or *region3.StructureRepairSupport@airbus.com.*

(i) Inspections done before the effective date of this AD: Within 30 days after the effective date of this AD.

(ii) Inspections done on or after the effective date of this AD: Within 30 days after accomplishment of the inspection.

(11) If no defect is found during any inspection required by paragraphs (g)(1), (g)(2), (g)(4), and (g)(6) of this AD, at the applicable time in (g)(10)(i) or (g)(10)(ii): Report the inspection results to Airbus SAS, Jean-Luc BOITEUX, SEES1, Customer Services, fax (0) 5 61 93 36 14; or e-mail to *jean-luc.j.boiteux@airbus.com.*

(h) For rudders not having a honeycomb core density of 24 kg/m^3, as identified in Table 1 of this AD, do the actions required in paragraph (h)(1) through (h)(10) of this AD in accordance with Airbus AOT A310–55A2048 or AOT A300–55A6047, both Revision 02, both dated October 12, 2009, as applicable.

(1) In the reinforced location: Within 8 months after the rudder has accumulated 13,000 flight cycles since first installation, or within 8 months after the effective date of this AD, whichever occurs later, do a vacuum loss inspection to detect defects including de-bonding.

(2) In the trailing edge location: Within 24 months after the rudder has accumulated 13,000 flight cycles since first installation, or within 24 months after the effective date of this AD, whichever occurs later, do an elasticity laminate checker inspection to detect defects including de-bonding.

(3) Repeat the inspection required by paragraph (h)(2) of this AD two times at intervals not to exceed 4,500 flight cycles, but not fewer than 4,000 flight cycles from the last inspection.

(4) In other locations (lower rib/upper edge/leading edge/other locations): Within 8 months after the rudder has accumulated 13,000 flight cycles since first installation, or within 8 months after the effective date of this AD, whichever occurs later, do an elasticity laminate checker inspection to detect defects including de-bonding.

(5) Repeat the inspection required by paragraph (h)(4) of this AD at intervals not to exceed 8 months from the last inspection.

(6) Within 24 months after the rudder has accumulated 13,000 flight cycles since first installation, or within 24 months after the effective date of this AD, whichever occurs later, do a vacuum loss inspection on the other locations (lower rib/upper edge/leading edge/other location) to detect defects including de-bonding.

(7) Accomplishment of the inspection required by paragraph (h)(6) of this AD terminates the initial and repetitive inspections required by paragraphs (h)(4) and (h)(5) of this AD.

(8) If any defect is found during any inspection required by paragraph (h)(1), (h)(2), (h)(4), or (h)(6) of this AD, before further flight, contact Airbus for repair instructions and do the repair.

(9) If no defects are found during the inspections required by paragraphs (h)(1) and (h)(6) of this AD, before further flight, restore the vacuum loss holes with the temporary restoration with self adhesive patches, temporary restoration with resin, or permanent restoration with resin and surface protection, and repeat the inspection required by paragraph (h)(3) of this AD at intervals not to exceed 4,500 flight cycles until permanent restoration is completed.

(10) If any defect is found during any inspection required by paragraphs (h)(1), (h)(2), (h)(4), and (h)(6) of this AD, at the applicable time in paragraph (h)(10)(i) or (h)(10)(ii) of this AD: Report the inspection results to Airbus SAS, SEER1/SEER2/SEER3, Customer Services, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; fax +33 (0) 5 61 93 28 73; or e-mail to *region1.StructureRepairSupport@airbus.com, region2.StructureRepairSupport@airbus.com,* or *region3.StructureRepairSupport@airbus.com.*

(i) Inspections done before the effective date of this AD: Within 30 days after the effective date of this AD.

(ii) Inspections done on or after the effective date of this AD: Within 30 days after accomplishment of the inspection.

(11) If no defect is found during any inspection required by paragraphs (h)(1), (h)(2), (h)(4), and (h)(6) of this AD, at the applicable time in (h)(10)(i) or (h)(10)(ii): Report the inspection results to Airbus SAS, Jean-Luc BOITEUX, SEES1, Customer Services, fax (0) 5 61 93 36 14; or e-mail to *jean-luc.j.boiteux@airbus.com.*

(i) Actions done before the effective date of this AD, in accordance with the service information listed in Table 2 of this AD, are acceptable for compliance with the requirements of paragraphs (g) and (h) of this AD for the areas inspected, for any rudder listed in Table 1 of this AD.

(j) Additional areas requiring inspection for all airplanes are defined in Airbus AOT A310–55A2048 or AOT A300–55A6047, both Revision 02, both dated October 12, 2009, as applicable. For these additional areas, do the actions required in paragraphs (g) and (h) of this AD, as applicable, at the times specified in those paragraphs. For all areas, do the repetitive inspections required by paragraphs (g) and (h) of this AD as applicable at the times specified in those paragraphs.

TABLE 2—CREDIT SERVICE INFORMATION

Airbus AOT—	Revision—	Dated—
A300–55A6047	Original	May 11, 2009.
A300–55A6047	01	July 8, 2009.
A310–55A2048	Original	May 11, 2009.
A310–55A2048	01	July 8, 2009.

(k) For rudders on which temporary restoration with resin or permanent vacuum loss hole restoration has been done in accordance with the applicable service bulletin in Table 2 of this AD, as required in paragraph (g)(9) or (h)(9) of this AD, before the effective date of this AD: Within 4,500 flight cycles from the restoration date, do an ultrasonic inspection for defects, including debonding of the reinforced area, in accordance with Airbus AOT A310–55A2048 or AOT A300–55A6047, both Revision 02, both dated October 12, 2009, as applicable. If any defect is found, before further flight, contact Airbus for repair instructions and do the repair.

(l) After the effective date of this AD, no person may install any rudder listed in Table 1 of this AD on any airplane, unless the rudder has been inspected and all applicable corrective actions have been done in accordance with paragraph (g) or (h) of this AD.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, 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, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149. 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.

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

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

Related Information

(n) Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2010–0002, dated January 5, 2010; and Airbus AOT A310–55A2048, Revision 02, dated October 12, 2009, or Airbus AOT A300–55A6047, Revision 02, dated October 12, 2009; for related information.

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

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–7459 Filed 4–1–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0279; Directorate Identifier 2009–NM–148–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A318, A319, A320, and A321 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. 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: Surface defects were visually detected on the rudder of one A319 and one A321 in-service aeroplane. Investigation has determined that the defects reported on both rudders corresponded to areas that had been reworked in production. The investigation confirmed that the defects were a result of de-bonding between the skin and honeycomb core. An extended de-bonding, if not detected and corrected, may degrade the structural integrity of the rudder. The loss of the rudder leads to degradation of the handling qualities and reduces the controllability of the aeroplane.

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 May 17, 2010.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 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, Airworthiness Office—EAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; 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 or 425–227–1152.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket 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: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2141; 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–2010–0279; Directorate Identifier 2009–NM–148–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 have lengthened the 30-day comment period for proposed ADs that address MCAI originated by aviation authorities of other countries to provide adequate time for interested parties to submit comments. The comment period for these proposed ADs is now typically 45 days, which is consistent with the comment period for domestic transport ADs.

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 European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2009–0141, dated July 2, 2009 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> Surface defects were visually detected on the rudder of one A319 and one A321 in-service aeroplane.
>
> Investigation has determined that the defects reported on both rudders corresponded to areas that had been reworked in production. The investigation confirmed that the defects were a result of de-bonding between the skin and honeycomb core.
>
> An extended de-bonding, if not detected and corrected, may degrade the structural integrity of the rudder. The loss of the rudder leads to degradation of the handling qualities and reduces the controllability of the aeroplane.
>
> This AD requires inspections of specific areas and, when necessary, the application of corrective actions for those rudders where production reworks have been identified.
>
> Inspections include vacuum loss inspections for de-bonding of the rudders in reinforced areas and other areas (splice/lower rib/upper edge/leading edge/other specified locations), and elasticity laminate checks for de-bonding of the rudders in the trailing edge area and other areas (splice/lower rib/upper edge/leading edge/other specified locations). Corrective actions include contacting Airbus for further instruction and doing the repair. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued All Operators Telex A320–55A1038, Revision 02, dated September 28, 2009. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of 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 155 products of U.S. registry. We also estimate that it would take about 11 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 $144,925, or $935 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:

Airbus: Docket No. FAA–2010–0279; Directorate Identifier 2009–NM–148–AD.

Comments Due Date

(a) We must receive comments by May 17, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A318–111, –112, –121, and –122 airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–111, –211, –212, –214, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes; certificated in any category, all manufacturer serial numbers (S/Ns), if equipped with carbon fiber reinforced plastic rudders having part numbers (P/Ns) and S/Ns as listed in Table 1 of this AD.

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Table 1 – Rudder Part Number and Affected Rudder Serial Number

Rudder P/N	Affected rudder S/N
D554 71000 010 00	TS-1069
D554 71000 010 00	TS-1090
D554 71000 012 00	TS-1227
D554 71000 014 00	TS-1350
D554 71000 014 00	TS-1366
D554 71000 014 00	TS-1371
D554 71000 014 00	TS-1383
D554 71000 014 00	TS-1387
D554 71000 016 00	TS-1412
D554 71000 018 00	TS-1443
D554 71000 018 00	TS-1444
D554 71000 018 00	TS-1468
D554 71000 020 00	TS-1480
D554 71000 020 00	TS-1491
D554 71000 020 00	TS-1495
D554 71000 020 00	TS-1498
D554 71000 020 00	TS-1499
D554 71000 020 00	TS-1500
D554 71000 020 00	TS-1505
D554 71000 020 00	TS-1506
D554 71000 020 00	TS-1507
D554 71000 020 00	TS-1509
D554 71000 020 00	TS-1515
D554 71000 020 00	TS-1528
D554 71000 020 00	TS-1530
D554 71000 020 00	TS-1532
D554 71000 020 00	TS-1535
D554 71000 020 00	TS-1536
D554 71000 020 00	TS-1538
D554 71001 000 00	TS-1537
D554 71001 000 00	TS-1540
D554 71001 000 00	TS-1541
D554 71001 000 00	TS-1543
D554 71001 000 00	TS-1548
D554 71001 000 00	TS-1549
D554 71001 000 00	TS-1551
D554 71001 000 00	TS-1554
D554 71001 000 00	TS-1555
D554 71001 000 00	TS-1556
D554 71001 000 00	TS-1557
D554 71001 000 00	TS-1559
D554 71001 000 00	TS-1562
D554 71001 000 00	TS-1563
D554 71001 000 00	TS-1564
D554 71001 000 00	TS-1565
D554 71001 000 00	TS-1566

Rudder P/N	Affected rudder S/N
D554 71001 000 00	TS-1567
D554 71001 000 00	TS-1568
D554 71001 000 00	TS-1569
D554 71001 000 00	TS-1570
D554 71001 000 00	TS-1573
D554 71001 000 00	TS-1575
D554 71001 000 00	TS-1578
D554 71001 000 00	TS-1579
D554 71001 000 00	TS-1580
D554 71001 000 00	TS-1581
D554 71001 000 00	TS-1582
D554 71001 000 00	TS-1584
D554 71001 000 00	TS-1593
D554 71001 000 00	TS-1594
D554 71001 000 00	TS-1596
D554 71001 000 00	TS-1599
D554 71001 000 00	TS-1603
D554 71001 000 00	TS-1609
D554 71001 000 00	TS-1621
D554 71001 000 00	TS-1626
D554 71001 000 00	TS-1627
D554 71001 000 00	TS-1635
D554 71001 000 00	TS-1637
D554 71002 000 00	TS-2306
D554 71002 000 00 0001	TS-2003
D554 71002 000 00 0001	TS-2005
D554 71002 000 00 0001	TS-2013
D554 71002 000 00 0001	TS-2016
D554 71002 000 00 0001	TS-2019
D554 71002 000 00 0001	TS-2020
D554 71002 000 00 0001	TS-2022
D554 71002 000 00 0001	TS-2024
D554 71002 000 00 0001	TS-2026
D554 71002 000 00 0001	TS-2031
D554 71002 000 00 0001	TS-2033
D554 71002 000 00 0001	TS-2043
D554 71002 000 00 0001	TS-2047
D554 71002 000 00 0001	TS-2048
D554 71002 000 00 0001	TS-2054
D554 71002 000 00 0001	TS-2058
D554 71002 000 00 0001	TS-2059
D554 71002 000 00 0001	TS-2064
D554 71002 000 00 0001	TS-2072
D554 71002 000 00 0001	TS-2075
D554 71002 000 00 0001	TS-2076
D554 71002 000 00 0001	TS-2079
D554 71002 000 00 0001	TS-2083

Rudder P/N	Affected rudder S/N
D554 71002 000 00 0001	TS-2089
D554 71002 000 00 0002	TS-2090
D554 71002 000 00 0002	TS-2095
D554 71002 000 00 0002	TS-2103
D554 71002 000 00 0002	TS-2116
D554 71002 000 00 0002	TS-2122
D554 71002 000 00 0002	TS-2133
D554 71002 000 00 0002	TS-2142
D554 71002 000 00 0002	TS-2147
D554 71002 000 00 0002	TS-2157
D554 71002 000 00 0002	TS-2158
D554 71002 000 00 0002	TS-2162
D554 71002 000 00 0002	TS-2167
D554 71002 000 00 0002	TS-2174
D554 71002 000 00 0002	TS-2176
D554 71002 000 00 0002	TS-2181
D554 71002 000 00 0002	TS-2189
D554 71002 000 00 0002	TS-2191
D554 71002 000 00 0002	TS-2203
D554 71002 000 00 0002	TS-2205
D554 71002 000 00 0002	TS-2207
D554 71002 000 00 0002	TS-2224
D554 71002 000 00 0002	TS-2229
D554 71002 000 00 0002	TS-2233
D554 71002 000 00 0002	TS-2241
D554 71002 000 00 0002	TS-2246
D554 71002 000 00 0002	TS-2249
D554 71002 000 00 0002	TS-2270
D554 71002 000 00 0002	TS-2275
D554 71002 000 00 0002	TS-2289
D554 71002 000 00 0002	TS-2290
D554 71002 000 00 0002	TS-2294
D554 71002 000 00 0002	TS-2309
D554 71002 000 00 0002	TS-2347
D554 71002 000 00 0002	TS-2348
D554 71002 000 00 0002	TS-2349
D554 71002 000 00 0002	TS-2357
D554 71002 000 00 0002	TS-2361
D554 71002 000 00 0002	TS-2380
D554 71002 000 00 0002	TS-2383
D554 71002 000 00 0002	TS-2390
D554 71002 000 00 0002	TS-2394
D554 71002 000 00 0002	TS-2396
D554 71002 000 00 0002	TS-2401
D554 71002 000 00 0002	TS-2406
D554 71002 000 00 0002	TS-2461
D554 71002 000 00 0002	TS-2468

Rudder P/N	Affected rudder S/N
D554 71002 000 00 0002	TS-2516
D554 71002 000 00 0002	TS-2537
D554 71002 000 00 0002	TS-2543
D554 71002 000 00 0002	TS-2546
D554 71002 000 00 0002	TS-2619
D554 71002 000 00 0002	TS-2684
D554 71002 000 00 0003	TS-2752
D554 71002 000 00 0003	TS-2869
D554 71002 000 00 0003	TS-2876
D554 71002 000 00 0003	TS-2970
D554 71002 000 00 0003	TS-2971
D554 71002 000 00 0003	TS-2987
D554 71004 000 00 0000	TS-3083
D554 71004 000 00 0000	TS-3197

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Note 1: Only rudder P/N D554 71000 010 00 having affected rudder S/Ns TS–1069 and TS–1090 and rudder P/N D554 71000 012 00 having affected rudder S/N TS–1227, have a core density of 24 kilogram (kg)/meters cubed (m^3).

Subject

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

Reason

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

Surface defects were visually detected on the rudder of one A319 and one A321 in-service aeroplane.

Investigation has determined that the defects reported on both rudders corresponded to areas that had been reworked in production. The investigation confirmed that the defects were a result of de-bonding between the skin and honeycomb core.

An extended de-bonding, if not detected and corrected, may degrade the structural integrity of the rudder. The loss of the rudder leads to degradation of the handling qualities and reduces the controllability of the aeroplane.

This AD requires inspections of specific areas and, when necessary, the application of corrective actions for those rudders where production reworks have been identified.

Inspections include vacuum loss inspections for de-bonding of the rudders in reinforced areas and other areas (splice/lower rib/upper edge/leading edge/other specified locations), and elasticity laminate checks for de-bonding of the rudders in the trailing edge area and other areas (splice/lower rib/upper edge/leading edge/other specified locations). Corrective actions include contacting Airbus for further instruction and doing the repair.

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) For rudders with a honeycomb core density of 24 kg/m^3 (rudder P/N D554 71000 010 00 having affected rudder S/Ns TS–1069 and TS–1090 and rudder P/N D554 71000 012 00 having affected rudder S/N TS–1227), do the actions specified in paragraphs (g)(1), (g)(2), (g)(3), and (g)(4) of this AD, in accordance with Airbus All Operators Telex (AOT) A320–55A1038, Revision 02, dated September 28, 2009, for the locations defined in the AOT.

(1) Within 200 days after the effective date of this AD, perform a vacuum loss inspection on the rudder reinforced area.

(2) Within 20 months after the effective date of this AD, perform an elasticity laminate checker inspection on the rudder trailing edge area. Repeat the inspection two times, at intervals not to exceed 4,500 flight cycles but not sooner than 4,000 flight cycles after the last inspection.

(3) Within 200 days after the effective date of this AD, perform an elasticity laminate checker inspection of the other areas (splice/lower rib/upper edge/leading edge/and other specified locations). Repeat the inspection at intervals not to exceed 1,500 flight cycles or 200 days, whichever comes first.

(4) Within 20 months after the effective date of this AD, perform a vacuum loss inspection of the other areas (splice/lower rib/upper edge/leading edge/other specified locations). Accomplishment of the action specified in paragraph (g)(4) of this AD terminates the requirements of paragraph (g)(3) of this AD.

(h) For rudders that do not have a honeycomb core density of 24 kg/m^3 (all rudders identified in Table 1 of this AD, except: Rudder P/N D554 71000 010 00 having affected rudder S/Ns TS–1069 and TS–1090 and rudder P/N D554 71000 012 00 having affected rudder S/N TS–1227), do the actions specified in paragraphs (h)(1), (h)(2), (h)(3), and (h)(4) of this AD, in accordance with Airbus AOT A320–55A1038, Revision 02, dated September 28, 2009, for the locations defined in the AOT. For this AD, "reference date" is defined as the effective date of this AD or the date when the rudder will accumulate 20,000 total flight cycles from its first installation on an airplane, whichever occurs later.

(1) Within 200 days after the reference date, perform a vacuum loss inspection on the rudder reinforced area.

(2) Within 20 months after the reference date, perform an elasticity laminate checker inspection on the rudder trailing edge area. Repeat the inspection two times at intervals not to exceed 4,500 flight cycles but not sooner than 4,000 flight cycles after the last inspection.

(3) Within 200 days after the reference date, perform an elasticity laminate checker inspection of the other areas (splice/lower rib/upper edge/leading edge/other specified locations). Repeat the inspection at intervals not to exceed 1,500 flight cycles or 200 days, whichever comes first.

(4) Within 20 months after the reference date, perform a vacuum loss inspection of the other areas (splice/lower rib/upper edge/leading edge/other specified locations). Accomplishment of the actions specified in this paragraph terminates the requirements of paragraph (h)(3) of this AD.

(i) In case of de-bonding found during any inspection required by paragraph (g) or (h) of this AD, before further flight, contact Airbus for further instructions and apply the associated instructions and corrective actions in accordance with the approved data provided.

(j) At the applicable time specified in paragraph (j)(1) or (j)(2) of this AD, submit a report of the findings (both positive and negative), of each inspection required by paragraphs (g) and (h) of this AD. The report must include the inspection results, as specified in Airbus Technical Disposition TD/K4/S2/27086/2009, Issue E, dated September 17, 2009. For positive findings, submit the report to the Manager, Seer1/

Seer2/Seer3 Customer Services; fax +33 (0)5 61 93 28 73; e-mail *region1.structurerepairsupport@airbus.com, region2.structurerepairsupport@airbus.com,* or *region3.structurerepairsupport@airbus.com.* For negative findings, submit the report to Nicolas Seynaeve, Sees1, Customer Services; telephone +33 (0)5 61 93 34 38; fax +33 (0)5 61 93 36 14; e-mail *nicolas.seynaeve@airbus.com.*

(1) For any inspection done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) For any inspection done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(k) All rudders that have passed the inspection specified in paragraphs (g)(1), (g)(2), (g)(3), (g)(4), (h)(1), (h)(2), (h)(3), and (h)(4) of this AD, before the effective date of this AD in accordance with Airbus AOT A320–55A1038, dated April 22, 2009; AOT A320–55A1038, Revision 01, dated June 10, 2009; or Airbus Technical Disposition TD/K4/S2/27051/2009, Issue B, dated February 25, 2009; are compliant with this AD for the areas inspected; except additional areas requiring inspection, as defined in Section 0, "Reason for Revision," of Airbus AOT A320–55A1038, Revision 02, dated September 28, 2009, must be inspected as specified in paragraph (g) or (h) of this AD. For all areas, the repetitive inspections required by paragraph (g) or (h) of this AD remain applicable.

(l) After the effective date of this AD, no rudder listed in Table 1 of this AD may be installed on any airplane, unless the rudder is in compliance with the requirements of this AD.

FAA AD Differences

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

Other FAA AD Provisions

(m) 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: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2141; fax (425) 227–1149. 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.

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

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

Related Information

(n) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2009–0141, dated July 2, 2009; Airbus All Operators Telex A320–55A1038, Revision 02, dated September 28, 2009; and Airbus Technical Disposition TD/K4/S2/27086/2009, Issue E, dated September 17, 2009; for related information.

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

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–7461 Filed 4–1–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0278; Directorate Identifier 2009–NM–255–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–223, –321, –322, and –323 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: During accomplishment of Damage Tolerant—Airworthiness Limitation Item task 712106–01–01 from A330 ALS Part 2, an A330 operator found a Fluorescent Penetrant Inspection (FPI) indication in the head of the shank filet radius in one of the Pratt & Whitney (PW) forward (FWD) engine mount pylon bolts. Dual-bolt fractures could lead to inability for mount assembly to sustain loads which may lead to an engine mount failure and consequently to engine separation from the aeroplane during flight, which would constitute an unsafe condition.

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 May 17, 2010.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 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—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.* 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: 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:

Comments Invited

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

this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0278; Directorate Identifier 2009–NM–255–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 have lengthened the 30-day comment period for proposed ADs that address MCAI originated by aviation authorities of other countries to provide adequate time for interested parties to submit comments. The comment period for these proposed ADs is now typically 45 days, which is consistent with the comment period for domestic transport ADs.

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 European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2009–0240, dated November 5, 2009 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> During accomplishment of Damage Tolerant—Airworthiness Limitation Item task 712106–01–01 from A330 ALS Part 2, an A330 operator found a Fluorescent Penetrant Inspection (FPI) indication in the head of the shank filet radius in one of the Pratt & Whitney (PW) forward (FWD) engine mount pylon bolts.
>
> Investigation has confirmed that this FPI indication was due to a quality manufacturing process issue which led to a bolt non-conformance and is also applicable to aft ward (AFT) mount pylon bolts.
>
> Dual-bolt fractures could lead to inability for mount assembly to sustain loads which may lead to an engine mount failure and consequently to engine separation from the aeroplane during flight, which would constitute an unsafe condition.
>
> This AD requires a one time detailed visual inspection of the FWD and AFT mount pylon bolts on all A330 aeroplanes fitted with PW engines (8 bolts per engine) and replacement of any affected bolt.

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

Relevant Service Information

Airbus has issued Mandatory Service Bulletin A330–71–3020, including Appendix 1, dated June 10, 2009. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of 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 41 products of U.S. registry. We also estimate that it would take about 7 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $16,672 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 costs. 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 the proposed AD on U.S. operators to be $707,947, or $17,267 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:

Airbus: Docket No. FAA–2010–0278; Directorate Identifier 2009–NM–255–AD.

Comments Due Date

(a) We must receive comments by May 17, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A330–223, –321, –322, and –323 airplanes; certificated in any category; all manufacturer serial numbers.

Subject

(d) Air Transport Association (ATA) of America Code 71: Powerplant.

Reason

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

During accomplishment of Damage Tolerant—Airworthiness Limitation Item task 712106–01–01 from A330 ALS Part 2, an A330 operator found a Fluorescent Penetrant Inspection (FPI) indication in the head of the shank filet radius in one of the Pratt & Whitney (PW) forward (FWD) engine mount pylon bolts.

Investigation has confirmed that this FPI indication was due to a quality manufacturing process issue which led to a bolt non-conformance and is also applicable to aft ward (AFT) mount pylon bolts.

Dual-bolt fractures could lead to inability for mount assembly to sustain loads which may lead to an engine mount failure and consequently to engine separation from the aeroplane during flight, which would constitute an unsafe condition.

This AD requires a one time detailed visual inspection of the FWD and AFT mount pylon bolts on all A330 aeroplanes fitted with PW engines (8 bolts per engine) and replacement of any affected bolt.

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) Do a detailed inspection to determine the part number, serial number, and lot number of the forward and aft mount pylon bolts on both engines, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–71–3020, dated June 10, 2009. Inspect at the later of the times specified in paragraphs (g)(1) and (g)(2) of this AD.

(1) Before the accumulation of 8,000 total flight cycles or 24,000 total flight hours, whichever occurs first.

(2) Within 24 months after the effective date of this AD.

(h) If the identified part number, serial number, or lot number corresponds to a suspect bolt number identified in Pratt & Whitney Service Bulletin PW4G–100–71–35, dated March 14, 2008, before further flight remove the affected bolt and replace with a serviceable bolt, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–71–3020, dated June 10, 2009.

(i) If the bolt part number, serial number, or lot number is unreadable, before further flight remove the affected bolt and replace with a serviceable bolt, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–71–3020, dated June 10, 2009.

(j) As of the effective date of this AD, no person may install any forward or aft mount pylon bolt on any airplane, unless this bolt has been identified as a non-suspect bolt, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–71–3020, dated June 10, 2009.

(k) Although Airbus Mandatory Service Bulletin A330–71–3020, dated June 10, 2009, specifies to submit certain information to the manufacturer, this AD does not include that requirement.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: Although the MCAI or service information tells you to submit information to the manufacturer, paragraph (k) of this AD specifies that such submittal is not required.

Other FAA AD Provisions

(l) 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. 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.

(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.

Related Information

(m) Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2009–0240, dated November 5, 2009; and Airbus Mandatory Service Bulletin A330–71–3020, dated June 10, 2009; for related information.

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

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–7460 Filed 4–1–10; 8:45 am]

BILLING CODE 4910–13–P

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

32 CFR Part 1701

Privacy Act of 1974: Implementation

AGENCY: Office of the Director of National Intelligence.

ACTION: Proposed rulemaking.

SUMMARY: The Office of the Director of National Intelligence (ODNI) proposes to exempt fourteen (14) new systems of records from subsections (c)(3); (d)(1), (2), (3), (4); (e)(1) and (e)(4)(G), (H), (I); and (f) of the Privacy Act, pursuant to 5 U.S.C. 552a(k).

DATES: Submit comments on or before May 12, 2010.

ADDRESSES: You may submit comments by any of the following methods: *Federal eRulemaking Portal: http://www.regulations.gov.*

Mail: Director, Information Management, Office of the Director of National Intelligence, Washington DC, 20511.

FOR FURTHER INFORMATION CONTACT: Mr. John F. Hackett, Director, Information Management, (703) 275–2215.

SUPPLEMENTARY INFORMATION: In compliance with the Privacy Act, 5 U.S.C. 552a(e)(4), the ODNI describes in the notice section of today's **Federal Register** the following fourteen (14) new systems of records: Manuscript, Presentation and Resume Review Records; Executive Secretary Action Management System Records; Public Affairs Office Records; Office of Legislative Affairs Records; ODNI Guest Speaker Records; Office of General Counsel Records; Analytic Resources Catalog; Intelligence Community Customer Registry; EEO and Diversity Office Records; Office of Protocol Records; IC Security Clearance and Access Approval Repository; Security Clearance Reform Research Records; Civil Liberties and Privacy Office Complaint Records, and National Intelligence Council Consultation Records. The ODNI has previously established a rule that it will preserve the exempt status of records it receives when the reason for the exemption remains valid (73 FR 166531, March 28, 2008).

Regulatory Flexibility Act

This proposed rule affects the manner in which ODNI collects and maintains information about individuals. ODNI certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, no regulatory flexibility analysis is required for this rule.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the ODNI to comply with small entity requests for information and advice about compliance with statutes and regulations within the ODNI jurisdiction. Any small entity that has a question regarding this document may address it to the information contact listed above. Further information regarding SBREFA is available on the Small Business Administration's Web page at *http://www.sga.gov/advo/law/law_lib.html.*

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the ODNI consider the impact of paperwork and other burdens imposed on the public associated with the collection of information. There are no information collection requirements associated with this proposed rule and therefore no analysis of burden is required.

Executive Order 12866, Regulatory Planning and Review

This proposed rule is not a "significant regulatory action" within the meaning of Executive Order 12866. This rule will not have an annual effect on the economy of $100 million or more or otherwise adversely affect the economy or sector of the economy in a material way; will not create inconsistency with or interfere with other agency action; will not materially alter the budgetary impact of entitlements, grants, fees or loans or the right and obligations of recipients thereof; or raise legal or policy issues arising out of legal mandates, the President's priorities or the principles set forth in the Executive Order. Accordingly, further regulatory evaluation is not required.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, 109 Stat. 48 (Mar. 22, 1995), requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. This proposed rule imposes no Federal mandate on any State, local, or tribal government or on the private sector. Accordingly, no UMRA analysis of economic and regulatory alternatives is required.

Executive Order 13132, Federalism

Executive Order 13132 requires ODNI to examine the implications for the distribution of power and responsibilities among the various levels of government resulting from this proposed rule. ODNI concludes that the proposed rule does not affect the rights, roles and responsibilities of the States, involves no preemption of State law and does not limit State policymaking discretion. This rule has no federalism implications as defined by the Executive Order.

Environmental Impact

The ODNI has reviewed this action for purposes of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321–4347, and has determined that this action will not have a significant effect on the human environment.

Energy Impact

The energy impact of this action has been assessed in accordance with the Energy Policy and Conservation Act (EPCA), Public Law 94–163, as amended, 42 U.S.C. 6362. This rulemaking is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 32 CFR Part 1701

Records and Privacy Act.

For the reasons set forth above, ODNI proposes to amend 32 CFR part 1701 as follows:

1. The authority citation for part 1710 continues to read as follows:

Authority: 50 U.S.C. 401–442; 5 U.S.C. 552a.

Subpart B—[Amended]

2. Add § 1701.24 to subpart B to read as follows:

§ 1701.24 Exemption of Office of the Director of National Intelligence (ODNI) systems of records.

(a) The ODNI exempts the following systems of records from the requirements of subsections (c)(3); (d)(1), (2), (3) and (4); (e)(1); (e)(4)(G), (H), (I); and (f) of the Privacy Act to the extent that information in the system is subject to exemption pursuant subsections (k)(1), (k)(2) or (k)(5) of the Act as noted in the individual systems notices:

(1) Manuscript, Presentation and Resume Review Records (ODNI–01)

(2) Executive Secretary Action Management System Records (ODNI–02)

(3) Public Affairs Office Records (ODNI–03)

(4) Office of Legislative Affairs Records (ODNI–04)

(5) ODNI Guest Speaker Records (ODNI–05)

(6) Office of General Counsel Records (ODNI–06)

(7) Analytic Resources Catalog (ODNI–07)

(8) Intelligence Community Customer Registry (ODNI–09)

(9) EEO and Diversity Office Records (ODNI–10)

(10) Office of Protocol Records (ODNI–11)

(11) IC Security Clearance and Access Approval Repository (ODNI–12)

(12) Security Clearance Reform Research Records (ODNI–13)

(13) Civil Liberties and Privacy Office Complaint Records (ODNI–14)

(14) National Intelligence Council Records (ODNI–15)

(b) Exemption of records in theses systems from any or all of the enumerated requirements may be necessary for the following reasons:

(1) From subsection (c)(3) (accounting of disclosures) because an accounting of disclosures from records concerning the record subject would specifically reveal an intelligence or investigative interest on the part of the ODNI or recipient agency and could result in release of properly classified national security or foreign policy information.

(2) From subsections (d)(1), (2), (3) and (4) (record subject's right to access and amend records) because affording access and amendment rights could alert the record subject to the investigative interest of intelligence or law enforcement agencies or compromise sensitive information classified in the interest of national security. In the absence of a national security basis for exemption, records in this system may be exempted from access and amendment to the extent necessary to honor promises of confidentiality to persons providing information concerning a candidate for position. Inability to maintain such confidentiality would restrict the free flow of information vital to a determination of a candidate's qualifications and suitability.

(3) From subsection (e)(1) (maintain only relevant and necessary records) because it is not always possible to establish relevance and necessity before all information is considered and evaluated in relation to an intelligence concern. In the absence of a national security basis for exemption under subsection (k)(1), records in this system

may be exempted from the relevance requirement pursuant to subsection (k)(5) because it is not possible to determine in advance what exact information may assist in determining the qualifications and suitability of a candidate for position. Seemingly irrelevant details, when combined with other data, can provide a useful composite for determining whether a candidate should be appointed.

(4) From subsections (e)(4)(G) and (H) (publication of procedures for notifying subjects of the existence of records about them and how they may access records and contest contents) because the system is exempted from subsection (d) provisions regarding access and amendment, and from the subsection (f) requirement to promulgate agency rules. Nevertheless, the ODNI has published notice concerning notification, access, and contest procedures because it may in certain circumstances determine it appropriate to provide subjects access to all or a portion of the records about them in a system of records.

(5) From subsection (e)(4)(I) (identifying sources of records in the system of records) because identifying sources could result in disclosure of properly classified national defense or foreign policy information, intelligence sources and methods, and investigatory techniques and procedures. Notwithstanding its proposed exemption from this requirement, ODNI identifies record sources in broad categories sufficient to provide general notice of the origins of the information it maintains in its systems of records.

(6) From subsection (f) (agency rules for notifying subjects to the existence of records about them, for accessing and amending records, and for assessing fees) because the system is exempt from subsection (d) provisions regarding access and amendment of records by record subjects. Nevertheless, the ODNI has published agency rules concerning notification of a subject in response to his request if any system of records named by the subject contains a record pertaining to him and procedures by which the subject may access or amend the records. Notwithstanding exemption, the ODNI may determine it appropriate to satisfy a record subject's access request.

Dated: March 23, 2010.

John F. Kimmons,

Lieutenant General, USA, Director of the Intelligence Staff.

[FR Doc. 2010–7503 Filed 4–1–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2009–0395]

RIN 1625–AA08

Special Local Regulation, Swim Across the Sound, Long Island Sound, Port Jefferson, NY to Captain's Cove Seaport, Bridgeport, CT

AGENCY: Coast Guard, DHS.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: This document supplements the Coast Guard's July 21, 2009 proposal to establish a permanent Special Local Regulation on the navigable waters of Long Island Sound between Port Jefferson, NY and Captain's Cove Seaport, Bridgeport, CT due to the annual Swim Across the Sound event. The proposed amendment is necessary to provide for the safety of life by protecting swimmers and their safety craft from the hazards imposed by marine traffic. This supplemental notice of proposed rulemaking describes an amendment to the list of potential dates and clarifies the limitations placed on marine traffic.

DATES: Comments and related material must be received by the Coast Guard on or before May 3, 2010.

ADDRESSES: You may submit comments identified by docket number USCG–2009–0395 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

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

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

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail: Chief Petty Officer Christie Dixon, Prevention Department, USCG Sector Long Island Sound at 203–468–4459, e-mail *christie.m.dixon@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

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

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2009–0395), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* select the Advanced Docket Search option on the right side of the screen, insert "USCG–2009–0395" in the Docket ID box, press Enter, and then click on the balloon shape in the Actions column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* select the Advanced Docket Search option on the right side of the screen, insert USCG–2009–0395 in the Docket ID box, press Enter, and then click on the item in the Docket ID column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

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

Public Meeting

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

Background and Purpose

The Swim Across the Sound has been successfully held for over twenty years on the waters of Long Island Sound between Port Jefferson, NY and Bridgeport, CT. This 25km swim has historically involved over 200 swimmers and accompanying safety craft. The swim course is located directly northwest of Port Jefferson, NY and extends to Captain's Cove Seaport, Bridgeport, CT. Currently there is no regulation in place to protect the swimmers or safety craft from the hazards imposed by marine traffic.

On July 21, 2009 the Coast Guard published a Notice of Proposed Rulemaking with request for comments titled, "Special Local Regulation, Swim Across the Sound, Long Island Sound, Port Jefferson, NY to Captain's Cove Seaport, Bridgeport, CT" (Docket number USCG–2009–0395) in the **Federal Register** (74 FR 35834). No comments or requests for meetings were received, however, during the final edits of the Final Rule we realized that the description of the regulated area was incorrect and needed clarification, and that the anticipated dates for the event should include the last weekend in July. This supplemental notice of proposed rulemaking clarifies the proposed regulation and the proposed dates for the annual event. The new proposed regulation creates less of a burden on vessel traffic by minimizing the restrictions in the regulated area.

Discussion of Proposed Rule

The Coast Guard proposes to establish a permanent special local regulation on the navigable waters of Long Island Sound that would exclude all unauthorized persons and vessels from approaching within 100 yards of any swimmer or safety craft on the race course. The race course, hereby referred to as the regulated area, is bounded by the following approximate points: Starting Point of Port Jefferson Beach 40°58′13″ N 073°05′51″ W, northwesterly to the finishing point at Captain's Cove Seaport at approximate position 41°09′25″ N 073°12′48″ W.

The duration of the event, and thus the enforcement period of the special local regulation, is generally from 8:30 a.m. to 7:30 p.m. on the day of the race. The special local regulation will only be enforced for approximately 11 hours on the day of the race, normally held on a single Saturday during the last weekend of July or the first two weekends of August, depending on the tides.

During the enforcement period of this regulation no person or vessel may approach or remain within 100 yards of any swimmer or safety craft within the regulated area unless they are officially participating in the Swim Across the Sound event or are otherwise authorized by the Captain of the Port Long Island Sound or Designated On-scene Patrol Personnel. Notification of the race date and subsequent enforcement of the special local regulation will be made via a Notice of Enforcement in the **Federal Register,** marine broadcasts and broadcast notice to mariners. Any violation of the special local regulation described herein is punishable by, among others, civil and criminal penalties, in rem liability against the offending vessel, and license sanctions.

Regulatory Analyses

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

Regulatory Planning and Review

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. This regulation may have some impact on the public, but any potential impact would be minimized for the following reasons: Marine traffic may transit in all areas of Long Island Sound, other than within 100 yards of event participants within the regulated area. Marine traffic passing through the regulated area would only have minimal increased transit time and the special local regulation will only be enforced for approximately 11 hours on a single specified Saturday in either July or August, made publicly known in advance of the scheduled event.

Small Entities

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

The Coast Guard certifies that under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit in those portions of Long Island Sound covered by the special local regulation. Before the activation of the zone, we would issue maritime advisories in advance of the event and make them widely available to users of the waterway. For the reasons outlined in the Regulatory Evaluation section above, this rule will not have a significant impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it

qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact: Chief Petty Officer Christie Dixon, Prevention Department, USCG Sector Long Island Sound at 203–468–4459, *christie.m.dixon@uscg.mil*. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves the promulgation of special local regulations in conjunction with a permitted marine event and falls under the category of actions under paragraph 34(h) of the instruction for which further environmental analysis is not normally required. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

2. Add § 100.121 to read as follows:

§ 100.121: Swim Across the Sound, Long Island Sound, Port Jefferson, NY to Captain's Cove Seaport, Bridgeport, CT.

(a) *Regulated area.* All navigable waters of Long Island Sound within 100 yards of any swimmer or safety craft on the race course bounded by the following points: Starting Point at Port Jefferson Beach at approximate position 40°58′12″ N 073°05′51″ W, north-westerly to the finishing point at Captain's Cove Seaport at approximate location 41°09′25″ N 073°12′48″ W.

(b) *Definitions.* The following definition applies to this section: *Designated On-scene Patrol Personnel,*

means any commissioned, warrant and petty officers of the U.S. Coast Guard operating Coast Guard vessels who have been authorized to act on the behalf of the Captain of the Port Long Island Sound.

(c) *Special local regulations.* (1) No person or vessel may approach or remain within 100 yards of any swimmer or safety craft within the regulated area during the enforcement period of this regulation unless they are officially participating in the Swim Across the Sound event or are otherwise authorized by the Captain of the Port Long Island Sound or by Designated On-scene Patrol Personnel.

(2) All persons and vessels must comply with the instructions from Coast Guard Captain of the Port or the Designated On-scene Patrol Personnel. The Designated On-scene Patrol Personnel may delay, modify, or cancel the swim event as conditions or circumstances require.

(3) Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of the vessel must proceed as directed.

(4) Persons and vessels desiring to enter the regulated area within 100 yards of a swimmer or safety craft may request permission to enter from the designated on scene patrol personnel by contacting them on VHF–16 or by a request to the Captain of the Port Long Island Sound via phone at (203) 468–4401.

(d) *Enforcement Period.* This rule is enforced annually on a single Saturday during the last weekend of July or one of the first two weekends in August, depending on the tides. Notification of the specific date and enforcement of the special local regulation will be made via a Notice of Enforcement in the **Federal Register**, separate marine broadcasts and local notice to mariners.

Dated: February 11, 2010.

Daniel A. Ronan,

Captain, U.S. Coast Guard, Captain of the Port Long Island Sound.

[FR Doc. 2010–7429 Filed 4–1–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0158]

RIN 1625–AA00

Safety Zone; Wilson Bay, Jacksonville, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone on the waters of Wilson Bay at Jacksonville, North Carolina for training purposes. The safety zone is necessary to provide for the safety of the general public and exercise participants from potential hazards associated with low flying helicopters and vessels participating in this multi agency exercise.

DATES: Comments and related material must be received by the Coast Guard on or before May 3, 2010.

ADDRESSES: You may submit comments identified by docket number USCG–2010–0158 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

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

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

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail CWO4 Stephen Lyons, Waterways Management Division Chief, Coast Guard Sector North Carolina; telephone (252) 247–4525, e-mail *Stephen.W.Lyons2@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

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

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2010–1058), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG–2010–0158" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the "read comments" box, which will then

become highlighted in blue. In the "Keyword" box insert "USCG–2010–0158" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

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

Public Meeting

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

For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact CWO4 Stephen Lyons at the telephone number or e-mail address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Background and Purpose

The Onslow County North Carolina Emergency Services will be conducting a multi agency exercise to test response capabilities of water rescue services in a mass casualty scenario on the waters of Wilson Bay, Onslow County, North Carolina from 6 a.m. to 5 p.m. June 9, 2010. The exercise is designed to train and test air and surface personnel in the judgmental decisionmaking process necessary to safely and effectively respond to a mass casualty incident. The exercise will involve helicopters, vessels, safety craft, divers, and rescue swimmers. This zone is necessary to establish a temporary restricted area in Wilson Bay to ensure the safety of participants within the exercise site.

Discussion of Proposed Rule

The Coast Guard is proposing to establish a temporary safety zone on the waters of Wilson Bay, Onslow County, North Carolina. During the exercise the safety zone applies to the navigable waters, from the surface to the seafloor, defined by enclosing an area south of a boundary line drawn from New River Channel Daybeacon 61 (34°44′30″ N/077°26′20″ W) to the north tip of Ethridge Point (34°44′37″ N/077°26′06″ W) and extending ½ nautical mile south from the boundary line. All vessels are prohibited from transiting this section of the waterway while the safety zone is in effect. Entry into the zone will not be permitted except as specifically authorized by the Captain of the Port or a designated representative. To seek permission to transit the area, mariners can contact Sector North Carolina at telephone number (252) 247–4570. This zone will be enforced from 6 a.m. to 5 p.m. on June 9, 2010.

Regulatory Analyses

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

Regulatory Planning and Review

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

Although this regulation will restrict access to the area, the effect of this rule will not be significant because: (i) The safety zone will only be in effect from 6 a.m. to 5 p.m. on June 9, 2010, (ii) the Coast Guard will give advance notification via maritime advisories so mariners can adjust their plans accordingly, and (iii) although the safety zone will apply to a section of Wilson Bay, it will not restrict vessel traffic in the federally marked channel.

Small Entities

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

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

This rule will affect the following entities, some of which may be small entities: the owners or operators of recreational and fishing vessels intending to transit the specified portion of Wilson Bay from 6 a.m. to 5 p.m. on June 9, 2010.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will only be in effect from 6 a.m. to 5 p.m. on June 9, 2010. Although the safety zone will apply to the section of Wilson Bay, it will not restrict vessel traffic in the federally marked channel. Before the effective period, the Coast Guard will issue maritime advisories widely available to the users of the waterway.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact CWO4 Stephen Lyons, Waterways Management Division Chief, Sector North Carolina, at (252) 247–4525. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or

impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This proposed rule is categorically excluded, under figure 2–1, paragraph (34)(g), of this instruction. The safety zone is necessary to provide for the safety of the general public and exercise participants from potential hazards associated with low flying helicopters and vessels participating in this multiagency exercise. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.T05–0158 to read as follows:

§ 165.T05–0158 Safety Zone; Wilson Bay, Jacksonville, NC.

(a) *Definitions.* For the purposes of this section, Captain of the Port means the Commander, Sector North Carolina. Representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized to act on the behalf of the Captain of the Port.

(b) *Location.* The following area is a safety zone: The safety zone is established for the navigable waters, from the surface to the seafloor, defined by enclosing an area south of a boundary line drawn from New River Channel Daybeacon 61 (34°44′30″ N/077°26′20″ W) to the north tip of Ethridge Point (34°44′37″ N/077°26′06″ W) and extending ½ nautical mile south from the boundary line into Wilson Bay, Jacksonville, North Carolina.

(c) *Regulations.* (1) The general regulations contained in § 165.23 of this part apply to the area described in paragraph (b) of this section.

(2) Persons or vessels requiring entry into or passage through any portion of the safety zone must first request authorization from the Captain of the Port, or a designated representative, unless the Captain of the Port previously announced via Marine Safety Radio Broadcast on VHF Marine Band Radio channel 22 (157.1 MHz) that this regulation will not be enforced in that portion of the safety zone. The Captain of the Port can be contacted at telephone number (252) 247–4570 or by radio on VHF Marine Band Radio, channels 13 and 16.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State, and local agencies.

(e) *Enforcement period.* This section will be enforced from 6 a.m. to 5 p.m. on June 9, 2010 unless cancelled earlier by the Captain of the Port.

Dated: March 22, 2010.

A. Popiel,

Captain, U.S. Coast Guard, Captain of the Port North Carolina.

[FR Doc. 2010–7427 Filed 4–1–10; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2008–0089; FRL–9132–2]

Approval and Promulgation of Implementation Plans; Texas; Revisions to Voiding of Permits and Extension of Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve severable portions of a submittal from the State of Texas, through the Texas Commission on Environmental Quality (TCEQ), on September 25, 2003, to revise the Texas Major and Minor New Source Review (NSR) State Implementation Plan (SIP). Within this SIP submittal, the State repealed a paragraph of the SIP rule pertaining to the Texas Major and Minor NSR SIP and renumbered the SIP rule's paragraphs. We are proposing to approve the new replacement rule as meeting the Major and Minor NSR SIP requirements for voiding of permits.

We are also proposing to approve the portion of the revision that addresses the recodification of the provision relating to the granting of one 18-month extension of a permit as meeting the Major and Minor NSR SIP requirement for extensions of permits. The revision imposes requirements on permitees, requiring a review of the permit's underlying permit determinations before this SIP-approved extension can be granted. Finally, the revision provides for a second permit extension if certain conditions are met, including a health effects review. EPA is proposing to approve the new replacement rule for this second permit extension as meeting the Major and Minor NSR and NNSR SIP requirements.

EPA finds that these changes to the Texas SIP comply with the Federal Clean Air Act (the Act or CAA) and EPA regulations, are consistent with EPA policies, and will improve air quality. This action is being proposed under section 110 and parts C and D of the Act.

DATES: Comments must be received on or before May 3, 2010.

ADDRESSES: Comments may be mailed to Mr. Jeff Robinson, Chief, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: If you have questions concerning today's proposal, please contact Ms. Melanie Magee (6PD–R), Air Permits Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue (6PD–R), Suite 1200, Dallas, TX 75202–2733. The telephone number is (214) 665–7161. Ms. Magee can also be reached via electronic mail at *magee.melanie@epa.gov.*

SUPPLEMENTARY INFORMATION: In the final rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no relevant adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of the rule, and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: March 24, 2010.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

[FR Doc. 2010–7212 Filed 4–1–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 721

[EPA–HQ–OPPT–2008–0918; FRL–8818–2]

RIN 2070–AB27

Proposed Significant New Use Rule for 1-Propene, 2,3,3,3-tetrafluoro-

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for the chemical substance identified as 1-Propene, 2,3,3,3-tetrafluoro- (CAS No. 754–12–1) which was subject to premanufacture notice (PMN) P–07–601. This proposed rule would require persons who intend to manufacture, import, or process the substance for an activity that is designated as a significant new use to notify EPA at least 90 days before commencing that activity. The required notification would provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit the activity before it occurs.

DATES: Comments must be received on or before May 3, 2010.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2008–0918, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery*: OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA–HQ–OPPT–2008–0918. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2008–0918. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless

the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Kenneth Moss, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–9232; e-mail address: *moss.kenneth@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture, import, process, or use the chemical substance contained in this proposed rule. Potentially affected entities may include, but are not limited to:

- Manufacturers, importers, or processors of the subject chemical substance (NAICS codes 325 and 324110), e.g., chemical manufacturing and petroleum refineries.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in § 721.5. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. Chemical importers are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements promulgated at 19 CFR 12.118 through 12.127 and 19 CFR 127.28 (the corresponding EPA policy appears at 40 CFR part 707, subpart B). Chemical importers must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA. Importers of chemicals subject to a final SNUR must certify their compliance with the SNUR requirements. In addition, any persons who export or intend to export a chemical substance that is the subject of this proposed rule on or after May 3, 2010 are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)) (see § 721.20) and must comply with the export notification requirements in 40 CFR part 707, subpart D.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What Action is the Agency Taking?

EPA is proposing a significant new use rule (SNUR) under section 5(a)(2) of TSCA for the chemical substance

identified as 1-Propene, 2,3,3,3-tetrafluoro- (PMN P–07–601; CAS No. 754–12–1). This SNUR would require persons who intend to manufacture, import, or process the chemical substance for any activity designated as a significant new use to notify EPA at least 90 days before commencing the activity.

In the **Federal Register** of February 1, 2010 (75 FR 4983) (FRL–8438–4), EPA issued a direct final SNUR for the substance in accordance with the procedures at § 721.170(d)(4)(i). EPA received notice of intent to submit adverse comments on this SNUR. Therefore, as required by at § 721.170(d)(4)(i), EPA is withdrawing the direct final SNUR, which is published elsewhere in this **Federal Register** and is now issuing this proposed SNUR on this substance. The record for the direct final SNUR on this substance was established as docket EPA–HQ–OPPT–2009–0918. That record includes information considered by the Agency in developing the direct final rule and the notice of intent to submit adverse comments.

B. What is the Agency's Authority for Taking this Action?

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in TSCA section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, TSCA section 5(a)(1)(B) requires persons to submit a significant new use notice (SNUN) to EPA at least 90 days before they manufacture, import, or process the chemical substance for that use. The mechanism for reporting under this requirement is established under § 721.5.

C. Applicability of General Provisions

General provisions for SNURs appear in 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the final rule. Provisions relating to user fees appear at 40 CFR part 700. According to § 721.1(c), persons subject to this SNUR must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs under TSCA section 5(a)(1)(A). In particular, these requirements include the information submission requirements of TSCA section 5(b) and 5(d)(1), the exemptions authorized by TSCA section 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUN, EPA may take regulatory action under TSCA section 5(e), 5(f), 6, or 7 to control the activities for which it has received the SNUN. If EPA does not take action, EPA is required under TSCA section 5(g) to explain in the **Federal Register** its reasons for not taking action.

Chemical importers are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements promulgated at 19 CFR 12.118 through 12.127, and 19 CFR 127.28 (the corresponding EPA policy appears at 40 CFR part 707, subpart B). Chemical importers must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA. Importers of chemical substances subject to a final SNUR must certify their compliance with the SNUR requirements. In addition, any persons who export or intend to export a chemical substance identified in a final SNUR are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611 (b)) (see § 721.20) and must comply with the export notification requirements in 40 CFR part 707, subpart D.

III. Significant New Use Determination

Section 5(a)(2) of TSCA states that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors, including:

- The projected volume of manufacturing and processing of a chemical substance.
- The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.
- The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.
- The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

In addition to these factors enumerated in TSCA section 5(a)(2), the statute authorized EPA to consider any other relevant factors.

To determine what would constitute a significant new use for the chemical substance that is the subject of this proposed SNUR, EPA considered relevant information about the toxicity of the chemical substance, likely human exposures and environmental releases associated with possible uses, and the four bulleted TSCA section 5(a)(2) factors listed in this Unit.

For the chemical substance 1-Propene, 2,3,3,3-tetrafluoro- (PMN P–07–601; CAS No. 754–12–1), EPA did not find that the use scenarios described in the PMN triggered the determination set forth under section 5(e) of TSCA. EPA did, however, determine that certain changes from the use scenario described in the PMN could result in increased exposures, thereby constituting a "significant new use." EPA has determined that activities proposed as a "significant new use" satisfy the two requirements stipulated in § 721.170(c)(2), i.e., these significant new use activities: "(i) are different from those described in the premanufacture notice for the substance, including any amendments, deletions, and additions of activities to the premanufacture notice, and (ii) may be accompanied by changes in exposure or release levels that are significant in relation to the health or environmental concerns identified" for the PMN substance.

IV. Substance Subject to this Proposed Rule and Basis for the Action

EPA is proposing to establish significant new use and recordkeeping requirements for the chemical substance identified as 1-Propene, 2,3,3,3-tetrafluoro- (PMN P–07–601; CAS No. 754–12–1). The specific activities proposed as significant new uses and other requirements are listed in 40 CFR 721.10182 of the proposed regulatory text.

PMN Number P–07–601

Chemical name: 1-Propene, 2,3,3,3-tetrafluoro-.

CAS number: 754–12–1.

Basis for action: The PMN states that the substance will be used as a motor vehicle air conditioning (MVAC) refrigerant in new passenger cars and vehicles (i.e., as defined in 40 CFR 82.32 (c) and (d)). Initial charging of MVAC units with the PMN substance will be done by the motor vehicle original equipment manufacturer. All servicing, maintenance, and disposal involving the PMN substance will be done only by Clean Air Act (CAA) section 609 certified technicians using CAA section 609 certified refrigerant handling equipment. Based on test data on the PMN substance, EPA identified health concerns for developmental toxicity and lethality to workers and consumers if they were exposed to a significant amount of the PMN substance via inhalation. The PMN substance has an ozone depletion potential of zero, and, based on test data, has a low global warming potential (GWP100 of about 4). For the use scenario described in the PMN, significant industrial or commercial worker exposure is unlikely

due to the use of CAA section 609 certified refrigerant handling equipment and other protective measures. Potential consumer (vehicle passenger) exposure from refrigerant leaks into the passenger compartment of a vehicle is not expected to present significant risk of serious health effects. Flammability concerns with the PMN substance are being addressed through regulatory actions by EPA's Office of Air and Radiation (see the following paragraph). Further, "do-it-yourself" consumer exposures are not expected because the PMN substance only will be sold or distributed in 20–pound containers or larger. Therefore, EPA has not determined that the manufacturing, processing, or use of the substance as described in the PMN may present an unreasonable risk. EPA has determined, however, that (1) use of the substance other than as a MVAC refrigerant in new passenger cars and vehicles as defined in 40 CFR 82.32 (c) and (d), (2) initial charging of MVAC units with the PMN substance by any person other than CAA section 609 certified technicians without using CAA section 609 certified refrigerant handling equipment, (3) servicing, maintenance, and disposal involving the PMN substance by persons other than CAA section 609 certified technicians without using CAA section 609 certified refrigerant handling equipment, or (4) sale or distribution of the PMN substance in containers smaller than 20–pounds (net weight) may cause serious health effects in accordance with 40 CFR 721.170(b)(3)(i).

This proposed SNUR is intended to complement recently proposed and forthcoming regulations on the PMN substance under the CAA in that this SNUR addresses health risk issues of the subject refrigerant. On October 19, 2009, EPA published a proposed rule on the PMN substance entitled "Protection of Stratospheric Ozone: New Substitute in the Motor Vehicle Air Conditioning Sector under the Significant New Alternatives Policy (SNAP) Program" (74 FR 53445) (FRL–8969–7). The SNAP Program, mandated under section 612 of the CAA, requires EPA to develop a program for evaluating alternatives to ozone-depleting substances and to create lists of substitutes for specific uses that do not present greater overall risk to human health and the environment than other alternatives that are available. In the October 19, 2009, action, EPA proposed to find HFO–1234yf acceptable, subject to certain use conditions, as a substitute for CFC–12 in new motor vehicle air conditioning systems (passenger cars and trucks). The proposed use conditions include incorporation of engineering strategies and/or devices to mitigate flammability risks for this substance (see Unit V. of the proposed SNAP rule). Use of most flammable refrigerants, including the PMN substance, in existing MVAC systems as a retrofit has previously been determined by EPA to be unacceptable. The proposed SNAP rule would require a petition and a new SNAP submission specifically for the use of the PMN substance in existing MVAC equipment as a retrofit before EPA would consider allowing such use (see Unit VI. of the proposed SNAP rule). EPA also intends to promulgate a follow-on rulemaking under section 609 of the CAA to address service equipment, technician certification, and end-of-life disposal specifications.

Recommended testing: EPA has determined that the results of an acute inhalation toxicity study (OPPTS Harmonized Test Guideline 870.1300 or Organisation for Economic Co-operation and Development (OECD) 403 test guideline) with rabbits would help characterize the human health effects of the PMN substance. Exposure concentrations of 10,000, 50,000, and 100,000 parts per million (ppm) should be used. Further, rabbits should be exposed for 1 hour, and pregnant rabbits should be exposed on Gravid Day 12.

CFR citation: 40 CFR 721.10182.

V. Rationale and Objectives of the Proposed Rule

A. Rationale

During the review of the chemical substance P–07–601, EPA determined that one or more of the criteria of concern established at § 721.170 were met, as discussed in Unit IV.

B. Objectives

EPA is proposing this SNUR for a chemical substance that has undergone premanufacture review because the Agency wants to achieve the following objectives with regard to the significant new uses designated in this proposed rule:

- EPA would receive notice of any person's intent to manufacture, import, or process a listed chemical substance for the described significant new use before that activity begins.
- EPA would have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing, importing, or processing a listed chemical substance for the described significant new use.
- EPA would be able to regulate prospective manufacturers, importers, or processors of a listed chemical substance before the described significant new use of that chemical substance occurs, provided that regulation is warranted pursuant to TSCA sections 5(e), 5(f), 6, or 7.

Issuance of a SNUR for a chemical substance does not signify that the chemical substance is listed on the TSCA Inventory. Guidance on how to determine if a chemical substance is on the TSCA Inventory is available on the Internet at *http://www.epa.gov/opptintr/newchems/pubs/invntory.htm*.

VI. Applicability of the Proposed Rule to Uses Occurring Before Effective Date of the Final Rule

To establish a significant "new" use, EPA must determine that the use is not ongoing. EPA solicits comments on whether any of the uses proposed as significant new uses are ongoing.

As discussed in the **Federal Register** of April 24, 1990 (55 FR 17376), EPA has decided that the intent of TSCA section 5(a)(1)(B) is best served by designating a use as a significant new use as of the date of publication of the proposed rule rather than as of the effective date of the final rule. If uses begun after publication of the proposed rule were considered ongoing rather than new, it would be difficult for EPA to establish SNUR notice requirements because a person could defeat the SNUR by initiating the significant new use before the rule became final, and then argue that the use was ongoing before the effective date of the final rule. Thus, persons who begin commercial manufacture, import, or processing with the chemical substances that would be regulated as a "significant new use" through this proposed rule, must cease any such activity before the effective date of the rule if and when finalized. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

EPA has promulgated provisions to allow persons to comply with this proposed SNUR before the effective date. If a person were to meet the conditions of advance compliance under § 721.45(h), the person would be considered to have met the requirements of the final SNUR, for those activities.

VII. Test Data and Other Information

EPA recognizes that TSCA section 5 does not require developing any particular test data before submission of a SNUN, except where the chemical substance subject to the SNUR is also subject to a test rule under TSCA section 4 (see TSCA section 5(b)).

Persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them (see § 720.50). However, upon review of PMNs and SNUNs, the Agency has the authority to require appropriate testing. EPA recommended certain testing listed in Unit IV. Descriptions of tests are provided for informational purposes. EPA strongly encourages persons, before performing any testing, to consult with the Agency pertaining to protocol selection. To access the OPPTS harmonized test guidelines referenced in this document electronically, please go to *http://www.epa.gov/oppts* and select "Test Methods and Guidelines." The Organisation for Economic Co-operation and Development (OECD) test guidelines are available from the OECD Bookshop at *http://www.oecdbookshop.org* or SourceOECD at *http://www.sourceoecd.org*.

The recommended test(s) may not be the only means of addressing the potential risks of the chemical substance. However, SNUNs submitted for significant new uses without any test data may increase the likelihood that EPA will take action under TSCA section 5(e), particularly if satisfactory test results have not been obtained from a prior PMN or SNUN submitter. EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate test(s).

SNUN submitters should be aware that EPA would be better able to evaluate SNUNs which provide detailed information on the following:

- Human exposure and environmental release that may result from the significant new use of the chemical substance.
- Potential benefits of the chemical substance.
- Information on risks posed by the chemical substance compared to risks posed by potential substitutes.

VIII. SNUN Submissions

As stated in Unit II.C., according to § 721.1(c), persons submitting a SNUN must comply with the same notice requirements and EPA regulatory procedures as persons submitting a PMN, including submission of test data on health and environmental effects as described in § 720.50. SNUNs must be submitted to the Environmental Protection Agency on EPA Form No. 7710–25 in accordance with the procedures set forth in §§ 721.25 and 720.40. This form is available from the Environmental Assistance Division (7408M), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001 (see §§ 721.25 and 720.40). Forms and information are also available electronically at *http://www.epa.gov/opptintr/newchems*.

IX. Economic Analysis

EPA has evaluated the potential costs of establishing SNUN requirements for potential manufacturers, importers, and processors of the chemical substance at the time of the direct final rule. The Agency's complete economic analysis is available in the public docket for the direct final rule (EPA–HQ–OPPT–2008–0918).

X. References

The official record for this proposed rule has been established. The following is a listing of the documents that have been placed in the proposed rule phase of the docket under docket ID number EPA–HQ–OPPT–2008–0918, which is available for inspection as specified under **ADDRESSES**. These documents serve as supplementary information specific to P–07–601 (aka HFO–1234yf) for consideration when submitting comments.

1. Letter Confirming Release of CBI Claims for HFO–1234yf Gradient Report.

2. Gradient Corporation. 2008. Risk Assessment for Alternative Refrigerant HFO–1234yf.

3. WIL Research Laboratories, LLC. 2008. An Inhalation Prenatal Developmental Toxicity Study of HFO–1234yf (2,3,3,3-tetrafluoropropene) in Rabbits.

4. United States Environmental Protection Agency (EPA). 2009. Addendum to Risk Assessment: PMN P–07–601.

XI. Statutory and Executive Order Reviews

A. Executive Order 12866

This proposed rule would establish a SNUR for a chemical substance that was the subject of a PMN. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993).

B. Paperwork Reduction Act

According to the Paperwork Reduction Act (PRA), 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 that requires OMB approval under the PRA, unless it has been approved by OMB and 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**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable. EPA would amend the table in 40 CFR part 9 to list the OMB approval number for the information collection requirements contained in this proposed rule. This listing of the OMB control numbers and their subsequent codification in the CFR satisfies the display requirements of PRA and OMB's implementing regulations at 5 CFR part 1320. This Information Collection Request (ICR) was previously subject to public notice and comment prior to OMB approval, and given the technical nature of the table, EPA finds that further notice and comment to amend it is unnecessary. As a result, EPA finds that there is "good cause" under section 553(b)(3)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), to amend this table without further notice and comment.

The information collection requirements related to this action have already been approved by OMB pursuant to PRA under OMB control number 2070–0012 (EPA ICR No. 574). This action would not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required SNUN.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, Collection Strategies Division, Office of Environmental Information (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

C. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that promulgation of this SNUR would not have a significant adverse economic impact on a substantial number of small entities. The rationale supporting this conclusion is discussed in this unit. The requirement to submit a SNUN applies to any person (including small or large entities) who intends to engage in any activity described in the rule as a "significant

new use." Because these uses are "new," based on all information currently available to EPA, it appears that no small or large entities presently engage in such activities. A SNUR requires that any person who intends to engage in such activity in the future must first notify EPA by submitting a SNUN. Although some small entities may decide to pursue a significant new use in the future, EPA cannot presently determine how many, if any, there may be. However, EPA's experience to date is that, in response to the promulgation of over 1,400 SNURs, the Agency receives on average only 5 notices per year. Of those SNUNs submitted from 2006–2008, only one appears to be from a small entity. In addition, the estimated reporting cost for submission of a SNUN (see Unit IX.) is minimal regardless of the size of the firm. Therefore, the potential economic impacts of complying with this SNUR are not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that published in the **Federal Register** of June 2, 1997 (62 FR 29684) (FRL–5597–1), the Agency presented its general determination that final SNURs are not expected to have a significant economic impact on a substantial number of small entities, which was provided to the Chief Counsel for Advocacy of the Small Business Administration.

D. Unfunded Mandates Reform Act

Based on EPA's experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or Tribal government would be impacted by this proposed rule. As such, EPA has determined that this proposed rule would not impose any enforceable duty, contain any unfunded mandate, or otherwise have any affect on small governments subject to the requirements of sections 202, 203, 204, or 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

E. Executive Order 13132

This action would not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999).

F. Executive Order 13175

This proposed rule would not have Tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This proposed rule would not significantly or uniquely affect the communities of Indian Tribal governments, nor would it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000), do not apply to this proposed rule.

G. Executive Order 13045

This action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

H. Executive Order 13211

This proposed rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use and because this action is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

In addition, since this action does not involve any technical standards, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), does not apply to this action.

J. Executive Order 12898

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: March 25, 2010.

Barbara A. Cunningham,

Acting Director, Office of Pollution Prevention and Toxics.

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

2. Add § 721.10182 to subpart E to read as follows:

§ 721.10182 1-Propene, 2,3,3,3-tetrafluoro-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 1-propene, 2,3,3,3-tetrafluoro- (PMN P–07–601; CAS No. 754–12–1; also known as HFO–1234yf) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j) (use as a motor vehicle air conditioning (MVAC) refrigerant in new passenger cars and vehicles as defined in 40 CFR 82.32 (c) and (d). The initial charging of MVAC units with the PMN substance will be done by the motor vehicle original equipment manufacturer. All servicing, maintenance, and disposal involving the PMN substance will be done only by Clean Air Act (CAA) section 609 certified technicians using CAA section 609 certified refrigerant handling equipment. The PMN substance only will be sold or distributed in 20–pound (net weight) containers or larger.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

[FR Doc. 2010–7191 Filed 4–1–10; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1244

[STB Ex Parte No. 646 (Sub-No. 3)]

Waybill Data Released in Three-Benchmark Rail Rate Proceedings

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board proposes to amend its rules with respect to the Three-Benchmark methodology used to adjudicate rate complaints. The proposed rule would provide for the release to the parties of the unmasked Waybill Sample data of the defendant carrier for the 4 years that correspond with the most recently published Revenue Shortfall Allocation Method (RSAM) figures. The parties would then use the released Waybill Sample data in any configuration they see fit to form their comparison groups. The Board seeks comments concerning the amount of data that would be available under the proposed rule and the proposal that the parties could draw from all 4 years of waybill data to form their comparison groups.

DATES: Comments on this proposal are due by May 3, 2010. Replies are due by June 1, 2010.

ADDRESSES: Comments may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the E-FILING link on the Board's Web site, at *http://www.stb.dot.gov.* Any person submitting a filing in the traditional paper format should send an original and 10 copies to: Surface Transportation Board, Attn: STB Ex Parte No. 646 (Sub-No. 3), 395 E Street, SW., Washington, DC 20423–0001.

Copies of written comments will be available for viewing and self-copying at the Board's Public Docket Room, Room 131, and will be posted to the Board's Web site.

FOR FURTHER INFORMATION CONTACT: Valerie Quinn at (202) 245–0382. (Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.)

SUPPLEMENTARY INFORMATION: In *Simplified Standards for Rail Rate Cases,* STB Docket No. 646 (Sub-No. 1) (*Simplified Standards*) (STB served Sept. 5, 2007), *aff'd sub nom. CSX Transp., Inc.* v. *STB,* 568 F.3d 236 (D.C. Cir. 2009) (*CSX Transp. I*), *and vacated in part on reh'g, CSX Transp., Inc.* v. *STB,* 584 F.3d 1076 (D.C. Cir. 2009) (*CSX Transp. II*), the Board modified its simplified rail rate guidelines, creating a simplified stand-alone cost approach for medium-size rail rate disputes and revising its Three-Benchmark approach for smaller rail rate disputes.

The Three-Benchmark method compares a challenged rate to the rates of a comparison group drawn from the Waybill Sample data. The Waybill Sample is a statistical sampling of railroad waybills that is collected and maintained for use by the Board. *See* 49 CFR 1244. The proposed rule in *Simplified Standards* would have required parties to draw their comparison groups from the most recent year of Waybill Sample data. Slip op. at 32–33 (STB served July 28, 2006). The final rule, however, allowed parties to form comparison groups using Waybill Sample data from the 4 years that corresponded with the most recently published RSAM figures. *Simplified Standards,* slip op. at 18, 80 (STB served Sept. 5, 2007).

Several railroads [1] and the Association of American Railroads (collectively, petitioners) challenged the aforementioned final rule in court on the basis that, under 5 U.S.C. 553(b)(3), the Board had not provided adequate notice and opportunity to comment on the expansion from 1 to 4 years of data from which the parties could draw to form their proposed comparison groups. *CSX Transp. I,* 568 F.3d at 246. Initially, the court determined that it would not address the merits of petitioners' argument because the issue had not been presented to the Board prior to seeking judicial review and, therefore, had been waived. *Id.* at 246–47.

On rehearing, however, the court reversed its waiver determination and considered the merits of petitioners' argument. The court concluded that the Board had failed to provide adequate notice of the final rule regarding the available range of Waybill Sample data. Accordingly, the court vacated that portion of *Simplified Standards. CSX Transp. II,* 584 F.3d at 1083.

For Three-Benchmark proceedings, the Board now proposes to release to the parties the unmasked Waybill Sample data of the defendant carrier for the 4 years that correspond with the most recently published RSAM figures. The Board also proposes to permit the parties to draw their proposed comparison groups in any combination they choose from the released Waybill Sample data. The Board will consider comments on both of these proposals.

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. In drafting a rule an agency is required to: (1) Assess the effect that its regulation will have on small entities; (2) analyze effective alternatives that may minimize a regulation's impact; and (3) make the analysis available for public comment. 5 U.S.C. 601–604. In its notice of proposed rulemaking, the agency must either include an initial regulatory flexibility analysis, 5 U.S.C. 603(a), or certify that the proposed rule will not have a "significant impact on a substantial number of small entities," 5 U.S.C. 605(b). The impact must be a direct impact on small entities "whose conduct is circumscribed or mandated" by the proposed rule. *White Eagle Coop. Ass'n* v. *Conner,* 553 F.3d 467, 480 (7th Cir. 2009).

The rule proposed here would be permissive, not mandatory; *i.e.,* it would provide a rate complainant and the defendant railroad (possibly small entities) the option of using more data, but the proposed rule would not force them to use all of that data. Accordingly, pursuant to 5 U.S.C. 605(b), the Board certifies that the regulations proposed herein would not have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration, Washington, DC 20416.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: March 29, 2010.

By the Board, Chairman Elliott, Vice Chairman Mulvey, and Commissioner Nottingham.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. 2010–7408 Filed 4–1–10; 8:45 am]

BILLING CODE 4915–01–P

[1] Canadian Pacific Railway Co., Soo Line Railroad Company, Delaware & Hudson Railway Company, CSX Transportation, Inc., Norfolk Southern Railway Company, and Union Pacific Railroad Company.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No. 100322160–0161–01]

RIN 0648–XV10

Endangered and Threatened Wildlife; Notice of 90–Day Finding on a Petition to List the Bumphead Parrotfish as Threatened or Endangered and Designate Critical Habitat Under the Endangered Species Act (ESA)

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

ACTION: 90–day petition finding; request for information.

SUMMARY: We (NMFS) announce a 90–day finding on a petition to list the bumphead parrotfish (*Bolbometopon muricatum*) as threatened or endangered and designate critical habitat under the ESA. We find that the petition presents substantial scientific or commercial information indicating that the petitioned actions may be warranted. Therefore, we initiate a status review of the bumphead parrotfish to determine if listing under the ESA is warranted. To ensure this status review is comprehensive, we solicit scientific and commercial information regarding this species.

DATES: Information and comments must be submitted to NMFS by May 3, 2010

ADDRESSES: You may submit comments, information, or data, identified by the Regulation Identifier Number (RIN) 0648–XV10, by any of the following methods:

Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal: *http://www.regulations.gov*.

Mail: Alecia Van Atta, Assistant Regional Administrator, Protected Resources Division, NMFS, Pacific Islands Regional Office, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814.

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

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Interested persons may obtain a copy of the petition from the above address or online from the NMFS website: *http://www.fpir.noaa.gov/PRD/prd_esa_section_4.html*

FOR FURTHER INFORMATION CONTACT: Patrick Opay, NMFS, Pacific Islands Region, (808) 944–2242 or Dwayne Meadows, NMFS, Office of Protected Resources, (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Background

On January 4, 2010, we received a petition from WildEarth Guardians to list the bumphead parrotfish as threatened or endangered under the ESA. The petitioner also requested that critical habitat be designated for this species concurrent with listing under the ESA. The petition asserts that overfishing is a significant threat to the bumphead parrotfish and that this species is declining across its range and is nearly eliminated from many areas. The petition also asserts that degradation of its coral habitat through coral bleaching and ocean acidification is a threat to this species, as coral is its primary food source. The petition asserts that biological traits (e.g., slow maturation and low reproductive rates), shrinking remnant populations and range reductions, the effects from increasing human populations in the species range, and inadequate regulatory protection are subjecting the bumphead parrotfish to extinction in the foreseeable future. The petition briefly summarizes the description, taxonomy, natural history, distribution, and status for the petitioned species.

The bumphead parrotfish is the largest of the parrotfish species and has a wide range. It can be found throughout the Indo-Pacific including the Red Sea and East Africa to the Line Islands and Samoa, north to Taiwan and the Yaeyama Islands (Japan), south to the Great Barrier Reef and New Caledonia, to Palau, Caroline, Marshall, and the Mariana Islands in Micronesia. In the United States it occurs in Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Pacific Remote Island Areas. It is not found in Hawaii or Johnston Atoll.

The petition states that this species is classified as vulnerable by the World Conservation Union (IUCN). The IUCN defines vulnerable as a species considered to be facing a high risk of extinction in the wild. We believe that bumphead parrotfish populations have been declining throughout their range and placed this species on our Species of Concern list in 2004.

ESA Statutory Provisions and Policy Considerations

Section 4(b)(3)(A) of the ESA of 1973, as amended (U.S.C. 1531 *et seq.*), requires, to the maximum extent practicable, that within 90 days of receipt of a petition to list a species as threatened or endangered, the Secretary of Commerce (Secretary) make a finding on whether that petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted (see 16 U.S.C. 1533(b)(3)(A)). Joint ESA-implementing regulations issued by NMFS and U.S. Fish and Wildlife Service (50 CFR 424.14(b)) define "substantial information" in this context as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted.

In making a finding on a petition to list a species, the Secretary must consider whether the petition: "(i) clearly indicates the administrative measure recommended and gives the scientific and any common name of the species involved; (ii) contains a detailed narrative justification for the recommended measure, describing, based on available information, past and present numbers and distribution of the species involved and any threats faced by the species; (iii) provides information regarding the status of the species over all or a significant portion of its range; and (iv) is accompanied by the appropriate supporting documentation in the form of bibliographic references, reprints of pertinent publications, copies of reports or letters from authorities, and maps" (50 CFR 424.14(b)(2)). To the maximum extent practicable, this finding is to be made within 90 days of the date the petition was received, and the finding is to be published promptly in the **Federal Register**. When it is found that substantial information indicating that the petitioned action may be warranted is presented in the petition, we are required to promptly commence a review of the status of the species concerned during which we will conduct a comprehensive review of the best available scientific and commercial information. In such cases, within 1 year of receipt of the petition, we shall conclude the review with a finding as to whether or not the petitioned action is warranted. Because the finding at the 12–month stage is based on a more thorough review of the available

information, as compared to the narrow scope of the 90–day stage, a "may be warranted" finding does not prejudge the outcome of the status review.

Under the ESA, a listing determination may address a "species," which is defined to include taxonomic species as well as subspecies and, for any vertebrate species which interbreeds when mature, a distinct population segment (DPS) (16 U.S.C. 1532(16)). The bumphead parrotfish is classified as a taxonomic species. The petitioner requested consideration of the entire taxonomic species. A species or subspecies is "endangered" if it is in danger of extinction throughout all or a significant portion of its range, and "threatened" if it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range (ESA sections 3(6) and 3(20), respectively, 16 U.S.C. 1532(6) and (20)).

Biology of the Bumphead Parrotfish

This species is slow growing and long-lived (up to 40 years), with delayed reproduction and low replenishment rates (Choat and Robertson, 2002; Hamilton, 2003). Bumphead parrotfish live in coral reef habitats from 3 to 160 feet (1–50 m) depth (Donaldson and Dulvy, 2004). They occur in barrier and fringing reefs during the day, but rest in caves or shallow sandy lagoon flats at night (Donaldson and Dulvy, 2004). Juveniles use seagrass beds inside lagoons while adults are more commonly found in outer lagoons and seaward reefs. This species sleeps in large groups, making them highly vulnerable to exploitation by spearfishers and netters at night (Myers, 1999; Donaldson and Dulvy, 2004). The bumphead parrotfish is primarily a corallivore, but also eats benthic algae. They use their large head to ram corals and break them into pieces that are more easily ingested (each fish ingests tons of structural reef carbonates per year) (Bellwood *et al.*, 2003), contributing significantly to the ecology and dynamics of reefs. Aggregations of this species are important coral sand producers on reefs and may be important in maintaining ecosystem resilience (Bellwood *et al.*, 2003).

Analysis of Petition

We evaluated the petition and information readily available in our files to determine if the petition presents an amount of scientific or commercial information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. The petition clearly recommends the administrative measure of listing the bumphead parrotfish as endangered or threatened and designating critical habitat, and gives the scientific and common name of the species. The petition contains a narrative justification for the recommended measure, and discusses past and present population status and trends. The petitioner argues that while historically common or abundant throughout its range, the bumphead parrotfish is now declining and globally rare, citing Donaldson and Dulvy (2004), Chan *et al.* (2007), and NMFS (2009). The petition further asserts that the populations of this species have declined at least 30 percent over the past 30 years, citing IUCN information (Chan *et al.*, 2007). The petition argues that the bumphead parrotfish is rarely encountered in U.S. Line and Phoenix Islands, and is nearly extirpated in Guam, East Africa, and the Marshall Islands. Our Pacific Islands Fisheries Science Center surveys of U.S. Pacific Islands and reefs conducted from 2000 to 2009 indicate that this species is extremely rare throughout the U.S. Pacific Islands except for Wake Atoll. The petition asserts that while the species was commercially important in the 1990s, the species is now rare in markets and nearly extirpated in Fiji, and is declining in Palau, Indonesia, and the south end of the Great Barrier Reef, citing Hasurmai *et al.* (2005), Foster *et al.* (2006), Chan *et al.* (2007), Habibi *et al.* (2007), Waddell and Clarke (2008), and NMFS (2009). The petition discusses interviews of local fishers in Palau conducted in 2003 by the Society for Conservation of Reef Fish Aggregations in which fishers explained that many bumphead parrot fish were caught years ago, but very few are found now. Respondents stated that 250 animals of this species were caught in just 1 fishing trip in 1975, whereas captures declined to 30 to 50 per trip after 1975, and now very few are caught. Another interview respondent reported that in their area they could catch up to 150 bumphead parrotfish in a month in the 1960's, but only up to 60 could be caught in a month after 1990, and the animals were half the size. The interviews suggested that this species had declined noticeably by the early 1990's. The petition asserts that in a global survey of over 300 reefs, the bumphead parrotfish was not found in 67 percent the sites in the Indo-Pacific, citing NMFS (2009).

The ESA requires us to determine whether species are threatened or endangered because of any of the following section 4(a)(1) factors: the present or threatened destruction, modification, or curtailment of habitat or range; overutilization for commercial, recreational, scientific, or educational purposes; disease or predation; inadequacy of existing regulatory mechanisms; and any other natural or manmade factors affecting the species' existence (16 U.S.C. 1533(a)(1)). The petition describes factors which it asserts have led to the current status of the bumphead parrotfish, as well as threats which it asserts the species currently face, categorizing them under the section 4(a)(1) factors.

The petition asserts destruction of coral reefs is an important threat to reef fishes, citing Dulvy *et al.* (2003) and Waddell and Clarke (2008), further asserting that the bumphead parrotfish is vulnerable to degradation of its coral habitat, citing NMFS (2009). Coral is a primary food source for this species, and the petition provides examples of activities that are adversely affecting corals in Micronesia, the Marshall Islands, the Mariana Islands, Indonesia, American Samoa, Palau, and Guam. Additionally, the petition asserts that the negative effects of coral bleaching and ocean acidification present a significant threat to the bumphead parrotfish throughout its range (through degradation or loss of its food source and habitat). The petition cites examples of coral bleaching events in American Samoa (citing Aeby *et al.*, 2008), the Pamyra Atoll and Kingman Reef (citing Clarke *et al.*, 2008), Jarvis Island (citing Id.), Howland Island (citing Id.), the Marshall Islands (citing Berger *et al.*, 2008), Indonesia (citing Habibi *et al.*, 2007), Micronesia (citing George *et al.*, 2008), Palau (citing Marino *et al.*, 2008), and Guam (citing Burdick *et al.*, 2008). The petition asserts that the increased frequency and intensity of extreme weather events due to climate change harm coral reefs and thus may negatively impact bumphead parrotfish. The petition further asserts that increasing human populations within the range of the bumphead parrotfish present additional threats to the species through increased fishing pressure and impacts on coral habitat.

The petition asserts that overutilization through commercial and subsistence overfishing is a significant threat to the bumphead parrotfish, claiming it is one of the most vulnerable species to fishing pressure, citing Donaldson and Dulvy (2004) and NMFS (2009). It is particularly susceptible to spear and net fishing, as this fish sleeps in large groups at night. One of the main threats to this species is overexploitation, especially the taking of sleeping adults at night with spears or nets. The petition asserts that this

species is not adequately protected by federal or state laws or policies to prevent its endangerment or extinction. The petition asserts that more or better protective measures are needed for large females, and that a moratorium on commercial fishing and export, gear restrictions, and blanket protection for the species is necessary.

The petition also asserts that the bumphead parrotfish is nearly extirpated from many areas within its range and that small population sizes and narrowing range may increase the likelihood of extinction through random events, or loss of genetic variability over time and a concomitant inability to cope with environmental change.

Petition Finding

We have reviewed the petition, the literature cited in the petition, and other literature and information available in our files. Based on that literature and information, we find that the petition meets the aforementioned requirements of the ESA regulations under 50 CFR 424.14(b)(2). The petition (i) clearly indicates the administrative measure recommended and gives the scientific and any common name of the species involved; (ii) contains a detailed narrative justification for the recommended measure, describing, based on available information, past and present numbers and distribution of the species involved and any threats faced by the species; (iii) provides information regarding the status of the species over all or a significant portion of its range; and (iv) is accompanied by the appropriate supporting documentation in the form of citations to journals that are readily accessible. This information would lead a reasonable person to believe that the measure proposed in the petition may be warranted. Therefore we determine that the requested listing actions may be warranted.

Information Solicited

Information on Status of the Species

As a result of this finding, we commence a status review on the bumphead parrotfish to determine whether listing this species under the ESA is warranted. We intend that any final action resulting from this review be as accurate and as effective as possible. Therefore, we open a 30–day public comment period to solicit information from the public, government agencies, the scientific community, industry, and any other interested parties on the status of this species throughout its range, including:

(1) Historical and current distribution and abundance of the species throughout its range (U.S. and foreign waters);

(2) Historic and current condition of the species and its habitat;

(3) Population trends;

(4) The effects of climate change on this species and the coral reef ecosystems on which it depends over the short- and long-term;

(5) The level of current fishing pressure and known effects of such fishing;

(6) The effects of other threats, including but not limited to, coastal development, coastal point source pollution, agricultural and land use practices, disease, predation, reef fishing, physical damage from boats and anchors, marine debris, and aquatic invasive species, on the distribution and abundance of coral habitat important to the species over the short- and long-term;

(7) The coral species consumed by this species and the status of each those corals; and

(8) Management programs for conservation of this species, including mitigation measures related to any of the threats listed above.

We request that all data and information be accompanied by supporting documentation such as maps, bibliographic references, or reprints of pertinent publications. Please send any comments to the **ADDRESSES** listed above. We will base our findings on a review of the best scientific and commercial information available, including all information received during the public comment period.

Information Regarding Protective Efforts

Section 4(b)(1)(A) of the ESA requires the Secretary to make listing determinations solely on the basis of the best scientific and commercial data available after conducting a review of the status of a species and after taking into account efforts being made to protect the species (16 U.S.C. 11533(b)(1)(A)). Therefore, in making its listing determinations, we first assess the status of the species and identify factors that have led to its current status. We then assess conservation measures to determine whether they ameliorate a species' extinction risk (50 CFR 424.11(f)). In judging the efficacy of conservation efforts, we consider the following: the substantive, protective, and conservation elements of such efforts; the degree of certainty that such efforts will reliably be implemented; the degree of certainty that such efforts will be effective in furthering the conservation of the species; and the presence of monitoring provisions to determine effectiveness of recovery efforts and that permit adaptive management (Policy on the Evaluation of Conservation Efforts, 68 FR 15100; March 28, 2003). In some cases, conservation efforts may be relatively new or may not have had sufficient time to demonstrate their biological benefit. In such cases, provisions of adequate monitoring and funding for conservation efforts are essential to ensure that the intended conservation benefits will be realized. We encourage all parties to submit information on ongoing efforts to protect and conserve the bumphead parrotfish, as well as information on recently implemented or planned activities and their likely impact(s).

Information Regarding Potential Critical Habitat

Critical habitat is defined in section 3(5) of the ESA as: (1) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the ESA, on which are found those physical or biological features (a) essential to the conservation of the species and (b) which may require special management considerations or protection; and (2) specific areas outside the geographical area occupied by the species at the time it is listed upon a determination that such areas are essential for the conservation of the species (16 U.S.C. 1532(5)). Once critical habitat is designated, section 7(a)(2) of the ESA requires Federal agencies to ensure that they do not fund, authorize or carry out any actions that are likely to destroy or adversely modify that habitat (16 U.S.C. 1536(a)(2)). This requirement is in addition to the section 7(a)(2) requirement that Federal agencies ensure that their actions do not jeopardize the continued existence of listed species.

Section 4(a)(3)(A) of the ESA requires that, to the extent prudent and determinable, critical habitat be designated concurrently with the listing of a species (16 U.S.C. 11533(a)(3)(A)(i)). Designations of critical habitat must be based on the best scientific data available and must take into consideration the economic, national security, and other relevant impacts of specifying any particular area as critical habitat (16 U.S.C. 1533(b)(2)). In advance of any determination to propose listing of the bumphead parrotfish as threatened or endangered under the ESA, we solicit information that would assist us in developing a critical habitat proposal.

Joint NMFS/FWS regulations for listing endangered and threatened species and designating critical habitat

(50 CFR 424.12(b)) state that the agency "shall consider those physical and biological features that are essential to the conservation of a given species and that may require special management considerations or protection." Pursuant to the regulations, such requirements include, but are not limited to the following: (1) space for individual and population growth, and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and generally, (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species. Id.

Section 4(b)(2) of the ESA requires the Secretary to consider the "economic impact, impact on national security, and any other relevant impact," of designating a particular area as critical habitat (16 U.S.C. 1533(b)(2)). Section 4(b)(2) further authorizes the Secretary to exclude any area from a critical habitat designation if the Secretary finds that the benefits of exclusion outweigh the benefits of designation, unless excluding that area will result in extinction of the species. Id. We seek information regarding the benefits of designating specific areas geographically throughout the range of the bumphead parrotfish as critical habitat. We also seek information on the economic impact of designating particular areas as part of the critical habitat designation. In keeping with the guidance provided by the Office of Management and Budget (2000, 2003), we seek information that would allow the monetization of these effects to the extent possible, as well as information on qualitative impacts to economic values. We also seek information on impacts to national security and any other relevant impacts of designating critical habitat in these areas.

In accordance with our regulations (50 CFR 424.13) we will consult as appropriate with affected states, interested persons and organizations, other affected Federal agencies, and, in cooperation with the Secretary of State, with the country or countries in which the species concerned are normally found or whose citizens harvest such species from the high seas. Data reviewed may include, but are not limited to, scientific or commercial publications, administrative reports, maps or other graphic materials, information received from experts, and comments from interested parties.

Peer Review

On July 1, 1994, NMFS, jointly with the U.S. Fish and Wildlife Service, published a series of policies regarding listings under the ESA, including a policy for peer review of scientific data (59 FR 34270). The intent of the peer review policy is to ensure listings are based on the best scientific and commercial data available. The Office of Management and Budget issued its Final Information Quality Bulletin for Peer Review on December 16, 2004. The Bulletin went into effect June 16, 2005, and generally requires that all "influential scientific information" and "highly influential scientific information" disseminated on or after that date be peer reviewed. Because the information used to evaluate this petition may be considered "influential scientific information," we solicit the names of recognized experts in the field that could take part in the peer review process for this status review (see **ADDRESSES**). Independent peer reviewers will be selected from the academic and scientific community, tribal and other Native American groups, Federal and state agencies, the private sector, and public interest groups.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: March 30, 2010.

Eric C. Schwaab,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–7495 Filed 4–1–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 100201058–0158–01]

RIN 0648–AY50

Fisheries of the Northeastern United States; Proposed 2010 Specifications for the Spiny Dogfish Fishery

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes specifications for the spiny dogfish fishery for the 2010 fishing year (FY) (May 1, 2010, through April 30, 2011). The implementing regulations for the Spiny Dogfish Fishery Management Plan (FMP) require NMFS to publish specifications for up to a period of 5 years and to provide an opportunity for public comment. This specification setting will apply to FY 2010 only. The intent of this rulemaking is to specify the commercial quota and other management measures, and to rebuild the spiny dogfish resource. NMFS proposes that the annual quota be set at 12 million lb (5,443.11 mt), and that the possession limit for dogfish remain set at 3,000 lb (1.36 mt). These proposed specifications and management measures are consistent with the FMP and promote the utilization and conservation of the spiny dogfish resource.

DATES: Public comments must be received no later than 5 p.m. eastern standard time on May 3, 2010.

ADDRESSES: You may submit comments, identified by RIN 0648–AY50, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov.*
- *Fax:* 978–281–9135, Attn: Lindsey Feldman.
- *Mail:* Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: "Comments on 2010 Dogfish Spex."

Instructions: No comments will be posted for public viewing until after the comment period has closed. All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of supporting documents used by the Mid-Atlantic Fishery Management Council (MAFMC), including the Environmental Assessment (EA) and Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), are available from: Richard Seagraves, Acting Deputy Director, Mid-Atlantic

Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904–6790. The EA/RIR/IRFA is also accessible via the Internet at *http://www.nero.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Lindsey Feldman, Fisheries Management Specialist, phone: 978–675–2179, fax: 978–281–9135.

SUPPLEMENTARY INFORMATION: Spiny dogfish were declared overfished by NMFS on April 3, 1998, and added to the list of overfished stocks in the *Report on the Status of the Fisheries of the United States,* prepared pursuant to section 304 of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Consequently, the Magnuson-Stevens Act required the preparation of measures to end overfishing and to rebuild the spiny dogfish stock. A joint FMP was developed by the MAFMC and NEFMC during 1998 and 1999. The Mid-Atlantic Fishery Management Council (MAFMC) was designated as the administrative lead on the FMP.

The regulations implementing the FMP at 50 CFR part 648, subpart L, outline the process for specifying the commercial quota and other management measures (*e.g.,* minimum or maximum fish sizes, seasons, mesh size restrictions, possession limits, and other gear restrictions) necessary to assure that the target fishing mortality rate (target F) specified in the FMP will not be exceeded in any fishing year (May 1–April 30), for a period of 1–5 fishing years. The annual quota is allocated to two semi-annual quota periods as follows: Period 1, May 1 through October 31 (57.9 percent); and Period 2, November 1 through April 30 (42.1 percent).

The Spiny Dogfish Monitoring Committee (MC), comprised of representatives from states; MAFMC staff; NEFMC staff; NMFS staff; academia; and two non-voting, ex-officio industry representatives (one each from the MAFMC and NEFMC regions) is required to review the best available information and to recommend a commercial quota and other management measures necessary to achieve the target F for 1–5 fishing years, with the fishing year being from May 1 through April 30. The Council's Joint Spiny Dogfish Committee (Joint Committee) then considers the MC's recommendations and any public comment in making its recommendation to the two Councils. The MAFMC and the NEFMC review the recommendations of the MC and Joint Committee and make their recommendations to NMFS. NMFS reviews those recommendations, and may modify them if necessary to assure that the target F will not be exceeded. NMFS then publishes proposed measures for public comment.

Spiny Dogfish Stock Status Update

In the fall of 2009, the Northeast Fisheries Science Center (NEFSC) updated the spiny dogfish stock status using the population modeling approach from the 43rd Stock Assessment Workshop (43rd SAW, 2006), 2008 catch data, and results from the 2009 trawl survey. The update indicates that the female spawning stock biomass (SSB) for 2009 is 163,256 mt (360 M lb), about 2.7% below the maximum spawning stock biomass, SSB_{max} (167,800mt), the current maximum sustainable yield biomass (B_{msy}) proxy. However, no biomass target currently exists in the Federal FMP because the Councils' recommended target (90% SSB_{max}) was disapproved during the review of the FMP in 2000.

The NEFSC stock status update estimated that overfishing is not occurring. Total removals (U.S. commercial dead discards, recreational landings and discards, and Canadian commercial landings) in 2008 were approximately 10,828 mt (23.871 M lb), corresponding to a fishing mortality (F) estimate of 0.11, well below the overfishing threshold of F = 0.39 and equivalent to the F level necessary to rebuild the stock ($F_{rebuild}$).

While the stock status update shows that the stock is close to the biomass target proxy, the 2009 stock assessment could not conclude that the stock is rebuilt. In addition, there are still a number of concerns about the stock condition. Although recruitment to the fishery increased in 2009, a decline in SSB is expected when these small 1997–2003 year-classes recruit to the SSB (approximately 2015) due to estimated low pup production from 1997–2003 and low survey catches of the size categories for these year classes. In addition, the current survival rate of pups may be lower than historic levels due to reduced maternal size and a skewed male-to-female sex ratio in the population.

Technical Recommendations

The MAFMC's Scientific and Statistical Committee (SSC) met on October 27, 2009, to develop an acceptable biological catch (ABC) recommendation for spiny dogfish for FY 2010 based on the NEFSC stock status update. The SSC discussed the fact that the stock had not been declared rebuilt, and that the appropriate target fishing mortality for spiny dogfish should be one consistent with continuing to achieve $F_{rebuild}$ (0.11). According to model projections, the ABC associated with $F_{rebuild}$ for spiny dogfish would be 10,064 mt (22.188 million lb).

The MC met on October 29, 2009, and November 13, 2009, to recommend the appropriate quota and possession limits for FY 2010 based on the SSC's ABC recommendation. To set the appropriate commercial quota, the MC took into account all other sources of fishing mortality for the spiny dogfish stock (U.S. commercial dead discards, recreational landings and discards, and Canadian commercial landings). The commercial quota that is available after deducting the estimated values for these other factors is 12.251 million lb (5,556.96 mt). The MC chose to recommend a commercial quota of 12.0 million lb (5,443.11 mt) in order to maintain the same quota in FY 2010 as in FY 2009. The MC felt that maintaining the slightly lower (status quo) commercial quota accommodated some management uncertainty for FY 2010. The MC also recommended maintaining possession limits at 3,000 lb (1.36 mt), unchanged from 2009.

Joint Committee Recommendations

The Joint Committee did not meet to review the Monitoring Committee's recommendations due to time limitations associated with the specification process. The Joint Committee review was encompassed in the meetings of both of the full Councils.

Council Recommendations

The MAFMC and NEFMC met in December and November 2009, respectively, to review the technical recommendations. While management measures may be established in the specification setting process for up to five years, the Councils are both recommending that the specifications and management measures be set for FY 2010 only. This is primarily because the Transboundary Resource Assessment Committee (TRAC) conducted a benchmark stock assessment for spiny dogfish in early February 2010, the results of which are expected in late March 2010. The Councils intend to utilize these results in developing specifications for FY 2011 and beyond.

The MAFMC adopted the MC's recommendation for 12.0 million lb (5,443.11 mt). The NEFMC did not adopt the MC recommendation and instead derived their recommendation from an ABC based on F = 0.20. The commercial quota that results after

deductions of U.S. commercial dead discards, recreational landings, and Canadian commercial landings is 21.6 million lb (9,797.60 mt). Both Councils recommended maintaining the possession limits of 3,000 lb (1.36 mt).

Proposed Measures

The FMP provides for disagreement between the Councils on management measures for the upcoming fishing year by specifying that NMFS may propose measures that were not rejected by both Councils assuring that the target F (in this case $F_{rebuild}$ until the fishery is declared rebuilt) will not be exceeded in any fishing year.

NMFS reviewed both Councils' recommendations and concluded that the MC's recommendation would assure that the $F_{rebuild}$ (0.11) is not exceeded, as required by the FMP until the stock is determined to be rebuilt. Therefore, NMFS proposes the measures recommended by the MAFMC: a commercial spiny dogfish quota of 12.0 million lb (5443.11 mt) and maintaining the current possession limit of 3,000 lb (1.36 mt). As specified in the FMP, quota Period 1 (May 1 through October 31) would be allocated 6,948,000 lb (3,151.56 mt), and quota Period 2 (November 1 through April 30) would be allocated 5,052,000 lb (2,291.55 mt).

The FMP authorizes NMFS to update biological reference points through the specification process based on the results of a peer-reviewed resource assessment such as the TRAC. Therefore, this rule also proposes that; if the results of the TRAC assessment, including any additional analysis, provide a biomass target that indicates the stock is rebuilt, NMFS may consider setting a higher quota for FY 2010 in the final rule consistent with an appropriate F value. The Councils have analyzed the impacts of a quota of 29.5 million lb (13,380.97 mt), consistent with a target F (0.28) which is the current F target for a rebuilt stock.

Measures Adopted by the Atlantic States Marine Fisheries Commission (ASMFC)

NMFS notes that the proposed 2010 spiny dogfish commercial quota is inconsistent with the commercial quota adopted by the ASMFC. On February 5, 2010, the ASMFC approved a 15 million lb (6,803.89 mt) quota with a maximum possession limit of 3,000 lb (1.36 mt) for FY 2010. As the quota implemented under the ASMFC is higher, the proposed Federal quota is likely to be exceeded by landings by vessels authorized to fish only in state waters. As in previous years, when the federal spiny dogfish fishery is closed but state fisheries remain open, fishing vessels issued federal permits may not fish for, possess, or land spiny dogfish from state or federal waters. In addition, Addendum II to the ASMFC's Interstate FMP for Spiny Dogfish allocated the ASMFC quota with 58 percent to states from Maine through Connecticut, 26 percent to New York through Virginia, and 16 percent to North Carolina. Due to this difference in allocation, state and Federal waters may close at different times, depending on regional and seasonal quota attainment.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that the proposed rule is consistent with the Spiny Dogfish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A copy of this analysis is available from the Council (see **ADDRESSES**). A summary of the analysis follows:

Statement of Objective and Need

A description of the reasons why this action is being considered, and the objectives of and legal basis for this action, is contained in the preamble to this proposed rule and is not repeated here.

Description and Estimate of Number of Small Entities to Which the Rule Will Apply

According to NMFS permit file data, 3,019 vessels were issued Federal spiny dogfish permits in FY 2008, while 229 of these vessels contributed to overall landings. All of the potentially affected businesses are considered small entities under the standards described in NMFS guidelines because they have gross receipts that do not exceed $3.5 million annually. Information from FY 2008 was used to evaluate impacts of this action, as that is the most recent year for which data are complete.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This action does not contain any new collection-of-information, reporting, recordkeeping, or other compliance requirements. It does not duplicate, overlap, or conflict with any other Federal rules.

Minimizing Significant Economic Impacts on Small Entities

The IRFA considered three distinct alternatives. The proposed action (Alternative 1, Status quo and equivalent to No Action) is expected to achieve $F_{rebuild}$ = 0.11 and recommends a commercial quota of 12.0 million lb (5,443.11 mt) and a possession limit of 3,000 lb (1.36 mt), for FY 2010. The proposed commercial quota is lower than those that result from the higher F targets associated with Alternative 2 (F = 0.20) and Alternative 3 (F = 0.28). Alternative 2 proposes a 21.6 million lb (9,797.60 mt) quota and Alternative 3 proposes a 29.5 million lb (13,380.97 mt) quota. None of the alternatives propose to modify the current 3,000 lb possession limit.

Assuming that the quota implemented would be attained, the proposed action would be expected to maintain current revenue levels. Alternatives 2 and 3 would be expected to increase revenue from dogfish landings, which would have positive or null economic impact on small entities. Total spiny dogfish revenue from the last complete fishing year (FY 2008) was reported as $2.157 million. Using the average FY 2008 price/lb ($0.24), landing the 12 million lb (5,443.11 mt) quota would yield $2.880 million in fleet revenue. Using the same approach, revenue would be expected to increase to $5.191 million under Alternative 2 and $7.070 million under Alternative 3. However, under Alternative 1, the proposed quota assures that $F_{rebuild}$ (0.11) is not exceeded until the stock is determined to be rebuilt, as required by the FMP.

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

Dated: March 29, 2010.

Eric C. Schwaab,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–7489 Filed 4–1–10; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 75, No. 63
Friday, April 2, 2010

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Forest Landscape Value and Special Place Mapping for National Forest Planning

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the new information collection, Forest Landscape Value and Special Place Mapping for National Forest Planning.

DATES: Comments must be received in writing on or before June 1, 2010 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Dr. Patrick Reed, National Human Dimensions Program Social Scientist, USDA Forest Service, 3301 C Street, Suite 202, Anchorage, AK 99503.

Comments may also be submitted by e-mail to *preed01@fs.fed.us.*

The public may inspect comments received at 201 14th St., SW., 3CEN during normal business hours. Visitors are encouraged to call ahead to 202–205–9969 or 202–360–3486 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Dr. Patrick Reed, USDA Forest Service, 907–743–9571. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Forest Landscape Value and Special Place Mapping for National Forest Planning.

OMB Number: 0596–NEW.

Type of Request: New.

Abstract: The Forest Service is proposing to augment the public participation process for revision of national forest land management plans by collecting data about the nature and location of landscape values and special places recognized by the public on national forest lands. Over the next 3 years, up to 15 national forest units will collect the aforementioned information as part of the national forest plan revision public participation process. The forest plan revision includes determining public desire for use (along with suitability of areas for different uses), identification of special areas, collaboration with the public, and monitoring for adaptive management.

Primarily using an Internet-based geographic information system (GIS), national forests will invite the public to share values regarding specific forest landscapes and special places. A comparable paper-based option, suitable for use in mail back surveys and focus group meetings, may be provided to individuals who do not have access to the Internet or as an alternative primary means of collecting data.

The information will be used in the revision of specific national forest plans. Forest planners and managers will use the collected information to develop land management plans that are consistent with public values, while working within the regulatory framework. The data collected would provide Forest Service managers with a new, systematic science-based tool for collecting and analyzing public opinion about desired forest conditions and use of specific geographic forest locations. Survey results will be useful in gauging public support for proposed forest management options and in collaborative and participatory approaches to planning. While the collection is designed to assist with development of forest land management plans under NFMA, the information collected could be used in a variety of forest planning processes (i.e., travel management and recreation facilities planning) and projects.

The legal authorities supporting the collection of this information include the National Environmental Policy Act (NEPA) of 1969, the National Forest Management Act (NFMA) of 1976, and the proposed 2008 NFMA Planning Rule (36 CFR part 219).

Estimate of Annual Burden: 20 minutes.

Type of Respondents: Individuals; State, county, and tribal governments; as well as for-profit and non-profit entities.

Estimated Annual Number of Respondents: 3,500 (average of 3 years).

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 1,167 hours (average of 3 years).

Comment is Invited: Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: March 29, 2010.

Gloria Manning,

Associate Deputy Chief, NFS.

[FR Doc. 2010–7551 Filed 4–1–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Agricultural Water Enhancement Program

AGENCY: Commodity Credit Corporation and Natural Resources Conservation Service, Department of Agriculture.

ACTION: Notice of request for proposals.

SUMMARY: Section 2510 of the Food, Conservation, and Energy Act of 2008 (2008 Act) established the Agricultural Water Enhancement Program (AWEP) by amending section 1240I of the Food

Security Act of 1985. The Secretary of Agriculture delegated the authority for AWEP to the Chief of the Natural Resources Conservation Service (NRCS), who is Vice President of the Commodity Credit Corporation (CCC). NRCS is an agency of the Department of Agriculture (USDA). Effective upon publication of this notice, NRCS announces the availability of approximately $20.7 million in AWEP financial assistance during fiscal year (FY) 2010 to support new AWEP projects. The AWEP is a voluntary conservation initiative that provides financial and technical assistance to agricultural producers to implement agricultural water enhancement activities on agricultural land for the purposes of conserving surface and ground water and improving water quality. As part of the Environmental Quality Incentives Program (EQIP), AWEP operates through program contracts with producers to plan and implement conservation practices in project areas established through partnership agreements. The purpose of this notice is to inform agricultural producers of the potential availability of program funds and to solicit proposals from potential partners seeking partnership agreements with the Chief to promote the conservation of ground and surface water and the improvement of water quality. This is not a grant program to partners, and all Federal funding offered through this authority will be paid directly to agricultural producers through individual contract agreements.

DATES: *Effective Date:* The notice of request is effective April 2, 2010.

Eligible partners may submit proposals by mail or via courier.

- *By mail:* proposals must be postmarked May 17, 2010.
- *By courier:* proposals must be delivered May 17, 2010.

ADDRESSES: Written proposals should be submitted to the addresses identified below, with copies to the appropriate NRCS State Conservationist whose names and addresses are identified as an attachment to this notice. If a project is multi-State in scope, potential partners must send each State Conservationist in the proposed project areas the proposal for review.

- *By mail:* Gregory K. Johnson, Director, Financial Assistance Programs Division, Department of Agriculture, Natural Resources Conservation Service, "AWEP Proposal," 1400 Independence Avenue, SW., Room 5239 South Building, Washington, DC 20250. (**Note:** *Registered or Certified Mail to a Post Office will not be accepted.*)
- *By courier:* Gregory K. Johnson, Director, Financial Assistance Programs Division, Department of Agriculture, Natural Resources Conservation Service, "AWEP Proposal," 1400 Independence Avenue, SW., Room 5239 South Building, Washington, DC 20250, Telephone: (202) 720–1845. Proposals will be accepted between 9 a.m. and 4 p.m., Monday through Friday, except Federal Holidays. Please ask the guard at the entrance to the South Building to call (202) 720–1845.

Note: Proposals submitted via fax, e-mail, or after the deadline date listed in this notice will not be considered.

FOR FURTHER INFORMATION CONTACT: Gregory K. Johnson, Director, Financial Assistance Programs Division, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Room 5239 South Building, Washington, DC 20250, Telephone: (202) 720–1845; Fax: (202) 720–4265; or E-mail: *AWEP@wdc.usda.gov.* Additional information regarding AWEP is available at the following NRCS Web page: *http://www.nrcs.usda.gov/programs/AWEP/.*

Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA TARGET Center at: (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION: This notice includes significant additions from the 2009 notice issued last fiscal year. The basic authority, procedures, and program requirements have not changed. Partners who responded to the 2009 notice reported difficulty in understanding where and how to apply, confusion about administration and purpose of the new AWEP authority and requirements of partners, misunderstanding that AWEP was not a grant program for partners, lack of knowledge about NRCS resource concerns and conservation practices that needed to be addressed through the partnership, frustration in NRCS terminology used in the notices, and other similar concerns. As the result of these concerns, the agency conducted an internal examination of AWEP to better clarify the program and requirements for proposal submission. In addition to the internal review, the agency also invited suggestions from legislators, producers, and other organizations with an interest in AWEP. As a result of the review, this notice includes more explanation of the program, added definitions, clarification of the requirements and criteria to be addressed in the proposal, links to resources to help partners apply, and other general improvements. The requirements for submission of the proposal are not significantly different from 2009, and pose no additional burden or workload.

Availability of Funding

Effective upon publication of this notice, NRCS announces the availability of approximately $20.7 million in AWEP financial assistance during FY 2010 to support new AWEP projects. NRCS will implement AWEP by entering into partnership agreements with eligible entities to conserve ground and surface water or improve water quality, or both, through a regional approach. Eligible partners must submit complete proposals, as described in this notice, to Gregory K. Johnson, Director, Financial Assistance Programs Division. Proposals are submitted by eligible partners, and project evaluation will be based upon a competitive process and the criteria established in this notice. Once the Chief approves a partner's proposal and announces selection, agricultural producers within the project area may submit an AWEP application directly to their local NRCS office. Only specific kinds of entities are eligible to submit a proposal and enter into partnership agreements with NRCS; these include federally recognized Indian tribes, State and local units of government, agricultural or silvicultural associations, and other groups of producers such as an irrigation association, agricultural land trust, or other nongovernmental organization that has experience working with agricultural producers. Nongovernmental organizations are entities as defined by the Internal Revenue Service and as cited in the definitions section of this notice. This is not a grant program, and all Federal funds made available through this request for proposals will be paid directly to producers through program contract agreements. Individual agricultural producers are not AWEP eligible entities and may not submit AWEP proposals, nor may they apply for program benefits through this proposal submission process; however, once an AWEP project area has been approved and announced, individual producers may apply for program benefits through their local NRCS office. No Federal AWEP funding may be used to cover administrative expenses of partners. Administrative activities include any indirect or direct costs relating to submitting or implementing the project proposal.

Definitions

Activities means conservation systems, practices, or management measures needed to address a resource concern or improve environmental quality through the treatment of natural resources, and includes structural, vegetative, and management practices, as well as the activity for development of conservation plans, as determined by NRCS. Activities may also include actions associated with an agricultural operation or other activities conducted by an AWEP partner which may or may not be associated with an NRCS conservation practice or program support.

Agricultural land means cropland, grassland, rangeland, pasture, and other agricultural land on which agricultural and forest-related products or livestock are produced and resource concerns may be addressed. Other agricultural lands may include cropped woodland, marshes, incidental areas included in the agricultural operation, and other types of agricultural land used for production of livestock.

Agricultural water enhancement activity means the following, conducted in accordance with State water law:

(a) Water quality or water conservation plan development, including resource condition assessment and modeling;

(b) Water conservation restoration or enhancement projects, including the conversion to the production of less water-intensive agricultural commodities or dryland farming;

(c) Water quality or quantity restoration or enhancement projects;

(d) Irrigation system improvement and irrigation efficiency enhancements;

(e) Activities designed to mitigate the effects of drought, (*e.g.,* construction, improvement, or maintenance of irrigation ponds, small on-farm reservoirs, or other agricultural water impoundment structures that are designed to capture surface water runoff); and

(f) Related activities that the Chief determines will help achieve water quality or water conservation benefits on agricultural land.

Note: *Not all listed activities are currently supported by NRCS practice standards or funded through NRCS programs.*

Applicant means a person, legal entity, joint operation, or tribe that has an interest in an agricultural or forestry operation, as defined in 7 CFR part 1400, who has requested to participate in AWEP.

Beginning Farmer or Rancher means a person or legal entity who:

(a) Has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 consecutive years. This requirement applies to all members of an entity who will materially and substantially participate in the operation of the farm or ranch.

(b) In the case of a contract with an individual, individually, or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch consistent with the practices in the county or State where the farm is located.

(c) In the case of a contract with an entity or joint operation, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that each of the members provide some amount of the management or labor and management necessary for day-to-day activities, such that if each of the members did not provide these inputs, operation of the farm or ranch would be seriously impaired.

Chief means Chief of the Natural Resources Conservation Service, or designee.

Conservation Activity Plan means a resource-specific conservation plan prepared by a certified Technical Service Provider (TSP) as authorized by the 2008 Act for financial assistance payment through EQIP for eligible land of the producer.

Conservation planning means using the planning process outlined in the NRCS National Planning Procedures Handbook (NPPH). The NPPH is available at: *http://directives.sc.egov.usda.gov/.*

*Conservation practic*e means one or more conservation improvements and planning activities, including structural practices, land management practices, vegetative practices, forest management practices, and other improvements that are planned and applied according to standards and specifications contained in the NRCS Field Office Technical Guide (FOTG). Conservation practices and activities funded through AWEP are subject to requirements of EQIP regulation (7 CFR 1466.10) (*http://www.nrcs.usda.gov/programs/eqip*). Only EQIP may provide financial assistance for support of the activity of conservation planning.

Conservation system means a combination of conservation practices and management measures used to address natural resource and environmental concerns in a comprehensive, holistic, and integrated manner.

Contract as defined in the EQIP regulation means a legal document that specifies the rights and obligations of any participant accepted to participate in the AWEP program. An AWEP contract is a binding agreement for the transfer of assistance from the Department of Agriculture (USDA) to the participant to share in the costs of applying conservation practices. Contracts funded through AWEP are subject to requirements of EQIP regulation (7 CFR 1466.21) (*http://www.nrcs.usda.gov/programs/eqip*).

Designated Conservationist means an NRCS employee whom the State Conservationist has designated as responsible for administration of NRCS programs at the local level.

Environmental Quality Incentives Program means a program administered by NRCS in accordance with 7 CFR part 1466 (*http://www.nrcs.usda.gov/programs/eqip*), which provides technical and financial assistance to eligible producers for the installation and implementation of conservation practices and activities on private agricultural and nonindustrial forest land.

Exceptional Drought (D–4) means, as defined by the National Oceanic and Atmospheric Administration, exceptional widespread crop/pasture losses; exceptional fire risk; and shortages of water in reservoirs, streams, and wells creating water emergencies.

Field Office Technical Guide means the official local NRCS source of resource information, conservation practice standards, specifications, and interpretation of guidelines, criteria, and requirements for planning and applying conservation practices, activities, and conservation management systems. It contains natural resource quality criteria to be achieved to provide for the conservation and sustainability of soil, water, air, plant, and animal resources applicable to the geographic area where resource concerns are addressed. The FOTG can be accessed online at: *http://www.nrcs.usda.gov/technical/efotg/.*

Financial Assistance means a payment made to the program participant.

Forest management plan means a site-specific plan that is prepared by a professional resource manager, in consultation with the participant, and is approved by the State Conservationist. Forest management plans may include a forest stewardship plan, as specified in section 5 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103a); another practice plan approved by the State Forester; or another plan determined appropriate by the State

Conservationist. The plan must comply with Federal, State, tribal, and local laws, regulations, and permit requirements.

Indian land is an inclusive term describing all lands held in trust by the United States for individual Indians or tribes, or all lands, titles to which are held by individual Indians or tribes, subject to Federal restrictions against alienation or encumbrance, or all lands that are subject to the rights of use, occupancy, or benefit of certain tribes. For purposes of this notice, the term Indian land also includes land for which the title is held in fee status by Indian tribes and the United States Government owned land under the Bureau of Indian Affairs jurisdiction.

Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*) that is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Joint Agreement means a business arrangement where two or more participants cooperate to carry out conservation practices that can best be accomplished by combining resources. Such agreements must be formally documented and signed by all applicable parties.

Joint Operation means a general partnership, joint venture, or other similar business arrangement in which the members are jointly and severally liable for the obligations of the organization.

Limited Resource Farmer or Rancher means:

(a) A person with direct or indirect gross farm sales not more than $155,200 in each of the previous 2 years (adjusted for inflation using Prices Paid by Farmer Index as compiled by the National Agricultural Statistical Service); and

(b) Has a total household income at or below the national poverty level for a family of four, or less than 50 percent of county median household income in each of the previous 2 years (to be determined annually using Department of Commerce data).

Local working group means the advisory body pursuant to 16 U.S.C. 3861 and described in 7 CFR part 610. Information regarding these groups can be found at: *http://www.nrcs.usda.gov/programs/StateTech/*.

Nongovernmental organization is any legal entity that is organized for, and at all times since, the formation of the organization has been operated principally for one or more of the conservation purposes specified in clause (i), (ii), (iii), or (iv) of section 170(h)(4)(A) of the Internal Revenue Code of 1986; is an organization described in section 501(c)(3) or that is described in section 509(a)(2) of that Code; or is described in section 509(a)(3) of that Code and is controlled by an organization described in section 509(a)(2) of that Code.

Nonindustrial private forest land means rural land, as determined by the Secretary, that has existing tree cover or is suitable for growing trees and is owned by any nonindustrial private individual, group, association, corporation, Indian tribe, or other private legal entity that has definitive decisionmaking authority over the land.

Participant means a person, legal entity, joint operation, or tribe that is receiving payment or is responsible for implementing the terms and conditions of an EQIP contract.

Partner means an entity that enters into a partnership agreement with NRCS to carry out the approved AWEP project. Eligible partners include federally recognized Indian tribes, State and local units of government, agricultural or silvicultural associations, or other such groups of agricultural producers. **Note:** Individual agricultural producers are not partners under provisions of AWEP and are not eligible to submit proposals as outlined in this notice.

Partner applicant means an eligible entity that enters into a partnership agreement with NRCS to carry out the approved AWEP project.

Partnership agreement means a multi-year agreement between NRCS and the partner. The AWEP partnership agreement describes the activities and resources, such as technical or financial assistance, that may be provided by NRCS and the partner to help producers meet the objectives of AWEP in an approved project area. The AWEP partnership agreement does not transfer financial or technical assistance funding to a partner, nor provide for the administrative expenses of the partner. Individual producers may not enter into partnership agreements under AWEP authority.

Payment means financial assistance provided to a contract participant under the terms of the program contract. The payment is based upon the estimated costs incurred for performing or implementing conservation practices and activities, including costs for planning, materials, equipment, labor, design and installation, maintenance, management, or training, as well as the estimated income foregone by the producer for designated conservation practices. AWEP payments are only made to eligible agricultural producers through program contracts. Payments and payment rates are established by program rule. Payments are only provided to assist with implementation of approved conservation practices and activities listed in the FOTG and must meet other requirements of EQIP regulation (7 CFR 1466.23–24) (*http://www.nrcs.usda.gov/programs/eqip*).

Priority resource concern means a resource concern that is identified by the State Conservationist, with advice from the State Technical Committee and local work groups, as a priority for a State or the specific geographic areas within a State.

Producer means a person, legal entity, or joint operation who has an interest in the agricultural operation, according to 7 CFR part 1400, or who is engaged in agricultural production or forestry management.

Projects of Special Environmental Significance means projects, as defined in 7 CFR 1466(d) and approved by the Chief, which meet the following criteria:

(a) Site-specific evaluations have been completed, documenting that the project will have substantial positive impacts on critical resources in or near the project area (e.g., impaired water bodies or at-risk species);

(b) The project clearly addresses a national priority and State, tribal, or local priorities, as applicable; and

(c) The project assists the participant in complying with Federal, State, and local regulatory requirements.

Rangeland means land on which the historic climax plant community is predominantly grasses, grass-like plants, forbs, or shrubs, and includes lands revegetated naturally or artificially when routine management of that vegetation is accomplished mainly through manipulation of grazing. Rangelands include natural grasslands, savannas, shrublands, most deserts, tundra, alpine communities, coastal marshes, and wet meadows.

Resource concern means a specific natural resource problem that represents a significant concern in a State or region, and is likely to be addressed successfully through the implementation of conservation activities by producers. The two natural resource concerns that may be addressed through AWEP are water conservation or water quality and include the following sub categories:

Water Quantity (Water Conservation):

- Aquifer Overdraft
- Excessive Runoff, Flooding, or Ponding
- Excessive Seepage
- Excessive Subsurface Water

- Inadequate Outlets
- Inefficient Water Use on Irrigated Land
- Inefficient Water Use on Nonirrigated Land
- Insufficient Flows in Water Courses
- Rangeland Hydrologic Cycle
- Reduced Capacity of Conveyances by Sediment Deposition
- Reduced Storage of Water Bodies by Sediment Accumulation

Water Quality:

- Excessive Nutrients and Organics in Groundwater
- Excessive Nutrients and Organics in Surface Water
- Excessive Salinity in Groundwater
- Excessive Salinity in Surface Water
- Excessive Suspended Sediment and Turbidity in Surface Water
- Harmful Levels of Pathogens in Groundwater
- Harmful Levels of Pathogens in Surface Water
- Harmful Levels of Pesticides in Groundwater
- Harmful Levels of Pesticides in Surface Water
- Harmful Temperatures of Surface Water

Resource concerns used by NRCS are found in section III of each State or local FOTG which can be found at: *http://www.nrcs.usda.gov/technical/efotg/*.

Socially Disadvantaged Farmer or Rancher means a farmer or rancher who has been subjected to racial or ethnic prejudices because of their identity as a member of a group without regard to their individual qualities. Those groups include African Americans, American Indians or Alaskan natives, Hispanics, Asians, and native Hawaiians or other Pacific Islanders.

State Conservationist means the NRCS employee who is authorized to implement conservation programs administered by NRCS, and who directs and supervises NRCS activities in a State, the Caribbean Area, or the Pacific Islands Area.

State Technical Committee means a committee established by the USDA Secretary in a State pursuant to 16 U.S.C. 3861 and described in 7 CFR part 610. Information regarding these committees can be found at: *http://www.nrcs.usda.gov/programs/StateTech/*.

Technical assistance means technical expertise, information, and tools necessary for the conservation of natural resources on land active in agricultural, forestry, or related uses. The term includes the following: (1) Technical services provided directly to farmers, ranchers, and other eligible entities, such as conservation planning, technical consultation, and assistance with the design and implementation of conservation practices; and (2) technical infrastructure including activities, processes, tools, and agency functions needed to support delivery of technical services, such as technical standards, resource inventories, training, data, technology, monitoring, and effects analyses. Information regarding technical assistance can be found at: *http://www.nrcs.usda.gov/programs/cta/*.

Technical Service Provider means an individual, private-sector entity, or public agency certified by NRCS, in accordance with 7 CFR part 652, to provide technical services to program participants in lieu of or on behalf of NRCS. Information regarding TSP services available through AWEP is found in the EQIP regulation (7 CFR 1466.11) (*http://www.nrcs.usda.gov/programs/eqip*).

Overview of the Agricultural Water Enhancement Program

Background

The AWEP is a voluntary conservation program that provides financial and technical assistance to agricultural producers to implement agricultural water enhancement activities using conservation practices on eligible land for the purposes of conserving surface and ground water and improving water quality. As part of EQIP, AWEP operates through contracts with eligible producers to plan and implement approved conservation practices and activities to conserve ground and surface water and improve water quality in project areas established through partnership agreements. Producers located in approved AWEP project areas, announced by partners and NRCS, may submit an application for program assistance at their local NRCS service center or field office. As part of the partnership agreement, approved partners may also help facilitate the submission of producers' applications, or they may provide additional technical or financial assistance to participating agricultural producers, or provide other resources as defined in the agreement. A primary intent of AWEP is to leverage other non-Federal resources along with NRCS program resources to achieve program objectives. Partners are encouraged to include in their proposals resources to help producers implement approved conservation practices and activities and provisions to address those AWEP priority activities that NRCS does not have the authority to implement (*e.g.* resource condition assessment and modeling). The partner is not required to provide financial or technical resources towards the project (match); however, proposals that include or offer partner provided resources will be given higher priority consideration in the evaluation process. AWEP financial assistance is delivered directly to producers in approved project areas through contract agreements. No technical or financial assistance funding may be provided to a partner through the AWEP partner agreement. However, if requested by a partner, the State Conservationist or Chief may consider development of a separate funding agreement with a qualified partner for delivery of technical services to producers participating in an approved AWEP project.

Submitting Proposals

Potential partners must submit a complete proposal to Gregory K. Johnson, Director, Financial Assistance Programs Division, addressing all questions and items listed in the "Proposal Requirements" section of this notice. The proposal must include sufficient detail to allow NRCS to understand the partner's priority resource concerns, objectives, and expected outcomes. Incomplete proposals and those that do not meet the requirements set forth in this notice will not be considered, and notification of elimination will be mailed to the applicant. The proposal must also be accompanied by letters of review from the appropriate State Conservationists to the Director, Financial Assistance Programs Division as specified in this notice. The Chief or designee will review, prioritize, and evaluate the proposals based on the criteria provided in this notice. State Conservationists will provide guidance to potential partners regarding resource concerns that may be addressed in the proposed project area, local working group and State Technical Committee natural resource priorities, approved conservation practices and activities, and other program requirements the partner should consider when developing a proposal.

Partner Entity Eligibility

Potential partner entities that are eligible to participate as partners include federally recognized Indian tribes, States and local units of government, agricultural or silvicultural associations, or other groups of producers, such as an irrigation association, agricultural land trust, or other nongovernmental organization that has experience working with agricultural producers. Individual

producers are not eligible to submit proposals under this notice.

Producer Eligibility

Individual producers are eligible to apply for program benefits as part of an approved AWEP project as determined by the requirements of this notice and EQIP regulation found in 7 CFR 1466.8 (*http://www.nrcs.usda.gov/programs/eqip*). Producers seeking to participate in an approved AWEP project must meet all EQIP program eligibility requirements.

Producer Applications and Contracts

Agricultural producers in approved project areas may apply for available AWEP funds at their local USDA service center or NRCS field office (*http://offices.sc.egov.usda.gov/locator/app?agency=nrcs*). Once an application is selected, an eligible agricultural producer will enter into a contract with NRCS to implement approved conservation practices that address the water conservation and water quality resource concerns identified in the partnership proposal and agreement. Through these contracts, NRCS provides payments to agricultural producers for implementing conservation practices that meet the agricultural water enhancement activities and goals of the project. The term of the contract agreement with a producer will be for a minimum duration of one year after completion of the last practice, but not more than 10 years.

In States with water quantity concerns, where the partner proposal includes conservation management practices that assist producers with the conversion of agricultural land from irrigated farming to dryland farming, NRCS may enter into contracts that provide a producer payments for applicable practices for up to 5 years as needed to complete the conversion when the conversion activity is consistent with State law. Conversion activities are supported through AWEP by implementation of approved conservation practices.

An agricultural producer may elect to use a TSP for technical assistance associated with conservation planning or practice design and implementation. A participant may not receive payments that exceed an aggregate of $300,000, directly or indirectly, for all EQIP and AWEP contracts, including prior year contracts entered into during any 6-year period. The Chief may waive this limitation allowing up to $450,000 for projects of special environmental significance as defined in this notice and EQIP regulation in section § 1466.21(d). All agricultural producers receiving assistance through AWEP must meet EQIP program eligibility requirements and will be subject to EQIP payment limitations and other requirements. Producers applying for AWEP are not required to have an existing EQIP contract. However, they must be determined eligible for EQIP assistance prior to entering into an AWEP contract. Information about limitations and benefits that apply to land and agricultural producers enrolled in the AWEP program are found in the EQIP authorizing legislation (16 U.S.C. 3839aa) and regulation (7 CFR part 1466) (*http://www.nrcs.usda.gov/programs/eqip*).

Land Eligibility

The following land is eligible for enrollment in the AWEP through program contracts with producers:

- Private agricultural land.
- Indian land.
- Publicly owned land where:
  - The conservation practices to be implemented on the public land are necessary and will contribute to an improvement in the identified resource concern;
  - The land is a working component of the participant's agricultural or forestry operation; and
  - The participant has control of the land for the term of the contract.

For producer contracts that address water conservation and irrigation related conservation practices, EQIP regulation requires that land must be irrigated 2 of the previous 5 years prior to application for assistance (7 CFR 1466.10(d)). AWEP projects that include agricultural lands not irrigated for 2 of the previous 5 years, the construction, improvement, or maintenance of irrigation ponds, small on-farm reservoirs, or other agricultural water impoundment structures that are designed to capture surface water runoff, are eligible only in an area that is experiencing or has experienced exceptional drought conditions between June 18, 2006, and June 18, 2008. A list of States and counties that are designated exceptional drought areas is found on the AWEP Web site at: *http://www.nrcs.usda.gov/programs/awep/*.

Additional information regarding land eligibility to meet EQIP requirements are found in 7 CFR 1466.8 and available at: *http://www.nrcs.usda.gov/programs/eqip*.

Proposal Requirements

For consideration of a proposal, a potential partner must submit five copies of the written proposal and one electronic copy for single-State or multi-State projects that do not exceed 5 years in length. The proposal must be in the following format and contain the information set forth below:

Proposal Format: Five copies of the proposal should be typewritten or printed on 8½″ × 11″ white paper. The text of the application should be in a font no smaller than 12-point, with one-inch margins. One additional copy of the proposal must be in a format such as Microsoft Word or PDF on one CD ROM. If submitting more than one proposal, submit a separate proposal for each project. Consult the NRCS national AWEP Web site for an example of an acceptable AWEP proposal document at: *http://www.nrcs.usda.gov/programs/awep/*. The entire proposal may not exceed 12 pages in length including summary, maps, reference materials, and related reports.

Proposal Summary

The basic format for the AWEP proposal is a narrative written response to the questions and information requested in this notice. There are no forms required or associated with the proposal submission process; however, the proposal must include the following:

(1) *Proposal Cover Sheet and Summary:* The first two pages of the proposal summary must include:

(a) Project Title.

(b) Project director/manager name, telephone number, and e-mail address.

(c) Name of lead partner entity submitting proposal and other collaborating partners.

(d) Mailing address and phone numbers for lead partner submitting proposal.

(e) Short general description/summary of project; describe whether proposal will address water conservation resource issues, water quality resource issues, or both. Identify the specific natural resource concerns to be addressed, and describe the approved FOTG conservation practices and activities that will be used to address those resource concerns, including practices that will be used to help producers in the conversion of irrigated farming to dryland farming.

(f) Specify the geographic location: State(s), County(s), congressional district(s), and whether proposal is a multi-State proposal or within-State proposal. Include a general location map that shows if the location of the project area is within an AWEP national priority area, which are:

- Eastern Snake Plains Aquifer.
- Everglades.
- Ogallala Aquifer.

- Puget Sound.
- Sacramento River Basin.
- Red River.
- Upper Mississippi River Basin.

Additional information, maps, and a list of States and counties located in AWEP priority areas can be found at: *http://www.nrcs.usda.gov/programs/awep/.*

(g) Proposed project start and end dates (not to exceed a period of 5 years).

(h) Total amount of AWEP financial assistance being requested for entire project.

(2) *Project Natural Resource Objectives and Actions:*

The proposal must include project objectives that address water quality or water quantity resource concerns.

(a) Identify and provide detail about the natural resource concern(s) to be addressed and how the proposals objectives will address those concerns. Objectives should be specific, measurable, achievable, results-oriented, and include a timeline for completion.

(b) For each objective, identify the actions to be completed to achieve the objective and to address the identified natural resource concern using AWEP assistance or the actions being addressed using alternate non-Federal resources or fund sources.

(c) Identify the total number of acres that need conservation treatment along with the kinds of conservation practices and activities needed to treat priority resource concerns in the project area. Identify specific priorities within the project area that need to be addressed first.

(d) The proposed agricultural water enhancement activities that may be implemented through partner efforts alone and those to be implemented using AWEP financial support.

(3) *Partnership Capacity:*

Potential partners must fully describe their project and demonstrate their history of working with agricultural producers to address water quality and quantity issues. Information provided in the proposal must:

(a) Demonstrate the commitment and experience of the partner to accomplish the long-term conservation of surface and ground water or water quality improvement and related historical activities that show this experience.

(b) Demonstrate the ability and history of the partner to coordinate water quality and quantity efforts among agricultural producers.

(c) Demonstrate the availability of non-Federal matching funds or other resources being contributed. A primary intent of AWEP is to leverage other non-Federal resources along with NRCS program resources to achieve program objectives. The partner is not required to provide financial or technical resources towards the project (match); however, proposals that include or offer partner provided resources will be given higher priority through the evaluation process. The partner needs to clearly state, by project objective, how they intend to leverage Federal funds along with partner resources to address water quantity or water quality resource issues. **Note:** *The funding and time contribution by agricultural producers to implement agreed-to conservation practices in program contracts may not be considered any part of a match from the potential partner for purposes of AWEP. One purpose of AWEP is to leverage new resources from partners above and beyond those contributions made by individual producers.*

(d) Demonstrate the ability to monitor and evaluate project effects on natural resources. Priority will be given to projects where the partner can provide resources, services, or conduct activities to monitor and evaluate effects of conservation practices and activities implemented through the project.

(e) Provide evidence the partner has the capacity to deliver a final project performance report. If a proposal is approved, the partnership agreement will provide additional details and requirements for reporting performance of the project effort.

(f) Identify potential criteria to be used by NRCS to prioritize and rank agricultural producers' AWEP applications in the project area. Potential partners should collaborate with NRCS in the State where the project is proposed to develop meaningful criteria that NRCS can use to evaluate and rank producer program applications. For approved projects, this joint effort will help NRCS select producer applications which will best accomplish the projects intended conservation goals and address priority resource issues identified by the partner in the proposal. Additional information regarding the process NRCS uses to evaluate and rank individual producer applications is found in EQIP regulation 7 CFR 1466.20. Proposals which include specific ranking criteria developed in collaboration with NRCS may receive higher consideration in the evaluation process. Additional guidance and assistance to develop appropriate criteria may be obtained from the State office where the project will be located.

(g) A description of how the partners and entities will collaborate to achieve the project objectives and the roles, responsibilities, and capabilities of each partner. Proposals that include resources from other than the submitter must include a letter or other documentation from the other partner confirming this commitment of resources. Proposals that demonstrate efforts to collaborate with other partners and producers are likely to provide increased environmental benefits, meet the objectives of AWEP, and may receive higher ranking consideration in the evaluation process.

(h) A description of the proposed agricultural water enhancement activities and approved NRCS conservation practices and activities to be applied within the designated 5-year timeframe allowed for AWEP projects and the general sequence of implementation of the project. Enhancement activities include efforts undertaken by the partner and those that the partner requests NRCS to address through financial support to implement eligible approved conservation practices and activities. In this section, list all the NRCS conservation practices the partner wishes NRCS to offer to producers through the AWEP project. Information about NRCS practices can be found in the FOTG at: *http://www.nrcs.usda.gov/technical/efotg/* and descriptions of practices at: *http://www.nrcs.usda.gov/technical/standards/*. For each conservation practice, estimate the extent (feet, acres, number, etc.) the partner expects producers to implement each fiscal year during the life of the project and the amount of financial assistance requested to support implementation of each practice through producer contracts. Provide detail if the project will address regulatory compliance and any other outcomes the partner expects to complete during the project period.

(i) A description of the resources (financial or technical assistance) requested annually from AWEP for producer contracts and the non-Federal resources provided by the partner that will be leveraged by the Federal contribution. From the estimated amount of financial assistance needed to implement the conservation practices identified in the previous section, include the total amount of financial assistance funds requested for each fiscal year of the project to be made available for producer contracts. If resources other than funding are being offered by the partner, describe the kind of resources and services that will be made available to producers to help implement conservation practices and activities. **Note:** The funding and time contribution by agricultural producers to implement agreed-to conservation practices in the program contracts may

not be considered as part of a match from the potential partner. All funding requests and information regarding partner resources may be included in the form of a budget narrative. If financial assistance is approved and available, these funds must be obligated in individual producer contracts that may be from 2 to 10 years in length.

(4) *Lands to be Treated:*

The proposal should describe the geographic area to be covered by the partnership agreement. Specifically, the proposal should include:

(a) A map showing the proposed project area. Describe the location and size of the proposed project area. Are the size and scope of the project area and proposed practices to address resource concerns reasonable and achievable? What kinds of agricultural operations are in the project area? Is the project located in a water conservation priority area or include any Indian land?

(b) A description of the agricultural water quality or water conservation issues to be addressed by the partnership agreement. Provide information about the extent and kinds of water quality issues to be addressed such as pollutants, designated priority areas, groundwater overdraft, surface water deficiencies, etc.

(c) A description of the agricultural water enhancement objectives to be achieved through the partnership and the NRCS practices expected to be implemented. What are the primary objectives to be accomplished in the project by the partner and expected environmental improvements from producer implementation of AWEP funded conservation practices and activities? How will progress toward achieving environmental benefits be measured? What kinds of water conservation plans, assessments, or modeling will be done to help achieve project objectives or encourage practice implementation? Will the project include specific efforts to encourage producers to convert irrigated land to less water-intensive operations or dryland farming? What percentage of the project area is expected to be converted to dryland farming? Will the proposal restore or enhance water quantity or quality in the project area or reduce the impacts of drought? What kinds of irrigation system improvements will be implemented? Will the planned activities significantly solve or improve the resource issues being addressed? Describe any activities that are innovative or include outcome-based performance measures implemented by the partner.

(d) Include the total acres that need conservation treatment and the priority conservation practices and activities that are needed to treat significant resource concerns in the project area. Identify specific priorities within the project area that need to be addressed first.

(5) *Producer Information:*

The partner must identify in the proposal:

An estimate of the number of eligible agricultural producers the partner expects to participate in the project compared with the estimated total number of producers in the project area (estimate the percentage of participation). Producer participation is a requirement for delivery of AWEP program benefits. How will the partner encourage participation to guarantee success of the project? Does the project include socially disadvantaged farmers or ranchers, beginning farmers or ranchers, limited resource farmers or ranchers, or Indian tribes? Are there groups of producers who may submit joint program applications to address resource issues of common interest and need?

(6) *Proposal Implementation Plan and Schedule:*

Potential partners must submit project action plans and schedules, not to exceed 5 years, detailing activities, including timeframes related to project milestones and monitoring and evaluation activities that will likely be documented in the partnership agreement. A project action plan should describe how often the potential partner plans to monitor and evaluate the project and how it plans to quantify the results or performance of the project for the final project performance report. Indicate the practices the partner expects to implement during the project timeframe and general sequence of implementation.

(7) *Letter of Review:*

Potential partners must include a copy of the letter showing that the written proposal was sent to the appropriate State Conservationist(s). If a project is multi-State in scope, all State Conservationists in the proposed project area must be sent the proposal for review. The State Conservationist(s) will review the proposal to address:

(a) Potential duplication of efforts with other projects or existing programs.

(b) Adherence to, and consistency with, overall EQIP regulation including requirements related to land and producer eligibility and use of approved NRCS resource concerns and conservation practices and other program requirements.

(c) Expected benefits for project implementation in their State(s).

(d) Other issues or concerns the State Conservationist is aware of that should be considered by the Chief.

(e) A general recommendation for support or denial of project approval.

State Conservationist(s) must submit letters of review to Gregory K. Johnson, Director, Financial Assistance Programs Division no later than 10 calendar days after the deadline for proposal submission. A list of NRCS State Conservationists, addresses, and phone numbers is included as an attachment at the end of this notice. Prior to submission of the proposal, potential partners are strongly encouraged to consult with the appropriate State Conservationist(s) during proposal development to obtain guidance as to appropriate resource concerns to address needed water quality or water conservation enhancements, needed conservation practices and activities, and other details of the project proposal. All AWEP proposals become the property of NRCS for use in the administration of the program, may be filed or disposed of by the agency, and will not be returned to the potential partner. Once proposals have been submitted to the agency for review and ranking, there will be no further opportunity to change or re-submit the proposal document.

Acknowledgement of Submission and Notifications

Partners whose proposals have been selected will receive a letter of official notification. Upon notification of selection, the partner should contact the State Conservationist listed in the letter to develop the required partnership agreement and other project implementation requirements. Potential partners should note that depending upon available funding, NRCS may offer a reduced amount of program financial assistance from what was requested in the proposal. Partner submissions of proposals that were not selected will be notified by official letter.

Withdrawal of Proposals

Partner proposals may be withdrawn by written notice to the Director, Financial Assistance Programs Division at any time prior to selection.

Ranking Considerations

The Chief or designee will evaluate the proposals using a competitive process. Higher priority may be given to proposals that:

(a) Include high percentages of agricultural land and producers in a region or other appropriate area;

(b) Result in high levels of applied agricultural water quality and water conservation activities;

(c) Significantly enhance agricultural activity;

(d) Allow for monitoring and evaluation by the partner;

(e) Assist agricultural producers in meeting a regulatory requirement that reduces the economic scope of the producer's operation; and

(f) Achieve the project's land and water treatment objectives within 5 years or less.

For proposals from States with water quantity concerns, the Chief will give higher priority to projects from States where the proposal will:

(a) Include conservation practices that support the conversion of agricultural land from irrigated farming to dryland farming;

(b) Leverage Federal funds provided under the program with funds provided by partners; and

(c) Assist producers in States with high priority water quantity concerns, as determined by the Chief. The high priority areas are located in the following regions: Eastern Snake Plain Aquifer, Everglades, Ogallala Aquifer, Puget Sound, Sacramento River Basin, Red River, and Upper Mississippi River Basin.

The Chief may include other factors and criteria which help identify those proposals which best achieve the purposes of AWEP.

Partnership Agreements

Upon selection and approval by the Chief, the agency will enter into a partnership agreement with the partner.

The partnership agreement will not obligate funds, but will address:

(a) Agricultural water enhancement activities anticipated to be addressed and conservation practices to be implemented;

(b) The role of NRCS;

(c) The responsibilities of the partner related to the monitoring and evaluation of project performance;

(d) The frequency and duration of the monitoring and evaluation of project performance;

(e) The content and format of the final project performance report that is required as a condition of the agreement;

(f) The specified project schedule and timeframe; and

(g) Other requirements deemed necessary by NRCS to achieve the purposes of AWEP.

Once the Chief or designee has entered into a partnership agreement, NRCS may enter into contracts directly with eligible agricultural producers participating in the project and located in the approved geographic area. Participating producers must meet all EQIP eligibility requirements (7 CFR 1466.8).

Waiver Authority

To assist in the implementation of agricultural water enhancement activities under the program, the Chief may waive the applicability of the Adjusted Gross Income Limitation, on a case-by-case basis, in accordance with policy and processes promulgated in 7 CFR part 1400. Such waiver requests must be submitted in writing from the program applicant, addressed to the Chief, and submitted through the local NRCS designated conservationist.

Signed March 29, 2010, in Washington, DC.

Dave White,

Vice President, Commodity Credit Corporation and Chief, Natural Resources Conservation Service.

Attachment

State Conservationists

AL—William E. Puckett, 3381 Skyway Drive, P.O. Box 311, Auburn, Alabama 36830, Phone: 334/887–4500, Fax: 334/887–4552, (V) 9027–4557, (E) *william.puckett@al.usda.gov*.

AK—Robert Jones, 800 West Evergreen, Atrium Building, Suite 100, Palmer, Alaska 99645–6539, Phone: 907/761–7760, Fax: 907/761–7790, (V) 9035–2227, (E) *robert.jones@ak.nrcs.usda.gov*.

AZ—David L. McKay, 230 North First Avenue, Suite 509, Phoenix, Arizona 85003–1706, Phone: 602/280–8801, Fax: 602/280–8809 or 8805, (V) 9011–8810, (E) *david.mckay@az.nrcs.usda.gov*.

AR—Michael E. Sullivan, Federal Building, Room 3416, 700 West Capitol Avenue, Little Rock, Arkansas 72201–3228, Phone: 501/301–3100, Fax: 501/301–3194, (V) 9044–3110, (E) *michael.sullivan@ar.usda.gov*.

CA—Lincoln E. (Ed) Burton, 430 G Street, Suite 4164, Davis, California 95616–4164, Phone: 530/792–5600, Fax: 530/792–5790, (V) 9040–5601, (E) *ed.burton@ca.usda.gov*.

CO—Allen Green, 655 Parfet Street, Room E200C, Lakewood, Colorado 80215–5521, Phone: 720–544–2810, Fax: 720–544–2965, (V) 9059–2802, (E) *allen.green@co.usda.gov*.

CT—Douglas Zehner, 344 Merrow Road, Suite A, Tolland, Connecticut 06084, Phone: 860/871–4011, Fax: 860/871–4054, (V) 9013–114, (E) *douglas.zehner@ct.usda.gov*.

DE—Russell Morgan, 1221 College Park Drive, Suite 100, Dover, Delaware 19904–8713, Phone: 302/678–4160, Fax: 302/678–0843, (V) 9060–199, (E) *russell.morgan@de.usda.gov*.

FL—Carlos Suarez, 2614 N.W. 43rd Street, Gainesville, Florida 32606–6611 or P.O. Box 141510, Gainesville, FL 32614, Phone: 352/338–9500, Fax: 352/338–9574, (V) 9012–3501, (E) *carlos.suarez@fl.usda.gov*.

GA—James Tillman, Federal Building, Stop 200, 355 East Hancock Avenue, Athens, Georgia 30601–2769, Phone: 706/546–2272, Fax: 706/546–2120, (V) 9021–2082, (E) *james.tillman@ga.usda.gov*.

GU—Lawrence T. Yamamoto, Director, Pacific Basin Area, FHB Building, Suite 301, 400 Route 8, Mongmong, Guam 96910, Phone: 671/472–7490, Fax: 671/472–7288, (V) 9000–822–1265, (E) *larry.yamamoto@pb.usda.gov*.

HI—Lawrence T. Yamamoto, 300 Ala Moana Blvd., Room 4–118, P.O. Box 50004, Honolulu, Hawaii 96850–0002, Phone: 808/541–2600 x107, Fax: 808/541–1335, (V) 9042–108, (E) *larry.yamamoto@hi.nrcs.usda.gov*.

ID—Jeffrey B. Burwell, 9173 West Barnes Drive, Suite C, Boise, Idaho 83709, Phone: 208/378–5700, Fax: 208/378–5735, (V) 9000–291–4551, (E) *jeffrey.burwell@id.usda.gov*.

IL—William J. Gradle, 2118 W. Park Court, Champaign, Illinois 61821, Phone: 217/353–6601, Fax: 217/353–6676, (V) 9057–6601, (E) *bill.gradle@il.usda.gov*.

IN—Jane E. Hardisty, 6013 Lakeside Blvd., Indianapolis, Indiana 46278–2933, Phone: 317/290–3200, Fax: 317/290–3225, (V) 9029–301, (E) *jane.hardisty@in.usda.gov*.

IA—Richard Sims, 693 Federal Building, 210 Walnut Street, Suite 693, Des Moines, Iowa 50309–2180, Phone: 515/284–6655, Fax: 515/284–4394, (V) 9000–945–1065, (E) *richard.sims@ia.usda.gov*.

KS—Kasey Taylor, Acting, Eric B. Banks, 760 South Broadway, Salina, Kansas 67401–4642, Phone: 785/823–4565, Fax: 785/452–3369, (V) 9000–345–8770, (E) *eric.banks@ks.usda.gov*.

KY—Tom Perrin, 771 Corporate Drive, Suite 110, Lexington, Kentucky 40503–5479, Phone: 859/224–7350, Fax: 859/224–7399, (V) 9032–7390, (E) *tom.perrin@ky.usda.gov*.

LA—Kevin D. Norton, 3737 Government Street, Alexandria, Louisiana 71302, Phone: 318/473–7751, Fax: 318/473–7626, (V) 9000–965–1635, (E) *kevin.norton@la.usda.gov*.

ME—Juan Hernandez, 967 Illinois Avenue, Suite #3, Bangor, Maine 04401, Phone: 207/990–9100, ext. #3, Fax: 207/990–9599, (V) 9000–757–

1028, (E) *juan.hermandez@me.usda.gov.*

MD—Jon F. Hall, John Hanson Business Center, 339 Busch's Frontage Road, Suite 301, Annapolis, Maryland 21401–5534, Phone: 410/757–0861 x315, Fax: 410/757–0687, (V) 9053–315, (E) *jon.hall@md.usda.gov.*

MA—Christine Clarke, 451 West Street, Amherst, Massachusetts 01002–2995, Phone: 413/253–4351, Fax: 413/253–4375, (V) 9047–4352, (E) *Christine.clarke@ma.usda.gov.*

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MN—Jennifer Heglund, Acting, 375 Jackson Street, Suite 600, St. Paul, Minnesota 55101–1854, Phone: 651/602–7900, Fax: 651/602–7913 or 7914, (V) 9041–7854, (E) *Jennifer.heglund@mn.usda.gov.*

MS—Homer Wilkes, Suite 1321, Federal Building, 100 West Capitol Street, Jackson, Mississippi 39269–1399, Phone: 601/965–5205, Fax: 601/965–4940, (V) 9000–965–2065, (E) *homer.wilkes@ms.nrcs.usda.gov.*

MO—J.R. Flores, Parkade Center, Suite 250, 601 Business Loop 70 West, Columbia, Missouri 65203–2546, Phone: 573/876–0901, Fax: 573/876–9439, (V) 9034–1367, (E) *jr.flores@mo.usda.gov.*

MT—Joyce Swartzendruber, Federal Building, Room 443, 10 East Babcock Street, Bozeman, Montana 59715–4704, Phone: 406/587–6813, Fax: 406/587–6761, (V) 9056–6813, (E) *joyce.swartzendruber@mt.usda.gov.*

NE—Stephen K. Chick, Federal Building, Room 152, 100 Centennial Mall, North, Lincoln, Nebraska 68508–3866, Phone: 402/437–5300, Fax: 402/437–5327, (V) 9026–4103, (E) *steve.chick@ne.usda.gov.*

NV—Bruce Petersen, 5301 Longley Lane, Building F, Suite 201, Reno, Nevada 89511–1805, Phone: 775/857–8500, Fax: 775/857–8524, (V) 9000–784–1390, (E) *bruce.petersen@nv.usda.gov.*

NH—George Cleek, Federal Building, 2 Madbury Road, Durham, New Hampshire 03824–2043, Phone: 603/868–7581 ext. 125, Fax: 603/868–5301, (V) 9000–868–8035, (E) *george.cleek@nh.usda.gov.*

NJ—Thomas Drewes, 220 Davidson Avenue, Somerset, New Jersey 08873, Phone: 732/537–6040, Fax: 732/537–6095, (V) 9000–767–1000, (E) *tom.drewes@nj.usda.gov.*

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ND—Paul Sweeney, 220 E. Rosser Avenue, Room 278, P.O. Box 1458, Bismarck, North Dakota 58502–1458, Phone: 701/530–2000, Fax: 701/530–2110, (V) 9051–2003, (E) *paul.sweeney@nd.usda.gov.*

OH—Terry J. Cosby, 200 North High Street, Room 522, Columbus, Ohio 43215–2478, Phone: 614/255–2472, Fax: 614/255–2548, (V) 9000–881–1870, (E) *terry.cosby@oh.usda.gov.*

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[FR Doc. 2010–7515 Filed 4–1–10; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Forest Service

Beaver Creek Landscape Management Project, Ashland Ranger District, Custer National Forest; Powder River County, MT

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) to disclose the effects of

managing forest vegetation in a manner that increases resiliency of the Beaver Creek Landscape Management Project area ecosystem to future wildland fires. Vegetation treatments proposed as part of this project are needed to trend the project area towards a more desired fire adapted state and to perpetuate short- and long-term forest health and habitat management goals. The decision will be to determine whether to proceed with the action as proposed, as modified by another alternative or not at all. If an action alternative is selected, the Responsible Official will determine what design features, mitigation measures and monitoring requirements to require.

The Beaver Creek Landscape Management Project includes treatments previously proposed as the Whitetail Hazardous Fuels Reduction Project, and East Otter Hazardous Fuels project. The Whitetail project was initially proposed in 2007 and the East Otter project in 2008. Since that time, the Forest Service has refined these treatment proposals in response to public comment and collaboration and to better address multiple landscape objectives.

The use of prescribed fire, thinning, no treatment, commercial and pre-commercial forest vegetation treatments to address the project purpose and need was evaluated for 14,052 acres of National Forest System Lands on the Ashland Ranger District. A team of interdisciplinary specialists proposed treatments based on a multitude of factors, including topography, tree crown densities, access, ladder fuel components, wildlife habitat needs, and past management activities.

Proposed vegetation treatments would be accomplished using appropriate tools, such as mechanical fuels treatment, commercial and non-commercial timber harvest, and prescribed burning. In the event that a commercial timber product is not marketable, use of mechanical treatments and prescribed fire would proceed where appropriate and as allocated funding allows.

DATES: The draft environmental impact statement is planned to be released in mid-April 2010 and the final environmental impact statement is planned for release in June 2010. The project was initially released for public scoping January 28, 2010 through March 1, 2010.

ADDRESSES: Send written comments to Beaver Creek Landscape Management Project, Ashland Ranger District, P.O. Box 168, Ashland, MT 59003 or by phone at 406–784–2344.

If you prefer, you can submit comments on the Internet at *comments-northern-custer-ashland@fs.fed.us* by typing on the subject line "Beaver Creek Landscape Management Project."

FOR FURTHER INFORMATION CONTACT: Dan Seifert, Project Coordinator, at (406) 446–2103.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose for the Beaver Creek Landscape Management Project is to manage forest vegetation in a manner that increases resiliency of this ecosystem to future wildland fires. Vegetation treatments proposed as part of this project are needed to trend the project area towards a more desired fire adapted state and to perpetuate short- and long-term forest health and habitat management goals.

Currently, there are high accumulations of forest fuels in the project area. Continuous fuel beds, increased ladder fuels, high surface fuel loading and landscapes dominated by closed canopy stands have played a major role in increasing wildfire size and severity for recent fires on the Ashland District, as evidenced by the effects of the Tobin, Stag, Watt Draw, and Lost wildfires. In some cases, these wildfires have resulted in burn severities that preclude timely natural forest revegetation, have reduced or eliminated habitats for intrinsically and economically important wildlife species, and have reduced or eliminated an economically important sawtimber and sustainable wood product base. Current fuel conditions threaten the future availability of cover habitat attributes important to wildlife species due to a higher probability of stand replacement fires and consequently, significantly reduced forest cover across the project area.

Currently the project area is dominated by late development closed canopy stands. There is a need to manage vegetation for more early-, mid- and late-development open forest structural classes to promote disturbance regimes and processes more consistent with a fire adapted ecosystem. Without a diversity of these conditions the risk of large stand replacement events is higher. More specifically, the proposal is needed to change vegetation characteristics across the landscape and create a spatial distribution of forest development classes and structure that is more resistant to large scale, high severity, stand replacement fires in order to provide sustainable environmental, social, and economic benefits. This is consistent with Custer Forest Management Plan (Forest Plan) direction (p. 18), where "Management activities, including prescribed fire, will be conducted to maintain or enhance the unique value associated within woody draws and riparian zones, as well as a variety of successional stages." Also, where timber harvest on suitable forest lands is proposed, the Forest Plan (p. 24) directs that timber management is to be designed and applied to maintain a variety of age classes. The Forest Plan (p. 25) notes that Timber harvest on unsuitable forest lands may occur to further management area goals.

The need for fuels reduction in the project area was also identified in the 2004 Powder River Community Fire Plan (Powder River County 2004). In this jointly produced document between local landowners, Powder River County Staff, and Forest Service personnel, the Beaver Creek project area was identified as part of the highest priority for fuel reduction within the 2,102,400 acres of Powder River County. The project is located adjacent to or within close proximity of private landholdings and Forest Service infrastructure, including the historic Whitetail Cabin and Holiday Campground.

Primary Objectives Include

1. Increase fire resiliency throughout the project area by reducing high fuel loads.
2. Respond to Forest Plan direction to encourage management activities that maintain or enhance a variety of successional vegetative stages. This project is intended to improve forest stand health and create a diversity of stand conditions throughout the project area by managing for early development (post disturbance), mid development closed, mid development open, late development closed, and late development open conditions.

Secondary Objectives Include

1. Perpetuate diverse and sustainable wildlife habitats that are more resilient to wildfire consistent with Forest Plan direction.
2. Provide a source of wood products for dependent local markets and perpetuate a sustainable wood product source for the future consistent with Forest Plan direction.
3. Reduce risk to private property in proximity to Federal lands in which conditions are conducive to a large-scale wildfire.

There is also a need to obliterate roads in the project area that were recommended for decommissioning in the Ashland Ranger District Travel Management Plan Final Environmental

Impact Statement and Record of Decision (USDA 2009).

Proposed Action

The Forest Service, Custer National Forest, Ashland Ranger District, proposes to move portions of the ponderosa pine, grassland, and woody draw ecosystems toward their desired conditions. The desired condition is contrasted with the existing condition in the following sections. Fuel load reduction/alteration would be accomplished through the tools of timber harvest, non timber harvest (non commercial) thinning, and prescribed burning to restore or maintain the structure, function, and composition of the ecosystems across the Project Area. The proposal may reduce the quality of wildlife habitat for the short-term but would ensure the long-term diversity and quality of habitats for selected species and provide wood products from the area, consistent with Forest Plan direction.

The proposed action treats approximately 2,694 acres by mechanical means (timber harvest) of forested area suited for commercial harvest. Non commercial type thinning activities (hand and mechanical) are proposed on 4,220 acres. Prescribed burning is proposed on 4,463 acres of the harvest and non commercial proposed activities post treatment. In addition to these treatments, prescribed fire is planned on 3,594 acres. Prescribed fire will be used for activity fuel reductions, site preparation on regeneration harvests and returning fire to the ponderosa pine, grassland and woody draw ecosystems across the landscape. These proposed treatments will reduce ladder fuels, tree densities, crown cover and maintain surface fuels at levels that will create a diversity of stand conditions in the project area. Where burning is proposed, approximately 10 to 70 percent of each treatment unit will remain unburned, depending upon specific unit prescriptions. No treatment is proposed on 3,545 acres, within the project area. Silvicultural prescriptions will be designed to minimize impacts, improve and retain wildlife habitats, alter current forest structures to enhance the Forest Service's ability to manage fires, and provide for sustainable wood products removal.

Actions connected to the proposed action may involve construction of temporary roads and reconstruction of existing roads (necessary for haul), timber harvest, noxious weed treatment, restoration of the green ash woody draws, slashing, thinning, and prescribed fire within the forested ecosystems and prescribed burning (natural and activity fuels) within the non-forested ecosystem. In addition, the proposed action would reduce the risk of a large fire event, reintroduce fire into these ecosystems and reduce the incidence of epidemic levels of insect infestations and disease infections within the project area.

The harvesting of timber, thinning, prescribed burning, and construction and reconstruction of roads will be analyzed in accordance to the standards and guidelines identified in the Forest Plan, Best Management Practices, as well as, other requirements of pertinent Federal and State laws and regulations. These may include, but are not limited to, the National Forest Management Act, Endangered Species Act, Clean Water Act, National Historic Preservation Act, and State Water Quality Standards.

No Action Alternative

The No Action alternative would not move any of the lands within the project area toward desired conditions because no treatments would be conducted.

Responsible Official

The Responsible Official is Mary C. Erickson, Forest Supervisor, Custer National Forest, 1310 Main Street, Billings, MT 59105.

Nature of Decision To Be Made

Based on the purpose and need for the proposed action, the Responsible Official will determine whether to proceed with the action as proposed, as modified by another alternative or not at all. If an action alternative is selected, the Responsible Official will determine what design features, mitigation measures and monitoring to require.

Scoping Process

Public scoping was initiated January 28, 2010 and closed March 1, 2010. Three public meetings were conducted in local communities that could be affected by the decision. The public meeting in Ashland, MT was attended by eight people. No one attended either of the Billings, MT meetings. The Forest Service received seven letters or other forms of comment (i.e. electronically submitted comments) as a result of scoping.

The Forest Service will consider all public scoping comments and concerns that have been submitted, as well as resource related input from the interdisciplinary team and other agency resource specialists. This input will be used to identify issues to consider in the environmental analysis. A comprehensive list of issues will be determined before the full range of alternatives is developed and the environmental analysis is begun.

Persons and organizations commenting or requesting project information during the initial scoping will be maintained on the mailing list for future information about Beaver Creek Landscape Management Project.

The Responsible Official has determined, at this time that it is in the best interest of the Forest Service to prepare an environmental impact statement.

Comments Requested

Given that scoping and public meetings have been conducted, comments are not being requested at this time.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement will be prepared for public comment. The comment period on the draft environmental impact statement will be 45 days from the date that the Environmental Protection Agency (EPA) publishes the notice of availability in the **Federal Register**.

Written comments are preferred and should include the name and address of the commenter. Comments submitted for this proposed action, including names and addresses of commentors, will be considered part of the public record and available for public review.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. Reviewers of draft environmental impact statements must structure their participation in the review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions, *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages Inc.* v. *Harris,* 409 F. Supp. 1334, 1338 (E.D.Wis. 1980). Because of these court rulings, it is very important those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at the time when it can meaningfully consider

them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternative formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: March 25, 2010.

Mary C. Erickson,

Forest Supervisor.

[FR Doc. 2010–7213 Filed 4–1–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Young Dodge SEIS; Kootenai National Forest, Lincoln County, MT

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a supplemental environmental impact statement.

SUMMARY: The Forest Service will prepare a Supplemental Environmental Impact Statement (SEIS) for the Young Dodge project. The Young Dodge project includes urban interface fuels treatments, vegetation management, watershed rehabilitation activities, wildlife habitat improvement, and access management changes, including road decommissioning. The project is located in the Young Dodge planning subunit on the Rexford Ranger District, Kootenai National Forest, Lincoln County, Montana, and seven miles northwest of Eureka, Montana. The Notice of Availability of the Draft EIS for this project was published in the **Federal Register** (70 FR 14315) on February 22, 2008, and the notice of the Final EIS (70 FR 38131) on May 1, 2008. The Record of Decision on this project was administratively appealed to the Regional Forester per 36 CFR part 215. The Regional Forester reversed the decision on July 24, 2008, citing insufficient evidence or rationale to explain why an analysis of potential effects on the goshawk was not warranted. A Supplemental EIS is being prepared to further address potential effects of the Young Dodge project on wildlife species.

ADDRESSES: The line officer responsible for this analysis is: Glen M. McNitt, District Ranger, Eureka Ranger Station, Rexford Ranger District, 949 Highway 93 North, Eureka, MT 59917.

FOR FURTHER INFORMATION CONTACT: Pat Price, Team Leader, Rexford Ranger District, at (406) 296–2536.

SUPPLEMENTARY INFORMATION: The Young Dodge project area is approximately seven miles northwest of Eureka, Montana, within all or portions of T37N R28W and part of T37N R29W, PMM, Lincoln County, Montana. The purpose and need for the project is to: (1) Reduce fuel accumulations, both inside and outside the Wildland-Urban Interface, to decrease the likelihood that fires would become stand-replacing wildfires; (2) Restore historical vegetation species and stand structure; and (3) Restore historical patch sizes. Other considerations are: (4) Identify the minimum transportation system necessary to provide safe, reasonable, and efficient access for Forest Service administrative activities and fire suppression, recreation use and public access, and private land owners and utility companies; (5) Manage the transportation system to reduce effects to threatened, endangered, sensitive, and management indicator species habitat and security; streams, riparian areas, and wetlands; big game winter range; and old growth habitat, and to minimize road maintenance costs; (6) Evaluate recreation facilities and opportunities to meet growing and anticipated demand; and (7) Evaluate existing and proposed Special Use Permits.

The Young Dodge Record of Decision (ROD) was released at the same time as the Final EIS and the legal notice of decision was published in the newspaper of record on May 1, 2008. The ROD selected Alternative 1 and authorized the following: (1) Removal of commercial timber products from 29 units totaling approximately 3,069 acres in order to reduce fuel accumulations, both within and outside of the wildland-urban interface, to decrease the likelihood that wildfires would become large stand-replacing wildfires, and to restore historical vegetation patterns, stand structure, and patch sizes on the landscape. Another 1,053 acres may have commercial products removed in units identified in the "Prescribed Burn with Mechanical Pre-Treatment" category; (2) Salvage of up to 200 acres of incidental mortality resulting from prescribed fire, if necessary. This salvage would be expected to take place in or adjacent to treatment units authorized under this decision; (3) Use of site-specific silvicultural prescriptions, logging systems, fuel treatments, riparian habitat conservation areas, and reforestation practices; (4) Underburning without harvest in 19 units totaling approximately 4,000 acres in order to achieve fuel reduction objectives; (5) Road maintenance activities on portions of 100 miles of roads in order to reduce impacts to soil and water resources; decommissioning of approximately 12 miles of roads to provide beneficial effects to the watersheds; placing approximately 27 miles of roads in intermittent stored service status to restore natural drainage patterns and reduce maintenance costs; reconstruct approximately 0.4 miles of existing roads; and adding about 9 miles of "unauthorized" roads to the National Forest Road System; (6) Construction of a boat ramp, parking area, and restroom to provide access on the west shore of Koocanusa Reservoir; (7) Rerouting and reconstructing approximately one and a half miles of non-motorized hiking trail and construct a small parking area; (8) Renovation of the Robinson Mountain Lookout to include it in the cabin rental program; (9) A project-specific Forest Plan amendment to Management Area (MA) 12 Wildlife and Fish standard #7 to allow regeneration harvest in big game movement corridors adjacent to previous harvest openings and openings greater than 40 acres; (10) A project-specific Forest Plan amendment to MA 12 Timber Standard #2 to allow harvest adjacent to units that do not provide suitable hiding cover; and (11) A project-specific Forest Plan amendment to MA 12 Facilities Standard #3 to allow open road density to exceed 0.75 mi/mi^2 during project implementation and post-project.

The SEIS is intended to provide additional documentation of the effects of the Young Dodge project on goshawk to the public.

A Draft SEIS is expected to be available for public review and comment in April 2010; and a Final SEIS in June 2010. The comment period for the Draft SEIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**.

It is important that reviewers provide their comments at such times and in such a way that they are useful to the Agency's preparation of the EIS. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions. The submission of timely and specific comments can affect a

reviewer's ability to participate in subsequent administrative review or judicial review.

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, anonymous comments will not provide the respondent with standing to participate in subsequent administrative review or judicial review.

Reviewers may wish to refer to the Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Responsible Official

The Forest Supervisor of the Kootenai National Forest, 31374 U.S. Highway 2, Libby, MT 59923, is the Responsible Official for this project. The Record of Decision will identify the land management activities to be implemented in the project area including urban interface fuels treatments, vegetation management, watershed rehabilitation activities, wildlife habitat improvement, access management changes, including road decommissioning, monitoring, and whether or not a Forest Plan amendment is necessary. The Forest Supervisor will make a decision on this project after considering comments and responses, environmental consequences discussed in the Final SEIS, and applicable laws, regulations and policies. The decision and supporting reasons will be documented in a Record of Decision.

Dated: March 24, 2010.

Paul Bradford,

Forest Supervisor, Kootenai National Forest.

[FR Doc. 2010–7486 Filed 4–1–10; 8:45 am]

BILLING CODE 3410–11–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Nebraska Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the Nebraska Advisory Committee to the Commission will convene by conference call at 2 p.m. and adjourn at approximately 3 p.m. on Thursday, April 22, 2010. The purpose of this meeting is to continue planning civil rights projects.

This meeting is available to the public through the following toll-free call-in number: (866) 364–7584, conference call access code number 65896860. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and contact name Farella E. Robinson.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Corrine Sanders of the Central Regional Office and TTY/TDD telephone number, by 4 p.m. on April 19, 2010.

Members of the public are entitled to submit written comments. The comments must be received in the regional office by May 3, 2010. The address is U.S. Commission on Civil Rights, 400 State Avenue, Suite 908, Kansas City, Kansas 66101. Comments may be e-mailed to *frobinson@usccr.gov.* Records generated by this meeting may be inspected and reproduced at the Central Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov,* or to contact the Central Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, March 29, 2010.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2010–7406 Filed 4–1–10; 8:45 am]

BILLING CODE 6335–02–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Aqua-Loop Cooling Towers, Co.

In the Matter of: 09–BIS–006, Aqua-Loop Cooling Towers, Co., P.O. Box 966, Folsom, CA 95763, and 116 Hopper Lane, Folsom, CA 95630, Respondent.

Order Relating to Aqua-Loop Cooling Towers, Co.

The Bureau of Industry and Security, U.S. Department of Commerce ("BIS"), initiated this administrative proceeding against Aqua-Loop Cooling Towers, Co. ("Aqua-Loop") pursuant to section 766.3 of the Export Administration Regulations (the "Regulations"),[1] and section 13(c) of the Export Administration Act of 1979, as amended (the "Act"),[2] through the issuance and tiling of a charging letter as to Aqua-Loop that alleges that Aqua-Loop has committed five violations of the Regulations ("Charging Letter"). Specifically, these charges are:

Charge 1: 15 CFR 764.2(d)—Conspiracy to Export Items From the United States to Iran Without the Required Licenses

Beginning at least in or about June 2004, and continuing through at least in or about April 2005, Aqua-Loop conspired or acted in concert with others, known and unknown, to violate the Regulations or to bring about an act that constitutes a violation of the Regulations. The purpose of the conspiracy was to export items subject to the Regulations from the United States to Iran, via the United Arab Emirates ("U.A.E."), without the required U.S. Government authorization. Pursuant to section 746.7 of the Regulations, no person may engage in the exportation of an item subject to both the Regulations and the Iranian Transactions Regulations ("ITR"),[3] without authorization from the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC"). Pursuant to section 560.204 of the ITR, an export to a third country intended for transshipment to Iran is a transaction subject to the ITR.

In furtherance of the conspiracy, the conspirators, including Aqua-Loop, participated in a scheme to have Aqua-

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2009). The violations occurred in 2004 and 2005. The Regulations governing the violation at issue are found in the 2004 and 2005 versions of the Code of Federal Regulations (15 CFR parts 730–774 (2004–2005)). The 2009 Regulations establish the procedures that apply to this matter.

[2] 50 U.S.C. app. § 240 1–2420 (2000). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR 2001 Comp. p. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 13, 2009 (74 FR 41.325 (Aug. 14, 2009)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.*) (IEEPA").

[3] 31 CFR part 560.

Loop source or obtain the items from a U.S. distributor, and then to have AquaLoop export the items to an Iranian customer and co-conspirator, Parto Abgardan Cooling Towers Co. ("Parto Abgardan"), in Iran through a U.A.E. entity identified by Parto Abgardan. In furtherance of the scheme, Aqua-Loop obtained from Parto Abgardan information regarding items Parto Abgardan sought to have exported from the United States to Iran. Aqua-Loop then obtained such items and facilitated their export to Parto Abgardan in Iran. Pursuant to the conspiracy, various items were exported to Parto Abgardan in Iran, including the items discussed in Charges 2–5, below, for which no OFAC authorization was sought or obtained.

In addition, the co-conspirators sought to bring about the export to Iran of other items subject to the Regulations. On or about December 21, 2004, Parto Abgardan informed Aqua-Loop that it had contacted a U.S. company regarding the purchase of a filament winding machine, Parto Abgardan told Aqua-Loop, "Since they can't sell directly to Iran, they are OK with selling it domestically and then we can transfer it from U.S. to Dubai and then to Iran. With your permission we are going to give Aqua-Loop's information to them so they can send you their offer" based on the technical information provided to the U.S. company by Parto Abgardan. Thereafter, on or about December 23, 2004, Aqua-Loop's president, writing on Aqua-Loop stationery, responded, that he would be "more than happy if I can be of assistance on your purchase of filament winding machines. Please let me know the detail, so I can pursue." In furtherance of the conspiracy, Parto Abgardan and Aqua-Loop continued to work together to accomplish this transaction; on or about January 31, 2005, Parto Abgardan provided Aqua-Loop with Parto Abgardan's contact at the U.S. filament winding machine company, and asked that Aqua-Loop contact the U.S. company. On or about February 1, 2005, Aqua-Loop's president again wrote to Parto Abgardan, stating that he had had a "long conversation" with the U.S. company's representative and that "I should emphasize that I found this lady a bit reluctant on the subject of export the unit to Iran. But she sound OK to work with us, if we do not mention any thing about Iran."

In so doing, Aqua-Loop committed one violation of section 764.2(d) of the Regulations.

Charge 2: 15 CFR 764.2(b)—Causing, Aiding or Abetting

Between on or about July 26, 2004, and on or about September 28, 2004, Aqua-Loop caused, aided or abetted the doing of an act prohibited by the Regulations by facilitating or coordinating the export of approximately 174 rolls of hog hair filter media, part number HH6O 130 and valued at approximately $11,687.76, items which are subject to the Regulations and designated as EAR99 items,[4] through the U.A.E. to Iran without the required U.S. Government authorization. Pursuant to section 560.204 of the JTR maintained by OFAC, an export to a third country intended for transshipment to Iran is a transaction that requires OFAC authorization. Pursuant to section 746.7 of the Regulations, no person may engage in the exportation of an item subject to both the Regulations and the hR without authorization from OFAC. No OFAC authorization was sought or obtained for the transaction described herein.

Aqua-Loop took this action after having been asked by Parto Abgardan, an Iranian company, to arrange for the export of the items to Iran "via Dubai." Parto Abgardan did not have a location in the U.A.E., and the address to which Aqua-Loop arranged for the items to be exported, "do Parto Abgardan," was in fact added to the BIS Unverified List of entities involved in transactions in which BIS is unable to verify the existence or authenticity of the end-user or other party to the transaction, published in the **Federal Register** on October 19, 2006. 71 FR 61,706 (Oct. 19, 2006).

In so doing, Aqua-Loop committed one violation of section 764.2(b) of the Regulations.

Charge 3: 15 CFR 764.2(e)—Acting With Knowledge of a Violation

Between on or about July 26, 2004, and on or about September 28, 2004, Aqua-Loop ordered or financed items to be exported from the United States with knowledge that a violation of the Regulations was occurring, was about to occur or was intended to occur in connection with the items. Specifically, between on or about July 26, 2004, and on or about September 28, 2004, Aqua-Loop ordered or financed approximately 174 rolls of hog hair filter media, part number HH60130 and valued at approximately $11,687.76, items which are subject to the Regulations and designated as EAR99, which Aqua-Loop knew would be exported to Iran via the U.A.E. without the required U.S. Government authorization. Pursuant to section 560.204 of the ITR, an export to a third country intended for transshipment to Iran is a transaction that requires OFAC authorization. Pursuant to section 746.7 of the Regulations, no person may engage in the exportation of an item subject to both the Regulations and the ITR without authorization from OFAC. Aqua-Loop knew that no OFAC authorization was sought or obtained for the transaction described herein.

Aqua-Loop had knowledge that a violation was occurring, was about to occur or was intended to occur in connection with the items because Aqua-Loop was aware of the U.S. embargo of Iran and had knowledge that exporting items through the U.A.E. to Iran was a violation of U.S. law.

Aqua-Loop's president stated to a BIS Office of Export Enforcement special agent in an interview on or about October 14, 2005, that approximately three years earlier he had become aware of sanctions barring the shipment of items to Iran and that he understood that knowingly shipping items to Iran through a third country was illegal. Aqua-Loop's president referred to this type of activity as "diverting" items to Iran. Moreover, on or about September 23, 1997, AquaLoop had issued a letter to Parto Abgardan stating, "I am trying to find a way to send the components that I promised to you. Unfortunately after many unsuccessful attempts, I came to a conclusion that the only way to open this channel is what you were thinking, and if I understood correctly, you are going to have some kind of agent or office in one of the Gulf countries. I tell you this that I would have no problem getting a container to my place and loading to a steam ship toward Dubai.* * * Many shipping companies express that you shouldn't have any major problem getting the goods to Tehran from Dubai."

In so doing, Aqua-Loop committed one violation of section 764.2(e) of the Regulations.

Charge 4: 15 CFR 764.2(b)—Causing, Aiding or Abetting

Between on or about February 9, 2005, and on or about April 19, 2005, Aqua-Loop caused, aided or abetted the doing of an act prohibited by the Regulations by facilitating or coordinating the export of approximately 185 rolls of hog hair filter media, part number HHB6O 130 and valued at approximately $9,838.30, items which are subject to the

[4] EAR99 is a designation for items subject to the Regulations but not listed on the Commerce Control List. 15 CFR 734.3(c).

Regulations and designated as EAR99 items, through the U.A.E. to Iran without the required U.S. Government authorization. Pursuant to section 560.204 of the ITR maintained by OFAC, an export to a third country intended for transshipment to Iran is a transaction that requires OFAC authorization. Pursuant to section 746.7 of the Regulations, no person may engage in the exportation of an item subject to both the Regulations and the ITR without authorization from OFAC. No OFAC authorization was sought or obtained for the transaction described herein.

Specifically, after exporting certain hog hair filter media to Parto Abgardan in Iran, as described in Charges 2–3, Aqua-Loop was informed by Parto Abgardan that the items were not exactly the same as a sample Aqua-Loop's president had brought to Parto Abgardan before the transaction described in Charges 2–3 occurred. Aqua-Loop received from Parto Abgardan a piece of the original sample as well as a piece of the items described in Charges 2–3. Aqua-Loop then provided both pieces to the U.S. distributor, and placed a new order for 185 rolls of hog hair filter media, part number HHB6O 130, with the U.S. distributor. Aqua-Loop arranged for the U.S. distributor to supply the items, which were destined for Iran, to a freight forwarder for initial shipment to the U.A.E., "c/o Parto Abgardan." Parto Abgardan did not have a location in the U.A.E., and the address to which Aqua-Loop arranged for the items to be exported, "do Parto Abgardan," was in fact added to the BIS Unverified List of entities involved in transactions in which BIS is unable to verify the existence or authenticity of the end-user or other party to the transaction, published in the **Federal Register** on October 19, 2006. 71 FR 61,706 (Oct. 19, 2006).

In so doing, Aqua-Loop committed one violation of section 764.2(b) of the Regulations.

Charge 5: 15 CFR 764.2(e)—Acting With Knowledge of a Violation

Between on or about February 9, 2005, and on or about April 19, 2005, Aqua-Loop ordered items to be exported from the United States with knowledge that a violation of the Regulations was occurring, was about to occur or was intended to occur in connection with the items. Specifically, between on or about February 9, 2005, and on or about April 19, 2005, Aqua-Loop ordered approximately 185 rolls of hog hair filter media, part number HHB6O 130 and valued at approximately $9,838.30, items which are subject to the Regulations and designated as EAR99, which Aqua-Loop knew would be exported to Iran via the U.A.E. without the required U.S. Government authorization. Pursuant to section 560.204 of the ITR, an export to a third country intended for transshipment to Iran is a transaction that requires OFAC authorization. Pursuant to section 746.7 of the Regulations, no person may engage in the exportation of an item subject to both the Regulations and the ITR without authorization from OFAC. Aqua-Loop knew that no OFAC authorization was sought or obtained for the transaction described herein.

Aqua-Loop had knowledge that a violation was occurring, was about to occur or was intended to occur in connection with the items because Aqua-Loop was aware of the U.S. embargo of Iran and had knowledge that exporting items through the U.A.E. to Iran was a violation of U.S. law. Aqua-Loop's president stated to a BIS Office of Export Enforcement special agent in an interview on or about October 14, 2005, that approximately three years earlier he had become aware of sanctions barring the shipment of items to Iran and that he understood that knowingly shipping items to Iran through a third country was illegal. Aqua-Loop's president referred to this type of activity as "diverting" items to Iran. Moreover, on or about September 23, 1997, AquaLoop's president had issued a letter to Parto Abgardan, on Aqua-Loop stationery, stating, "I am trying to find a way to send the components that I promised to you. Unfortunately after many unsuccessful attempts, I came to a conclusion that the only way to open this channel is what you were thinking, and if I understood correctly, you are going to have some kind of agent or office in one of the Gulf countries. I tell you this that I would have no problem getting a container to my place and loading to a steam ship toward Dubai. * * * Many shipping companies express that you shouldn't have any major problem getting the goods to Tehran from Dubai."

In so doing, Aqua-Loop committed one violation of section 764.2(e) of the Regulations.

Whereas, BIS and Aqua-Loop have entered into a Settlement Agreement pursuant to section 766.18(b) of the Regulations, whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein; and

Whereas, I have approved of the terms of such Settlement Agreement; *it is therefore ordered:*

First, Aqua-Loop shall be assessed a civil penalty in the amount of $100,000, the payment of which shall be suspended for a period often (10) years from the date of this Order, and thereafter shall be waived, provided that during the period of suspension, Aqua-Loop has committed no violation of the Act, or any regulation, order, or license issued thereunder.

Second, that for a period often (10) years from the date of this Order, Aqua-Loop, his representatives, assigns or agents ("Denied Person") may not participate, directly or indirectly, in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Third, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is

intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Fourth, that, after notice and opportunity for comment as provided in section 766.23 of the Regulations, any person, firm, corporation, or business organization related to Aqua-Loop by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

Fifth, that the Charging Letter, the Settlement Agreement, and this Order shall be made available to the public.

Sixth, that this Order shall be served on the Denied Person and on BIS, and shall be published in the **Federal Register**.

This Order, which constitutes the final agency action in this matter, is effective immediately.

Issued this 25th day of March, 2010.

David W. Mills,

Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 2010–7439 Filed 4–1–10; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[09–BIS–005]

Action Affecting Export Privileges; Bob Rahimzadeh

In the Matter of: Bob Rahimzadeh, 116 Hopper Lane, Folsom, CA 95630, Respondent; Order Relating to Bob Rahimzadeh.

The Bureau of Industry and Security, U.S. Department of Commerce ("BIS"), initiated this administrative proceeding against Bob Rahimzadeh ("Rahimzadeh") pursuant to Section 766.3 of the Export Administration Regulations (the "Regulations") [1], and Section 13(c) of the Export Administration Act of 1979, as amended (the "Act") [2], through the issuance and filing of a charging letter as to Rahimzadeh that alleges that Rahimzadeh has committed four violations of the Regulations ("Charging Letter"). Specifically, these charges are:

Charge 1 15 CFR 764.2(b)—Causing, Aiding or Abetting

Between on or about July 26, 2004, and on or about September 28, 2004, Rahimzadeh caused, aided or abetted the doing of an act prohibited by the Regulations by facilitating or coordinating the export of approximately 174 rolls of hog hair filter media, part number HH60130 and valued at approximately $11,687.76, items which are subject to the Regulations and designated as EAR99 items,[3] through the United Arab Emirates ("U.A.E.") to Iran without the required U.S. Government authorization. Pursuant to Section 560.204 of the Iranian Transactions Regulations ("ITR") [4] maintained by the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC"), an export to a third country intended for transshipment to Iran is a transaction that requires OFAC authorization. Pursuant to Section 746.7 of the Regulations, no person may engage in the exportation of an item subject to both the Regulations and the ITR without authorization from OFAC. No OFAC authorization was sought or obtained for the transaction described herein. Rahimzadeh took this action after having been asked by Parto Abgardan Cooling Towers Co. ("Parto Abgardan"), an Iranian company, to arrange for the export of the items to Iran "via Dubai." Parto Abgardan did not have a location in the U.A.E., and the address to which Rahimzadeh arranged for the items to be exported, "do Parto Abgardan," was in fact subsequently added to the BIS Unverified List of entities involved in transactions in which BIS is unable to verify the existence or authenticity of the end-user or other party to the transaction, published in the **Federal Register** on October 19, 2006. 71 FR 61706 (Oct. 19, 2006).

In so doing, Rahimzadeh committed one violation of Section 764.2(b) of the Regulations.

Charge 2 15 CFR 764.2(e)—Acting With Knowledge of a Violation

Between on or about July 26, 2004, and on or about September 28, 2004, Rahimzadeh ordered or financed items to be exported from the United States with knowledge that a violation of the Regulations was occurring, was about to occur or was intended to occur in connection with the items. Specifically, between on or about July 26, 2004, and on or about September 28, 2004, Rahimzadeh ordered or financed approximately 174 rolls of hog hair filter media, part number HH60130 and valued at approximately $11,687.76, items which are subject to the Regulations and designated as EAR99, which Rahimzadeh knew would be exported to Iran via the U.A.E. without the required U.S. Government authorization. Pursuant to Section 560.204 of the ITR, an export to a third country intended for transshipment to Iran is a transaction that requires OFAC authorization. Pursuant to Section 746.7 of the Regulations, no person may engage in the exportation of an item subject to both the Regulations and the ITR without authorization from OFAC. Rahimzadeh knew that no OFAC authorization was sought or obtained for the transaction described herein.

Rahimzadeh had knowledge that a violation was occurring, was about to occur or was intended to occur in connection with the items because he was aware of the U.S. embargo of Iran and had knowledge that exporting items through the U.A.E. to Iran was a violation of U.S. law. Rahimzadeh stated to a BIS Office of Export Enforcement special agent in an interview on or about October 14, 2005, that approximately three years earlier he had become aware of sanctions barring the shipment of items to Iran and that he understood that knowingly shipping items to Iran through a third country was illegal. Rahimzadeh referred to this type of activity as "diverting" items to Iran. Moreover, on or about September 23, 1997, Rahimzadeh had issued a letter to Parto Abgardan stating, "I am trying to find a way to send the components that I promised to you. Unfortunately after many unsuccessful attempts, I came to a conclusion that the only way to open this channel is what you were thinking, and if I understood

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2009). The violations occurred in 2004 and 2005. The Regulations governing the violation at issue are found in the 2004 and 2005 versions of the Code of Federal Regulations (15 CFR parts 730–774 (2004–2005)). The 2009 Regulations establish the procedures that apply to this matter.

[2] 50 U.S.C. app. §§ 2401–2420 (2000). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR 2001 Comp. p. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 13, 2009 (74 FR 41325 (Aug. 14, 2009)) has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.*) ("IEEPA").

[3] EAR99 is a designation for items subject to the Regulations but not listed on the Commerce Control List. 15 CFR 734.3(c).

[4] 31 CFR part 560.

correctly, you are going to have some kind of agent or office in one of the Gulf countries. I tell you this that I would have no problem getting a container to my place and loading to a steam ship toward Dubai. * * * Many shipping companies express that you shouldn't have any major problem getting the goods to Tehran from Dubai."

In so doing, Rahimzadeh committed one violation of Section 764.2(e) of the Regulations.

Charge 3 15 CFR 764.2(b)—Causing, Aiding or Abetting

Between on or about February 9, 2005, and on or about April 19, 2005, Rahimzadeh caused, aided, or abetted the doing of an act prohibited by the Regulations by facilitating or coordinating the export of approximately 185 rolls of hog hair filter media, part number HHB60130 and valued at approximately $9,838.30, items which are subject to the Regulations and designated as EAR99 items, through the U.A.E. to Iran without the required U.S. Government authorization. Pursuant to Section 560.204 of the ITR maintained by OFAC, an export to a third country intended for transshipment to Iran is a transaction that requires OFAC authorization. Pursuant to Section 746.7 of the Regulations, no person may engage in the exportation of an item subject to both the Regulations and the ITR without authorization from OFAC. No OFAC authorization was sought or obtained for the transaction described herein.

Specifically, after exporting certain hog hair filter media to Parto Abgardan in Iran, as described in Charges 1–2, Rahimzadeh was informed by Parto Abgardan that the items were not exactly the same as a sample Rahimzadeh had previously brought to Parto Abgardan before the transaction described in Charges 1–2 occurred. Rahimzadeh received from Parto Abgardan a piece of the original sample as well as a piece of the items described in Charges 1–2. Rahimzadeh then provided both pieces to the U.S. distributor, and placed a new order for 185 rolls of hog hair filter media, part number HHB60130, with the U.S. distributor. Rahimzadeh arranged for the U.S. distributor to supply the items, which were destined for Iran, to a freight forwarder for initial shipment to the U.A.E., "c/o Parto Abgardan." Parto Abgardan did not have a location in the U.A.E., and the address to which Rahimzadeh arranged for the items to be exported, "c/o Parto Abgardan," was in fact added to the BIS Unverified List of entities involved in transactions in which BIS is unable to verify the existence or authenticity of the end-user or other party to the transaction, published in the **Federal Register** on October 19, 2006. 71 FR 61706 (Oct. 19, 2006).

In so doing, Rahimzadeh committed one violation of Section 764.2(b) of the Regulations.

Charge 4 15 CFR 764.2(e)—Acting With Knowledge of a Violation

Between on or about February 9, 2005, and on or about April 19, 2005, Rahimzadeh ordered items to be exported from the United States with knowledge that a violation of the Regulations was occurring, was about to occur or was intended to occur in connection with the items. Specifically, between on or about February 9, 2005, and on or about April 19, 2005, Rahimzadeh ordered approximately 185 rolls of hog hair filter media, part number HHB60130 and valued at approximately $9,838.30, items which are subject to the Regulations and designated as EAR99, which Rahimzadeh knew would be exported to Iran via the U.A.E. without the required U.S. Government authorization. Pursuant to Section 560.204 of the ITR, an export to a third country intended for transshipment to Iran is a transaction that requires OFAC authorization. Pursuant to Section 746.7 of the Regulations, no person may engage in the exportation of an item subject to both the Regulations and the ITR without authorization from OFAC. Rahimzadeh knew that no OFAC authorization was sought or obtained for the transaction described herein.

Rahimzadeh had knowledge that a violation was occurring, was about to occur or was intended to occur in connection with the items because Rahimzadeh was aware of the U.S. embargo of Iran and had knowledge that exporting items through the U.A.E. to Iran was a violation of U.S. law. Rahimzadeh stated to a BIS Office of Export Enforcement special agent in an interview on or about October 14, 2005, that approximately three years earlier he had become aware of sanctions barring the shipment of items to Iran and that he understood that knowingly shipping items to Iran through a third country was illegal. Rahimzadeh referred to this type of activity as "diverting" items to Iran. Moreover, on or about September 23, 1997, Rahimzadeh had issued a letter to Parto Abgardan stating, "I am trying to find a way to send the components that I promised to you. Unfortunately after many unsuccessful attempts, I came to a conclusion that the only way to open this channel is what you were thinking, and if I understood correctly, you are going to have some kind of agent or office in one of the Gulf countries. I tell you this that I would have no problem getting a container to my place and loading to a steam ship toward Dubai. * * * Many shipping companies express that you shouldn't have any major problem getting the goods to Tehran from Dubai."

In so doing, Rahimzadeh committed one violation of Section 764.2(e) of the Regulations.

Whereas, BIS and Rahimzadeh have entered into a Settlement Agreement pursuant to Section 766.18(b) of the Regulations, whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein; and

Whereas, I have approved of the terms of such Settlement Agreement; *it is therefore ordered:*

First, Rahimzadeh shall be assessed a civil penalty in the amount of $100,000, the payment of which shall be suspended for a period of ten (10) years from the date of this Order, and thereafter shall be waived, provided that during the period of suspension, Rahimzadeh has committed no violation of the Act, or any regulation, order, or license issued thereunder.

Second, that for a period of ten (10) years from the date of this Order, Rahimzadeh, his representatives, assigns or agents ("Denied Person") may not participate, directly or indirectly, in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Third, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Fourth, that, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to Rahimzadeh by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

Fifth, that the Charging Letter, the Settlement Agreement, and this Order shall be made available to the public.

Sixth, that this Order shall be served on the Denied Person and on BIS, and shall be published in the **Federal Register**.

This Order, which constitutes the final agency action in this matter, is effective immediately.

Issued this 25th day of March 2010.

David W. Mills,

Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 2010–7437 Filed 4–1–10; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

U.S. Bureau of the Census

Proposed Information Collection; Comment Request; Generic Clearance for Questionnaire Pretesting Research

AGENCY: U.S. Census Bureau.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: To ensure consideration, written comments must be submitted on or before June 1, 2010.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Theresa J. DeMaio, U.S. Census Bureau, Room 5K–319, 4600 Silver Hill Road, Washington, DC 20233–9150, (301) 763–4894 (or via the Internet at *theresa.j.demaio@census.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau plans to request an extension of the current OMB approval to conduct a variety of small-scale questionnaire pretesting activities under this generic clearance. A block of hours will be dedicated to these activities for each of the next three years. OMB will be informed in writing of the purpose and scope of each of these activities, as well as the timeframe and number of burden hours used. The number of hours used will not exceed the number set aside for this purpose.

This research program will be used by the Census Bureau and survey sponsors to improve questionnaires and procedures, reduce respondent burden, and ultimately increase the quality of data collected in the Census Bureau censuses and surveys. The clearance will be used to conduct pretesting of decennial, demographic, and economic census and survey questionnaires prior to fielding them. Pretesting activities will involve one of the following methods of identifying measurement problems with the questionnaire or survey procedure: Cognitive interviews, focus groups, respondent debriefing, behavior coding of respondent/interviewer interaction, and split panel tests.

II. Method of Collection

Any of the following methods may be used: Mail, telephone, face-to-face, paper-and-pencil, CATI, CAPI, Internet, or IVR.

III. Data

OMB Number: 0607–0725.

Form Number: Various.

Type of Review: Regular submission.

Affected Public: Individuals or Households, Farms, Business or other for-profit.

Estimated Number of Respondents: 16,500.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 16,500.

Estimated Total Annual Cost: There is no cost to respondent, except for their time to complete the questionnaire.

Respondent's Obligation: Voluntary.

Legal Authority: 13 U.S.C. 131, 141, 142, 161, 181, 182, 193, and 301.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including house and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 30, 2010.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–7448 Filed 4–1–10; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

Background

Every five years, pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the Department of Commerce ("the Department") and the International Trade Commission automatically initiate and conduct a review to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

Upcoming Sunset Reviews for May 2010

The following Sunset Reviews are scheduled for initiation in May 2010 and will appear in that month's Notice of Initiation of Five-Year Sunset Reviews.

	Department contact
Antidumping Duty Proceedings	
Chlorinated Isocyanurates from the PRC (A–570–898)	Jennifer Moats, (202) 482–5047.
Chlorinated Isocyanurates from Spain (A–469–814)	Jennifer Moats, (202) 482–5047.
Greige Polyester Cotton Printcloth from the PRC (A–570–101) (3rd Review)	Jennifer Moats, (202) 482–5047.
Iron Construction Castings from Brazil (A–351–503) (3rd Review)	Dana Mermelstein, (202) 482–1391.
Iron Construction Castings from Canada (A–122–503) (3rd Review)	Dana Mermelstein, (202) 482–1391.
Iron Construction Castings from the PRC (A–570–502) (3rd Review)	Dana Mermelstein, (202) 482–1391.
Potassium Permanganate from the PRC (A–570–001) (3rd Review)	Jennifer Moats, (202) 482–5047.
Countervailing Duty Proceedings	
Heavy Iron Construction Castings from Brazil (C–351–504) (3rd Review)	Brandon Farlander, (202) 482–0182.
Suspended Investigations	
No Sunset Review of suspended investigations is scheduled for initiation in May 2010.	

The Department's procedures for the conduct of Sunset Reviews are set forth in 19 CFR 351.218. Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin,* 63 FR 18871 (April 16, 1998). The Notice of Initiation of Five-Year ("Sunset") Reviews provides further information regarding what is required of all parties to participate in Sunset Reviews.

Pursuant to 19 CFR 351.103(c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Please note that if the Department receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue. Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation.

This notice is not required by statute but is published as a service to the international trading community.

Dated: March 17, 2010.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–7415 Filed 4–1–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV37

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Notice; availability of fishery plan and request for comment.

SUMMARY: Notice is hereby given that the Washington Department of Fish and Wildlife (WDFW) has submitted a Fishery Management and Evaluation Plan (FMEP) pursuant to the protective regulations promulgated for Snake River steelhead, Snake River spring/summer Chinook, and Snake River fall Chinook salmon under the Endangered Species Act (ESA). The FMEP specifies the future management of freshwater inland recreational fisheries potentially affecting basin steelhead and Chinook salmon in portions of the Snake River basin within the State of Washington. This document serves to notify the public of the availability of the FMEP and associated draft environmental assessment (EA) for comment prior to a decision by NMFS whether to approve the proposed fisheries. All comments received will become part of the public record and will be available for review pursuant to the ESA.

DATES: Comments must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific time on May 3, 2010.

ADDRESSES: Written comments on the application should be addressed to the NMFS Salmon Recovery Division, 1201 NE Lloyd Boulevard, Suite 1100,

Portland, OR 97232, or faxed to 503–872–2737. Comments may be submitted by e-mail. The mailbox address for providing e-mail comments is: *WDFWFisheries.nwr@noaa.gov*. Include in the subject line of the e-mail comment the following identifier: Comments on Washington's fishery plan.

FOR FURTHER INFORMATION CONTACT: Enrique Patiño, at phone number: (206) 526–4655, or e-mail: *Enrique.Patino@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Species Covered in This Notice

This notice is relevant to the Snake River Steelhead (*Oncorhynchus mykiss*) Distinct Population Segment (DPS), the Snake River Spring/summer-run Chinook Salmon (*Oncorhynchus tshawytscha*) Evolutionarily Significant Unit (ESU), and the Snake River Fall-run Chinook (*Oncorhynchus tshawytscha*) ESU.

WDFW has submitted to NMFS an FMEP entitled "WDFW Recreational fisheries for summer steelhead, warmwater fish, sturgeon, carp, and other species." The FMEP describes the management of recreational fisheries in the State of Washington, Snake River basin, for adipose-clipped, hatchery-origin summer steelhead, warmwater fish, sturgeon, carp, and other game fish species in a manner that is intended to comply with requirements of the ESA under limit 4 of the 4(d) Rule. The FMEP includes adaptive management measures to limit ESA impacts and proposes conservative incidental harvest regimes on natural-origin members of the affected listed species. As described in the FMEP, the proposed fisheries are expected to result in the mortality of no more than 5%, 1.5%, and 0.2% of any population of listed, natural-origin Snake River steelhead, fall Chinook salmon, and spring/summer Chinook salmon, respectively. The FMEP presents evidence that the abundance of natural-origin fish has trended upwards over the past five years. In addition, the FMEP includes monitoring programs that are intended to ensure that the proposed fisheries and associated incidental take would not reduce the chances of survival and recovery of the affected listed species.

The FMEP includes a provision that directs WDFW to conduct an annual review to determine if completed fisheries were conducted in manner that complied with the guidance provided in the FMEP. Further, WDFW will provide a pre-season planning letter each year to NMFS for concurrence that demonstrates the fisheries intended for the upcoming season shall be consistent with the fisheries management protocols described in the FMEP.

As specified in the July 10, 2000, ESA 4(d) rule for salmon and steelhead (65 FR 42422) and updated June 28, 2005 (70 FR 37160), NMFS may approve an FMEP if it meets criteria set forth in 50 CFR 223.203(b)(4)(i)(A) through (I). Prior to final approval of an FMEP, NMFS must publish notification announcing its availability for public review and comment.

Authority

Under section 4 of the ESA, the Secretary of Commerce is required to adopt such regulations as he deems necessary and advisable for the conservation of species listed as threatened. The ESA salmon and steelhead 4(d) rule (65 FR 42422, July 10, 2000, as updated in 70 FR 37160, June 28, 2005) specifies categories of activities that contribute to the conservation of listed salmonids and sets out the criteria for such activities. Limit 4 of the updated 4(d) rule (50 CFR 223.203(b)(4)) further provides that the prohibitions of paragraph (a) of the updated 4(d) rule (50 CFR 223.203(a)) do not apply to activities associated with fishery harvest provided that an FMEP has been approved by NMFS to be in accordance with the salmon and steelhead 4(d) rule (65 FR 42422, July 10, 2000, as updated in 70 FR 37160, June 28, 2005).

Dated: March 29, 2010.

Therese Conant,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–7491 Filed 4–1–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Economic Development Administration

[Docket No.: 100323164–0164–01]

EDA Participation in the Energy Efficient Building Systems Regional Innovation Cluster Initiative

AGENCY: Economic Development Administration (EDA), Department of Commerce.

ACTION: Notice and request for applications.

SUMMARY: EDA announces its participation in the Energy Efficient Building Systems Regional Innovation Cluster Initiative (Initiative), the first pilot project of the Interagency Regional Innovation Clusters Taskforce (Taskforce). The Taskforce has been charged with developing a replicable and sustainable model for coordinated Federal and regional efforts that foster and use regional innovation clusters to: Develop and demonstrate sustainable and efficient models for attaining national strategic objectives; create and retain Good Jobs (defined below); eliminate gaps between the supply and demand for workers in specialized fields through training and education; increase regional gross domestic product (GDP); promote innovation in science and technology; and enhance the economic, technological, and commercial competitiveness of the United States on the global stage. The Taskforce has selected Energy Efficient Building Systems Design as the topical focus for its first pilot project. The pilot project will be anchored around a Department of Energy (DOE)-funded Energy Innovation Hub and will incorporate elements funded by each of EDA, SBA, and NIST/MEP. Capitalized terms used in this notice and request for applications have the meanings ascribed to them under the heading **SUPPLEMENTARY INFORMATION** below.

DATES: Consortia must submit their completed application package pursuant to the instructions set out in this notice and in Section IV of the Joint Federal Funding Opportunity Announcement of the Fiscal Year (FY) 2010 Energy Efficient building Systems Regional Innovation Cluster Initiative (FOA) no later than May 6, 2010, at 5 p.m. (Eastern time).

ADDRESSES: All application forms are available online and may *not* be requested in hardcopy format. Therefore, unless otherwise specified in the FOA, all forms must be downloaded from *http://www.grants.gov.* As specified in Section IV.I of the FOA, the Consortium must submit six (6) copies of a compact disc (CD), labeled as specified in the FOA, with each CD containing all required forms and narratives from all Co-applicants. Proposals should not be submitted via Grants.gov, but should be delivered no later than 5 p.m. (Eastern time) on May 6, 2010, at the following address: Maureen Klovers; Economic Development Administration; U.S. Department of Commerce; Rm. 7019; 1401 Constitution Avenue, NW.; Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: For additional information please submit questions via e-mail at *e-ric@eda.doc.gov.* The FOA, additional information about the funding opportunity, updates, and questions and answers are available at *http://www.energy.gov/hubs/eric.htm.*

Prospective applicants should check the Web site for updates on a regular basis.

Application Submission Requirements: Prospective applicants are advised to read the application instructions in the FOA very carefully, as these instructions differ from typical FOA submission instructions. Highlighted below are key aspects of the application process specific to this competitive solicitation.

Consortium Proposals and Co-Applicant Applications

As described in Section V of the FOA, only one Consortium Proposal will be selected for funding under the joint FOA. Each Consortium will be permitted to submit only one Proposal. Each Consortium Proposal shall include four Applications for funding and the Overarching Regional Innovation Cluster Project Narrative (*see* Section IV of the FOA for details on this submission) that will explain proposed activities of the Consortium as a whole. The four Applications within each Proposal shall be: (i) The Application for DOE assistance; (ii) the Application for EDA assistance; (iii) the Application for NIST/MEP assistance; and (iv) the Application for SBA assistance. The Co-applicants within any Consortium must demonstrate in their Proposal that they have entered into a written agreement to operate as a Consortium for at least as long a period as the term of the longest award made under the FOA (*see* Section IV of the FOA for further details).

Although the four Co-applicants will collaborate as a Consortium, each Co-applicant will receive a separate award from the applicable Granting Agency. Accordingly, the DOE Co-applicant on the winning Proposal will receive the DOE grant funds, the EDA Co-applicant on the winning Proposal will receive the EDA funds, the NIST Co-applicant on the winning Proposal will receive the NIST/MEP funds, and the SBA Co-applicant on the winning Proposal will receive the SBA funds. *Please see* pertinent definitions under **SUPPLEMENTARY INFORMATION** below.

Please note that although each Co-applicant will be able to download just those forms that they must complete, the Proposal from the Consortium must contain all of these forms, as well as all required narratives (including the Overarching Regional Innovation Cluster Project Narrative), in a single submission. The Consortium must submit six (6) copies of a compact disc (CD), with *each* CD containing *all* required forms and narratives from *all* Co-applicants. *Proposals should not be submitted via Grants.gov.* Because the Proposal is not to be submitted via *http://www.grants.gov,* the Co-applicants are not required to obtain a Grants.gov user id and password.

In Order To Apply for EDA Funding, the EDA Co-Applicant Must Take the Following Steps To Download the Required Forms

1. Navigate to the URL *http://www.grants.gov.*
2. Click on 'Apply for Grants' on the left hand menu. Note: You will not be submitting an application package through Grants.gov; however using the Grants.gov 'Apply' function is necessary in order to access the required forms in a screen-fillable format.
3. Click on the blue link 'Download a Grant Application Package.'
4. Enter funding opportunity number 'ERIC2010'.
5. Under the 'Instructions & Application' column, click on 'download' for your appropriate Competition Title ('EDA Construction', 'EDA Non-Construction', or 'EDA Construction and Non-Construction'), depending on whether the EDA Co-applicant is seeking *only* construction assistance, *only* non-construction assistance, or both.
6. Click on the blue 'Download Application Package' link.
7. Save the PDF file to your computer. This package contains only those forms that must be completed by the EDA Co-applicant.
8. In the 'Application Filing Name' field, enter '[insert Consortium name]—EDA Application.'
9. Under "Mandatory Documents," left click with your mouse on the first form name. Then click on the gray arrow button labeled "Move Form to Complete."
10. Continue doing so until all forms listed as "Mandatory Documents" have been moved to the "Mandatory Documents for Submission" box.
11. If there are any forms listed under "Optional Documents," move these forms to "Optional Documents for Submission" if the instructions in Section IV.F. of the FOA indicate that you are required to complete these forms.
12. Continue to save your application as you work on it.
13. Once you have completed your application package, click on the "Check Package for Errors" button at the top of the document in order to ensure that all mandatory fields in your application are filled.
14. *DO NOT click on SAVE & SUBMIT.* Instead, save your application locally to your own computer or network. The application package PDF file should be copied to the Consortium Proposal CD.

Applicants should access the following link for assistance in navigating *http://www.grants.gov* and for a list of useful resources: *http://www.grants.gov/help/help.jsp.* If you do not find an answer to your question under General FAQs, try consulting the Applicant User Guides. If you still cannot find an answer to your question, send an e-mail to *support@grants.gov* or call 1–800–518–4726. The *http://www.grants.gov* Contact Center is available 24 hours a day, 7 days a week (except for Federal holidays).

Page Limit of Proposal

The entire Proposal (*i.e.,* all four Applications plus the Overarching Regional Innovation Cluster Project Narrative) must not exceed 350 pages, when printed using standard 8.5″ x 11″ paper with 1″ margins (from top, bottom, left, and right). The font size must not be smaller than Times New Roman 12-point font. Evaluators will review only the first 350 pages if more than 350 pages are submitted. Do not include any Internet URLs that provide information necessary to review the Proposal, because the information contained in these sites will not be reviewed. The page limit excludes:

- The cover page, table of contents, and required appendices of the Hub project narrative;
- The copy of the region's Comprehensive Economic Development Strategy(ies) (CEDS); and
- The copy of the EDA Co-applicant's Articles of Incorporation and By-Laws (if applicable).

SUPPLEMENTARY INFORMATION:

Initiative Information: The purpose of the pilot project is to identify and support an Energy Regional Innovation Cluster (defined below) that will develop, expand, and commercialize innovative energy efficient building systems technologies, designs, and best practices for national and international distribution. Specifically, the Participating Agencies (defined below) seek to identify and fund a Consortium that will link the Hub and the other Co-applicants with complementary Federal and non-Federal investments in business development and support, public infrastructure, workforce development, and education, for the purpose of growing and expanding a robust E–RIC that will achieve the goals stated in the FOA. The FOA was published at *http://www.energy.gov/hubs/eric.htm* on February 8, 2010.

EDA will award up to $2 million of its Economic Adjustment Assistance Program funds and $3 million of its

Public Works and Economic Development Program funds to the EDA Co-applicant as part of the Initiative. EDA seeks an EDA Co-applicant to help facilitate a high degree of collaboration among the Consortium members and offer expertise in using planned regional economic development as a framework for achieving the maximum sustainable economic impact. The EDA Co-applicant should enable the Consortium members and their E–RIC Partners to operate in an integrated, coordinated fashion, and may use EDA funds for constructing or renovating necessary infrastructure, for strategic planning purposes, or for revolving loan fund grants. Examples of possible uses of funds include: Upgrading business incubators or publicly-owned industrial or commercial buildings and infrastructure so they can serve the purposes of the E–RIC; to conduct E–RIC coordination, planning or technical assistance activities; or to capitalize revolving loan funds focused on supporting firms in the E–RIC. EDA encourages the Consortia to consider new, energy efficient and environmentally beneficial ways of constructing or renovating infrastructure, including use of natural vegetation for storm water retention and sewage filtration, green roofs, and on-site water recycling.

The two EDA programs from which funds may be awarded are the (i) Public Works and Economic Development Program and (ii) Economic Adjustment Assistance Program. The Public Works Program may fund investments that expand, upgrade, and "green" infrastructure to attract new industry, support technology-led development, accelerate new business development while promoting energy-efficiency, and enhance the ability of regions to capitalize on opportunities to export goods and services. EDA's Economic Adjustment Assistance (EAA) Program is designed to respond flexibly to pressing economic recovery issues and is well suited to help address challenges and obstacles to the formation and sustenance of a successful E–RIC. EAA funds may be used for strategic planning and technical assistance, physical infrastructure, or revolving loan funds. *Please see* the FOA for more details on the objectives and goals of the Initiative and EDA's Public Works and EAA Programs.

Capitalized Terms Used in This Notice and Request for Applications Shall Have the Following Definitions, as More Specifically Described in the FOA

1. *Application:* Any Co-applicant's application for funding from one of the Granting Agencies announced through the FOA.

2. *Consortium:* The collective group of Co-applicants presenting a unified Proposal in response to the FOA.

3. *Consortium MOU:* The memorandum of understanding, or similar agreement, among the Consortium, the Participating Agencies, and NSF that will reflect long-term commitments of the Consortium to the emergence and successful growth of the E–RIC based on plans and other materials presented in the Consortium Proposal.

4. *Co-applicants (and each, a Co-applicant):* Collectively, each member of the Consortium that is applying for Federal funding assistance, anticipated to include the DOE Co-applicant, the EDA Co-applicant, the SBA Co-applicant, and the NIST Co-applicant.

5. *Co-applicant Scope of Work:* The specific portion of the Proposal to be performed pursuant to a specific funding agreement by a specific Co-applicant.

6. *DOE Co-applicant (or Hub Co-applicant):* The entity or entities applying for direct funding from the Department of Energy under the FOA.

7. *EDA Co-applicant:* The entity or entities applying for direct funding from the Economic Development Administration, Department of Commerce, under the FOA.

8. *Energy Regional Innovation Cluster (E–RIC):* The geographically-bounded, active network of similar, synergistic or complementary organizations, which includes the selected Consortium (and, therefore, the Hub), engaged in or with the energy efficient buildings systems and design industry, with active channels for business transactions, communications, and dialogue, that share specialized infrastructure, labor markets, and services. The E–RIC may be located in a defined geographic region that crosses municipal, county, and other jurisdictional boundaries. The E–RIC should encompass local universities, government research centers, and other research and development (R&D) resources, which shall serve as catalysts of innovation and drivers of regional economic growth. The E–RIC should leverage the region's unique competitive strengths and seek to nurture networks for business financing, business-to-business sales, education, and workforce development. These networks will include the E–RIC Partners and strategic partnerships with similar institutions (some of whom may be located outside of the E–RIC's geographic region) to ensure that the full potential of the E–RIC is realized.

9. *E–RIC Partners:* The public and private entities (*i.e.,* local and regional governments and quasi-public entities, venture capitalists, private banks, workforce investment boards, institutions of higher education including community colleges, and other public and private agencies and institutions) that have submitted formal Letters of Commitment to collaborate with the Consortium to develop and expand the E–RIC. E–RIC Partners are entities other than the Co-applicants that will work with the Consortium to foster a vibrant E–RIC. E–RIC Partners are not required to be located within the E–RIC's geographic region.

10. *Energy Technologies:* Refers to the means of locating, assessing, harvesting, transporting, processing, and transforming the primary energy forms found in nature (*e.g.,* sunlight, biomass, crude petroleum, coal, uranium-bearing rocks) to yield either direct energy services (*e.g.,* heat from fuel wood or coal) or secondary forms more convenient for human use (*e.g.,* charcoal, gasoline, electricity). Also included under the heading of energy technology is the means of distributing secondary forms to their end users and the means of converting these forms to energy services (*e.g.,* electricity to light and refrigeration, electricity and gasoline to motive power). A distinction is often made between energy-supply technologies, meaning those used to bring energy forms to a point of final use, and energy end-use technologies, meaning those applied at this point of use to convert an energy form to a service such as light or motive power.

11. *Good Jobs:* Jobs that increase workers' incomes; narrow wage and income inequality; provide safe and healthy workplaces, particularly in high-risk industries; comply with applicable laws governing wages and overtime pay; are open to all eligible job-seekers; and provide necessary skills and training to prepare workers for success in the high-growth and emerging careers that will result from the Energy Regional Innovation Cluster.

12. *Granting Agencies:* DOE, the Department of Commerce's EDA and NIST, and SBA.

13. *Hub (or Energy-Efficient Building Systems Design Hub):* The DOE Co-applicant's fully-integrated, multidisciplinary RD&D program that will create practical, replicable strategies for reducing overall energy consumption in buildings.

14. *NIST Co-applicant:* The NIST/MEP Center applying for direct funding from NIST under the FOA.

15. *NIST/MEP:* The Hollings Manufacturing Extension Partnership

Program of the National Institute for Standards and Technology.

16. *Participating Agencies:* Those members of the Interagency Regional Innovation Clusters Taskforce that are participating in the review and selection process described in Section V of the FOA (*i.e.,* DOE, DOC/EDA, DOC/NIST, SBA, DOL, ED).

17. *Proposal:* The collective, unified proposal submitted by a particular Consortium in response to the FOA. A Proposal contains four applications reflecting a DOE Co-applicant's Application for DOE funding, an EDA Co-applicant's Application for EDA funding; an SBA Co-applicant's Application for SBA funding and a NIST Co-applicant's Application for NIST/MEP funding.

18. *Region:* An economic unit of human, natural, technological, capital or other resources, defined geographically. Geographic areas comprising a region need not be defined by political boundaries, but should constitute a cohesive area capable of undertaking self-sustained economic development.

19. *SBA Co-applicant:* The Small Business Development Center(s) applying for direct funding from the Small Business Administration under the FOA.

20. *Taskforce:* The Interagency Regional Innovation Clusters Taskforce that is made up of DOE, DOC/EDA, DOC/NIST, DOL, ED, SBA, and NSF.

21. *Underrepresented groups:* Ethnic and racial minorities—including Native Americans, Alaskan Natives, Black- or African-Americans, Latinos or Hispanics, Asian-Americans or Native Hawaiian or other Pacific Islanders; women; veterans; and persons with disabilities.

Statutory Authority: EDA's authorizing statute is the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. 3121 *et seq.*) (PWEDA). The statutory authorities for the (i) Public Works and Economic Development Facilities Program; and (ii) Economic Adjustment Assistance Program are sections 201 (42 U.S.C. § 3141), and 209 (42 U.S.C. 3149) of PWEDA, respectively.

EDA's regulations are codified at 13 CFR chapter III. The regulations and PWEDA are accessible on EDA's Web site at *http://www.eda.gov/InvestmentsGrants/Lawsreg.xml.*

Funding Availability: Funding appropriated under the Consolidated Appropriations Act, 2010 (Pub. L. 111–117, 123 Stat. 3034, at 3114 (2009)), together with other appropriated funds, is available for the economic development assistance programs authorized by PWEDA. Under this notice and request for applications, $2,000,000 of Economic Adjustment Assistance and $3,000,000 of Public Works and Economic Development Program assistance is available for this award and shall remain available until expended.

(Catalog of Federal Domestic Assistance (CFDA) Numbers (EDA Co-applicant): 11.300 Grants for Public Works and Economic Development Facilities; 11.307, Economic Adjustment Assistance.)

Eligibility Requirements: Pursuant to PWEDA, eligible applicants for EDA's Public Works and Economic Adjustment Assistance Programs include a(n): (i) District Organization; (ii) Indian Tribe or a consortium of Indian Tribes; (iii) State, a city or other political subdivision of a State, including a special purpose unit of a State or local government engaged in economic or infrastructure development activities, or a consortium of political subdivisions; (iv) institution of higher education or a consortium of institutions of higher education; or (v) public or private non-profit organization or association acting in cooperation with officials of a political subdivision of a State. *See* section 3 of PWEDA (42 U.S.C. 3122) and 13 CFR 300.3. For-profit, private-sector entities and individuals are not eligible for investment assistance.

The EDA-funded project must be located in an area that, on the date EDA receives the Proposal, meets one (or more) of the following economic distress criteria: (i) An unemployment rate that is, for the most recent 24-month period for which data are available, at least one percentage point greater than the national average unemployment rate; (ii) per capita income that is, for the most recent period for which data are available, 80 percent or less of the national average per capita income; or (iii) has a "Special Need," as determined by EDA.

EDA-Specific Cost Sharing Requirement: Generally, the amount of the EDA grant may not exceed 50 percent of the total cost of the project. Projects may receive an additional amount that shall not exceed 30 percent, based on the relative needs of the region in which the project will be located (when compared with other distressed regions around the country), as determined by EDA. *See* section 204(a) of PWEDA (42 U.S.C. 3144) and 13 CFR 301.4(b)(1). In the case of EDA investment assistance to a(n): (i) Indian Tribe, (ii) State (or political subdivision of a State) that the Assistant Secretary determines has exhausted its effective taxing and borrowing capacity, or (iii) non-profit organization that the Assistant Secretary determines has exhausted its effective borrowing capacity, the Assistant Secretary has the discretion to establish a maximum EDA investment rate of up to 100 percent of the total project cost. *See* sections 204(c)(1) and (2) of PWEDA (42 U.S.C. 3144) and 13 CFR 301.4(b)(5).

Funds from other Federal financial assistance awards are considered matching share funds for the EDA Co-applicant Scope of Work only if authorized by statute, which may be determined by EDA's reasonable interpretation of the statute. *See* 13 CFR 300.3. The EDA Co-applicant must show that the matching share is committed to the EDA Co-applicant Scope of Work for the award period, will be available as needed, and is not conditioned or encumbered in any way that precludes its use consistent with the requirements of EDA investment assistance. *See* 13 CFR 301.5. While cash contributions are preferred, in-kind contributions, consisting of contributions of space, equipment, or services, may provide the required non-Federal share of the total project cost. *See* 15 CFR 24.24.

Evaluation and Selection Procedures (Section V of the FOA): The evaluation criteria and selection procedures that EDA will use when evaluating EDA Applications and selecting the EDA Co-applicant under the FOA differ markedly from EDA's standard operating procedures and, in some cases, EDA's regulations.

Selection Procedures

The selection procedures set forth below, and in more detail in Section V of the FOA, will supersede EDA's standard procedures for this competitive solicitation. These procedures will be implemented on behalf of EDA by EDA Headquarters, and are as follows:

Phase 1: Initial eligibility and responsiveness review. The Granting Agencies will conduct an initial eligibility and responsiveness review to determine if the submitted Proposals (a) contain all required items for submission, as specified in Section IV of the FOA, and (b) include agency-specific Applications that meet the relevant agency-specific eligibility criteria, as specified in Section III of the FOA.

Phase 2: DOE review of the Hub-specific portion of the Proposal. In this phase, DOE will review only those Proposals that were determined to be eligible and responsive during the prior phase of review. DOE will review the Hub-specific portion of the Proposal provided by the DOE Co-Applicant (*see* Section V.B of the FOA for the Hub-specific criteria against which Proposals

in this phase will be reviewed). DOE will conduct this merit review in accordance with the nonbinding guidance provided in the "Department of Energy Merit Review Guide for Financial Assistance and Unsolicited Proposals." This guide is available under Financial Assistance, Regulations and Guidance at *http://www.management.energy.gov/documents/meritrev.pdf.* Following this merit review, DOE will apply the DOE-specific program policy factors and identify the top tier of DOE Co-applicants based on the Hub evaluation criteria and the program policy factors. The Proposals associated with this top tier ("Top Tier Proposals") will continue to Phase #3.

Phase 3: EDA, NIST/MEP, and SBA review of Proposals. Representatives from the Granting Agencies other than DOE will perform an agency-specific review of their respective Applications for funding contained within the Top Tier Proposals. This review will assess the quality of the Applications based on the agency-specific criteria set forth in the FOA.

Phase 4: Technical merit review of Consortium Proposals by interagency panel. In this phase, an interagency review panel composed of representatives from the Participating Agencies will review all Top Tier Proposals. In this phase, the interagency review panel will evaluate each Top Tier Proposal based on the E–RIC evaluation criteria listed in Section V.E of the FOA.

Phase 5: Interactions with Consortia Submitting Top Tier Proposals. The interagency panel may interact with Consortia that submitted Top Tier Proposals as identified in Phase #2. In these interactions, Consortia may be notified of any shortcomings identified in Phases #2, #3, or #4 and be given the opportunity to submit supplemental materials to address these shortcomings. The interagency panel may elect to skip this phase; however, if the interagency panel elects to interact with any Consortium, it will interact with all Consortia submitting Top Tier Proposals.

Phase 6: Interviews and Site Visits. The interagency panel may elect to conduct interviews and/or site visits with the Consortia that submitted Top Tier Proposals. If the interagency panel elects to conduct interviews with any Consortium, it will conduct interviews with all Consortia submitting Top Tier Proposals. Site visits will be conducted at the interagency panel's discretion.

Phase 7: Interagency Panel Scores and Ranks Consortia. The interagency panel will then review the Top Tier Proposals, along with the results of any interviews or site visits and any supplementary materials submitted by the Consortia pursuant to Phase #5, and rate the Top Tier Proposals based on the E–RIC evaluation criteria in Section V.E of the FOA. Proposals that either a) are deemed unsatisfactory on the E–RIC evaluation criteria or b) are deemed unsatisfactory for funding by any Granting Agency on the basis of its agency-specific evaluation will be eliminated from further consideration. The interagency panel will then assign scores to the remaining Proposals based on the E–RIC evaluation criteria, which may be informed by the agency-specific technical merit reviews from EDA, NIST/MEP, and SBA. If all Top Tier Proposals are eliminated in Phase #7, the interagency panel will not proceed to Phase #8. In this case, each Granting Agency may rely upon its own analysis and use the funds available under the FOA to fund any eligible Co-applicant it so chooses, or make no selection at all.

Phase 8: Interagency Panel Identification of Recommended Proposal. The interagency panel will then apply specific policy factors to the remaining Top Tier Proposals as described in the FOA. The interagency panel will determine, based on its ranking and the policy factors, which Proposal it will recommend (the "Recommended Proposal") for funding to the Granting Agencies. The interagency panel will recommend funding the top-ranked Proposal from Phase #7 unless the panel recommends another Top Tier Proposal on the basis of the application of the policy factors. Each Granting Agency's representative on the interagency panel will recommend to their agency's Selecting Official that their agency fund their respective Co-applicant from the Recommended Proposal.

Phase 9: Recommendation to Agency Selecting Officials and Agency Award Selections. The interagency panel members representing Granting Agencies will then forward to their respective Selecting Officials (i) a memorandum recommending the selection of the Co-Applicant on the Recommended Proposal for award, together with (ii) the Recommended Proposal itself and the ranking of the Top Tier Proposals by the interagency panel. Although it is anticipated that the Selecting Officials will be guided by their respective staff's recommendation, each Selecting Official does retain the right to not make an award.

Phase 10: Negotiation of Consortium MOU and Final Awards. After the selected Proposal has been identified but prior to awards, the interagency panel will engage in negotiations with the Consortium in order to establish a collective agreement among *all* Consortium Co-applicants and *all* agencies involved in the interagency panel regarding certain matters proposed in the Consortium's Proposal. The Consortium MOU will establish the long-term commitments of the Consortium as a whole to the management and facilitation of the E–RIC. Each Selecting Official may also enter into individual discussions with its selected recipient in order to negotiate and finalize a satisfactory award instrument consistent with the terms in the Consortium MOU. Such discussions may entail (1) conforming modifications to the project budget or Co-Applicant Scope of Work to meet Participating Agency requirements; or (2) special terms and conditions that may be required.

Any Granting Agency may enter into negotiations with its selected recipient for any reason it deems necessary, including but not limited to: (1) The budget is not appropriate or reasonable for the requirement; (2) only a portion of the Application is selected for award; (3) a Granting Agency needs additional information to determine that the Co-applicant is capable of complying with the requirements in the FOA or the Granting Agency's applicable regulations; or (4) special terms and conditions are required. Failure to resolve satisfactorily the issues identified by the applicable Granting Agency will preclude award to its selected recipient. In the event that negotiations with the selected recipient cannot be resolved to the Granting Agency's satisfaction, the Granting Agencies reserve the right to select an alternate Consortium using the results from Phases #7 and #8 above.

Notice of Selection

Subject to the availability of funding, successful Co-applicants should expect to receive notification of selection for negotiation within sixty (60) to ninety (90) days from the closing date of the FOA. Each Co-applicant award will have an estimated start date between August 1, 2010, and September 30, 2010.

Evaluation Criteria

The evaluation criteria set forth in this notice and request for applications, and more fully described in Section V of the FOA, will supersede any other evaluation criteria used by EDA for this competitive solicitation, including without limitation those set forth in 13 CFR 301.8. Where consistent with the terms set forth in the FOA, applicant

eligibility, program objectives and priorities, and other application and award requirements are set forth in EDA's regulations and EDA Co-applicants must address these requirements; however, EDA's investment policies and priorities, evaluation criteria, and selection procedures shall be exclusively as set forth in this notice and the FOA, and EDA's codified regulations regarding those matters shall not apply.

EDA Investment Policies and Funding Priorities

EDA's mission is to catalyze and foster regional economic development. EDA concentrates its resources on building a new foundation for sustainable economic growth. This foundation builds upon two key economic drivers—innovation and regional collaboration. Innovation puts ideas into action by developing and commercializing new products, services, and technologies for sale in the regional, national, and global marketplace. Regional collaboration requires cooperation across city, county, and even State lines; cross-functional collaboration among government agencies; and collaboration among the private, non-profit, and public sector. EDA funds approaches to economic development that break down barriers to collaboration and that support local and regional efforts to spur economic growth, create jobs, and enhance quality of life. In general, EDA strives to support a portfolio of investments that:

- Promote regional development;
- Accelerate innovation, technology transfer, and entrepreneurship to create or expand high-impact, fast-growth businesses;
- Attract private and non-profit capital;
- Create and retain good jobs and increase regional per capita income;
- Foster a globally competitive workforce;
- Increase exports of U.S. products and services; and
- Leverage complementary investments by other Federal, State and local entities.

Finally, EDA encourages Proposals that engage the diverse populations of America, including the most disadvantaged and historically underrepresented, to contribute to and reap the benefits of these funding priorities.

EDA-specific Evaluation Criteria for EDA Co-applicant

EDA will use the following evaluation criteria for specific evaluation of the EDA Co-applicant:

i. Qualifications of EDA Co-applicant's key personnel to perform the proposed project.

ii. Quality of EDA Co-applicant's proposed management, and the extent to which the proposed project effectuates EDA's investment priorities, which are:

- *Collaborative Regional Innovation.* Initiatives that support the development and growth of innovation clusters based on existing regional competitive strengths. Initiatives must engage stakeholders; facilitate collaboration among urban, suburban and rural (including Tribal) areas; provide stability for economic development through long-term intergovernmental and public/private collaboration; and support the growth of existing and emerging industries.
- *Public/Private Partnerships.* Investments that use both public and private sector resources and leverage complementary investments by other government/public entities and/or non-profits.
- *National Strategic Priorities.* Initiatives that encourage job growth and business expansion in clean energy; green technologies; sustainable manufacturing; information technology (*e.g.,* broadband, smart grid) infrastructure; communities severely impacted by automotive industry restructuring; natural disaster mitigation and resiliency; access to capital for small and medium sized and ethnically diverse enterprises; and innovations in science, health care and alternative fuel technologies.
- *Global Competitiveness.* Investments that support high growth businesses and innovation-based entrepreneurs to expand and compete in global markets.
- *Environmentally-Sustainable Development.* Investments that encompass best practices in 'environmentally sustainable development,' broadly defined, to include projects that enhance environmental quality and develop and implement green products, processes, and buildings as part of the green economy.
- *Economically Distressed and Underserved Communities.* Investments that strengthen diverse communities that have suffered disproportionate economic and job losses and/or are rebuilding to become more competitive in the global economy.

iii. The extent to which the EDA Co-applicant's Application for EDA funding reflects an outstanding, high quality, and meaningful contribution to the Consortium's overall Proposal and evaluation under Section V.E. of the FOA.

iv. Feasibility of proposed project and project readiness. EDA may consider past performance of the EDA Co-applicant with respect to the receipt of and the performance of prior awards of Federal assistance under this factor.

v. Quality and amount of local match and/or related private investment offered as part of the project.

Intergovernmental Review: Applications for assistance under EDA's programs are subject to the State review requirements imposed by Executive Order 12372, "*Intergovernmental Review of Federal Programs*."

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements: Administrative and national policy requirements for all Department of Commerce awards are applicable to this competitive solicitation. These requirements may be found in the *Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements,* which was published in the **Federal Register** on February 11, 2008 (73 FR 7696). This notice may be accessed by entering the **Federal Register** volume and page number provided in the previous sentence at the following Web site: *http://www.gpoaccess.gov/fr/index.html.*

Paperwork Reduction Act: This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Form ED–900 (*Application for Investment Assistance*) has been approved by the Office of Management and Budget (OMB) under the Control Number 0610–0094. The use of Forms SF–424 (*Application for Financial Assistance*), SF–424A (*Budget Information—Non-Construction Programs*), SF–424B (*Assurances—Non-Construction Programs*), SF–424C (*Budget Information—Construction Programs*), SF–424D (*Assurances—Construction Programs*), and Form SF–LLL (*Disclosure of Lobbying Activities*) has been approved under OMB Control Numbers 4040–0004, 0348–0044, 4040–0007, 4040–0008, 4040–0009, and 0348–0046 respectively. The Form CD–346 (*Applicant for Funding Assistance*) is approved under OMB Control Number 0605–0001. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB Control Number.

Executive Order 12866 (Regulatory Planning and Review): This notice has

been determined to be not significant for purposes of Executive Order 12866.

Executive Order 13132 (Federalism): It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/ Regulatory Flexibility Act: Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for rules concerning grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: March 26, 2010.

John R. Fernandez,

Assistant Secretary of Commerce for Economic Development.

[FR Doc. 2010–7467 Filed 4–1–10; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 00323162–0165–01]

RIN 0648–XV30

Endangered and Threatened Species; 90–Day Finding on a Petition to Delist Coho Salmon South of San Francisco Bay

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

ACTION: Notice of 90–day petition finding; request for information.

SUMMARY: We, the National Marine Fisheries Service (NMFS), are accepting a 2003 petition to delist coho salmon (*Oncorhynchus kisutch*) in coastal counties south of the ocean entrance to San Francisco Bay, California, from the Federal List of Endangered and Threatened Wildlife under the Endangered Species Act (ESA) of 1973, as amended. Coho salmon populations in this region are currently listed under the ESA as part of the Central California Coast (CCC) Evolutionarily Significant Unit (ESU). This action is being taken in response to a February 8, 2010, U.S. District Court decision that our previous rejection of the petition in 2006 was arbitrary and capricious. To ensure a comprehensive review, we are soliciting scientific and commercial data and other information relevant to the status of coho salmon in the coastal counties south of San Francisco Bay. We will publish the results of that review and will make a finding as to whether the petitioned action is or is not warranted on or before February 8, 2011.

DATES: Written comments, data and information related to this petition finding must be received no later than 5 p.m. local time on June 1, 2010.

ADDRESSES: You may submit comments, identified by the RIN 0648–XV30, by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal http// www.regulations.gov. Follow the instructions for submitting comments.
- Facsimile (fax): 562–980–4027, Attn: Craig Wingert
- Mail: Submit written comments to the Assistant Regional Administrator, Protected Resources Division, Attn: Craig Wingert, Southwest Region, National Marine Fisheries Service, 501 W. Ocean Blvd., Suite 5200, Long Beach, CA, 90802–4213.

Instructions: All comments received are a part of the public record and will generally be posted to *http// www.regulations.gov* without change. All personal identifying information (for example, name, address, etc.) voluntarily submitted by the commenter may be publically accessible. Do not submit confidential business information or otherwise sensitive or protected information. We will accept anonymous comments (if you wish to remain anonymous enter N/A in the required fields). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

A copy of the petition and related information may be obtained by submitting a request to the Assistant Regional Administrator, Protected Resources Division, Attn: Craig Wingert, Southwest Region, National Marine Fisheries Service, 501 W. Ocean Blvd., Suite 5200, Long Beach, CA, 90802–4213 or from the internet at: *http:// swr.nmfs.noaa.gov/*.

FOR FURTHER INFORMATION CONTACT: Craig Wingert, NMFS, Southwest Region, (562) 980–4021; or Marta Nammack, NMFS, HQ, (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Background

Coho salmon in Santa Cruz and coastal San Mateo counties south of San Francisco Bay are part of the larger CCC coho salmon ESU. The CCC coho salmon ESU was listed as a threatened species on October 31, 1996 (61 FR 56138), and subsequently reclassified as an endangered species on June 28, 2005 (70 FR 37160). For more information on the status, biology, and habitat of this coho salmon ESU, please refer to "Endangered and Threatened Species: Proposed Listing Determinations for 27 ESUs of West Coast Salmonids; Proposed Rule" (69 FR 33102; June 14, 2004) or "Final Rule Endangered and Threatened Species; Threatened Status for Central California Coast Coho Salmon Evolutionarily Significant Unit (ESU)" (61 FR 56138; October 31, 1996).

On November 25, 2003, we received a petition from Mr. Homer T. McCrary, a Santa Cruz County forestland owner, to redefine the southern extent of the CCC coho salmon ESU by excluding coastal populations of coho salmon south of San Francisco Bay, California, from the ESU. An addendum to the petition (dated February 6, 2004) was received on February 9, 2004, that provided additional information to clarify the original petition and respond to new information regarding museum specimens of coho salmon from the area south of San Francisco Bay. The ESA authorizes an interested person to petition for the listing or delisting of a species, subspecies, or Distinct Population Segment (DPS)(16 U.S.C.1533(b)(3)(A). The ESA implementing regulations contain the factors to consider for delisting a species (50 CFR 424.11(d)). A species may be delisted for one or more of the following reasons: the species is extinct or has been extirpated from its previous range; the species has recovered and is no longer endangered or threatened; or investigations show the best scientific or commercial data available when the species was listed, or the interpretation of such data, were in error.

Section 4(b)(3)(A) of the ESA requires that, to the maximum extent practicable, within 90 days after receiving a petition, the Secretary shall make a finding whether the petition presents substantial scientific information indicating that the petitioned action may be warranted (90–day finding). The ESA implementing regulations for NMFS define "substantial information" as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted (50 CFR 424.14(b)(1)). If a positive 90–day finding is made, then NMFS must promptly conduct a status review of the species concerned and publish a finding indicating whether the petitioned action is or is not warranted within one year (1-year finding).

On March 23, 2006, we published a 90-day finding in the **Federal Register** (71 FR 14683) stating that the petition did not present substantial information indicating that delisting coho salmon south of San Francisco Bay may be warranted. On March 31, 2006, the petitioner challenged that finding, alleging violations of the ESA and the Administrative Procedure Act. *Homer T. McCrary* v. *Carlos Gutierrez*, *et al.*, No. 06–cv–86–MCE (E.D. Cal.)). The venue for the case was subsequently transferred to the Northern District Court in San Jose, California, No. C–08–01592–RMW (N.D. Cal.).

On February 8, 2010, the court issued an order stating that our decision to deny the petition was arbitrary and capricious. The court found that we failed to follow the proper statutory procedures for reviewing petitions under the ESA, by using information beyond the four corners of the petition, and in applying the 1-year standard of whether the petitioned action "is or is not warranted," rather than the 90-day standard of whether the petitioned action "may be warranted." The court vacated our March 23, 2006, finding and remanded the petition to NMFS for review in accordance with 16 U.S.C. 1533(b)(3)(A).

The Petition

Mr. McCrary's petition requests that we redefine the southern boundary of the CCC coho salmon ESU. The petition clearly identified itself as a petition and included the identification information for the petitioner, as required in 50 CFR 424.14(a). The petition claims coho salmon were introduced into Santa Cruz County, California, in 1906 and until that time, aside from possible occasional strays, no self-sustaining native coho salmon populations existed in the streams south of San Francisco Bay, California. The petition asserts the legal and factual criteria supporting the listing of coho salmon under the ESA, as amended, were in error based on historical and scientific data presented in the petition. The petition argues coho salmon populations currently present in the coastal watersheds south of San Francisco Bay, California, are most likely non-native and persist there only due to artificial propagation, and for this reason do not constitute an important component in the evolutionary legacy of the species. Additionally, through the initial petition and subsequent written correspondence between NMFS' Southwest Fisheries Science Center (SWFSC) in Santa Cruz, California, and Southwest Regional Office in Long Beach, California, the petitioner asserted coho salmon in the area should be delisted because they are not evolutionarily significant populations and their inclusion in the CCC coho salmon ESU is inconsistent with NMFS' ESU policy for Pacific salmon (Waples, 1991). Based on this and other information detailed in the petition and addendums, the petitioner has requested that NMFS delist populations of CCC ESU coho salmon south of San Francisco Bay and redefine the southern boundary of CCC ESU coho salmon to north of San Francisco Bay.

Information used to support the petitioner's assertion that coho salmon are not native south of San Francisco Bay, and therefore, erroneously listed, is predicated on: (1) early scientific and historical accounts indicating that the entrance to San Francisco Bay is the southern boundary for coho salmon; (2) the absence of coho salmon in the archeological record; (3) differences in geology, climate, and hydrology between regions north and south of San Francisco Bay; and (4) human intervention through out-of-area (i.e., non-native) coho salmon plantings to streams in coastal San Mateo and Santa Cruz counties which resulted in the establishment of coho salmon in the area.

We considered all additional information provided by the petitioner and individuals providing supplemental information on his behalf to NMFS and our SWFSC from 2004 2005 to be addendums to the original November 23, 2003, petition.

Petition Finding

In order to address errors in the previous handling of the petition, we are accepting the petition and initiating a review of the status of CCC coho populations south of San Francisco Bay.

Information Solicited

To ensure that the status review is complete and based on the best available scientific and commercial information, we are soliciting information concerning coho salmon in coastal streams south of San Francisco Bay in San Mateo and Santa Cruz counties. We request information from the public, concerned governmental agencies, Native American tribes, the scientific community, agricultural and forestry groups, conservation groups, industry, or any other interested parties concerning the current and/or historical status of coho salmon in coastal streams south of San Francisco Bay. Specifically, we request information on: (1) published accounts from historical or scientific sources regarding the presence, absence, and distribution of coho salmon in streams south of San Francisco Bay prior to 1906; (2) archeological evidence regarding presence or absence of coho salmon in streams south of San Francisco Bay; (3) genetic information comparing coho salmon in the streams south of San Francisco Bay with coho salmon in streams north of San Francisco Bay within the range of the CCC coho salmon ESU, and in other coho salmon ESUs; (4) differences or similarities in climate, geology, and hydrology of watersheds in Santa Cruz and coastal San Mateo counties compared with watersheds in the northern portion of the CCC coho salmon ESU range (coastal Marin County to Punta Gorda in southern coastal Humboldt County), and the effects of these habitat differences on coho salmon; and (5) the reproductive isolation of coho salmon in coastal San Mateo and Santa Cruz counties and the importance of these populations to the evolutionary legacy of the CCC coho salmon ESU in light of NMFS' ESU policy (56 FR 58612; November 20, 1991).

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination. Section 4(b)(1)(A) of the ESA directs that a determination must be made "solely on the basis of the best scientific and commercial data available." On or before February 8, 2011, we will issue a 1-year finding based on a review of the best scientific and commercial data available, including all relevant information received from the public in response to this 90-day finding.

You may submit your information concerning this finding by one of the methods listed in the **ADDRESSES** section. Please note that we may not consider comments we receive after the date specified in the DATES section in our final determination. If you submit your information via *http//www.regulations.gov*, your entire submission including personal identifying information will be posted on the website. If your submission is made via hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hard copy submissions on *http//www.regulations.gov*. Information and materials we receive, as well as supporting documentation we used in preparing this finding, will be available for public inspection, by appointment, during normal business

hours at NMFS' Southwest Region Office.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: March 30, 2010.

Eric C. Schwaab,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–7493 Filed 4–1–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XU93

Notice of Intent to Prepare an Environmental Assessment for a Proposed Rule to Revise Marine Mammal Special Exception Permit Requirements

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

ACTION: Notice of Intent to prepare Environmental Assessment; extension of comment period.

SUMMARY: On March 10, 2010, NMFS announced its intent to prepare an Environmental Assessment (EA) to analyze the potential environmental impacts of a proposed rule to revise federal regulations implementing the Section 104 permit provisions of the Marine Mammal Protection Act (MMPA) with written comments due by May 10, 2010. NMFS has decided to allow additional time for submission of public comments on this action.

DATES: The public comment period for this action has been extended by 30 days. Written comments must be received or postmarked by June 10, 2010.

ADDRESSES: Written comments should be mailed to: P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910–3226. Comments may also be submitted by facsimile to (301) 713–0376 and confirmed by hard copy, or by email to *mmpermitregs.comments@noaa.gov*. Please include "Permit Regulations NOI" in the subject line of the email.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Jennifer Skidmore, (301) 713–2289.

SUPPLEMENTARY INFORMATION: NMFS has developed proposed revisions, additions, and restructuring of NMFS marine mammal permit application procedures and permit requirements to form the basis of one or more alternatives to be evaluated in an EA for a Proposed Rule. The internal scoping summary document for public review is available at: *http://www.nmfs.noaa.gov/pr/permits/mmpa_regulations.htm*.

NMFS will consider all comments received during the comment period. All hardcopy submissions must be unbound, on paper no larger than 8½ by 11 inches (216 by 279 mm), and suitable for copying and electronic scanning. NMFS requests that you include in your comments: (1) Your name and address; and (2) Any background documents to support your comments, as you feel necessary. A draft EA will be made available for public review concurrent with publication of a notice of proposed rulemaking.

Dated: March 29, 2010.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–7492 Filed 4–1–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of State Coastal Management Programs and National Estuarine Research Reserves

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Office of Ocean and Coastal Resource Management, National Ocean Service, Commerce.

ACTION: Notice of intent to evaluate and notice of availability of final findings.

SUMMARY: The NOAA Office of Ocean and Coastal Resource Management (OCRM) announces its intent to evaluate the performance of the Louisiana Coastal Management Program and the Great Bay (New Hampshire) National Estuarine Research Reserve. The Coastal Zone Management Program evaluation will be conducted pursuant to section 312 of the Coastal Zone Management Act of 1972, as amended (CZMA) and regulations at 15 CFR part 923, subpart L. The CZMA requires continuing review of the performance of states with respect to coastal program implementation. Evaluation of a Coastal Management Program requires findings concerning the extent to which a state has met the national objectives, adhered to its Coastal Management Program document approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA.

The National Estuarine Research Reserve evaluation will be conducted pursuant to sections 312 and 315 of the CZMA and regulations at 15 CFR part 921, subpart F and part 923, subpart L. Evaluation of a National Estuarine Research Reserve requires findings concerning the extent to which a state has met the national objectives, adhered to its Reserve final management plan approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA.

Each evaluation will include a site visit, consideration of public comments, and consultations with interested Federal, State, and local agencies and members of the public. A public meeting will be held as part of the site visit. When the evaluation is completed, OCRM will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings. Notice is hereby given of the date of the site visits for the listed evaluations, and the date, local time, and location of the public meetings during the site visits.

Dates and Times: The Louisiana Coastal Management Program evaluation site visit will be held May 10–14, 2010. One public meeting will be held during the week. The public meeting will be held on Monday, May 10, 2010, at 6:30 p.m. at the LaSalle Building (Capitol Complex), Griffon Room, 1st Floor, 617 North 3rd Street, Baton Rouge, Louisiana.

The Great Bay (New Hampshire) National Estuarine Research Reserve evaluation site visit will be held May 17–21, 2010. One public meeting will be held during the week. The public meeting will be held on Wednesday, May 19, 2010, at 7 p.m. at the Great Bay National Estuarine Research Reserve, Hugh Gregg Coastal Conservation Center, 89 Depot Road, Greenland, New Hampshire.

ADDRESSES: Copies of states' most recent performance reports, as well as OCRM's evaluation notification and supplemental information request letters to the state, are available upon request from OCRM. Written comments from interested parties regarding this Program are encouraged and will be accepted until 15 days after the public meeting. Please direct written comments to Kate Barba, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, N/ORM7, Silver Spring, Maryland 20910.

SUPPLEMENTARY INFORMATION: Notice is hereby given of the availability of the final evaluation findings for the Hawaii Coastal Management Program and the Hudson River (New York) National Estuarine Research Reserve (NERR). Sections 312 and 315 of the Coastal Zone Management Act of 1972 (CZMA), as amended, require a continuing review of the performance of coastal states with respect to approval of CMPs and the operation and management of NERRs. The State of Hawaii was found to be implementing and enforcing its federally approved coastal management program, addressing the national coastal management objectives identified in CZMA Section 303(2)(A)–(K), and adhering to the programmatic terms of their financial assistance awards. The Hudson River NERR was found to be adhering to programmatic requirements of the NERR System.

Copies of these final evaluation findings may be obtained upon written request from: Kate Barba, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, N/ORM7, Silver Spring, Maryland 20910, or *Kate.Barba@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Kate Barba, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, N/ORM7, Silver Spring, Maryland 20910, (301) 563–1182.

Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration

Dated: March 24, 2010.

Donna Wieting,

Director, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2010–7081 Filed 4–1–10; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Order No. 1672]

Expansion of Foreign–Trade Zone 75, Phoenix, Arizona

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 City of Phoenix, grantee of Foreign–Trade Zone 75, submitted an application to the Board for authority to expand its zone to include the jet–fuel storage and distribution system at and adjacent to the Phoenix Sky Harbor International Airport (Site 5) in Phoenix, Arizona, within the Phoenix Customs and Border Protection port of entry (FTZ Docket 17–2009, filed 4/23/09);

Whereas, notice inviting public comment was given in the **Federal Register** (74 FR 19935–19936, 4/30/09) 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 expand FTZ 75 is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 23rd day of March 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign–Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–7517 Filed 4–1–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Document Number: 090306279–0146–02]

Final Voluntary Product Standard; DOC PS 20–10 "American Softwood Lumber Standard"

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology (NIST) announces voluntary product standard DOC PS 20–10 "American Softwood Lumber Standard" which will supersede DOC PS 20–05. The Standard establishes standard sizes and requirements for developing and coordinating the lumber grades of the various species of softwood lumber, the assignment of design values, and the preparation of grading rules applicable to each species. Its provisions include implementation of the Standard through an accreditation and certification program; establishment of principal trade classifications and lumber sizes for yard, structural, factory/shop use: Classification, measurement, grading and grade-marking of lumber; Definitions of terms and procedures to provide a basis for the use of uniform methods in the grading, inspection, measurement and description of softwood lumber; commercial names of the principal softwood species: Definitions of terms used in describing standard grades in lumber; and commonly used industry abbreviations. The Standard also includes the organization and functions of the American Lumber Standard Committee, the Board of Review, and the National Grading Rule Committee.

DATES: DOC PS 20–10 "American Softwood Lumber Standard," a voluntary product standard developed under Department of Commerce procedures, becomes effective June 1, 2010, for products produced thereunder on and after that date. The standard being superseded, DOC PS 20–05 "American Softwood Lumber Standard," is effective for products produced thereunder through May 31, 2010.

ADDRESSES: Requests for a copy of DOC PS 20–10 should be submitted to: Standards Services Program, NIST, 100 Bureau Drive Stop 2100, Gaithersburg, MD 20899–2150. The standard is also available at *http://ts.nist.gov/Standards/Conformity/vps.cfm.*

FOR FURTHER INFORMATION CONTACT: David F. Alderman, Standards Services Division, telephone: 301–975–4019, fax: 301–975–4715, or e-mail *david.alderman@nist.gov.*

SUPPLEMENTARY INFORMATION: DOC PS 20–10 "American Softwood Lumber Standard" was developed by the American Lumber Standard Committee, the Standing Committee responsible for maintaining the standard. The revision was processed in accordance with provisions of Department of Commerce "Procedures for the Development of Voluntary Product Standards" (15 CFR part 10). A notice, which appeared in the **Federal Register** on April 3, 2009 (74 FR 15255) announced NIST's circulation of the revision for public review, requested public comments, and provided the history of the revision.

Analysis of Comments

NIST received one comment from an association representing lumber retailers.

Comment: The commenter requested that the standard be expanded to include a "single regime" for verifying the eco-attribute of lumber products with an on-product eco-label.

Response: NIST did not make the requested change because the scope of DOC PS 20 deals with the grade marking of various softwood lumber and the addition of eco-labeling is therefore considered outside the scope of this standard.

DOC PS 20–10 supersedes DOC PS 20–05, effective June 1, 2010. The new edition reflects efforts toward updating and improving DOC PS 20 with clarification and amplification of text and terms while maintaining the technical requirements and administrative structure for implementing and enforcing the Standard.

Dated: March 30, 2010.

Marc G. Stanley,

Acting Deputy Director.

[FR Doc. 2010–7494 Filed 4–1–10; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Federal Geospatial Summit To Provide Information on Upcoming Improvements To the National Spatial Reference System (NSRS), Including the Replacement of the North American Datum of 1983 (NAD 83) and the North American Vertical Datum of 1988 (NAVD 88)

AGENCY: National Geodetic Survey (NGS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public meeting.

SUMMARY: The National Geodetic Survey (NGS) will host a Federal Geospatial Summit to discuss the impact updating the National Spatial Reference System (NSRS) will have on federal government agencies by replacing the North American Datum of 1983 (NAD 83), the North American Vertical Datum of 1988 (NAVD 88), and other state and territorial island vertical datums. The proposed changes will affect the surveying, mapping, charting, and Geographic Information System (GIS) programs of federal government agencies, as well as those tribal, state, county, and municipal governments that have adopted the NSRS.

DATES: The public meeting will be held Tuesday, May 11 and Wednesday, May 12, 2010 from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting location is the National Oceanic and Atmospheric Administration's (NOAA) Science Center and Auditorium, located at 1301 East-West Highway, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Christine Gallagher, Program Analyst, National Geodetic Survey (N/NGS1), 1315 East-West Highway, Silver Spring, MD 20910; Phone: (301) 713–3231 x 105; E-mail: *christine.gallagher@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Abstract

In January 2008, NGS adopted a 10-year plan identifying the need to change the geometric and vertical geodetic datums of the United States to improve the efficient use of the NAVSTAR Global Positioning System (GPS). Continuing technological developments and enhancements in space-based positioning, navigation, and timing systems by the United States, as well as in other international programs, including the Chinese global satellite navigation system COMPASS, the European Union's satellite navigation system GALILEO, and the Russian GLONASS (Global'naya Navigatsionnaya Sputnikovaya Sistema), will have a profound impact on the integration of Global Navigation Satellite System (GNSS) technologies with Federal surveying, mapping, charting, and GIS programs. In an effort to support these rapid changes in positioning technologies, NGS has adopted a plan to replace NAD 83 and NAVD 88, as well as other state and territorial island datums, with more contemporary geodetic reference systems, thereby reducing several significant impediments to the efficient use of these positioning and navigation systems. This meeting will serve as a forum to allow Federal geospatial program managers, technical specialists, and contractors to address the impacts of the planned changes, offer an opportunity to discuss these changes, and explain how NGS may provide training and technical assistance to ensure minimal technical and budgetary impacts resulting from these new systems.

Dated: March 19, 2010.

Juliana P. Blackwell,

Director, Office of National Geodetic Survey, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2010–7080 Filed 4–1–10; 8:45 am]

BILLING CODE 3510–JE–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

Marine Protected Areas Federal Advisory Committee; Public Meeting

AGENCY: National Ocean Service, NOAA, Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: Notice is hereby given of a meeting of the Marine Protected Areas Federal Advisory Committee (Committee) in Charleston, South Carolina.

DATES: The meeting will be held Tuesday, April 20, 2010, from 9 a.m. to 5:30 p.m., Wednesday, April 21, from 8:30 a.m. to 12 p.m., and Thursday, April 22, from 8:30 a.m. to 4:30 p.m. These times and the agenda topics described below are subject to change. Refer to the web page listed below for the most up-to-date meeting agenda.

ADDRESSES: The meeting will be held at the Francis Marion Hotel, 387 King Street, Charleston, South Carolina.

FOR FURTHER INFORMATION CONTACT: Lauren Wenzel, Designated Federal Officer, MPA FAC, National Marine Protected Areas Center, 1305 East West Highway, Silver Spring, Maryland 20910. (*Phone:* 301–713–3100 x136, *Fax:* 301–713–3110); *e-mail: lauren.wenzel@noaa.gov;* or visit the National MPA Center Web site at *http://www.mpa.gov*).

SUPPLEMENTARY INFORMATION: The Committee, composed of external, knowledgeable representatives of stakeholder groups, was established by the Department of Commerce (DOC) to provide advice to the Secretaries of Commerce and the Interior on implementation of Section 4 of Executive Order 13158 on MPAs. The meeting will be open to public participation from 4 p.m. to 4:45 p.m. on Tuesday, April 20, 2010, and from 8:35 a.m. to 9:30 a.m. on Thursday, April 22, 2010. In general, each individual or group will be limited to a total time of five (5) minutes. If members of the public wish to submit written statements, they should be submitted to the Designated Federal Official by April 15, 2010.

Matters to be Considered: The focus of the Committee's meeting will be the establishment of appropriate Subcommittees and Workgroups and their development of work plans to address the Committee's new charge. The Committee will receive an update on the Administration's Ocean Policy Task Force and Coastal and Marine

Spatial Planning initiatives, and their linkages to the national system of MPAs. The Committee will hear from two panels of MPA stakeholders: one on regional MPA issues in the South Atlantic, and one on cultural MPA resources. The agenda is subject to change. The latest version will be posted at *http://www.mpa.gov.*

Donna Wieting,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 2010–7082 Filed 4–1–10; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No.: PTO–P–2010–0029]

Request for Comments on Proposed Change To Missing Parts Practice

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Request for comments.

SUMMARY: The United States Patent and Trademark Office (USPTO), in response to a number of requests to reduce the costs due one year after filing a provisional application, is considering a change that would effectively provide a 12-month extension to the 12-month provisional application period (creating a net 24-month period). This change would be implemented through the missing parts practice in nonprovisional applications. Currently the missing parts practice permits an applicant on payment of a surcharge to pay the up-front filing fees and submit an executed oath or declaration after the filing of a nonprovisional application within a two-month time period set by the USPTO that is extendable on payment of extension of time fees for an additional five months. Under the proposal, applicants would be permitted to file a nonprovisional application with at least one claim within the 12-month statutory period after the provisional application was filed, pay the basic filing fee, and submit an executed oath or declaration. In addition, the nonprovisional application would need to be in condition for publication and applicant would not be able to file a nonpublication request. Applicants would be given a 12-month period to decide whether the nonprovisional application should be completed by paying the required surcharge and the search, examination and any excess claim fees due within that 12-month period. The proposal would benefit applicants by permitting additional time to determine if patent protection should be sought at a relatively low cost and by permitting applicants to focus efforts on commercialization during this period. The proposal would benefit the USPTO and the public by adding publications to the body of prior art, and by removing from the USPTO's workload those nonprovisional applications for which the applicants have decided not to pursue examination. Importantly, the extended missing parts period would not affect the 12-month priority period provided by the Paris Convention for the Protection of Industrial Property and, thus, any foreign filings would still need to be made within 12 months of the filing date of the provisional application if applicant wishes to rely on the provisional application in the foreign-filed application.

Comment Deadline Date: To be ensured of consideration, written comments must be received on or before June 1, 2010.

ADDRESSES: Written comments should be sent by electronic mail message over the Internet addressed to *extended_missing_parts@uspto.gov.* Comments may also be submitted by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of Eugenia A. Jones. Although comments may be submitted by mail, the USPTO prefers to receive comments via the Internet.

The written comments will be available for public inspection at the Office of the Commissioner for Patents, located in Madison East, Tenth Floor, 600 Dulany Street, Alexandria, Virginia, 22314, and will be available via the USPTO Internet Web site (address: *http://www.uspto.gov*). Because comments will be made available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Eugenia A. Jones, Senior Legal Advisor, Office of Patent Legal Administration, Office of the Associate Commissioner for Patent Examination Policy, by telephone at (571) 272–7727, or by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of Eugenia A. Jones.

SUPPLEMENTARY INFORMATION: Applicants have a one-year period from the filing date of a provisional application to file a corresponding nonprovisional application in order to claim the benefit of the provisional application. Roughly fifty percent of provisional applications are abandoned without the subsequent filing of nonprovisional applications claiming their benefit. Many applicants have expressed that a longer period of time to draft a complete set of claims and pay fees would facilitate their efforts to determine whether their inventions have commercial viability, and would enable more informed and economically efficient decision making for applicants considering filing nonprovisional applications claiming benefit of prior provisional applications. Moreover, these same applicants have expressed that they would be willing to commit to 18-month publication of the invention disclosed in their provisional applications benefiting from any extension period, as well as any nonprovisional applications later claiming benefit of such provisional applications.

In order to claim the benefit of a prior provisional application, the statute requires a nonprovisional application filed under 35 U.S.C. 111(a) to be filed within 12 months after the date on which the corresponding provisional application was filed. *See* 35 U.S.C. 119(e). The proposed change would not alter this statutory requirement but would allow applicants to more easily avail themselves of the benefits of missing parts practice in nonprovisional applications.

Under the current missing parts practice, if a nonprovisional application filed under 35 U.S.C. 111(a) has been accorded a filing date but does not include the basic filing fee, the search fee, the examination fee, or an oath or declaration under 37 CFR 1.63, the USPTO will send a missing parts notice and set a time period for the applicant to submit the missing items and pay any required surcharge to avoid abandonment. *See* 37 CFR 1.53(f). If excess claims fees, a multiple dependent claim fee, and/or an application size fee are required and such fees have not been paid, then these fees are also required to be paid in response to a missing parts notice. Currently, the time period set forth in a missing parts notice is two months with extensions of time of up to five months under 37 CFR 1.136(a) being available.

The USPTO is requesting public comment on whether the missing parts practice should be changed to provide applicants with an extended time period to reply to a missing parts notice requiring fees in a nonprovisional application filed under 35 U.S.C. 111(a) that claims the benefit of a provisional application under the conditions that the basic filing fee for the

nonprovisional application has been paid, an executed oath or declaration under 37 CFR 1.63 has been filed, a nonpublication request has not been filed, and the application is in condition for publication. A benefit of such extension would be increased use of the 18-month publication system resulting from: (1) Additional nonprovisional applications being filed that would not have been filed without the ability to have 12 months to reply to a missing parts notice with no extension of time fees being required; and (2) nonprovisional applications being filed without a nonpublication request so that applicant will be given the 12-month time period to reply to a missing parts notice. A second benefit is added flexibility for applicants who may otherwise be forced to expend resources completing nonprovisional applications that may prove unnecessary given an additional year of commercialization efforts. Providing a longer time period to reply to a missing parts notice would give applicants more time to ascertain the value of their inventions, thereby helping applicants to decide whether to incur the additional costs associated with pursuing patent rights. Applications not completed as nonprovisional applications additionally benefit the USPTO and all other users of the patent system, by removing unnecessary workload from the agency. A third benefit is better targeting of applicant resources to commercialization efforts at critical time periods, which efforts can ultimately result in creation of jobs as well as new products and services. This sequencing of effort in turn will lead to more efficient and purposeful engagement with the USPTO for those applications that are filed and completed as nonprovisional applications.

The percentage of provisional applications that are subsequently relied upon in a nonprovisional application has been declining over time, leaving a higher percentage of provisional applications as abandoned, unrelied upon applications. In 2008, 143,120 provisional applications were filed. Thereafter, 72,792 nonprovisional or international applications were filed that claimed the benefit of one or more of the provisional applications filed in 2008 (or 50.8 percent of the provisional applications). In 2007, 132,581 provisional applications were filed. Thereafter, 75,330 nonprovisional or international applications were filed that claimed the benefit of one or more of the provisional applications filed in 2007 (or 56.8 percent of the provisional applications). In 2006, 121,471 provisional applications were filed. Thereafter, 73,136 nonprovisional or international applications were filed that claimed the benefit of one or more of the provisional applications filed in 2006 (or 60.2 percent of the provisional applications). In 2005, 111,753 provisional applications were filed. Thereafter, 68,511 nonprovisional or international applications were filed that claimed the benefit of one or more of the provisional applications filed in 2005 (or 61.3 percent of the provisional applications). In 2004, 102,268 provisional applications were filed. Thereafter, 63,146 nonprovisional or international applications were filed that claimed the benefit of one or more of the provisional applications filed in 2004 (or 61.7 percent of the provisional applications). For provisional applications filed from 1998 to 2003, the percentage of provisional applications relied upon in a subsequent application ranged from 61.2 to 63.2 percent.

Currently, some applicants take advantage of the missing parts practice to file nonprovisional applications without complete claim sets by omitting an executed oath or declaration or failing to pay the search and examination fees up front. Such filings result in a notice to file missing parts which must be replied to in order to complete the application prior to docketing for examination. A subset of these applicants then file a continuing application claiming the benefit of the first-filed nonprovisional application that claimed the benefit of the prior provisional application, rather than a reply to the notice to file missing parts, in order to effectively extend the time period to complete the nonprovisional application. The current proposal to provide a time period of twelve months for an applicant to reply to a missing parts notice under certain conditions seeks to provide applicants with a streamlined alternative to this practice by eliminating the need to refile the application and to pay significant extension of time fees.

Similarly, applicants who file several nonprovisional patent applications based on a number of provisional applications may fail to have sufficient focus on what they deem to be their most important applications. In addition, by failing to prioritize USPTO efforts on the nonprovisional applications deemed most important by applicants, greater delay in the processing and examination of all nonprovisional applications by the USPTO occurs. The current proposal would help applicants focus on their most important applications and conserve USPTO resources.

In order for an applicant to be provided a 12-month (non-extendable) time period to reply to a missing parts notice, the applicant would need to satisfy the following conditions: (1) The nonprovisional application filed under 35 U.S.C. 111(a) must claim the benefit of a prior-filed provisional application; (2) the basic filing fee must have been paid (in the nonprovisional application); (3) an executed oath or declaration under 37 CFR 1.63 must have been filed; (4) applicant must not have filed a nonpublication request, or the applicant must have filed a request to rescind a previously filed nonpublication request; and (5) the application must be in condition for publication as provided in 37 CFR 1.211(c). After an applicant timely replies to the missing parts notice within the 12-month time period and the nonprovisional application is completed, the nonprovisional application would be placed in the examination queue based on the actual filing date of the nonprovisional application. Therefore, there would be no change made in the order in which applications are examined as a result of the current proposal.

An applicant who has filed a provisional application with a complete disclosure and high quality application papers (*e.g.,* papers that satisfy the requirements of 37 CFR 1.52) would, in most cases, be able to file a nonprovisional application with little additional effort and expense. In addition to the requirements of a provisional application, a nonprovisional application requires at least one claim and an executed oath or declaration under 37 CFR 1.63. Thus, for example, where a provisional application was filed without any claims, the applicant would need to: (1) Draft at least one claim and file the nonprovisional application using essentially a copy of the provisional application papers (*e.g.,* specification and drawings), with minor revisions to add the claim(s) at the end of the specification and the reference to the prior-filed provisional application in the first sentence of the specification; (2) submit an executed oath or declaration under 37 CFR 1.63; and (3) submit the basic filing fee. A preliminary amendment adding additional claims could be submitted along with the reply to the missing parts notice. Currently, the small entity basic filing fee for a utility application is $165.00, or $82.00 if filed electronically using the USPTO's electronic filing system (EFS–Web). The non-small entity basic filing fee for a utility application is $330.00. To

complete the application for examination, the remainder of the filing fees and the required surcharge ($65.00 for small entities and $130.00 for other applicants) would be due within the 12-month time period set in the missing parts notice. Thus, an additional $445.00 for small entities and $890.00 for other applicants would be due for payment of the surcharge and the search and examination fees (plus any required excess claims fees and application size fee). Furthermore, the publication fee would not be required until mailing of a notice of allowance (unless early publication is requested).

Applicants are reminded that the disclosure of an invention in a provisional application should be as complete as possible because the claimed subject matter in the later-filed nonprovisional application must have support in the provisional application in order for the applicant to obtain the benefit of the filing date of the provisional application. Applicants are also advised that the extended missing parts period would not affect the 12-month priority period provided by the Paris Convention for the Protection of Industrial Property (Paris Convention) and, thus, any foreign filings would still need to be made within 12 months of the filing date of the provisional application if applicant wishes to rely on the provisional application in the foreign-filed application.

As discussed, the USPTO would require the nonprovisional application to be in condition for publication. In addition, the USPTO would publish the application promptly after the expiration of eighteen months from the earliest filing date for which a benefit is sought. Thus, if there are informalities in the application papers that need correction for the application to be in condition for publication (such as the specification pages contain improper margins or line spacing or the drawings are not acceptable because they are not electronically reproducible), the USPTO would still send a missing parts notice that sets a two-month (extendable) time period (not the 12-month extended missing parts period) for the applicant to correct the informalities as well as submit any missing items or required fees.

The USPTO is also considering offering applicants an optional service of having an international style search report prepared during the 12-month extended missing parts period. The optional service would provide the applicant with information concerning the state of the prior art and may be useful in determining whether to complete the application and the claims to pursue if the application is completed. The search report that would be prepared would be similar to the search report that is prepared for international applications. *See* PCT Rule 43 and *Manual of Patent Examining Procedure* (MPEP) § 1844. The fee for this service would be set, through rule making, to recover the estimated average cost of providing the service and is anticipated to be consistent with the current cost of conducting an international search. *See* 35 U.S.C. 41(d)(2) and 37 CFR 1.445(a)(2). It should be noted that if applicant decides to file a reply to the missing parts notice and complete the nonprovisional application after having received such a search report, the applicant would still be required to pay the search fee (set forth in 35 U.S.C. 41(d)(1) and 37 CFR 1.16) with the reply to the missing parts notice, and the examiner would still conduct the search that is currently done as part of the examination of nonprovisional applications. *See* MPEP §§ 704.01 and 904–904.03. This is analogous to international applications where applicant is required to pay the search fee set forth in 37 CFR 1.445(a)(2) and the USPTO will conduct a search and prepare an international search report when the USPTO is the International Searching Authority; and then, after the international application enters the national stage in the United States, applicant is required to pay the national stage search fee set forth 37 CFR 1.492(b) and the examiner will conduct a search as part of the examination of the application.

Any patent term adjustment (PTA) accrued by an applicant based on certain administrative delays by the USPTO is offset by a reduction for failing to reply to a notice by the USPTO within three months. *See* 37 CFR 1.704(b). Thus, if an applicant replies to a notice to file missing parts more than three months after mailing of the notice, the additional time would be treated as an offset to any positive PTA that will be accrued by applicant. The USPTO envisions that no change would be made to the current regulations (including the patent term adjustment regulations) except to provide for the fee for the optional service of an international style search report, if the USPTO decides to implement the proposed change to the missing parts practice.

The USPTO is publishing this request for comments to gather public feedback on, and to determine the level of interest in, the proposed change to missing parts practice as well as the optional service to provide a search report during the extended missing parts period discussed in this notice. Comments or suggestions are solicited on whether or how the USPTO should revise the missing parts practice.

Dated: March 29, 2010.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2010–7520 Filed 4–1–10; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–863]

Honey from the People's Republic of China: Notice of Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* April 2, 2010.

FOR FURTHER INFORMATION CONTACT: FOR FURTHER CONTACT INFORMATION: Catherine Bertrand, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3207.

SUPPLEMENTARY INFORMATION:

Background

On December 1, 2009, the Department of Commerce ("the Department") published a notice of opportunity to request an administrative review of the antidumping duty order on honey from the People's Republic of China ("PRC"). *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 74 FR 62743 (December 1, 2009). On December 31, 2009, American Honey Producers Association and the Sioux Honey Association (collectively "Petitioners") requested that the Department conduct an administrative review of the exports to the United States of 51 companies for the period December 1, 2008, through November 30, 2009. Those companies are: Ahcof Industrial Development Corp., Ltd.; Alfred L. Wolff (Beijing) Co. Ltd.; Anhui Honghui Foodstuff (Group) Co., Ltd.; Anhui Honghui Import&Export Trade Co., Ltd.; Anhui Cereals Oils and Foodstuffs I/E (Group) Corporation; Anhui Native Produce Imp& Exp Corp.; APM Global Logistics (Shanghai) Co.; Baiste Trading Co., Ltd.;

Cheng Du Wai Yuan Bee Products Co., Ltd.; Chengdu Stone Dynasty Art Stone; Dongtai Peak Honey Industry Co., Ltd.; Eurasia Bee's Products Co., Ltd.; Fresh Honey Co., Ltd. (formerly Mgl. Yun Shen); Golden Tadco Int'l; Hangzhou Golden Harvest Health Industry Co., Ltd.; Haoliluck Co., Ltd.; Hengjide Healthy Products Co. Ltd.; Hubei Yusun Co., Ltd.; Inner Mongolia Altin Bee–Keeping; Inner Mongolia Youth Trade Development Co., Ltd.; Jiangsu Cereals, Oils Foodstuffs Import Export (Group) Corp.; Jiangsu Kanghong Natural Healthfoods Co., Ltd.; Jiangsu Light Industry Products Imp & Exp (Group) Corp.; Jilin Province Juhui Import; Maersk Logistics (China) Company Ltd.; Nefelon Limited Company; Ningbo Shengye Electric Appliance; Ningbo Shunkang Health Food Co., Ltd.; Ningxia Yuehai Trading Co., Ltd.; Product Source Marketing Ltd.; Qingdao Aolan Trade Co., Ltd.; QHD Sanhai Honey Co., Ltd.; Qinhuangdao Municipal Dafeng Industrial Co., Ltd.; Renaissance India Mannite; Shaanxi Youthsun Co. Ltd.; Shanghai Bloom International Trading Co., Ltd.; Shanghai Foreign Trade Co., Ltd.; Shanghai Hui Ai Mal Tose Co. Ltd.; Shanghai Taiside Trading Co., Ltd.; Shine Bal Co., Ltd.; Sichuan–Dujiangyan Dubao Bee Industrial Co., Ltd.; Silverstream International Co., Ltd.; Suzhou Shanding Honey Product Co. Ltd.; Tianjin Eulia Honey Co., Ltd.; Wuhan Bee Healthy Co., Ltd.; Wuhan Shino–Food Trade Co., Ltd.; Wuhu Fenglian Co., Ltd.; Wuhu Qinshi Tangye; Wuhu Qinshgi Tangye; Xinjiang Jinhui Food Co., Ltd.; and, Zhejiang Willing Foreign Trading Co. Pursuant to this request, the Department published a notice of the initiation of the administrative review of the antidumping duty order on honey from the PRC. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 75 FR 4770 (January 29, 2010).

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw the requests within 90 days of the date of publication of the notice of initiation. On March 22, 2010, Petitioners timely withdrew their request that the Department conduct an administrative review of the entries of subject merchandise of the 51 companies listed above, and no other interested party requested a review of these or any other companies for this POR. Therefore, the Department is rescinding this administrative review of the antidumping duty order on honey from the PRC covering the period December 1, 2008, through November 30, 2009, in accordance with 19 CFR 351.213(d)(1).

Assessment

The Department will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all appropriate entries. Antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after the publication of this notice in the **Federal Register**.

Notification to Interested Parties

This notice serves as a final reminder to importers of their 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 review period. Pursuant to 19 CFR 351.402(f)(3), failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO, in accordance with 19 CFR 351.305 and as explained in the APO itself. 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 the terms of an APO is a sanctionable violation.

This notice is in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: March 29, 2010.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–7506 Filed 4–1–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–822]

Certain Helical Spring Lock Washers From the People's Republic of China: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 2, 2010.

FOR FURTHER INFORMATION CONTACT: Patricia M. Tran, 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) 482–1503.

SUPPLEMENTARY INFORMATION:

Background

On October 1, 2009, the Department of Commerce ("the Department") published a notice announcing the opportunity to request an administrative review of the antidumping duty order on certain helical spring lock washers from the People's Republic of China for the period October 1, 2008 through September 30, 2009. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 74 FR 50772 (October 1, 2009). On November 2, 2009, in accordance with 19 CFR 351.213(b), the Department received a timely request from Shakeproof Assembly Components Division of Illinois Tool Works Inc., the petitioner, to conduct an administrative review of Hangzhou Spring Washer Co., Ltd., also known as Zheijang Wanxin Group Co., Ltd ("Hangzhou"). No other party requested an administrative review.

On November 25, 2009, the Department published a notice of initiation of an antidumping duty administrative review of Hangzhou. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 74 FR 61658 (November 25, 2009).

Rescission of Administrative Review

If a party that requested an administrative review withdraws the request within 90 days of the date of publication of notice of initiation of the requested administrative review, the Secretary will rescind the administrative review pursuant to 19 CFR 351.213(d)(1). On March 16, 2010, the petitioner withdrew its request with

respect to Hangzhou. Although the 90-day deadline to withdraw an administrative review request in the instant administrative review was March 2, 2010, pursuant to 19 CFR 351.213(d)(1), the Secretary may extend the 90-day time limit if it is reasonable to do so.[1] The Department determines it is reasonable to do so in this case because it has not expended significant resources conducting this administrative review with respect to Hangzhou. Specifically, the Department has not completed its full analysis of Hangzhou's sales or factors of production data for the period of review nor has it calculated a preliminary margin for Hangzhou. Therefore, in accordance with 19 CFR 351.213(d)(1), and consistent with our practice, the Department is rescinding this administrative review.

Assessment

The Department will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties at the cash deposit rate in effect on the date of entry, for entries during the period October 1, 2008 through September 30, 2009. The Department intends to issue appropriate assessment instructions to CBP 15 days after publication of this notice of rescission of administrative review.

Notification to Importers

This notice 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 review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Order

This notice serves as a final reminder to parties subject to administrative protective orders ("APO") 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 issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(d)(4).

Dated: March 26, 2010.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–7521 Filed 4–1–10; 8:45 am]

BILLING CODE 3510–DS–S

[1] As explained in the memorandum from the Deputy Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from February 5, through February 12, 2010. Thus, all deadlines in this segment of the proceeding have been extended by seven days. The revised deadline to withdraw an administrative review request is March 2, 2010. *See* Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm," dated February 12, 2010.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV17

Taking and Importing Marine Mammals; Taking of Marine Mammals Incidental to Conducting Precision Strike Weapons Testing and Training by Eglin Air Force Base in the Gulf of Mexico

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

ACTION: Notice of issuance of a Letter of Authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA), as amended, notification is hereby given that a letter of authorization (LOA) to take four species of marine mammals incidental to testing and training during Precision Strike Weapons (PSW) tests in the Gulf of Mexico (GOM), a military readiness activity, has been issued to Eglin Air Force Base (AFB).

DATES: This authorization is effective from April 1, 2010, through March 31, 2011.

ADDRESSES: The application and LOA are available for review in the Permits, Conservation, and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 or by contacting the individuals listed in FOR FURTHER INFORMATION CONTACT.

FOR FURTHER INFORMATION CONTACT: Candace Nachman or Michelle Magliocca, NMFS, (301) 713–2289.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS 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 by NMFS and regulations are issued. Under the MMPA, the term "taking" means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture or kill marine mammals. The National Defense Authorization Act of 2004 (Public Law 108–136) removed the "small numbers" and "specified geographical region" limitations and amended the definition of "harassment" as it applies to a "military readiness activity" to read as follows (Section 3(18)(B) of the MMPA):

> (i) any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].

Authorization, in the form of annual LOAs, may be granted for periods of up to 5 years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). In addition, NMFS must prescribe regulations that include permissible methods of taking and other means of effecting the least practicable adverse impact on the species and its habitat, and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations must include requirements pertaining to the monitoring and reporting of such taking. Regulations governing the taking of marine mammals incidental to PSW testing and training within the Eglin Gulf Test and Training Range (EGTTR) in the GOM were published on November 24, 2006 (71 FR 67810), and remain in effect from December 26, 2006, through December 27, 2011. The species that Eglin AFB may take during PSW testing and training are Atlantic bottlenose (*Tursiops truncatus*) and Atlantic spotted dolphins (*Stenella*

frontalis) and dwarf (*Kogia simus*) and pygmy (*Kogia breviceps*) sperm whales.

Issuance of the annual LOA to Eglin AFB is based on findings made in the preamble to the final rule that the total takings by this project would result in no more than a negligible impact on the affected marine mammal stocks or habitats and would not have an unmitigable adverse impact on subsistence uses of marine mammals. NMFS also finds that the applicant will meet the requirements contained in the implementing regulations and LOA, including monitoring and reporting requirements. Without any mitigation measures, a small possibility exists for one bottlenose dolphin and one spotted dolphin to be exposed to blast levels from the PSW testing sufficient to cause mortality. Additionally, less than two cetaceans might be exposed to noise levels sufficient to induce Level A harassment (injury) annually, and as few as 31 or as many as 53 cetaceans (depending on the season and water depth) could potentially be exposed (annually) to noise levels sufficient to induce Level B harassment in the form of a temporary loss of hearing sensitivity (also referred to as a temporary threshold shift).

While none of these impact estimates consider the proposed mitigation measures that will be employed by Eglin AFB to minimize potential impacts to protected species, NMFS has authorized Eglin AFB a total of one mortality, two takes by Level A harassment, and 53 takes by Level B harassment (TTS) annually. However, the proposed mitigation measures described in the final rule (71 FR 67810, November 24, 2006) and the LOA are anticipated to both reduce the number of marine mammal takes and lessen the severity of the effects of the takes. These measures include a conservative safety range for marine mammal exclusion; incorporation of aerial and shipboard survey monitoring efforts in the program both prior to and after detonation of explosives; and a prohibition on detonations whenever marine mammals are detected within the safety zone, may enter the safety zone at the time of detonation, or if weather and sea conditions preclude adequate aerial surveillance. This LOA may be renewed annually based on a review of the activity, completion of monitoring requirements, and receipt of reports required by the LOA.

Summary of Request

On March 4, 2010, NMFS received a request for an LOA renewal pursuant to the aforementioned regulations that would authorize, for a period not to exceed 1 year, take of marine mammals, by harassment, incidental to PSW testing and training in the GOM.

Summary of Activity and Monitoring Conducted During 2009 and 2010

No PSW tests were conducted during calendar year 2009 or between January and March of 2010. However, the PSW LOA was modified on April 16, 2009, to include Stand-Off Precision Guided Munition (SOPGM) testing. NMFS issued this modification because it was determined that the impacts of SOPGM testing would be significantly smaller than the impacts outlined in the PSW LOA. SOPGM testing utilized two out of the six live shots allowed for the Small Diameter Bomb (SDB) exercise under the PSW LOA. Three Griffin™ SOPGM system missiles with a net explosive weight of 7.5 pounds (TNT equivalent) were fired against two target boats in the GOM on April 29, 2009, and May 5, 2009. No marine mammals were seen during the boat sweep or at release. No evidence of injury or death to marine mammals was noted after either mission.

Authorization

The U.S. Air Force complied with the requirements of the 2009 LOA, and NMFS has determined that there was no take of marine mammals by the U.S. Air Force in 2009. Accordingly, NMFS has issued a LOA to Eglin AFB authorizing the take of marine mammals, by harassment, incidental to PSW testing and training in the EGTTR in the GOM. Issuance of this LOA is based on findings described in the preamble to the final rule (71 FR 67810, November 24, 2006) and supported by information contained in Eglin's March 2010 request for a new LOA that the activities described under this LOA will not result in more than the incidental harassment of certain marine mammal species and will have a negligible impact on the affected species or stocks. The provision requiring that the activities not have an unmitigable adverse impact on the availability of the affected species or stock for subsistence uses does not apply for this action.

Dated: March 29, 2010.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–7482 Filed 3–30–10; 4:15 pm]

BILLING CODE 3510–22–S

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and Deletions from Procurement List.

SUMMARY: This action adds to the Procurement List a product and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List products previously furnished by such agencies.

DATES: *Effective Date:* May 3, 2010.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 1/15/2010 (75 FR 2510) and 2/5/2010 (75 FR 5970–5971), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed additions to the Procurement List.

The Committee for Purchase From People Who Are Blind or Severely Disabled (Committee) operates pursuant to statutory and regulatory requirements. Committee decisions regarding which items are suitable for addition to the Procurement List are specifically guided by 41 CFR Chapter 51. This regulation states that for a commodity or service to be suitable for addition to the Procurement List, each of the following criteria must be satisfied: Employment potential, nonprofit agency qualifications, capability, and level of impact on the current contractor for the commodity or service. In response to its Notice of Proposed Procurement List Addition, the Committee received comments from five parties relating to the fourth criterion, level of impact.

Comments were received from the incumbent contractor for the facilities management requirement at Fort Lewis, WA. The firm stated that addition of this service to the Procurement List is inconsistent with the Javits-Wagner-O'Day Act policy regarding contracts

currently held within the SBA 8(a) Program. The firm stated that placing this service on the Procurement List would result in "severe adverse impact" and is thus not suitable for addition. The incumbent contractor also asserted that such an action would seem to be contrary to the Regulatory Flexibility Act as it relates to "small entities."

The Committee has considered these comments. The Committee has documentation from the contracting activity showing that the Fort Lewis requirement awarded to the incumbent contractor was explicitly restricted to a one (1) year acquisition and was not permanently placed into the 8(a) Program. Under Committee procedures, this service is eligible for consideration to be added to the Procurement List. The financial information presented by the contractor and calculated according to Committee practice during its impact analysis did not indicate that it would result in "severe adverse impact" under Committee regulations at 41 CFR 51–2.4(a)(4). The contractor was notified of the preliminary determination that impact was not severe in April 2009. In light of this notification, coupled with the contracting activity's communication that the requirement would be limited to one year, the incumbent contractor could not have had a reasonable expectation of further awards or contract option years. The Committee continues to find the proposed action to be consistent with the Regulatory Flexibility Act (RFA) because the particular service being considered for addition to the Procurement List will be provided by qualified nonprofit agencies (or "small entities" under the RFA) employing people who are blind or with other significant disabilities.

Comments were also received from the South Carolina District Office of the Small Business Administration, the National Association of Small Disadvantaged Businesses, and two contractors who perform similar work at another Army installation. Their comments also raise the SBA 8(a) program issue and the negative impact of removing this project from the 8(a) Program.

The Committee has considered these comments. Information provided by the contracting activity states that the ongoing requirement at Fort Lewis was not permanently placed under the SBA 8(a) program and is eligible for consideration to be added to the Procurement List. The requirement for comparable services at McChord AFB is currently performed by a contractor that has graduated from the SBA 8(a) program. In accordance with Committee practice, the requirement is eligible for consideration to be added to the Procurement List at this juncture. The Committee's action will not affect the McChord AFB contractor's ability to continue to perform the services until expiration of its contract.

When passing the Javits-Wagner-O'Day Act, Congress understood the importance of using the federal procurement process as a means of providing employment opportunities for people who are blind or with other severe disabilities. The proposed addition of this project to the Procurement List will guarantee the creation of jobs for people with severe disabilities, a group whose unemployment rate has been estimated to be approaching 70%. Having reviewed all material information regarding the suitability of this project for the AbilityOne Program, the Committee has determined that the Joint Base Lewis-McChord facilities management service is suitable for addition to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide a product and services and impact of the additions on the current or most recent contractors, the Committee has determined that the product and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product and services to the Government.

2. The action will result in authorizing small entities to furnish the product and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following product and services are added to the Procurement List:

Product

NSN: 2090–00–372–6064—Repair Kit, Standard.
NPA: Mid-Valley Rehabilitation, Inc., McMinnville, OR.
Contracting Activity: Defense Logistics Agency, Defense Supply Center Columbus, Columbus, OH.
Coverage: C-List for the requirements for the Defense Supply Center Columbus, Columbus, OH.

Services

Service Type/Location: Base Supply Center, Defense Supply Center Columbus, 3990 E. Broad Street, Columbus, OH.
NPA: Associated Industries for the Blind, Milwaukee, WI.
Contracting Activity: Defense Logistics Agency, Defense Supply Center Columbus, Columbus, OH.
Service Type/Location: Facilities Management, First Sergeants Barracks, Joint Base Lewis-McChord, WA.
NPA: Professional Contract Services, Inc., Austin, TX.
Contracting Activity: Dept. of the Army, XR W6BA ACA, Mission and Installation Contracting Command, Ft. Lewis, WA.

Deletions

On 2/5/2010 (75 FR 5970–5971), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products deleted from the Procurement List.

End of Certification

Accordingly, the following products are deleted from the Procurement List:

Products

Inkjet Cartridge
NSN: 7510–01–544–0833
NSN: 7510–01–544–0819
NSN: 7510–01–539–9836
NSN: 7510–01–544–0836
NSN: 7510–01–544–0830

NSN: 7510–01–539–9837
NSN: 7510–01–544–0832
NSN: 7510–01–544–0820
NSN: 7510–01–539–9842
NSN: 7510–01–544–0835
NSN: 7510–01–544–0826
NSN: 7510–01–539–9838
NSN: 7510–01–544–0837
NSN: 7510–01–544–0825
NSN: 7510–01–539–9834
NSN: 7510–01–544–0823
NSN: 7510–01–544–0831
NSN: 7510–01–544–1733
NSN: 7510–01–544–0829
NSN: 7510–01–544–0839
NSN: 7510–01–544–0838
NSN: 7510–01–544–0827
NPA: Alabama Industries for the Blind, Talladega, AL.
Contracting Activity: GSA/FSS OFC SUP CTR—Paper Products, New York, NY
NSN: 6230–01–513–3265—Flashlight, Aluminum, 2D, Blue
NSN: 6230–01–513–3268—Flashlight, Aluminum, 2D, Red
NSN: 6230–01–513–3279—Flashlight, Aluminum, 4D, Red
NPA: Central Association for the Blind & Visually Impaired, Utica, NY.
Contracting Activity: GSA/FSS OFC SUP CTR—Paper Products, New York, NY.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2010–7480 Filed 4–1–10; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Deletions From the Procurement List.

SUMMARY: The Committee is proposing to delete from the Procurement List services previously provided by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must Be Received on or Before: 5/3/2010.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Deletions

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to provide the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for deletion from the Procurement List.

End of Certification

The following services are proposed for deletion from the Procurement List:

Services

Service Type/Location: Food Service Attendant, Whiting Field Naval Air Station, Milton, FL.
NPA: UNKNOWN.
Contracting Activity: DEPT OF THE NAVY, U S FLEET FORCES COMMAND, NORFOLK, VA.
Service Type/Location: Document Image Conversion, U.S. Department of Housing & Urban Development, Richard B. Russell Federal Building, Atlanta, GA.
NPA: Tommy Nobis Enterprises, Inc., Marietta, GA.
Contracting Activity: DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, OFFICE OF PROCUREMENT & CONTRACTS, WASHINGTON, DC.
Service Type/Location: Janitorial/Custodial, Federal Aviation Administration, ATC Standiford Field, Airway Facilities Sector Field Office, Louisville, KY.
NPA: C.G.M. Services, Inc., Louisville, KY.
Contracting Activity: DEPARTMENT OF TRANSPORTATION, SAINT LAWRENCE SEAWAY DEVELOPMENT CORP, MASSENA, NY.
Service Type/Location: Grounds Maintenance, Lexington Blue Grass Army Depot: Blue Grass Activity, Richmond, KY, Lexington Activity, Avon, KY.
NPA: UNKNOWN.
Contracting Activity: DEPT OF THE ARMY, XR W40M NATL REGION CONTRACT OFC, WASHINGTON, DC.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2010–7481 Filed 4–1–10; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Federal Advisory Committee; Military Leadership Diversity Commission (MLDC)

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness, DoD.

ACTION: Meeting notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the Military Leadership Diversity Commission (MLDC) will meet April 21–23, 2010. Subject to the availability of space, the meeting is open to the public.

DATES: The meeting will be held:
April 21, 2010 from 8 a.m. to 1:15 p.m.
April 22, 2010 from 8 a.m. to 5:45 p.m.
April 23, 2010 from 8 a.m. to 5:15 p.m.

ADDRESSES: The meeting will be held at the Holiday Inn, Fishkill, 542 Route 9, Fishkill, NY 12524–2224.

FOR FURTHER INFORMATION CONTACT: Master Chief Steven A. Hady, Designated Federal Officer, MLDC, at (703) 602–0838, 1851 South Bell Street, Suite 532, Arlington, VA. E-mail: *steven.Hady@wso.whs.mil.*

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting

The purpose of the meeting is for the commissioners of the Military Leadership Diversity Commission to continue their efforts to address congressional concerns as outlined in the commission charter.

Agenda

April 21, 2010

8 a.m.–1:15 p.m.
DFO opens meeting.
Commission Chairmen opening remarks.
Dr. Rohini Anand and Mr. Michael Montelongo brief MLDC on diversity efforts at Sodexo.
Dr. R. Roosevelt Thomas briefs the MLDC on effective diversity practices in the private sector.
Dr. Edward Hubbard briefs the MLDC on diversity metrics.
Mr. Luke Visconti briefs the MLDC on effective diversity practices in the private sector.
Open discussion on implementation

and accountability DFO adjourns the meeting.

April 22, 2010

8 a.m.–11:45 a.m.
DFO opens the meeting.
Commission Chairman opening remarks.
Dr. Meg Harrell, RAND, briefs the MLDC on barriers to minority participation in the special forces and the assignment policy for military women.
Decision Brief: Career Development: Branching and Assignments DFO recesses the meeting.

12:45 p.m.–5:45 p.m.
DFO opens the meeting.
Open discussion on legal implications of diversity management Decision Brief: Definition of Diversity.
Open discussion on promotion.
Open discussion on retention.
Commission Chairman closing remarks.
DFO adjourns the meeting.

April 23, 2010

8 a.m.–11:30 a.m.
DFO opens the meeting.
Commission Chairman opening remarks.
Open discussion on metrics.
Briefings from the Office of the Secretary of Defense (OSD) and Service representatives from organizations responsible for metrics.
DFO recesses the meeting.

12:30 p.m.–5:15 p.m.
DFO opens meeting.
Briefings from OSD and Service representatives from organizations responsible for metrics (continued).
Public comments.
Commission Chairman closing remarks.
DFO adjourns the meeting.

Public's Accessibility to the Meeting

Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, the meetings on April 21 thru 23, 2010 will be open to the public. Please note that the availability of seating is on a first-come basis.

Written Statements

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements to the Military Leadership Diversity Commission about its mission and functions. Written statements may be submitted at any time or in response to the stated agenda of a planned meeting of the Military Leadership Diversity Commission.

All written statements shall be submitted to the Designated Federal Officer for the Military Leadership Diversity Commission, and this individual will ensure that the written statements are provided to the membership for its consideration. Contact information for the Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

Statements being submitted in response to the agenda mentioned in this notice must be received by the Designated Federal Officer (*see* **FOR FURTHER INFORMATION CONTACT**) at least five calendar days prior to the meeting that is the subject of this notice. Written statements received after this date may not be provided to or considered by the Military Leadership Diversity Commission until its next meeting.

The Designated Federal Officer will review all timely submissions with the Military Leadership Diversity Commission Chairperson and ensure they are provided to all members of the Military Leadership Diversity Commission before the meeting that is the subject of this notice.

Dated: March 29, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–7381 Filed 4–1–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2010–OS–0036]

Privacy Act of 1974; System of Records

AGENCY: Defense Threat Reduction Agency, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Defense Threat Reduction Agency proposes to amend a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on May 3, 2010 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

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

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

FOR FURTHER INFORMATION CONTACT: Ms. Brenda Carter at (703) 767–1771.

SUPPLEMENTARY INFORMATION: The Defense Threat Reduction Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the Freedom of Information and Privacy Office, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

The specific changes to the record systems being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: March 29, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

HDTRA 017

Voluntary Leave Sharing Program Records (August 3, 2005; 70 FR 44573).

CHANGES:

SYSTEM NAME:

Delete entry and replace with "Voluntary Leave Transfer Program Records."

SYSTEM LOCATION:

Delete entry and replace with "Business Enterprise, Human Capital Office, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "Individuals who have volunteered to participate in the leave transfer program as either a donor or recipient of annual leave."

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Leave recipient records contain the individual's name, organization, office telephone number, Social Security Number (SSN), position title, grade, pay level, leave balances, brief description of the medical or personal hardship which qualifies the individual for inclusion in the leave transfer program, the status of the hardship, and a statement that selected data elements may be used in soliciting donations. The file may also contain medical or physician certifications and Defense Threat Reduction Agency (DTRA) approvals or denials.

Donor records include the individual's name, organization, office, telephone number, Social Security Number (SSN), position title, grade, pay level, leave balances, number of hours being transferred (or donated leave), and in the case of the transfer program, the designated leave recipient."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "5 U.S.C. 301, Departmental Regulations; 5 U.S.C. 6331 et seq, Leave; 5 CFR part 630, Administrative Personnel, Absence and Leave; and E.O. 9397 (SSN), as amended."

PURPOSE(S):

Delete entry and replace with "This system is used in managing the Defense Threat Reduction Agency (DTRA) Voluntary Leave Sharing Program. The recipient's name, and a brief description of the hardship, if authorized by the recipient, is published internally for solicitation purposes. The Social Security Number (SSN) is obtained to ensure the transfer of leave from the donor's account to the recipient's account."

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with "In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Labor in connection with a claim filed by an employee for compensation due to a job-related injury or illness; where the leave donor and leave recipient are employed by different Federal agencies.

To personnel and finance offices of Federal agencies involved to effectuate the leave transfer.

The DoD 'Blanket Routine Uses' set forth at the beginning of DTRA's compilation of systems of records notices apply to this system."

STORAGE:

Delete entry and replace with "Records are stored on paper and electronic storage media."

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with "Records are destroyed two years after the end of the year in which the file is closed. Paper records are destroyed by burning or shredding; electronic records are deleted."

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Chief, Human Capital Office, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Human Capital Office, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

Written requests should contain the full name and Social Security Number (SSN)."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Human Capital Office, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

Written requests for information should contain the full name and Social Security Number (SSN)."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The DTRA rules for accessing records and for contesting contents and appealing initial agency determinations are published in DTRA Instruction 5400.11, DTRA Privacy Program; 32 CFR part 318; or may be obtained from the system manager."

RECORD SOURCE CATEGORIES:

Delete entry and replace with "From the individual, personnel and leave records."

* * * * *

HDTRA 017

SYSTEM NAME:

Voluntary Leave Transfer Program Records.

SYSTEM LOCATION:

Business Enterprise, Human Capital Office, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have volunteered to participate in the leave transfer program as either a donor or recipient of annual leave.

CATEGORIES OF RECORDS IN THE SYSTEM:

Leave recipient records contain the individual's name, organization, office telephone number, Social Security Number (SSN), position title, grade, pay level, leave balances, brief description of the medical or personal hardship which qualifies the individual for inclusion in the leave transfer program, the status of the hardship, and a statement that selected data elements may be used in soliciting donations. The file may also contain medical or physician certifications and DTRA approvals or denials.

Donor records include the individual's name, organization, office, telephone number, Social Security Number (SSN), position title, grade, pay level, leave balances, number of hours being transferred (or donated leave), and in the case of the transfer program, the designated leave recipient.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 5 U.S.C. 6331 *et seq.,* Leave; 5 CFR part 630, Administrative Personnel, Absence and Leave; and E.O. 9397 (SSN), as amended.

PURPOSE(S):

This system is used in managing the Defense Threat Reduction Agency (DTRA) Voluntary Leave Sharing Program. The recipient's name, and a brief description of the hardship, if authorized by the recipient, is published internally for solicitation purposes. The Social Security Number (SSN) is obtained to ensure the transfer of leave from the donor's account to the recipient's account.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may

specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Labor in connection with a claim filed by an employee for compensation due to a job-related injury or illness; where the leave donor and leave recipient are employed by different Federal agencies.

To personnel and finance offices of Federal agencies involved to effectuate the leave transfer.

The DoD 'Blanket Routine Uses' set forth at the beginning of DTRA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on paper and electronic storage media.

RETRIEVABILITY:

Retrieved by name or Social Security Number (SSN).

SAFEGUARDS:

Records are accessed by custodian of the records or by persons responsible for servicing the record system in the performance of their official duties. Records are stored in locked cabinets or rooms, and are controlled by personnel screening and computer software.

RETENTION AND DISPOSAL:

Records are destroyed two years after the end of the year in which the file is closed. Paper records are destroyed by burning or shredding; electronic records are deleted.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Human Capital Office, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Human Capital Office, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

Written requests should contain the full name and Social Security Number (SSN).

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Human Capital Office, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

Written requests for information should contain the full name and Social Security Number (SSN).

CONTESTING RECORD PROCEDURES:

The DTRA rules for accessing records and for contesting contents and appealing initial agency determinations are published in DTRA Instruction 5400.11, DTRA Privacy Program; 32 CFR part 318; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, personnel and leave records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010–7383 Filed 4–1–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2010–OS–0037]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to delete a system of records.

SUMMARY: The Office of the Secretary proposes to delete a system of records notice from its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on May 3, 2010 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

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

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

FOR FURTHER INFORMATION CONTACT: Mrs. Cindy Allard at (703) 588–6830.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the Privacy Act Officer, Office of Freedom of Information, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

The Office of the Secretary of Defense proposes to delete one system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: March 29, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletion:
WUSU 09

SYSTEM NAME:

USUHS Grants Managements Information System (Protocols/Grants) (February 22, 1993; 58 FR 10920)

REASON:

The Office of the Secretary of Defense had determined that WUSU 09, is covered by both DHA 08, Health Affairs Survey Data Base (April 28, 1999; 64 FR 22837) for its coverage of research participants and DHA 18, Human Research Protection Program (HRPP) Records (September 11, 2008; 73 FR 52838) for its coverage of grants and can therefore be deleted.

[FR Doc. 2010–7384 Filed 4–1–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2010–0006]

Privacy Act of 1974; System of Records

AGENCY: U.S. Marine Corps; Department of the Navy; DoD.

ACTION: Notice to add a system of records.

SUMMARY: The U.S. Marine Corps is proposing to add a new system of records notice to its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on May

3, 2010 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

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

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

FOR FURTHER INFORMATION CONTACT: Ms. Tracy Ross at (703) 614–4008.

SUPPLEMENTARY INFORMATION: The U.S. Marine Corps system of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from: Headquarters, U.S. Marine Corps, FOIA/PA Section (ARSF), 2 Navy Annex, Room 3134, Washington, DC 20380–1775.

The proposed system report, as required by 5 U.S.C. 552a(r), of the Privacy Act of 1974, as amended, was submitted on March 23, 2010, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996; 61 FR 6427).

Dated: March 29, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

M01070–7

SYSTEM NAME:

Marine Corps Mobilization Processing System (MCMPS) Records

SYSTEM LOCATION:

Headquarters Marine Corps (HQMC) Manpower Information Systems Division (MI), at the James Wesley Marsh Center, 3280 Russell Rd., Marine Corps Base, Quantico, VA 22134–5103.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Marine Corps reservists and retirees, Navy personnel augmented to support the Marine Corps, medical officers, corpsmen, chaplains and pilots.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel data includes full name, Social Security Number (SSN), rank/grade, date of rank (DOR), Military Occupational Specialty (MOS), Navy Enlisted Classifications (NEC) and Navy Officer Designators (NOD), current duty station, Parent Organization or Navy Command, mailing address, and assignment history.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 32 CFR 64.6, Management and Mobilization; and Marine Corps Order; P1300.8R, Marine Corps Personnel Assignment Policy; E.O. 9397 (SSN), as amended.

PURPOSE(S):

To facilitate the recall, mobilization, tracking of Reserve and Retired Marines, and Navy personnel that augment and support the Marine Corps, Medical Officers, Corpsmen, chaplains and pilots. The Marine Corps Mobilization Processing System (MCMPS) Records primarily provides the capability to allow Initial Deployment Processing Centers (IDPCs), Deployment Processing Centers (DPCs), Marine Corps Reserve Support Command (MCRSC), Marine Forces Reserves (MARFORRES), and Manpower Management Force Augmentation (MMFA), Manpower and Reserve Affairs (M&RA), HQMC personnel to process and monitor the status of individual manpower activation and mobilization.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To officials and employees of other departments and agencies of the Executive Branch of government, upon request, in the performance of their official duties related to the management of activating, recalling and mobilizing Marine Corps Reservists and retired Marines.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Marine Corps' compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Name and/or Social Security Number (SSN).

SAFEGUARDS:

Access is restricted to personnel with authorized access in the performance of their official duties. MCMPS is currently encrypted to protect the transmission of personal information. The system does not contain any classified information.

RETENTION AND DISPOSAL:

Disposition pending (treat records as permanent until the National Archives and Records Administration has approved the retention and disposition schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters Marine Corps (HQMC), Director, Manpower Information Systems Division (MI), James Wesley Marsh Center, 3280 Russell Road, Marine Corps Base (MCB), Quantico, VA 22143–5103.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to HQMC, Manpower Information Systems Division (MI), James Wesley Marsh Center, 3280 Russell Road, MCB, Quantico, VA 22143–5103.

The request must be signed and include full name, complete mailing address and Social Security Number (SSN).

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to HQMC, Manpower Information Systems Division (MI), James Wesley Marsh Center, 3280 Russell Road, MCB, Quantico, VA 22143–5103.

The request must be signed and include full name, complete mailing address and Social Security Number (SSN).

CONTESTING RECORD PROCEDURES:

The USMC rules for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; Marine Corps Order P5211.2; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

MCMPS personnel data comes from the Operational Data Store Enterprise (ODSE), and the Navy-MCMPS (NMCMPS) for Navy personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010–7385 Filed 4–1–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 3, 2010.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: March 29, 2010.

James Hyler,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: Revision.

Title: Federal Family Education Loan (FFEL) Program, Federal Perkins Loan Program, and William D. Ford Federal Direct Loan (Direct Loan) Program Military Service Deferment/Post-Active Duty Student Deferment Request.

Frequency: On Occasion.

Affected Public: Individuals or households.

Reporting and Recordkeeping Hour Burden:

Responses: 16,000.

Burden Hours: 8,000.

Abstract: The Military Service/Post-Active Duty Student Deferment request form serves as the means by which a FFEL, Perkins, or Direct Loan borrower requests a military service deferment and/or post-active duty student deferment and provides his or her loan holder with the information needed to determine whether the borrower meets the applicable deferment eligibility requirements. The form also serves as the means by which the U.S. Department of Education identifies Direct Loan borrowers who qualify for the Direct Loan Program's no accrual of interest benefit for active duty service members.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4203. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–7559 Filed 4–1–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 3, 2010.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: March 30, 2010.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Revision.

Title: Conversion Magnet Schools Evaluation Revision.

Frequency: On Occasion.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 50.

Burden Hours: 187.

Abstract: The Conversion Magnet Schools Evaluation is being conducted to determine if efforts to turn around low-performing schools through converting to a Magnet Schools Assistance Program (MSAP) supported magnet school are associated with improved student achievement and the reduction in minority group isolation. The Institute of Education Sciences, in collaboration with the Office of Innovation and Improvement, initiated the study due to the popularity and persistence of magnet programs and the inconclusive research on the relationship of these programs to important student outcomes. The study will use quasi-experimental designs to explore the relationship between magnet programs and student achievement both for "resident" students who attend magnet schools as their neighborhood schools and, if possible, for non-resident students. Data collection includes student records data, principal surveys, and project director interviews. The U.S. Department of Education has commissioned American Institutes for Research to conduct this study. An OMB clearance request that (1) described the study design and full data collection activities and (2) requested approval for the burden associated with the first three years of data collection was approved in 2007 (OMB Number 1850–0832 approval 7/13/07; expiration 7/31/10). This revision requests approval for the last two years of data collection.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4205. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–7560 Filed 4–1–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA Number 84.295A]

Ready-to-Learn Television Program

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2010; correction.

SUMMARY: On March 22, 2010, we published in the **Federal Register** (75 FR 13515) a notice inviting applications for new awards for FY 2010 for the Ready-to-Learn Television Program. There is an error in one of the dates in that notice.

SUPPLEMENTARY INFORMATION: This notice corrects the meeting date for prospective applicants on two pages of the notice as follows:

Correction

(1) On page 13515, in the first column, after the words *Date of Meeting for Prospective Applicants:,* replace the date "April 8, 2010" with the date "April 15, 2010."

(2) On page 13518, in the second column, after the words *Date of Meeting for Prospective Applicants:,* replace the date "April 8, 2010" with the date "April 15, 2010."

FOR FURTHER INFORMATION CONTACT: The Ready-to-Learn Television Program, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4W414, Washington, DC 20202 or by e-mail: *readytolearn@ed.gov.*

If you use a telecommunications device for the deaf, call the Federal Relay Service, toll free, at 1–800–877–8339.

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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: March 30, 2010.

James H. Shelton, III,

Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. 2010–7531 Filed 4–1–10; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Notice

AGENCY: U.S. Election Assistance Commission.

ACTION: Notice of public meeting agenda.

DATE AND TIME: Thursday, April 8, 2010, 10 a.m.–12:15 p.m. EDT (Morning Session), 1:15 p.m.–3 p.m. EDT (Afternoon Session).

PLACE: U.S. Election Assistance Commission, 1225 New York Ave, NW., Suite 150, Washington, DC 20005, (Metro Stop: Metro Center).

AGENDA: The Commission will hold a public meeting to receive an update on a clearinghouse policy. Commissioners will hold a discussion on a public comment version of a UOCAVA pilot program testing and certification manual. Commissioners will hold a discussion on a UOCAVA pilot voting program and requirements document. Commissioners will consider other administrative matters. Members of the public may observe but not participate in EAC meetings unless this notice provides otherwise. Members of the public may use small electronic audio recording devices to record the proceedings. The use of other recording equipment and cameras requires advance notice to and coordination with the Commission's Communications Office.[1]

This Meeting and Hearing Will Be Open to the Public.

[1] View *EAC Regulations Implementing Government in the Sunshine Act.*

PERSON TO CONTACT FOR INFORMATION: Bryan Whitener, Telephone: (202) 566–3100.

Alice Miller,

Chief Operating Officer, U.S. Election Assistance Commission.

[FR Doc. 2010–7623 Filed 3–31–10; 4:15 pm]

BILLING CODE 6820—KF–P

ELECTION ASSISTANCE COMMISSION

Publication of State Plan Pursuant to the Help America Vote Act

AGENCY: U.S. Election Assistance Commission (EAC).

ACTION: Notice.

SUMMARY: Pursuant to sections 254(a)(11)(A) and 255(b) of the Help America Vote Act (HAVA), Public Law 107–252, the U.S. Election Assistance Commission (EAC) hereby causes to be published in the **Federal Register** changes to the HAVA State plan previously submitted by Nevada.

DATES: This notice is effective upon publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bryan Whitener, Telephone 202–566–3100 or 1–866–747–1471 (toll-free).

Submit Comments: Any comments regarding the plans published herewith should be made in writing to the chief election official of the individual State at the address listed below.

SUPPLEMENTARY INFORMATION: On March 24, 2004, the U.S. Election Assistance Commission published in the **Federal Register** the original HAVA State plans filed by the fifty States, the District of Columbia and the Territories of American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands. 69 FR 14002. HAVA anticipated that States, Territories and the District of Columbia would change or update their plans from time to time pursuant to HAVA section 254(a)(11) through (13). HAVA sections 254(a)(11)(A) and 255 require EAC to publish such updates. This is the sixth revision to the State plan for Nevada.

The amendment to Nevada's State plan changes dollar amount spending to percentage amount spending on various activities; elaborates on the Command Center and the Senate Bill 401 report of the election process in Nevada; provides updated charts and tables to reflect November 2009 funding levels and spending plans; incorporates updates to reflect minority language requirements; and removes the Temporary Statewide Voter Registration List. In accordance with HAVA section 254(a)(12), all the State plans submitted for publication provide information on how the respective State succeeded in carrying out its previous State plan. Nevada confirms that its amendments to the State plan were developed and submitted to public comment in accordance with HAVA sections 254(a)(11), 255, and 256.

Upon the expiration of thirty days from April 2, 2010, the State is eligible to implement the changes addressed in the plan that is published herein, in accordance with HAVA section 254(a)(11)(C). EAC wishes to acknowledge the effort that went into revising this State plan and encourages further public comment, in writing, to the State election official listed below.

Chief State Election Official

The Honorable Ross Miller, Secretary of State, 101 North Carson Street, Suite 3, Carson City, Nevada 89701–3714, Phone: (775) 684–5708, Fax: (775) 684–5725.

Thank you for your interest in improving the voting process in America.

Dated: March 25, 2010.

Thomas R. Wilkey,

Executive Director, U.S. Election Assistance Commission.

BILLING CODE 6820–KF–P

State of Nevada

Fiscal Year 2009-2010

Amended State Plan

Amended January 2010

As required by Public Law 107-252
***Help America Vote Act of 2002*, Section 253 (b)**

Office of the Nevada Secretary of State
101 N. Carson Street, Suite 3
Carson City, NV 89701
January 2010

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STATE OF NEVADA
FISCAL YEAR 2009-2010
Amended STATE PLAN

I. INTRODUCTION

The State of Nevada was informed by the U.S. Election Assistance Commission (EAC) that The Omnibus Appropriations Act for Fiscal Year 2009 (Public Law 110-161) includes $100 million to help states improve the administration of Federal elections. These funds are known as Requirements Payments (hereinafter "Funds"). The funds will be distributed to each State conditioned upon satisfying certain criteria pursuant to Help America Vote Act of 2002 (HAVA) Section 253(b). These funds are limited to specific uses outlined in Section 253(b) and may not be allocated to activities other than those expressly set forth in the EAC announcement regarding the additional funding.

In order to become eligible for the additional funding, States are required to amend their State Plans. Accordingly, only sections of the State of Nevada Fiscal Year 2009-2010 Amended State Plan dated January 2010 that are related to the necessary criteria for eligibility will be amended and incorporated.

II. THE BACKDROP FOR NEVADA'S STATE PLAN

The Secretary of State is the Chief Officer of Elections for the State of Nevada, and, as such, is responsible for the execution and enforcement of state and federal laws relating to elections. Currently, the State has approximately 1.2 million registered voters spread throughout its 17 counties. Moreover, more than 1,500 state, county and municipal political campaigns come under the jurisdiction of local or state election officials during each election cycle.

The Secretary of State's Office continues to work closely with local election officials, advocacy groups, the State Legislature, and local and state law enforcement agencies to protect the integrity of Nevada's election process. This cooperative effort includes various committees, such as the State Training Committee, Election Command Center Committee, State Regulatory & Compliance Committee and the State IT Committee. The State continues to mitigate costs associated with HAVA implementation and compliance and continues to be fiscally responsible in best utilizing the State's remaining funds.

III. NEVADA'S STATE PLAN

A. Use of Requirements Payments

Section 254(a)(1) requires a description of how the State will use the requirements payment to meet the requirements of Title III, and, if applicable under section 251((b)(2), to carry out other activities to improve the administration of elections. Title III requires the establishment of certain voting system standards, provisional voting, public posting of voting information, a computerized statewide voter registration list, and voter registration application modifications.

1. Voting Systems Standards

Section 301(a) establishes several voting system standards which must be met by January 1, 2006. Under this section, no waiver of the requirements is permitted.

HAVA requires each voting system in the state to: (a) permit voters to verify whom they have voted for and make changes to their vote in a private, secret and independent manner; (b) prevent the voter from over-voting on electronic voting systems and on optical scan ballots provide instruct on how to correct and how to avoid over-voting while marking their ballot; (c) ensure that any notification to the voter maintains the privacy, secrecy and independence of the voter's ballot; (d) produce a permanent paper record with manual audit capacity; (e) be accessible for people with disabilities through the use of at least one (1) DRE voting system placed at each polling place; (f) provide alternative language accessibility pursuant to Section 203 of the Voting Rights Act of 1965; (g) comply with error rates established by the Federal Elections Commission (FEC) as of the time HAVA was adopted; and (h) have a definition of what constitutes a vote and what will be counted. These requirements have been incorporated into Nevada statutes or regulations.

A significant amount of federal funding appropriated to date was used to upgrade the voting systems throughout the State and to purchase new systems to comply with the above requirements. The State implemented uniform DRE voting systems for polling places throughout the state, with all DRE machines fitted with the voter verifiable paper trail printers. The State reevaluates its voting system needs before each federal election and purchases additional machines based on need.

To ensure proper training for election administrators and the voting citizens of Nevada, the State uses requirements payments to educate individuals about the proper use of the voting systems. Requirements payments are also used for maintaining, modifying and improving all voting systems in the State to ensure compliance with HAVA Section 301(a) standards. Additional uses include continued education on the operation and maintenance of voting systems.

In 2008, the State proposed to use the requirements payments to continue meeting the requirements of Title III and to carry out other activities to improve the administration of Federal elections. This was accomplished through enhancements to the statewide voting systems, as well as updating the standards and procedures to ensure Nevada voters have a positive experience with the electoral process. The State purchased and maintains ADA-compliant voting machines, and conducts voter education outreach programs in conjunction with various local providers and disability support agencies. Additionally, the State continues to conduct training sessions to ensure information, standards, and procedures related to the voting systems are conveyed and understood by election officials, poll workers and Nevada voters. The State disseminates information using mail and other web-based applications, and provides local election officials with proper resources to accomplish the same. In 2008, the State anticipated allocating the sum of $50,000.00 of the 2008 requirements payments for this endeavor.

2009 Amendment

The State will continue to conduct training sessions, per EAC spending guidelines and advisories, for election officials, poll workers and Nevada voters to ensure information related to the voting systems, the standards and procedures is conveyed and understood. Additionally, the State will enhance its inventory of voting system hardware and software based upon local jurisdiction need. All voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process or voting systems, including ballots, will be provided in minority languages as required by the VRA. Based on historical spending, and future needs, the State anticipates allocating 50% of future requirements payments to update and improve the State's voting systems and training on those systems.

2. Provisional Voting and Voting Information Requirements

Section 302 requires the establishment of provisional voting and the posting of voting information at polling places by January 1, 2004. Under this section, no waiver permitted.

HAVA requires provisional voting procedures in all states to ensure that no voter who appears at the polls and desires to vote is turned away for any reason. The State adopted legislation proposed by the Secretary of State enacting procedures to allow for provisional voting in federal races throughout the State. The procedures[1] adopted meet the requirements of Section 302.

The State continues to use requirements payments to maintain the free access system required by HAVA to provide voters who cast provisional ballots the ability to discover whether their ballot was counted. The State also uses requirements payments to develop procedures for provisional voting and to plan and conduct training and outreach concerning a voter's ability to receive and cast a provisional ballot. Finally, if adequate federal funding is available, the State may use requirements payments to assist local governments with funding offsets necessary to prepare and process provisional ballots.

Section 302 of HAVA also mandates that a sample ballot and other voting information be posted at polling places on Election Day. The State also uses requirements payments to defray the cost of developing, printing and posting this information in the upcoming election cycle.

[1] See Nevada Revised Statutes (NRS) Sections 293.3081 through 293.3086, inclusive.

The State Training Committee will continue to promulgate signage for counties to utilize as well as provide continued assistance in evaluating a county's election signage prior to printing and posting. The Secretary of State continues to provide guidance and clarification in signage requirements.

In 2008, The State made enhancements to the provisional voting system by expanding information pertaining to provisional voting by exploring the addition of Internet based information and education. The State continues to provide training for local election officials and poll workers on the provisional voting procedures, as well as training on the free access system available to voters to determine the status of their cast ballot. In 2008, the State anticipated allocating the sum of $40,113.00 of the 2008 requirements payments for this endeavor.

2009 Amendment

The State will continue to make enhancements to the provisional voting system by expanding the dissemination of information to election workers and voters through traditional print and additional electronic avenues. The State will continue to provide instruction for local election officials and poll workers on the provisional voting procedures. Based on historical spending, and future needs, the State anticipates allocating 3% of future requirements payments for these endeavors.

3. Computerized Statewide Voter Registration List and Requirements for Voters Who Register by Mail

Section 303 requires the establishment of a computerized statewide voter registration list, first time voters who register by mail to provide identification when they cast their ballots, and changes to be made to the voter registration application by January 1, 2004. A waiver is permitted to extend compliance with Section 303(a) to January 1, 2006.

a. Statewide Voter Registration System (SVRS)

Section 303 of HAVA requires that all states establish a statewide computerized registration list of all eligible voters. This "single, uniform, official, centralized, interactive, computerized statewide voter registration list" must be administered at the State level and is considered the official list of legally registered voters in the State.

The Secretary of State's Office has a HAVA compliant statewide voter registration system in place. The Secretary of State's system was implemented prior to the 2006 election cycle and has the ability to interface with Nevada's Department of Motor Vehicles and other appropriate agencies, as required by HAVA. Additionally, this statewide voter registration database allows all 17 counties to clear thousands of records, including duplicate records.

The State continues to expend a portion of its requirements payments and Title I payments to fund additional upgrades and maintenance of the statewide voter registration system. Additionally, the Secretary of State continues to explore options of the statewide voter registration database interfacing with other agencies which may not currently have electronic databases. Regulations specific to statewide voter registration maintenance procedures were promulgated prior to the 2006 election cycle.

The State has successfully implemented NevVoter, the statewide voter registration system, and continues to monitor its accuracy and effectiveness. This is accomplished by exploring and developing more efficient and timely methods of verifying statewide voter registration data through State and Federal agency databases. In 2008, the State anticipated allocating the sum of $100,000.00 of the 2008 requirements payments to invest in the maintenance of, as well as enhancements to NevVoter.

2009 Amendment

The State continues to successfully administer NevVoter, the statewide voter registration system, and will continue to monitor its accuracy and effectiveness. This will be accomplished by exploring and developing more efficient and timely methods of verifying statewide voter registration data through State and Federal agency databases. Based on historical spending, and future needs, the State anticipates allocating 11% of future requirements payments to invest in the maintenance of, as well as enhancements to NevVoter.

b. Requirements for Voters Who Register by Mail

With respect to requirements for voters who register by mail, the State revised its voter registration form in May 2007. The revisions include clarifying language for identification requirements and providing an opportunity for county election officials to recruit poll workers.

The State expanded its efforts to ensure the registration process for mail-in, absentee, and overseas voters is efficient and timely, and continues its efforts to increase voter participation in these categories by devising and developing statewide procedures for the receipt and processing of mail-in ballots, absentee ballots and ballots returned via facsimile and other electronic means. Additionally, the State continues work to provide a uniform method of disseminating information on absentee voter information to voters inside and outside the State of Nevada. In 2008, the State anticipated allocating the sum of $50,000.00 of the 2008 requirements payment toward this endeavor.

2009 Amendment

The State will continue to improve its mail-in registration process through traditional and electronic media. Any registration materials or information relating to the registration process will be provided in minority languages pursuant to the VRA. The State will also continue to expand its efforts to ensure the registration process for mail-in, absentee, and overseas voters is efficient and timely. The State intends to continue its efforts to increase voter participation in these categories by devising and developing statewide procedures for the receipt and processing of mail-in ballots, absentee ballots and ballots returned via facsimile. Most recently, the State added approved electronic transmission, including email, as acceptable methods for UOCAVA voters to request, receive, and vote absentee ballots. These new procedures will require absentee information, procedures and notices to

be updated to reflect these recent changes. Based on historical spending, and future needs, the State anticipates allocating 10% of future requirements payments for this endeavor.

4. Other Activities to Improve the Administration of Elections (Section 251(b)(2))

a. Improving Voting Accessibility for People with Disabilities

Every polling site in the State was surveyed for Americans with Disabilities Act[2] (ADA) accessibility and various types of equipment were purchased to improve access to needed areas. During FY 2009-2010, the Secretary of State will continue to improve accessibility, apply for additional federal funding to ensure ADA compliance and proper training of poll workers, and continue both voter outreach efforts to the people with disabilities community and statewide training on ADA compliance issues.

2009 Amendment

The State will continue to work with local election officials to assess accessibility and usability needs to ensure that voters with disabilities can vote with independence and privacy. While reserving the right to, the State anticipates using minimal requirements payments money to improve voting accessibility for people with disabilities. Instead, due to the current reserve of Department of Health and Human Services/Administration of Children and Families (HHS/ACF) funds, the State anticipates using 100% of current and future HHS/ACF payments to improve voting accessibility for people with disabilities.

b. Develop State IT Committee

The Secretary of State continues to utilize a statewide IT committee comprised of county and Secretary of State IT representatives and elections staff. This committee is headed by the Secretary of State's Office and works to: 1) address overall security improvements to voting equipment and the statewide voter registration database; 2) develop updates to the statewide voter registration database and accompanying changes to county election management systems; 3) coordinate election night reporting; 4) assist state training committee on preparing technical training materials; and 5) testing for voting machine software and state certification.

The State intends to continue using requirements payments to fund other activities to improve the administration of elections, including, but not limited to: (a) establishing a polling place accessibility program to ensure that all polling places in Nevada are and continue to be in compliance with the ADA; (b) providing necessary assistance to persons with limited proficiency in the English language; (c) engaging in a variety of voter education and outreach activities, including public service announcements, voting machine demonstrations, mass mailings and other related media avenues; (d) providing election official and poll worker training initiatives; (e) establishing poll worker recruitment programs; and (f) continuing to develop the Secretary of State's website to offer up-to-date, detailed election information to the public.

The State will also continue using requirements payments to fund staff positions to allow for ongoing operations and maintenance of programs and projects to sustain HAVA compliance, and will continue to evaluate staffing needs to determine if additional positions are needed to fulfill HAVA requirements.

In 2008, the State successfully instituted the Command Center, a centralized election information management system to coordinate communications between local election officials, state and federal law enforcement, the Secretary of State and Nevada citizens before, during and after the Primary and General elections of 2008. To aid in the administration of elections, this system included cross-jurisdictional communications, liaisons at the local election official offices, a central information portal. The portal, known as Track-It, included pre- and post- logic and accuracy testing (LAT) information, information on election audits, instructions on hardware and software use, and the development of detailed standard operating procedures pertaining to the security for the operations, transport, and delivery of elections equipment and supplies. The system provides a centralized method for local elections officials to exchange information on Election Day to ensure the efficient and timely notification of voting equipment failure, shortages, or other election-related issues. Additionally, the system provides an improved method of communication between local election officials to expedite corrections in the statewide voter registration list. The State allocated approximately $300,000 of the 2008 requirements payment toward this endeavor.

2009 Amendment

The State will continue its efforts toward refining the Command Center and communications system between state and local elections officials in the upcoming election cycle. Based on historical spending, and future needs, the State anticipates allocating 5% of future requirements payments to continue this endeavor.

B. Distribution of Requirements Payments and Eligibility for Distribution

Section 254(a)(2) of the act requires a description of how the State will distribute and monitor the distribution of the requirements payment to units of local government or other entities in the State for carrying out the activities described in Section 254(a)(1), including a description of—

(A) The criteria to be used to determine the eligibility of such units or entities for receiving the payment; and

(B) The methods to be used by the State to monitor the performance of the units or entities to whom the payment is distributed, consistent with the performance goals and measures adopted under Section 254(a)(8).

The Office of the Secretary of State centrally manages activities funded by requirements payments. The Secretary of State is accountable for all expenditures, funding levels and

[2] Public Law 336 of the 101st Congress, enacted July 26, 1990.

program controls and outcomes. The Secretary of State, in conjunction with local election officials, determines the appropriate level of support for local activities.

To the extent that a decision is made to distribute requirements payments to units of local government and other entities for carrying out the activities described in Section 254(a)(1), the criteria used for determining eligibility include, but are not limited to: (a) the priority of the project to which the distribution is intended to be applied, as it relates to complying with HAVA; (b) the extent to which the recipient is in compliance with Title III of HAVA and all other state and federal election laws; (c) the recipient must maintain its current level of funding for its elections budget outside of any HAVA funds received; (d) the recipient must cooperate with the State in maintaining the statewide voter registration list and must timely implement list purging activities and reporting as required by the Secretary of State; (e) the need for the payment to ensure continued compliance with state and federal elections laws; (f) the availability to the recipient of other funding sources, including other HAVA related grants; (g) the recipient must acknowledge that it will be required to reimburse the State for all federal funds received if it does not meet the deadlines for compliance in HAVA; and (h) the recipient must develop a comprehensive accounting plan in accordance with federal criteria for separately identifying and tracking any federal funds received. The criteria for receipt of requirements payments will be agreed to in writing in advance by the Secretary of State and the unit or entity receiving the payment.

If requirements payments are so distributed, the Secretary of State monitors the performance of each activity funded by requirements payments on a case-by-case basis. The methods used by the State to monitor the performance of the payment recipients may include, without limitation: (a) requiring the recipient to prepare and submit comprehensive timely reports to the Secretary of State detailing the expenditures and their relation to complying with Title III of HAVA; (b) implementing financial controls that establish financial reporting methods; and (c) developing performance indicators on a case-by-case basis for all activities funded.

Nevada manages all HAVA funding on a statewide level, and continues to allocate HAVA funds for sub-grants to qualifying entities in the State to carry out activities regarding the administration of Federal elections and voting systems. Due to the relatively small number of counties in Nevada, only seventeen, the administration of Federal elections and voting systems of local governments are coordinated centrally through the Nevada Secretary of State's office.

2009 Amendment

The State proposes no changes to the distribution and monitoring of funds of the requirements payments.

C. Voter Education, Election Official and Poll Worker Training

Section 254(a)(3) of the Act requires a description of how the State will provide for programs for voter education, election official education and training, and poll worker training which will assist the State in meeting the requirements of title III.

1. Voter Education

With voter participation and turnout declining nationally over the last twenty years, the Secretary of State's office is making a concerted effort to expand Nevada's voter outreach and education efforts.

Education is the key to improving Nevada's voter participation rate. Further exploration as to reaching various socio-economic groups as well as providing information for those who have had their rights restored or qualify to have their voting rights restored are also included.

The State has augmented its efforts to improve its voter outreach programs and increasing the participation of its college student population by developing a partnership between the Secretary of State's office and the Nevada System of Higher Education. The State continues to explore additional voter outreach activities, and to expand information available on the website.

The State intends to develop data collection methods for improving voting system standards and voting information requirements. This includes, but is not limited to, researching and identifying demographic groups that have been disproportionately low in voter turnout rates to capture and report that information. The State has set a goal to meet, or exceed voter turnout rates in these demographic categories. The State allocated the sum of $300,000.00 for these activities.

2009 Amendment

The State will continue to provide for programs for voter education, election official education and training, and poll worker training to meet requirements of title III through traditional print, as well as, the latest electronic methods. The State will improve its voter outreach programs and plans to increase the participation of voters across all age, racial, and socio-economic categories through increased media promotion. The State will additionally continue voter education and outreach efforts with the Nevada System of Higher Education to reach the youth vote. Based on historical spending, and future needs, the State anticipates allocating 10% of future requirements payments to continue these endeavors.

The Secretary of State's office has produced and published several informative brochures designed to educate Nevada's citizens about the voter registration process, the significance of every single vote, and the requirements of HAVA. The agency's website (www.nvsos.gov) contains a wealth of information useful to individuals and groups seeking to advance voter participation and citizen knowledge of the elections process.

The 2003 Nevada Legislature moved the Advisory Committee on Participatory Democracy (ACPD) under the auspices of the Secretary of State's office, and established the goals of 70 percent voter registration and 70 percent voter turnout by those registered voters in Nevada by 2008. The goals established through this committee were realized during the 2008 General Election.

In 2006, the Advisory Committee for Participatory Democracy (ACPD) solicited grant applications to conduct voter education and outreach to the citizens of Nevada. The grant was funded through Section 101 HAVA, and was limited to nonprofit, nonpartisan organizations for the purpose of voter education and outreach to increase participation in the election process. The Secretary of State, as recommended by the ACPD, awarded grants to four entities totaling $65,824. Each entity was required to enter into a Notice of Subgrant Award with the Secretary of State, Elections Division to ensure HAVA compliance and for reporting purposes. The voter education and outreach grant was continued prior to the 2008 General Election, with four organizations receiving in excess of $100,000 in grant funding to assist the State's efforts.

The Secretary of State and the ACPD continue to focus on establishing partnerships with the business sector to enhance voter participation and Election Day support, while also building relationships with educational institutions and community organizations to increase youth voter participation. This was accomplished in 2008 through the creation of a business "tool kit" containing press releases, sample articles, posters and fact sheets to help businesses engage their employees in the process of voter registration and voting. The tool-kit is available on-line at the Secretary of State's website in both English and Spanish.

2009 Amendment

The State will continue working with ACPD to identify and fund voter outreach opportunities throughout Nevada. Based on historical spending, and future needs, the State anticipates allocating 3% of future requirements payments to continue this endeavor.

2. Election Official and Poll Worker Training

The State, in conjunction with all 17 counties, has instituted a training program to provide a more centralized source of training, versus the more localized training programs that have existed in the past. In lieu of the disproportionate range of resources available at the local level across the State, building a centralized source of training is critical in ensuring all 17 counties have access to all the training necessary to maintain their role in achieving HAVA compliance. Centralized training in 2006 and 2008 covered: 1) maintenance of the statewide voter registration list; 2) DRE maintenance, testing, programming and security; 3) provisional voting and provisional phone line reporting; 4) election date signage requirements; 5) requirements under UOCAVA for overseas citizens and the military, including use of FWAB ballots; 6) ADA accessibility training for poll workers and election staff; 7) general improvements for poll worker recruitment, training and management; 8) overall communication; 9) additional federal reporting requirements; 10) conducting mandatory post election VVPAT audit and 11) additional certifications for various federal and state requirements.

For the 2008 Elections, comprehensive training sessions and materials addressing election issues were conducted and distributed to all election officials. These sessions also included independent training sessions tailored to address the various needs of Nevada's election officials.

The State will continue to revise and update the training materials and procedures created in 2008 through the guidance of a State Training Committee. This committee is comprised of two Secretary of State employees and four County Clerks/Registrar of Voters. Training topics will include but are not limited to: 1) restoration of felon voting rights; 2) voter identification requirements; 3) poll watchers; 4) provisional voting; 5) election security; 6) electioneering; and 7) polling place assistance.

2009 Amendment

Regarding election official training, the State will hold annual training sessions to both educate clerks/registrars and their election staff on new statutes and regulation, as well as review existing laws and procedures. These annual training sessions will be supplemented with online training materials and manuals, guides and advisory opinions published by the Secretary of State's office.

In addition to written material, the Secretary of State's office intends to work with the counties in producing a CD or Internet-based poll worker training that will educate poll workers on Election Day procedures, equipment operation, requirements for voters with disabilities, and customer service.

Based on historical spending, and future needs, the State anticipates allocating 8% of current and future requirements payments for voter outreach, election official training and poll worker training.

D. Voting System Guidelines and Processes

Section 254(a)(4) requires a description of how the State will adopt voting system guidelines and processes which are consistent with the requirements of Section 301.

Nevada law mirrors the voting system guidelines and processes set forth in HAVA section 301, as outlined in Section III(A)(1) of this Plan. In addition, the Secretary of State is responsible for certifying voting systems for use in the State. The Secretary of State, in accordance with state law, cannot certify any voting system in the State unless it meets or exceeds the standards for voting systems established by the FEC. The Secretary of State will develop new guidelines and processes as necessary to ensure all voting systems in the State continue to remain in compliance with Section 301.

E. Establishment of Election Fund

Section 254(a)(5) requires a description of how the State will establish a fund described in Section 254(b) for purposes of administering the State's activities under this part, including information on fund management.

(b) Requirements for Election Fund—

(1) Election Fund Described.—For purposes of subsection (a)(5), a fund described in this subsection with respect to a State is a fund which is established in the treasury of the State government, which is used in accordance with paragraph (2), and which consists of the following amounts:

(A) Amounts appropriated or otherwise made available by the State for carrying out the activities for which the requirements payment is made to the State under this part.
(B) The requirements payment made to the State under this part.
(C) Such other amounts as may be appropriated under law.
(D) Interest earned on deposits of the fund.

The State created a special election fund in the state treasury that provides the Secretary of State with the authority to deposit into this fund all HAVA grants and state matching fund appropriations. This fund is fully compliant with Section 254(b) of HAVA. The Secretary of State works closely with the State's Budget Division and the State Controller's office to implement and enforce all fiscal controls and policies required by both state and federal law.

2009 Amendment

This fund is codified in Nevada Revised Statutes ("NRS") as NRS 293.442

F. Nevada's Proposed HAVA Budget

Section 254(a)(6) requires a description of the State's proposed budget for activities under this part, based on the State's best estimates of the costs of such activities and the amount of funds to be made available, including specific information on-
(A) The costs of the activities required to be carried out to meet the requirements of Title III
(B) The portion of the requirements payment which will be used to carry out activities to meet such requirements; and
(C) The portion of the requirements payment which will be used to carry out other activities.

1. Total Funding Received to Date:

Federal Fiscal Year	Federal Appropriations	Nevada's Share	5% Match
Title I Early Payments	$650 million	$5 million	n/a
2003	$830 million	$5.785 million	$304,495
2004	$1.489 billion	$10.381 million	$546,389
2005	$0	$0	$0
2006	$0	$0	$0
2007	$0	$0	$0
2008	$115 million	$798,107	$42,006
Total	$3.084 billion	$21.964 million	$892,381

2009 Amendment

Federal Fiscal Year	*Federal Appropriations*	*Nevada's Share*	*5% Match*
2009	*$100 million*	*$694,006*	*$36,527*
Amended Total	*$3.184 billion*	*$22.658 million*	*$929,417*

The State has also received an additional $500,000, under HAVA Title II, Section 261 for polling place accessibility. The State has been awarded yearly increments of $100,000 over the last five years. The State began drawing these funds for the first time in 2006. These funds will continue to be utilized for voter outreach projects, improved accessibility and poll worker training.

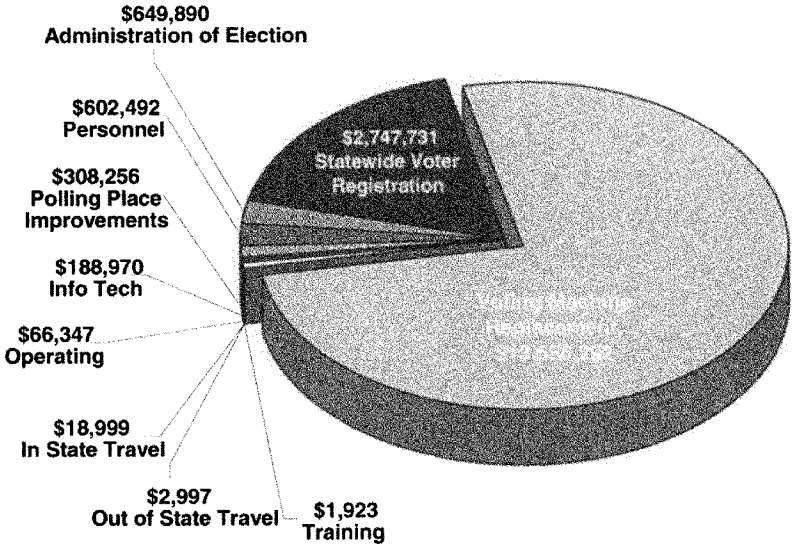
2009 Amendment

The State was awarded another $100,000 in July of 2009. The State has a current balance of $391,743 in Section 261 funds.

2. Total Funding Expended to Date – 2009 Amendment:

Of the HAVA funding received, $18,143,890 has been expended to date to meet the various requirements set forth under HAVA.

HAVA Expenditures to Date

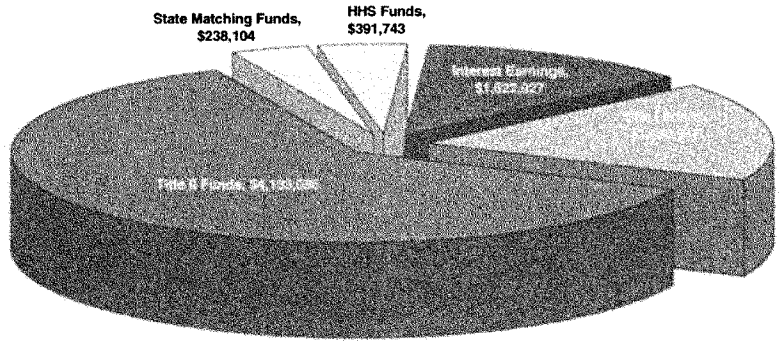


3. Total Funding Remaining to Date:

Budget Account 1051 - HAVA
Funding Received and Remaining as of November 1, 2009

Funding Source	Date Rec'd	Amount Rec'd	Amount Remaining
Title I	05/01/03	$5,000,000	$1,030,947
Title II (Federal FY 03)	08/09/04	$5,785,410	$0
Title II (Federal FY 04)	11/29/04	$10,381,400	$2,610,973
State Match – GF	07/01/04	$299,820	$0
State Match – SS	08/05/04	$550,555	$159,571
Title II – FY 08	05/06/09	$798,107	$798,107
State Match – FY 08		$42,006	$42,006
Title II – FY 09	TBD	$694,006	$694,006
State Match – FY 09		$36,527	$36,527
HHS Funds – FY 2003		$100,000	$0
HHS Funds – FY 2004		$100,000	$0
HHS Funds – FY 2005		$100,000	$0
HHS Funds – FY 2006		$100,000	$91,743.13
HHS Funds – FY 2007		$100,000	$100,000
HHS Funds – FY 2008		$100,000	$100,000
HHS Funds – FY 2009		$100,000	$100,000
FY 04 Interest Earned	06/30/04	$87,430	$87,430
FY 05 Interest Earned	06/30/05	$214,828	$214,828
FY 06 Interest Earned	06/30/06	$371,193	$371,193
FY 07 Interest Earned	06/30/07	$404,543	$404,543
FY 08 Interest Earned	06/30/08	$369,509	$369,509
FY 09 Interest Earned	06/30/09	$145,782	$145,782
FY 10 Interest Earned YTD	11/1/09	$28,742	$28,742
Totals:		**$25,909,858**	**$7,385,907**

Proportionate Breakdown of Remaining HAVA Funding



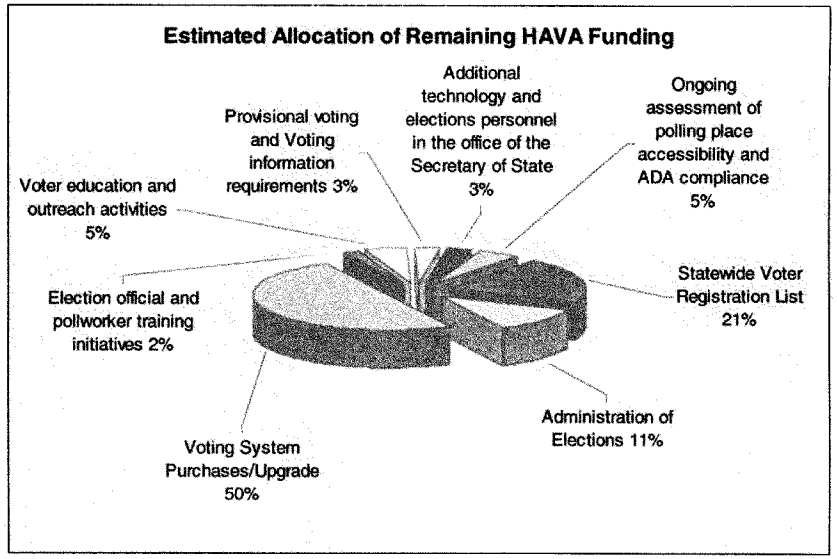
4. Allocation of Remaining HAVA Funding For FY 2009-2010:

The remaining $7,385,907 will be utilized to continue to maintain statewide HAVA compliance. Additionally funding will be set aside to ensure that both the voting systems and the statewide voter registration database can be maintained, updated and adequately supported. As ongoing projects, funding needs have been taken into account post FY 2009-2010.

a. Voting System Purchases/Upgrades:

- Continue to develop strategies to obtain funding, to update DRE machines and their respective VVPAT mechanism to ensure continued compliance with both federal and state law. Also provide additional touch screen systems fitted with voter verifiable paper audit trail printers as needed prior to the 2010 election cycle.
- To be funded with Title I early payments, Title II requirements payments and State matching funds.
- Cost to date: $13,556,292
- The costs of activities required to be carried out to meet this requirement of Title III is estimated to be in excess of $1 million dollars per election cycle.

- The projected portion of the 2009 and future requirements payment which will be used to carry out activities to meet this requirement is estimated to be: 50%



b. Establishing and Maintaining a Statewide Voter Registration List:

- Approximately, $4 to $5 million was allocated to cover base cost, with estimated ongoing maintenance costs of approximately $100,000 per year.
- The State will maintain between $2-3 million to cover any additional improvements to be made to the internally built statewide voter registration list and any additional maintenance costs which may arise.
- To be funded with Title I early payments, Title II requirements payments and State matching funds.
- Cost to date: $2,747,731
- The costs of activities required to be carried out to meet this requirement of Title III is estimated to be in excess of $50,000 dollars per election cycle.
- The projected portion of the 2009 and future requirements payment which will be used to carry out activities to meet this requirement is estimated to be: 21% of total HAVA funds.

c. Provisional Voting and Voting Information Requirements:

- $150,000 was initially allocated to create and develop enhancements to the free-access system, provide necessary training and outreach, and develop voting information.
- To be funded with Title II requirements payments and State matching funds.
- The costs of activities required to be carried out to meet this requirement of Title III is estimated to be in excess of $25,000 dollars per election cycle.
- The projected portion of the 2009 and future requirements payment which will be used to carry out activities to meet this requirement is estimated to be: 3% of total HAVA funds.

d. Ongoing assessment of polling place accessibility and ADA compliance:

- A significant portion of HAVA Title II, Section 261 funds totaling $391,743 will continue to be allocated to improve polling place accessibility. The expenditures will also include training for election officials and poll workers, along with providing information about polling place accessibility to people with disabilities.
- Section 261 funding is provided by the Department of Health and Human Services and is limited for the purposes for which it may be used. The projected percentage of 2009 HHS funds and future HHS awards to be spent in this category: 100 %
- Projected percentage of remaining and future HAVA funding to be spent in this category: 5% of total HAVA funds.

e. Voter education and outreach activities:

- To be funded with Title I requirements payments and State matching funds.
- The costs of activities required to be carried out to meet this requirement of Title III is estimated to be in excess of $40,000 dollars per election cycle.
- The projected portion of the 2009 and future requirements payment which will be used to carry out activities to meet this requirement is estimated to be: 5% of total HAVA funds.

f. Election official and poll worker training initiatives:

- To be funded with both Title I and Title II requirements payments and State matching funds
- The costs of activities required to be carried out to meet this requirement of Title III is estimated to be in excess of $16,000 dollars per election cycle.
- The projected portion of the 2009 and future requirements payment which will be used to carry out activities to meet this requirement is estimated to be: 2% of total HAVA funds.

g. Other Activities - Additional technology and elections personnel in the office of the Secretary of State:

- $602,492 has been expended on elections personnel since the implementation of HAVA in 2002. This money has thus far come from Title I money.
- -- Additional considerations include creating a HAVA information technology position to help maintain various aspects of HAVA compliance including programming related to voting equipment as well as statewide voter registration maintenance and further development.
- Projected percentage of remaining and future HAVA funding to be spent in this category: 3% of total HAVA funds.

h. Other Activities - Administration of Elections

- $648,890 of Title I money to carry out other election activities outside of Title III has been spent to date to assist in the Administration of Elections. This money thus far has come from Title I money.
- Projected percentage of remaining and future HAVA funding to be spent in this category: 11 %

The State's FY 2009-2010 Plan, as presented herein, is limited to the extent State appropriations are made available, and is based on the assumption that adequate federal funding will be appropriated. While the State intends to fully comply with HAVA requirements, if adequate federal funding is not made available, the manner in which the funds are disbursed or dedicated and the priorities given to particular projects may be altered from the information contained in this FY 2009-2010 Plan.

5. Costs and Portions of State's Proposed Budget for 2009 Amended Activities:

Activity	*Percent of Funds*	*Title I, II, III Classification*
Improvements for statewide voting systems standards	*50%*	*III*
Maintenance and enhancements to NevVoter, Nevada's statewide voter registration list	*21%*	*III*
Provisional Voting and Voting Information Requirements	*3%*	*III*
Ongoing Assessment of Polling Place Accessibility	*5%*	*Sec 261 Funds/Title III*
Voter Education Outreach Activities	*5%*	*III/ Activities to Improve Administration of Federal Elections*
Election Official and Pollworker Training	*2%*	*III/ Activities to Improve Administration of Federal Elections*
Other Activities	*3%*	*Title I*
Other Activities – Administration of Elections	*11%*	*Title I*

G. Maintenance of Effort

Section 254(a)(7) requires a description of how the State, in using the requirements payment, will maintain the expenditures of the State for activities funded by the payment at a level that is not less than the level of such expenditures maintained by the state for the fiscal year ending prior to November 2000.

Consistent with the maintenance of effort requirement contained in HAVA, in using any requirements payments, the State will maintain expenditures for activities funded by the payment at a level equal to or greater than the level of such expenditures maintained by the State for its fiscal year that ended prior to November 2000. The total expenditures attributable to the Elections Division increased in the State's fiscal years 2001, 2002, 2003, 2004, 2005, 2006 and 2007 and are anticipated to increase in FY 2009-2010.

The State Legislature has the authority to approve these funding levels and has been apprised of the maintenance of effort requirements contained in HAVA. At this time, the Secretary of State's total HAVA budget is $8,463,422.00. $5,228,674.00 of this total amount is held in a Title II reserve fund, 1,503,081.00 is held in a Title I reserve fund, $291,386 consists of state match funds, $362,286 is held in HHS funding and $1,077,994.00 consists of accrued interest. Projected state funded expenses for FY 2007-2008 will still exceed $250,000.

Nevada continued to meet its Maintenance of Effort (MOE) requirement with HAVA funds, and not State funds, used for Title III needs. Previously, the Secretary of State's total HAVA budget, excluding the 2008 requirements payment, was $6,922,855.93. $4,030,436.00 of this total amount was held in Title II reserve fund; $1,756,200.00 of this total amount was held in Title I reserve fund; $174,376.00 consisted of the balance remaining in the state match funds; $376,536.48 is held in HHS funding; and $1,388,756.60 consisted of accrued interest. Projected state funded expenses ending in FY 2008-2009 exceeded $250,000.00

2009 Amendment

Nevada will continue to meet its Maintenance of Effort (MOE) requirement in that HAVA funds, and not State funds, will be used for Title III needs. The State, in using the requirements payment, will maintain the expenditures of the State for activities funded by the payment at a level that is not less than the level of such expenditures maintained by the state for the fiscal year ending prior to November 2000, or $151,470.

H. Performance Goals and Measures

Section 254(a)(8) requires a description of how the State will adopt performance goals and measures that will be used by the State to determine its success and the success of units of local government in the State in carrying out the plan, including timetables for meeting each of the elements of the plan, descriptions of the criteria the State will use to measure performance and the process used to develop such criteria, and a description of which official is to be held responsible for ensuring that each performance goal is met.

The Secretary of State, in collaboration with local election officials, has met all critical performance goals and will continue to institute processes to measure additional progress in relation to these time-specific goals, as well as ongoing performance goals. This process will provide local election officials with structure and continued measurable targets for accomplishment. In addition, each local election official will be required to report the progress in meeting the performance goals and measures to the Secretary of State within 60 days following every general election held in the State.

1. Performance Goals

In developing the FY 07-08 update to the State Plan, the strategies for achieving these HAVA compliant goals in the previous State Plans continue to be applicable: (1) obtain federal funding; (2) implement legislation fostering voter participation and compliance with HAVA; (3) conduct an assessment of the condition of the statewide voter registration process given these standards; (4) suggest changes to voting technology and processes to ensure

accurate and reliable elections and voter confidence; and (5) develop and implement follow-through accountability activities and feedback mechanisms for complaints.

The State's primary goal is to achieve election reform and compliance with HAVA through the successful implementation of the programs outlined in the State Plan. In addition, having met HAVA compliance, the State will continue to create additional goals to continue Nevada's leadership role in election reform. Following is a description of the timetable for meeting each element of the Plan and the title of the official responsible for ensuring each such element is met:

Element	State/County Official	Timetable
Voting Systems	State Elections Deputy County Election Official	Accomplished September 2004
Voter Registration	State Elections Deputy County Election Official	Accomplished in 2006
Provisional Voting	State Elections Deputy County Election Official	Ongoing
Additional Personnel	State Elections Deputy	Ongoing (as needed)
Polling Place Accessibility	State Elections Deputy County Election Official	Ongoing
Voter Education/Outreach	State Elections Deputy County Election Official	Ongoing
Poll Worker Training	State Elections Deputy County Election Official	Ongoing
Complaint Procedures	Deputy Attorney General	Adopted/Ongoing

2. Performance Measures

The State will use the following criteria to measure performance:

--voter turnout statistics
--functionality of voting systems
--accuracy of the data contained in the statewide voter registration list
--voter satisfaction with equipment (accomplished through surveys or other strategies)
--complaints against poll workers
--complaints received versus complaints resolved
--ADA compliance

These criteria were developed through the State Planning Process. The State is further committed to exploring the use of additional performance measures. In 2008, Nevada's use of additional requirements payments enhanced current elements of our State Plan, and as such, the performance goals, measurements and timetables already established continue to be used to measure the performance of the additional funding.

2009 Amendment

The 2007 Nevada Legislature passed Senate Bill 401, which requires the Secretary of State to submit a comprehensive report of the election process in Nevada. The S.B. 401 report was presented to the 2009 Session of the Nevada Legislature and included data on the following performance measures:
(a) The number of ballots that have been discarded or for any reason not included in the final canvass of votes, along with an explanation for the exclusion of each such ballot from the final canvass of votes,
(b) A report on each malfunction of any mechanical voting system, including, without limitation:
(1) Any known reason for the malfunction;
(2) The length of time during which the mechanical voting system could not be used;
(3) Any remedy for the malfunction which was used at the time of the malfunction; and
(4) Any effect the malfunction had on the election process.
(c) A list of each polling place not open during the time prescribed pursuant to NRS 293.273 and an account explaining why each such polling place was not open during the time prescribed pursuant to NRS 293.273.
(d) A description of each challenge made to the eligibility of a voter pursuant to NRS 293.303 and the result of each such challenge.
(e) A description of each complaint regarding a ballot cast by mail or facsimile filed with the county clerk and the resolution, if any, of the complaint.
(f) The results of any audit of election procedures and practices conducted pursuant to regulations adopted by the Secretary of State pursuant to this chapter.
(g) The number of provisional ballots cast and the reason for the casting of each provisional ballot.

The report is made available on the Secretary of State's website for review by the general public.

I. State-Based Administrative Complaint Procedure

Section 254(a)(9) requires a description of the uniform, nondiscriminatory State-based administrative complaint procedures in effect under section 402. This state-based administrative complaint procedure must be in effect prior to certification of the State Plan, but no later than January 1, 2004; no waiver of the procedure is permitted.

The Advisory Committee has developed and adopted a procedure for complaints that meets HAVA requirements[3]. The Secretary of State adopted regulations to place these procedures

[3] See Appendix A for copy of Administrative Complaint Procedure.

into the State Administrative Code prior to submission of the FY 03-04 State Plan. The Secretary of State will continue to review and update regulatory language on an ongoing basis. The Secretary of State has assembled the State Regulatory Committee which will continually review statutes needing clarification and develop regulatory language as needed.

In summary, the procedure provides a uniform, nondiscriminatory procedure for the resolution of any complaint alleging a violation of any provision of Title III of HAVA, including a violation that has occurred, is occurring, or is anticipated to occur. Any person who believes a violation of any provision of Title II has occurred may file a complaint with the Secretary of State. The complaint must be written, signed, sworn to and notarized. At the request of the complainant, the Secretary of State will conduct a hearing on the record that will be conducted in accordance with HAVA requirements. The Secretary of State will provide the appropriate remedy and will provide a final determination within the timeframes specified in HAVA. The procedure provides for alternative dispute resolution if the Secretary of State does not make a timely final determination. Finally, the procedure requires the Secretary of State to make reasonable accommodations to assist persons in need of special assistance for utilizing the complaint procedure.

The Secretary of State's Office has also established a statewide Election Command Center Committee which will further modify and improve various aspects of the complaint procedures to ensure the process remains a uniform and nondiscriminatory state-based administrative process. In addition to coordinating with local law enforcement agencies, the Secretary of State's Office will work closely with local district attorneys and the State's Attorney General to ensure complaints are handled proficiently and swiftly. The Secretary of State will deploy investigators from another division of the office to assist local and state agencies investigative staff and the Elections Division during voting periods to investigate complaints as they are recorded by the Secretary of State's Election Fraud and Complaint Hotline. This committee will be a concerted effort and will work closely with the State Training Committee as well on complaint procedures.

J. Effect of Title I Payments

If the State received payment under Title I, Section 254(a)(10) requires a description of how such payment will affect the activities proposed by the State to be carried out under the plan, including the amount of funds available for such activities.

On April 30, 2003, the State received $5 million in Title I payments. The State has expended a portion of these funds for the voting system upgrades described in this State Plan. In addition, the State has expended these funds for ancillary devices, equipment and services associated with the voting systems contract and for travel and training activities necessary for implementing the new voting systems and the statewide voter registration system. Section 6 of this Plan specifically sets forth the State's intended additional uses for these funds. In 2008, Nevada had approximately $1,756,200.00 of this total amount held in Title I reserve fund.

2009 Amendment

Nevada has approximately $1,438,800.00 of Title I money remaining. These funds will be used, as needed, for improving the administration of elections, paying personnel, educating voters concerning voting procedures, training election officials and poll workers, improving the accessibility and quantity of polling places, and complying with requirements under Title III.

K. Ongoing Management of the State Plan

Section 254(a)(11) requires a description of how the State will conduct ongoing management of the plan, except that the State may not make any material change in the administration of the plan unless the change—

(A) is developed and published in the Federal Register in accordance with section 255 in the same manner as the State plan;

(B) is subject to public notice and comment in accordance with section 256 in the same manner as the State plan; and

(C) takes effect only after the expiration of the 30-day period which begins on the date the change is published in the Federal Register in accordance with subparagraph (A).

The State intends to use the State Plan as the foundation for its goals in achieving election reform and compliance with HAVA. To achieve these goals, the Secretary of State has appointed an internal committee in his office to be overseen by the Deputy Secretary for Elections. This committee is responsible for conducting ongoing management of the State Plan. To carry out this function, the committee is required to hold meetings as deemed necessary to address HAVA related issues and keep current on the State's progress toward implementation of HAVA. The Deputy Secretary for Elections, or a designee, is to report to the State Advisory Committee the activities involved with the ongoing management of the Plan. The Secretary of State will continue to hold an annual meeting of the State Advisory Committee to review and update the State Plan, as necessary. The Secretary of State may also convene the State Advisory Committee at other times during the year as deemed advisable.

2009 Amendment

Nevada's ongoing management of the plan will not change. Oversight of the State Plan will remain a function of the State Advisory Committee, the Deputy of Elections, and the Secretary of State.

L. Changes to the State Plan from the Previous Fiscal Year

In the case of a State with a State plan in effect under this subtitle during the previous fiscal year, Section 254(a)(12) requires a description of how the plan reflects changes from the State plan for the previous fiscal year and of how the State succeeded in carrying out the State plan for such previous fiscal year.

This FY 2009-2010 State Plan incorporates the same basic theme as the previous plans, and generally reports on the procedures implemented by the State in carrying out the previous plan, such as upgrades to voting systems throughout the State and specific voter education

and outreach efforts undertaken by the State. Additionally, the current FY 2009-2010 State Plan updates the status of State performance goals and the various HAVA compliant projects, such as statewide voter registration. Also provided is a general update of achievements in the areas of training, accessibility, statewide voter registration, voter machine upkeep and maintenance, and outreach, as well as cleaning up of language used in previous versions of the State Plan. The current plan further takes into consideration the Title II, Section 261 funds which had not been drawn prior to 2006.

The 2008 amendment to the State Plan reflects changes from the previous State Plan by increasing spending estimations for: improvements to statewide voting systems; training for local election officials and poll workers on the provisional voting procedures; maintenance and enhancements to NevVoter; expand efforts regarding mail-in, absentee, and overseas voting; centralized Election Information Management System; and outreach activities and data collection. . Additionally, the State Advisory Committee voted to change language in Section III.A.1 pertaining to voting system standards relating to over-voting. The State has succeeded in carrying out the previous State Plan by continuing to meet performance goals, HAVA compliance in expenditure of HAVA funds, and an 11.4% increase in registered voters from June 2007 to June 2008.

2009 Amendment

Upon consultation with the EAC, the 2009-2010 amended State Plan reflects changes from the previous State Plan by switching dollar amount spending to percentage amount spending for: improvements to statewide voting systems; training for local election officials and poll workers on the provisional voting procedures; maintenance and enhancements to NevVoter; expand efforts regarding mail-in, absentee, and overseas voting; centralized Election Information Management System; and outreach activities and data collection. The State Plan also elaborates on the Command Center and the SB 401 report. Financial tables and charts are also updated to reflect November 2009 funding levels and spending plans. The State Plan also incorporates updates to reflect minority language requirements as required by the Voting Rights Act. Lastly, the Temporary Statewide Voter Registration List procedures were removed, as they have been adopted as permanent.

M. Committee Description and Development of State Plan

Section 254(a)(13) requires a description of the committee which participated in the development of the State plan in accordance with section 255 and the procedures followed by the committee under such section and section 256.

The State's Advisory Committee consists of eleven (11) members including the Secretary of State, local election officials from the two largest counties in the State and a variety of other election stakeholders[4]. The Secretary of State selected the committee membership and either he or his Chief Deputy acted as Chairperson for each meeting held.

Members of the State Advisory Committee and their qualifications are as follows:

Ross Miller, Secretary of State
Nicole Lamboley, Chief Deputy Secretary of State
Wayne Howle, Solicitor General
Thomas Allman, Rights Advocate/ADA Coordinator, Nevada Disability Advocacy & Law Center
Dan Burk, Washoe County Registrar of Voters
Jan Gilbert, N. NV Coordinator, Progressive Leadership Alliance of NV (PLAN)
Alan Glover, Carson City Clerk
Kenya Pierce, Community College Professor, College of Southern Nevada
Larry Lomax, Clark County Registrar of Voters
Daniel Wong, Chief Deputy Attorney General/Chief Counsel, NV Dept. of Transportation
Monica Martinez Simmons, Henderson City Clerk

Advisory Committee Staff in the Office of the Secretary of State and their qualifications are as follows:

Matthew M. Griffin, Deputy Secretary of State for Elections
Ryan High, State HAVA Coordinator
Kimberly Carrubba, State Advisory Committee Secretary

In developing the *State of Nevada Fiscal Year 2009-2010 Amended State Plan,* the State Advisory Committee convened on January 25, 2010. The Committee meeting was publicly held and noticed in accordance with Nevada's Open Meeting Law. The *State of Nevada Fiscal Year 2009-2010 Amended State Plan* will be made available for public inspection and comment for a 30-day period prior to submission to the Election Assistance Commission (EAC). The Secretary of State will publish the adopted Plan and notice of the comment period will commence on or about February 1, 2010, and will be made available for public inspection on the Secretary of State's website and at satellite offices, the Nevada State Library, at all main county libraries, all city and county clerks' offices, and at various other public agencies throughout the State.

2009 Amendment

The amended State Plan reflects changes from the previous State Plan in the members of the State Advisory Committee.

[4] See Appendix B for Advisory Committee biographies and party affiliations.

APPENDIX B

Advisory Committee Biographies and Affiliations

2009 Amendment

The amended State Plan reflects changes from the previous State Plan to include the biographies of the new Committee members.

Name	Title – Organization	Biography
Ross Miller	Secretary of State	Ross Miller was sworn into office on January 1st 2007. Mr. Miller is a third-generation Nevadan who previously served as a Deputy District Attorney in Clark County, Nevada. He holds a dual degree, in law (J.D.) and a Masters in Business Administration (M.B.A.), from Loyola Marymount University, in Los Angeles, and completed his undergraduate studies at Stanford University in California, earning a Bachelor of Arts major in English, with minors in Psychology and Political Science. While at Stanford, Mr. Miller served as a White House Intern, where he worked under then-Cabinet Liaison Thurgood Marshall, Jr.
Nicole Lamboley	Chief Deputy Secretary of State	Nicole Lamboley, Chief Deputy Secretary of State, was appointed by Secretary Ross Miller in January 2007. Ms. Lamboley has spent the past 18 years working in different capacities in the area of public and government affairs, about half of which have been spent working in the public sector. Prior to joining Secretary Miller's administration, she served as campaign manager for Attorney General Catherine Cortez Masto. Before that, Ms. Lamboley served as Legislative Affairs Manager for the City of Reno and was in charge of the city's state, federal and intergovernmental lobbying efforts. Her career also includes positions as Senior Regional Manager for the National Association of Manufacturers, Deputy Chief of Staff to former Nevada Governor Bob Miller, and Production Manager for the Harriman Communications' Center. Ms. Lamboley received her Bachelors degree from the University of Notre Dame and her Masters degree in Public Policy from Georgetown University.
Thomas Allman	Rights Advocate/ADA Coordinator, NDALC	Thomas Allman has been with Nevada Disability Advocacy & Law Center (NDALC) in Las Vegas as a Rights Advocate/Projects Coordinator for 7½ years where he has been the Help America Vote Act (HAVA) Coordinator. As NDALC's HAVA Coordinator, his agency's priority has been to assure full access to the electoral process so that people with disabilities can register to vote and vote with complete independence and privacy. Mr. Allman's duties include conducting voting rights outreach meetings to disability organizations, monitoring through site visits ADA compliance for polling places and providing monitoring and technical assistance of both State and County Election Departments to assure they are in compliance with HAVA sections as they relate to people with disabilities. His other agency duties involve coordinating the annual staff training and resolving many ADA compliance issues regarding access to private and government buildings. He has over 20 years working with people with disabilities including his over 7 years as Director of the Corrections Office for the Massachusetts Rehabilitation Commission in Boston. Both his Doctorate in Rehabilitation and Masters in Education in Counseling Psychology are from Boston College, while his J.D. is from Thomas Jefferson School of Law in San Diego.
Dan Burk	Registrar of Voters, Washoe County	B.A. in Public Administration, U of North Texas (1970). M.A. in History, U of Northern Colorado (1977). Worked over 20 years in all aspects of election procedures in Oregon, from Director of Records and Elections, Liaison Officer in the Archive Division to membership on the committee for the implementation of the ADA (American Disabilities Act) regarding Oregon's standards for access to polling locations for people with disabilities.
Jan Gilbert	Northern Nevada Coordinator, PLAN	B.A. Economics from UCLA. She co-founded the Progressive Leadership Alliance of Nevada (PLAN). Prior to working on economic and environmental justice issues at the state legislature for 24 years, she began advocacy work for the League of Women Voters. She has received several Humanitarian Awards including the Women's role Model Award from the Attorney General and the Hannah Humanitarian Award from the Committee to Aid Abused Women. She also served on the Department of Human Resources Block Grant Commission for 9 years and was Chairman for two of those years.

Name	Title – Organization	Biography
Alan Glover	Clerk-Recorder, Carson City	Alan Glover, Carson City Clerk-Recorder, is a native of Carson City, attended Carson City schools, and is a graduate of the University of Nevada in Reno. While a senior at the University he was elected to the Nevada State Assembly where he served five terms before being elected to the State Senate. In 1985 Mr. Glover resigned from the Senate and was appointed as the Carson City Recorder. In 1987 the office of Recorder was combined with that of Clerk and Mr. Glover served in that position until 1991 when he went back to private business. In 1994 he was elected Carson City Clerk-Recorder and has served in that capacity since. Mr. Glover is a past president of the County Fiscal Officers Association and the Nevada Association of County Clerks and County Election Officials. Mr. Glover is the Ex-Officio Clerk of: the First Judicial District, Board of Supervisors, Board of Equalization and General Obligation Bond Commission, and is Ex-Officio Public Administrator. Mr. Glover also oversees the operations of the Recorders Office, Marriage Bureau, Elections, and Records Management.
Harvard "Larry" Lomax	Registrar of Voters, Clark County	B.A. in English Literature, Stanford University (1967) and Master of Business Administration from University of North Dakota (1977). He was a Distinguished Graduate from the Air Force's Officer Training School and as a pilot flew over 4,000 hours in a 30 year career. He served on the Joint Staff in Washington D.C. and had the opportunity to work with legislators and staff members on a wide range of issues. He began his career as Assistant Registrar for Registrations in January of 1998 overseeing the training of 7,000 election board officers, processing of petitions, and election night logistics and was appointed Registrar of Voters with full responsibility for the County's Election Department in March of 1999.

Name	Title – Organization	Biography
Wayne Howle	Solicitor General	Wayne Howle is the Solicitor General for Nevada Attorney General Catherine Masto. He is responsible for the Attorney General's appellate advocacy in State and federal courts. He also ensures consistency in the Attorney General's legal policy by overseeing the opinion-writing process for the Office, facilitating an appellate moot court program, and leading an amicus program. He also supervises a large bureau made up of over forty government attorneys. In 1990, Wayne was hired by then-Attorney General Brian McKay, and has worked for five different Nevada Attorneys General. Over the years, he has represented numerous State agencies. His practice has included extensive experience in natural resource law, federal Indian law and public land law. Most recently he has represented the Secretary of State in election law cases. He has appeared in many trial and appellate hearings in tribal, state and federal courts, including appearances in the Nevada and U.S. Supreme Courts. Wayne received his undergraduate degree in political science from the College of Charleston in Charleston, S.C., in 1978. He worked for the U.S. Bureau of Land Management in Ely, Nevada, from 1979 until 1985, where he was the Ely District wilderness program leader. He then attended law school at the University of Idaho, and graduated magna cum laude in 1988. In his first year of practice, he served as law clerk for the Honorable Charles McGee in the Second Judicial District Court of Nevada in Reno, Nevada, and in 1990 was an associate at the Reno law firm Hill Cassas and deLipkau.

Name	Title – Organization	Biography
Kenya Pierce	Community College Professor, College of Southern Nevada	Kenya Pierce is a principal and co-founder of Blackbox Consulting Group and has over 15 years experience in community organizing, non-profit management and higher education. Currently, Kenya Pierce serves as Community Affairs Advisor to State Senate Majority Leader Steven Horsford. In 2007, Kenya was tapped to lead the African American outreach effort for the Nevada State Democratic Party in preparation for the 2008 Presidential Caucus. In 2005, she co-founded TRENDZ Inc. ("Taking Responsibility and Education in New Directions"). This youth-led social activist network recruits young people of color training them in civic engagement. As a tenured Sociology Professor at the College of Southern Nevada, Kenya has been able to help students broaden their social perspective as they prepare to become professionals in their community. Her coursework includes: Teaching Principles of Sociology; Marriage and Family; Race and Ethnicity; and Social Problems. Ms. Pierce holds a bachelors degree in Social Work from the University of Central Missouri and a masters in Social Work from Saint Louis University. Kenya serves on the boards of SAFY (Specialized Alternatives for Families and Youth), PLAN (Progressive Leadership Alliance of Nevada), Western States Center and Pushback Network. She is the mother of two: Jordan, age 10 and Nilah, age 7.
Monica M. Simmons	City Clerk, City of Henderson	Monica was appointed City Clerk in 1998 by the City Council following 20 years of service in the City Attorney's Office. During her 28-year tenure at the City, she has experienced unprecedented growth (from 23,567 to a current population of 265,000.) Monica serves on the Board of Directors for the international organization of Municipal Clerks and Administrators, representing 15 countries and a membership of 10,000. She was elected president of the Nevada Municipal Clerks' Association in 1994, and she is an active member with the League of Women Voters, Nevada Women's History Project, and the American Bar Association. Monica partnered with the University of Nevada/Reno to establish the first Nevada Municipal and County Clerks' accredited educational institute. At the request of the U.S. Department of State, she pursued the implementation of a full-service U.S. Passport Application Program in 2003. Monica continues her commitment to strengthening community relations through effective outreach programs, including Henderson's nationally recognized "Local Youth Vote" campaign and the recent implementation of "Vote Centers" during Henderson's Municipal Elections.
Daniel Wong	Chief Deputy Attorney General/Chief Counsel, Nevada Dept. of Transportation	Daniel Wong earned a B.A. in Political Science from UCLA in 1974 and a Juris Doctor from the University of the Pacific, McGeorge School of Law in 1979. He was a major felony prosecutor for the Washoe County District Attorney's Office, a solo private practitioner and was the first Asian-American to serve as a judge in the State of Nevada serving in Reno Justice Court for 7 ½ years. He has been with the Nevada Attorney General's Office for almost ten years and has served as a Deputy Attorney General, Senior Deputy Attorney General, Assistant Solicitor General, Solicitor General, Chief Solicitor General and Chief Deputy Attorney General of the Litigation Division. He is currently the Chief Deputy Attorney General of the Transportation Division and Chief Counsel to the Nevada Department of Transportation. He has been active in the community having served on the Board of Directors of the Suicide Prevention and Crisis Call Center, Partners in Education, Leadership Reno-Sparks, and KNPB Channel 5 Public Television. He currently serves on the National Board of the Center for Civic Education.

APPENDIX C

Agenda for January 2010 Advisory Committee Meeting

NEVADA STATE ADVISORY COMMITTEE

AGENDA

Meeting: **Monday, January 25, 2010**
9:00 a.m.

Room 105 Blasdel Building 209 E. Musser St. Carson City, Nevada	Suite 1400 Grant Sawyer Building 555 East Washington Street Las Vegas, Nevada

I. Introduction and Welcome

II. Roll Call

III. Amend State Plan to satisfy eligibility criteria for additional requirement payments*

IV. Comments of Committee Members

V. Public Comment

VI. Adjournment*

* Denotes items on which action may be taken

Notice of this meeting has been posted at the following locations:

Offices of the 17 County Clerks/Registrar of Voters
The Capitol Building, 101 N. Carson St., Carson City, Nevada
Secretary of State – Reno Office, 1755 East Plumb Ln., Ste. 231, Reno, NV 89502
Grant Sawyer State Office Building, 555 East Washington St., Las Vegas, Nevada
Nevada State Legislature, 401 S. Carson St., Carson City, Nevada
Nevada State Library and Archives, 100 N. Stewart St., Carson City, Nevada

Notice of this meeting was posted on the following website:
http://www.nvsos.gov

Posted: January 19, 2010

We are pleased to make accommodations for people with disabilities who wish to attend this meeting. Please notify the Elections Division at the Secretary of State's office by calling (775) 684-5705.

APPENDIX D

Compliance with Military and Overseas Voter Empowerment Act
(Title 5, Subtitle H, Section 588 of H.R. 2647 of the 111th Congress)

The State will meet MOVE Act compliance through instituting Nevada Laws and regulations that will mirror federal requirements.

[FR Doc. 2010–7479 Filed 4–1–10; 8:45 am]
BILLING CODE 6820–KF–C

DEPARTMENT OF ENERGY

Proposed Agency Information Collection

AGENCY: U.S. Department of Energy.

ACTION: Notice and Request for OMB Review and Comment.

SUMMARY: Pursuant to the Paperwork Reduction Act of 1995, the Department of Energy (DOE) invites public comment on a proposed emergency collection of information that DOE is developing to collect data on the status of activities, project progress, jobs created and retained, spend rates and performance metrics under the American Recovery and Reinvestment Act of 2009. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments regarding this collection must be received on or before April 16, 2010. If you anticipate difficulty in submitting comments within that period, contact the person listed in **ADDRESSES** as soon as possible.

ADDRESSES: Please send all comments electronically to: Raphael Tisch, *raphael.tisch@ee.doe.gov.*

Written comments may be sent in addition to electronic comments to:

Raphael Tisch, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Raphael Tisch at *raphael.tisch@ee.doe.gov.*

SUPPLEMENTARY INFORMATION: This emergency information collection request contains: (1) *OMB No:* New; (2) *Information Collection Request Title:* Wind; (3) *Type of Review:* Emergency; (4) *Purpose:* To collect data on the status of activities, project progress, jobs created and retained, spend rates and performance metrics under the American Recovery and Reinvestment Act of 2009. This will ensure adequate information is available to support sound project management and to meet the transparency and accountability associated with the Recovery Act by requesting approval for monthly reporting. (5) *Annual Estimated Number of Respondents:* 2 (6) *Annual Estimated Number of Total Responses:* 12 (7) *Annual Estimated Number of Burden Hours:* 320. (8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $1,300–$2,300. (9) *Type of Respondents:* Recipients of American Recovery and Reinvestment Act funding.

An agency head or the Senior Official, or their designee, may request OMB to authorize emergency processing of submissions of collections of information.

(a) Any such request shall be accompanied by a written determination that:

(1) The collection of information:

(i) Is needed prior to the expiration of time periods established under this Part; and

(ii) Is essential to the mission of the agency; and

(2) The agency cannot reasonably comply with the normal clearance procedures under this Part because:

(i) Public harm is reasonably likely to result if normal clearance procedures are followed;

(ii) An unanticipated event has occurred; or

(iii) The use of normal clearance procedures is reasonably likely to prevent or disrupt the collection of information or is reasonably likely to cause a statutory or court ordered deadline to be missed.

(b) The agency shall state the time period within which OMB should approve or disapprove the collection of information.

Statutory Authority: Title IV of the American Recovery and Reinvestment Act of 2009, Pub. L. 111–5.

Issued in Washington, DC, on March 23, 2010.

Megan McCluer,

Program Manager, Wind, Office of Energy Efficiency and Renewable Energy.

[FR Doc. 2010–7454 Filed 4–1–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

March 26, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–479–001.
Applicants: California Independent System Operator Corporation.
Description: The California Independent System Operator Corporation submits the instant filing in compliance with FERC's 3/3/10 Letter Order on Tariff Revisions.
Filed Date: 03/11/2010.
Accession Number: 20100311–0025.
Comment Date: 5 p.m. Eastern Time on Thursday, April 1, 2010.

Docket Numbers: ER10–911–000.
Applicants: Wisconsin Electric Power Company.
Description: Wisconsin Electric Power Co submits the Wholesale Distribution Service Agreement.
Filed Date: 03/19/2010.
Accession Number: 20100319–0218.
Comment Date: 5 p.m. Eastern Time on Friday, April 9, 2010.

Docket Numbers: ER10–926–000.
Applicants: Niagara Mohawk Power Corporation.
Description: Niagara Mohawk Power Corporation submits a Second Revised Service Agreement 1154 with Project Orange Associates, LLC, etc under ER10–926.
Filed Date: 03/23/2010.
Accession Number: 20100324–0210.
Comment Date: 5 p.m. Eastern Time on Tuesday, April 13, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–7424 Filed 4–1–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

March 25, 2010.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC10–51–000.
Applicants: T. Rowe Price Group, Inc.
Description: T. Rowe Price Group Inc *et al* requests reauthorization and extension of Blanket Authorizations to acquire and dispose of securities under Section 203 of the Federal Power Act.
Filed Date: 03/15/2010.
Accession Number: 20100316–0205.
Comment Date: 5 p.m. Eastern Time on Monday, April 5, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER01–1099–014; ER02–1406–015; ER99–2928–011.
Applicants: Cleco Power LLC; Acadia Power Partners, LLC; Cleco Evangeline LLC.
Description: Cleco Power, LLC *et al* submits a notice of non-material change in status.
Filed Date: 03/25/2010.
Accession Number: 20100325–0208.
Comment Date: 5 p.m. Eastern Time on Thursday, April 15, 2010.

Docket Numbers: ER10–549–000.
Applicants: PJM Interconnection, LLC.
Description: PJM Interconnection, LLC submits response to FERC 2/25/2010 letter.
Filed Date: 03/22/2010.
Accession Number: 20100324–0026.
Comment Date: 5 p.m. Eastern Time on Monday, April 12, 2010.

Docket Numbers: ER10–904–000.
Applicants: NFI Solar, LLC.
Description: Amendment to Application for market-based rate authority, request for waivers and authorizations, and request for finding of qualification as Category 1 Seller, and for expedited consideration re NFI Solar, LLC.
Filed Date: 03/22/2010.
Accession Number: 20100324–0027.
Comment Date: 5 p.m. Eastern Time on Monday, April 5, 2010.

Docket Numbers: ER10–930–000.
Applicants: Consolidated Edison Company of New York.
Description: Consolidated Edison Company of New York, Inc submits amendments to their Delivery Service Rate Schedule, FERC Rate Schedule 96 *et al.*
Filed Date: 03/24/2010.
Accession Number: 20100324–0218.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 14, 2010.

Docket Numbers: ER10–931–000.
Applicants: Virginia Electric and Power Company.
Description: Virginia Electric and Power Company submits Sixth Revised Sheet 314G.01 *et al* to FERC Electric Tariff, Sixth Revised Volume 1 to PJM Interconnection, LLC open-access transmission tariff, to be effective 3/25/10.
Filed Date: 03/24/2010.
Accession Number: 20100325–0202.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 14, 2010.

Docket Numbers: ER10–932–000.
Applicants: PacifiCorp.
Description: PacifiCorp submits Network Integration Transmission Service Agreement dated 3/16/10 with Basin Electric Power Cooperative to be designated as First Revised Service Agreement 505 to FERC Electric Tariff, Seventh Revised Volume 11.
Filed Date: 03/24/2010.
Accession Number: 20100325–0201.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 14, 2010.

Docket Numbers: ER10–933–000.
Applicants: Southern Company Services, Inc.
Description: Alabama Power Company *et al* submits for filing an amendment to the Network Integration Transmission Service Agreement with PowerSouth Energy Cooperative *et al.*
Filed Date: 03/25/2010.
Accession Number: 20100325–0206.
Comment Date: 5 p.m. Eastern Time on Thursday, April 15, 2010.

Docket Numbers: ER10–934–000.
Applicants: Cleco Power LLC.
Description: Cleco Power, LLC submits Agreement Addressing Balancing Authority Area Requirements and Reliability Standards with City of Alexandria.
Filed Date: 03/25/2010.
Accession Number: 20100325–0207.
Comment Date: 5 p.m. Eastern Time on Thursday, April 15, 2010.

Docket Numbers: ER10–935–000.
Applicants: Stony Creek Wind Farm, LLC.
Description: Request by Stony Creek Wind Farm, LLC for Expedited Consideration of waiver of NYISO Class Year eligibility requirement to provide notice by the study start date of the Annual Transmission Reliability Assessment, accepted for filing.
Filed Date: 03/25/2010.
Accession Number: 20100325–5058.
Comment Date: 5 p.m. Eastern Time on Monday, April 5, 2010.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA07–36–006; OA08–46–005; OA08–93–003.
Applicants: South Carolina Electric & Gas Company.
Description: South Carolina Electric & Gas Company submits a compliance filing containing SCE&G's revised Attachment K to SCE&G's Order No. 890–A OATT.
Filed Date: 03/24/2010.
Accession Number: 20100324–5104.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 14, 2010.

Docket Numbers: OA08–97–003.
Applicants: MidAmerican Energy Company.
Description: Annual Informational Report on Penalty Assessments and Distributions.
Filed Date: 03/25/2010.
Accession Number: 20100325–5052.
Comment Date: 5 p.m. Eastern Time on Thursday, April 15, 2010.

Docket Numbers: OA10–8–000.

Applicants: Idaho Power Company.

Description: Idaho Power Company submits its annual compliance report on operational penalty assessments and distributions.

Filed Date: 03/25/2010.

Accession Number: 20100325–0209.

Comment Date: 5 p.m. Eastern Time on Thursday, April 15, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–7425 Filed 4–1–10; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9133–5]

Agency Information Collection Activities; Proposed Collection; Comment Request for Sulfur Content of Motor Vehicle Gasoline Under the Tier 2 Rule; EPA ICR No. 1907.05; OMB Control No. 2060–0437

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This request is to renew an ICR that will expire on July 31, 2010.

DATES: Comments must be submitted on or before June 1, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2010–0258, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-Docket@epa.gov.*
- *Mail:* Air Docket, Environmental Protection Agency, Mail Code: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Fax or Hand Delivery:* EPA's Public Reading Room is located in Room 3334 of the EPA West Building, 1301 Constitution Ave., NW., Washington, DC. Docket hours are Monday through Friday, 8 a.m. until 4:30 p.m., excluding legal holidays. In order to ensure to arrange for proper fax or hand delivery of materials, please call the Air Docket at 202–566–1742.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR- 2010–0258. 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 for which 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 *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: Geanetta Heard, Office of Transportation and Air Quality, Transportation and Regional Programs Division, Mail Code 6406J, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343–9017; fax number: (202) 343–2801; e-mail address: *heard.geanetta@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–OAR–2010–0258. The docket is available for online viewing at *http://www.regulations.gov*, and for in-person viewing at EPA's Public Reading Room. The Public Reading Room was temporarily closed due to flooding and reopened in the EPA Headquarters Library, Infoterra Room (Room 3334), in the EPA West Building, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST) in its new location, Monday through Friday, excluding legal holidays. The telephone number for the Air Docket is 202–566–1742.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified in this document.

What Information Is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the Paperwork Reduction Act, 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?

Affected entities: Entities potentially affected by this action are refiner and importers, gasoline terminals, pipelines, and users of research and development (R& D) gasoline.

Title: Sulfur Content of Motor Vehicle Gasoline under Tier 2 Rule.

ICR numbers: EPA ICR No. 1907.05, OMB Control No. 2060–0437.

ICR status: This ICR will expire on July 31, 2010. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in Title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: With this information collection request (ICR) renewal, we are seeking permission to continue to accept notifications from refiners and importers as they relate to gasoline sulfur content of motor vehicles under § 211(c)(1) of the Clean Air Act and EPA regulation of 2003 40 CFR part 80, subpart H; and to provide a compliance option whereby a refiner or importer may demonstrate compliance with the gasoline sulfur control requirement via test results. These provisions, which have been in effect since 2003, are designed to grant compliance flexibility. The current ICR approval expires July 31, 2010. We are requesting that the Office of Management and Budget (OMB) renew this ICR and request that it be effective three years after approval.

Burden Statement: The annual hourly reporting and recordkeeping burden and cost for this collection of information is estimated to be 38,573 hours and $2,573,954, respectively. The total number of responses for this ICR is estimated to be 37,665. Burden means the total time, effort, or financial resources expended by a person to generate, maintain, retain, or disclose or provide information to (or for) a Federal agency. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information; to process and maintain information; to disclose and provide information; to adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; to train personnel to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information.

Are There Changes in the Estimates From the Last Approval?

This submittal is a renewal of the ICR for the Tier 2 gasoline sulfur rule.

We do not estimate a change in burden associated with renewal of this information collection request. However, there is a change in the Agency burden which increased by $1,070.

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 person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: March 29, 2010.

Lori Stewart,

Acting Director, Office of Transportation and Air Quality.

[FR Doc. 2010–7497 Filed 4–1–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8989–5]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–1399 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements.

Filed 03/22/2010 through 03/26/2010.

Pursuant to 40 CFR 1506.9.

Notice

In accordance with Section 309(a) of the Clean Air Act, EPA is required to

make its comments on EISs issued by other Federal agencies public. Historically, EPA has met this mandate by publishing weekly notices of availability of EPA comments, which includes a brief summary of EPA's comment letters, in the **Federal Register**. Since February 2008, EPA has been including its comment letters on EISs on its Web site at: *http://www.epa.gov/compliance/nepa/eisdata.html.* Including the entire EIS comment letters on the Web site satisfies the Section 309(a) requirement to make EPA's comments on EISs available to the public. Accordingly, after March 31, 2010, EPA will discontinue the publication of this notice of availability of EPA comments in the **Federal Register**.

EIS No. 20100097, Final EIS, USFS, OR, EXF Thinning, Fuel Reduction, and Research Project, Proposal for Vegetation Management and Fuel Reduction within the Lookout Mountain Unit of the Pringle Falls Experimental Forest, Bend/Ft. Rock Ranger District, Deschates National Forest, Deschutes County, OR, Wait Period Ends: 05/03/2010, Contact: Beth Peer 541–383–4769.

EIS No. 20100098, Final EIS, FHWA, WA, WA–502 Corridor Widening Project, Proposes Improvements to Five Miles of WA–502 (NE.-219th Street) between NE. 15th Avenue and NE. 102nd Avenue, Funding, Clark County, WA, Wait Period Ends: 05/03/2010, Contact: Chris Tams 360–759–1310.

EIS No. 20100099, Final EIS, FHWA, FL, Interstate 395 (I–395) Development and Environment Study Project, From I–95 to West Channel Bridges of the MacArthur Causeway at Biscayne Bay, City of Miami, Miami-Dade County, FL, Wait Period Ends: 05/03/2010, Contact: Linda K. Anderson 850–942–9650 Ext. 3053.

EIS No. 20100100, Draft EIS, BLM, OR, West Butte Wind Power Project, Construction and Operation of Access Roads and a Transmission Line, Application for Right-of-Way (ROW) Grant, Deschutes and Crook Counties, OR, Comment Period Ends: 05/17/2010, Contact: Steve Storo 541–416–6700.

EIS No. 20100101, Draft EIS, FTA, TX, D2 Downtown Dallas Transit Study, To Support Increased Demand and Implementation of the 2030 Transit System Plan (TSP), Dallas Area Rapid Transit (DART), in the City of Dallas, Dallas County, TX, Comment Period Ends: 05/17/2010, Contact: Lynn Hayes 817–978–0565.

EIS No. 20100102, Draft EIS, BLM, CA, Palen Solar Power Plant Project, Construction, Operation and Decommission a Solar Thermal Facility on Public Lands, Approval for Right-of-Way Grant, Possible California Desert Conservation Area Plan Amendment, Riverside County, CA, Comment Period Ends: 07/01/2010, Contact: Holly Roberts 760–833–7149.

EIS No. 20100103, Draft EIS, FERC, 00, Apex Expansion Project, Proposal to Expand its Natural Gas Pipeline System, WY, UT and NV, Comment Period Ends: 05/17/2010, Contact: Julia Bovey 1–866–208–3372.

EIS No. 20100104, Draft EIS, USFS, NM, McKinley County Easement—Forest Roads 191 and 191D, Implementation, Cibola National Forest, McKinley County, NM, Comment Period Ends: 05/17/2010, Contact: Keith Baker 505–346–3820.

EIS No. 20100105, Draft EIS, USA, GA, Fort Stewart Training Range and Garrison Support Facilities Construction and Operation, Liberty, Long, Bryan, Evans and Tattnall Counties, GA, Comment Period Ends: 05/17/2010, Contact: Mike Ackerman 410–436–2522.

EIS No. 20100106, Draft EIS, BLM, CA, Granite Mountain Wind Energy Project, Proposed to Develop an up to 84-megawatt Wind Energy Plant and Associated Facilities on Public Land and Private Land, California Desert Conservation Areas Plan, San Bernardino County, CA, Comment Period Ends: 07/01/2010, Contact: Edythe Seehafer 760–252–6021.

EIS No. 20100107, Draft EIS, BLM, CA, Calico Solar Project, Proposed Solar Thermal Electricity Generation Facility Located Public Lands, Construction and Operation, Right-of-Way Grant, San Bernardino County, CA, Comment Period Ends: 07/01/2010, Contact: Jim Stobaugh 775–861–6478.

Amended Notices

EIS No. 20100018, Draft EIS, NPS, WV, New River Gorge National River Project, General Management Plan, Implementation, Fayette, Raleigh and Summers Counties, WV, Comment Period Ends: 04/02/2010, Contact: Deborah Darden 304–465–6509.

Revision to FR Notice Published 01/29/2010: Correction to Comment Period from 03/29/2010 to 04/02/2010.

EIS No. 20100054, Draft EIS, NASA, VA, Wallops Flight Facility, Shoreline Restoration and Infrastructure Protection Program, Implementation, Wallops Island, VA, Comment Period Ends: 04/19/2010, Contact: Joshua A. Bundick 757–824–2319.

Revision to FR Notice Published 02/26/2010: Correction to Comment Period from 04/12/2010 to 04/19/2010.

Dated: March 30, 2010.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2010–7501 Filed 4–1–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8989–6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7146 or *http://www.epa.gov/compliance/nepa/.*

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated July 17, 2009 (74 FR 35754).

Final Notice

In accordance with Section 309(a) of the Clean Air Act, EPA is required to make its comments on EISs issued by other Federal agencies public. Historically, EPA has met this mandate by publishing weekly notices of availability of EPA comments, which includes a brief summary of EPA's comment letters, in the **Federal Register.** Since February 2008, EPA has been including its comment letters on EISs on its Web site at: *http://www.epa.gov/compliance/nepa/eisdata.html.* Including the entire EIS comment letters on the Web site satisfies the Section 309(a) requirement to make EPA's comments on EISs available to the public. Accordingly, this is the final publication of this notice of availability of EPA comments in the **Federal Register**.

Draft EISs

EIS No. 20090378, ERP No. D–COE–F09806–MN, NorthMet Project, Proposes to Construct and Operate an Open Pit Mine and Processing Facility, Located in Hoyt Lakes—Babbitt Area of St. Louis County, MN

Summary: The project as proposed will have unsatisfactory impacts to surface water and groundwater from acid mine drainage and mobilization of

metals and sulfates. The project will also have significant wetland impacts that are not adequately mitigated. In addition, the EIS does not adequately evaluate the fate and transport of pollutants between groundwater, surface water and wetlands, nor does it discuss financial assurance for closure and post-closure care. Rating EU3.

EIS No. 20090411, ERP No. D–BLM–K65383–CA, Clear Creek Management Area Resource Management Plan (RMP), Implementation, Portion of San Benito County and Fresno County, CA.

Summary: EPA does not object to the proposed project because it will help protect human health and safety and significantly improve environmental resources in the project area. Rating LO.

EIS No. 20090451, ERP No. D–FHW–F40451–FL, St. Johns River Crossing Project, Improved Highway Corridor and Bridge Crossing the St. John River between Clay and St. Johns Counties, FL.

Summary: EPA expressed environmental objections about significant wetland and habitat resource impacts. EPA also had concerns about air quality, noise, surface water and floodplain impacts. Rating EO2.

EIS No. 20100017, ERP No. D–NOA–L91035–00, Amendment 21 to the Pacific Coast Groundfish Fishery Management Plan, (FMP), Allocation of Harvest Opportunity between Sectors, Implementation, WA, OR and CA.

Summary: EPA does not object to the proposed action. Rating LO.

EIS No. 20100027, ERP No. D–AFS–K65384–CA, Big Grizzly Fuels Reduction and Forest Health Project, Proposes Vegetation Treatments, Eldorado National Forest, Georgetown Ranger District, Georgetown, CA.

Summary: EPA expressed environmental concerns about air quality impacts and requested a commitment to implement BMPs. Rating EC2.

Final EISs

EIS No. 20100019, ERP No. F–DOE–C06012–NY, West Valley Demonstration Project and Western New York Nuclear Service Center Decommissioning and/or Long-Term Stewardship, (DOE/EIS–0226–D Revised) City of Buffalo, Eric and Cattaraugus Counties, NY.

Summary: While EPA has no objection with the proposed action, EPA indicated that Phase 2 actions and NEPA documentation will be reevaluated at the end of Phase 1.

EIS No. 20100036, ERP No. F–IBR–K65382–CA, New Melones Lakes Area Resource Management Plan, Implementation, Tuolumne and Calaveras Counties, CA.

Summary: No comment letter was sent to the preparing agency.

EIS No. 20100039, ERP No. F–WAP–K08017–00, ADOPTION—Southwest Intertie Project, Construction and Operation, 500kV Transmission Line from the existing Midpoint substation near Shoshone, ID to a new substation site in the Dry Lake Valley of Las Vegas, NV area to a point near Delta, UT, Permits Approval and C.

Summary: No comment letter was sent to the preparing agency.

EIS No. 20100041, ERP No. F–FHW–F40379–MI, US–31 Holland to Grand Haven Project, Transportation Improvement to Reduce Traffic Congestion and Delay, Ottawa County, MI.

Summary: EPA's previous issues have been resolved; therefore, EPA does not object to the proposed action.

EIS No. 20100042, ERP No. F–COE–K39121–CA, Natomas Levee Improvement Program Phase 4a Landside Improvement Project, Issuing of 408 Permission and 404 Permits, California Department of Water Resources (DWR) and the California Central Valley Flood Protection Board, Sutter and Sacramento Counties, CA.

Summary: EPA continues to have environmental concerns about flood risk impacts and the need for a PM 2.5 modeling assessment and a general conformity determination.

EIS No. 20100044, ERP No. F–AFS–K65368–CA, Lower Trinity and Mad River Motorized Travel Management, Proposed to Prohibit Cross-County Motor Vehicle Travel Off Designated National Forest Transportation System (NFTS) Roads and Motorized Trails, Six River National Forest, CA.

Summary: EPA continues to have environmental concerns about the scope of the travel management planning process and routes proposed in impaired watersheds. EPA recommended the action include current roads and trails with known impacts and a thorough evaluation of all impacts to water resources.

EIS No. 20100058, ERP No. F–FHW–F40445–IN, I–69 Evansville to Indianapolis, Indiana Project, Section 2, Revised to Update the Stream Impacts, Oakland City to Washington, (IN–64 to US 50), Gibson, Pike and Daviess Counties, IN.

Summary: EPA's previous issues have been resolved; therefore, EPA does not object to the proposed action.

Dated: March 30, 2010.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2010–7504 Filed 4–1–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R03–OW–2009–0985; FRL–9133–4]

Proposed Determination To Prohibit, Restrict, or Deny the Specification, or the Use for Specification (Including Withdrawal of Specification), of an Area as a Disposal Site; Spruce No. 1 Surface Mine, Logan County, WV

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to Section 404(c), the United States Environmental Protection Agency Region III (EPA) is requesting public comments on its proposal to withdraw or restrict use of Seng Camp Creek, Pigeonroost Branch, Oldhouse Branch, and certain tributaries to those waters in Logan County, West Virginia to receive dredged and/or fill material in connection with construction of the Spruce No. 1 Surface Mine (Spruce No. 1 Mine or the project).

An important part of EPA's mission is to ensure our environment and public health are protected and restored for current and future generations. Among ways that EPA carries out its mission is by ensuring appropriate implementation of the Clean Water Act. Section 404(c) of the Clean Water Act (CWA) authorizes the U.S. Environmental Protection Agency (EPA) to prohibit, restrict, or deny use of any defined area in waters of the United States for specification (including the withdrawal of specification) for the discharge of dredged and/or fill material whenever it determines, after notice and opportunity for public hearing, that use of such sites to receive dredged and/or fill material would have an unacceptable adverse impact on various resources, including fisheries, wildlife, municipal water supplies, and recreational areas. This authority is often referred to as EPA's authority to "veto" a CWA Section 404 permit to discharge dredged and/or fill material to waters of the United States.

The Spruce No. 1 Mine is one of the largest surface mining operations ever authorized in Appalachia. In connection

with this project, Mingo Logan Coal Company (permittee) has been authorized by the U.S. Army Corps of Engineers, Huntington District (Corps) (Department of the Army Permit No. 199800436–3 (Section 10: Coal River)) to construct six "valley fills" and numerous sedimentation ponds in Seng Camp Branch (already partially constructed), Pigeonroost Branch (not yet constructed), Oldhouse Branch (not yet constructed), and certain tributaries to those waters by discharging excess overburden (or spoil) generated by surface coal mining operations. The project as authorized will directly impact 2,278 acres, including more than seven miles of stream, and indirectly impact other waters. EPA Region III acknowledges the project has undergone extensive regulatory review and has been modified from the original proposal in order to reduce impacts. EPA Region III is taking this action because it believes, despite all the regulatory processes intended to protect the environment, that construction of Spruce No. 1 Mine as authorized would destroy streams and habitat, cause significant degradation of on-site and downstream water quality, and could therefore result in unacceptable adverse impacts to wildlife and fishery resources. These impacts are described in more detail in Section IV below.

The goal of protecting water quality, plant and animal habitat, navigable waterways, and other downstream resources requires the careful protection of headwater streams and life they support. These streams are like the capillaries within our circulatory system. They are the largest network of waterbodies within our ecosystem and provide the most basic and fundamental building blocks to the remainder of the aquatic and human environment.

Applying the lessons of the past, we now know that failure to control mining practices has resulted in persistent environmental degradation in the form of acid mine drainage and other impacts that cost billions to remedy. While the Surface Mining Control and Reclamation Act (SMCRA), the CWA, and other laws have put in place controls addressing some environmental impacts, including acid mine drainage, recent studies and experience point to new environmental and health challenges that were largely unconsidered until more recently. We know the regulatory controls currently in place have not prevented adverse water quality and aquatic habitat impacts from other surface mining operations. We also know the same types of impacts as those anticipated from this project have had previously unforeseen environmental consequences.

Public health issues surrounding the types of impacts associated with the Spruce No. 1 project are not well understood. EPA has been presented with household-specific and anecdotal information that suggests individual and possibly public surface water and ground water supplies could be adversely impacted by surface coal mining activities. In addition, recent published studies directly relate intensity of surface mining activities within Appalachia to degraded public health and mortality. EPA has been presented with a petition from a variety of local stakeholders that outlines many of these concerns and further relates them to issues of environmental justice.

Ultimately, EPA's process will result in one of three outcomes: (1) EPA could withdraw specification of the site as a disposal site and decide to use its discretion to prohibit any discharges from the project, including the construction of valley fills; (2) EPA could restrict specification of the site as a disposal site and decide the project cannot go forward under the permit as currently issued, but could go forward under a modified permit with more environmentally protective conditions; or (3) EPA could decide the permit as currently issued is sufficiently protective.

EPA seeks comment on this proposed Section 404(c) determination to withdraw, prohibit or restrict use of Seng Camp Creek, Pigeonroost Branch, Oldhouse Branch, and their tributaries in Logan County, West Virginia, to receive dredged or fill material in connection with construction of the Spruce No. 1 Surface Mine as currently authorized by the January 22, 2007 Department of the Army (DA) Permit No. 199800436–3 (Section 10: Coal River). See Solicitation of Comments, at the end of the public notice, for further details.

DATES: Comments must be received in writing by *June 1, 2010.*

ADDRESSES: Submit your comments, identified by Docket ID No EPA–R03–OW–2009–0985, by one of the following methods:

1. *Federal eRulemaking Portal (recommended method of comment submission): http://www.regulations.gov.* Follow the online instructions for submitting comments.

2. *E-mail: ow-docket@epamail.epa.gov.* Include the docket number, EPA–R03–OW–2009–0985, in the subject line of the message.

3. *Mail:* "EPA–R03–OW–2009–0985, Spruce No. 1 Surface Mine," U.S. Environmental Protection Agency, EPA Docket Center Water Docket, Mail Code 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

4. *Hand Delivery or Courier:* Director, Office of Environmental Programs; Environmental Assessment and Innovation Division; U.S. Environmental Protection Agency, 3EA30 Region III; 1650 Arch Street, SW.; Philadelphia, Pennsylvania 19103. Such deliveries are accepted only during the Regional Office's normal hours of operation, which are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

5. *Submit at Public Hearing: See* Public Hearing section below.

Instructions: Direct your comments to Docket ID No. EPA–R03–OW–2009–0985.

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 through *http://www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. 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 placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends 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.*

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is

restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Office of Environmental Programs; Environmental Assessment and Innovation Division; U.S. Environmental Protection Agency, Region III; 1650 Arch Street, Philadelphia, Pennsylvania 19103. EPA requests that if at all possible, you contact the office listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The EPA Region III Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Public Hearing: In accordance with EPA regulations at 40 CFR 231.4, the Regional Administrator may decide that a public hearing on a proposed Section 404(c) determination would be in the public interest. A separate public notice will be published in advance of any hearing in the **Federal Register** and local newspapers to announce the date, time and location of the hearing and describe hearing procedures. Written comments may be presented at the hearing.

FOR FURTHER INFORMATION CONTACT: For information regarding this notice of proposed Section 404(c) determination, contact the Office of Environmental Programs; Environmental Assessment and Innovation Division; U.S. Environmental Protection Agency, Region III; 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is 215–814–2760. The Office can also be reached via electronic mail at *R3_Spruce_Surface_Mine@epa.gov.* This is for information on the notice only and is not the official comment submission forum. Please see the previous section for directions on submitting comments on the Proposed Determination.

SUPPLEMENTARY INFORMATION: Throughout this document, references to "EPA," "we," "us" or "our" are references to the Environmental Protection Agency. References to the "Corps" refer to the U.S. Army Corps of Engineers. References to "WVDEP" refer to the West Virginia Department of Environmental Protection. References to Seng Camp Creek, Pigeonroost Branch and Oldhouse Branch also refer to tributaries to those waters that would be impacted by the project as authorized. The supplementary information is arranged as follows:

I. Section 404(C) Procedure
II. Project Description and Background
A. Project History
B. Project Description
III. Characteristics and Functions of the Impacted Resources
A. Watershed and Stream Conditions
1. The Coal River Sub-basin
2. The Spruce Fork Sub-watershed
B. Wildlife
1. Invertebrates
2. Vertebrates
a. Salamanders
b. Fish
c. Birds
d. Bats
IV. Basis for Proposed Determination
A. Section 404(c) Standards
B. Adverse Impacts of the Proposed Project
1. Impacts to Wildlife
a. Freshwater Macroinvertebrates
b. Salamanders
c. Fish
d. Birds
e. Bats
2. Impacts to Water Quality
a. Selenium
b. Total Dissolved Solids/Conductivity
3. Potential To Contribute to Conditions That Support Growth of Toxic Golden Algae
4. Proposed Mitigation May Not Offset Anticipated Impacts to an Acceptable Level
5. Consistency With the 404(b)(1) Guidelines
a. Alternatives
b. Water Quality
V. Proposed Determination
VI. Other Considerations
A. Environmental Justice
B. Cumulative Effects
VII. Solicitation of Comments

I. Section 404(C) Procedure

The Clean Water Act (CWA) 33 U.S.C. 1251, *et seq.,* prohibits the discharge of pollutants, including dredged or fill material, into waters of the United States (including wetlands) except in compliance with, among other provisions, Section 404 of the CWA, 33 U.S.C. 1344. Section 404 authorizes the Secretary of the Army, acting through the Chief of Engineers (Corps), to authorize the discharge of dredged or fill material at specified disposal sites. This authorization is conducted, in part, through application of environmental guidelines set forth in regulations developed by EPA in conjunction with the Corps under Section 404(b) of the CWA, 33 U.S.C. 1344(b) (Section 404(b)(1) Guidelines).

Section 404(c) of the CWA authorizes EPA to prohibit specification (including the withdrawal of specification) of any defined area as a disposal site, and EPA is authorized to restrict or deny use of any defined area for specification (including withdrawal of specification) as a disposal site, whenever it determines, after notice and opportunity for public hearing, that the discharge of such materials into any defined area will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas.

Procedures for implementing Section 404(c) are set forth in 40 CFR Part 231. Under those procedures, if the Regional Administrator has reason to believe that use of a site for discharge of dredged or fill material may have an unacceptable adverse effect on one or more of the aforementioned resources, he may initiate the Section 404(c) process by notifying the Corps and applicant/permittee (and/or project proponent and landowner(s)) that he intends to issue a proposed determination. Each of those parties then has 15 days to demonstrate to the satisfaction of the Regional Administrator that no unacceptable adverse effects will occur, or that corrective action to prevent an unacceptable adverse effect will be taken. If no such information is provided to the Regional Administrator, or if the Regional Administrator is not satisfied that no unacceptable adverse effect will occur, the Regional Administrator will publish a notice in the **Federal Register** of his proposed determination, soliciting public comment, and offering opportunity for a public hearing. Today's notice represents this step in the process.

Following the public hearing and close of the comment period, the Regional Administrator will decide whether to withdraw his proposed determination or prepare a recommended determination. A decision to withdraw a proposed determination may be reviewed at the discretion of the Assistant Administrator for Water at EPA Headquarters. If the Regional Administrator prepares a recommended determination, he then forwards it and the complete administrative record compiled in the Regional Office to the Assistant Administrator for Water. The Assistant Administrator makes the final determination affirming, modifying, or rescinding the recommended determination.

EPA Region III recognizes this action represents one of the few times EPA has initiated a Section 404(c) action to withdraw specification after a permit has been issued by the Department of the Army. It is EPA's preference to initiate procedures pursuant to Section 404(c) prior to permit issuance. Nevertheless, Section 404(c) authorizes EPA to withdraw use of a defined area for specification, and therefore, EPA has the ability to initiate a Section 404(c)

action after permit issuance. As set forth in the Preamble to EPA's implementing regulations, EPA recognizes the seriousness of initiating a Section 404(c) action after the Corps has issued a permit and does so only when unacceptable impacts from the project are of commensurate seriousness. In addition, EPA recognizes that a portion of the project located in the Seng Camp Creek subwatershed already has been constructed pursuant to the permit issued by the Department of the Army. This action is not intended to withdraw or restrict specification to the extent that dredged or fill material already has been discharged as of the date of this notice pursuant to a Department of the Army (DA) Permit No. 199800436–3 (Section 10: Coal River).

II. Project Description and Background

A. Project History

The Spruce No. 1 mining project is a proposed mountaintop mining operation with valley fills (MTM/VF). In this type of mining operation, forests on the mined site are cleared and stripped of topsoil, and explosives are used to break up tops of mountains to expose the coal seams. Excess overburden is pushed into adjacent valleys, where it buries streams. The Spruce No. 1 Mine as currently authorized by DA Permit No. 199800436–3 (Section 10: Coal River), is one of the largest mountaintop mining projects ever authorized in West Virginia and includes six valley fills. The proposed Spruce No. 1 Mine was originally advertised as a Hobet Mining Inc. project, a subsidiary of Arch Coal, Inc. Effective December 31, 2005, Arch Coal, Inc. transferred Spruce No. 1 Mine holdings and responsibilities to its Mingo Logan Coal Company (Mingo Logan) subsidiary. The project as originally proposed in 1998, would have directly impacted a total footprint area of 3,113 acres and 57,755 linear feet (more than ten miles) of stream (not including indirect impacts to remaining downstream waters). At that time, the Corps approved the project under a nationwide permit, which was subsequently enjoined by a federal district court. As a consequence of that action, the Corps retracted the previously proffered nationwide permit for the project, and the permittee, Mingo Logan, advised the Corps it would submit an individual permit application. Because the decision whether to issue the permit was a major federal action with potential to significantly affect the quality of the human environment, an Environmental Impact Statement (EIS) was prepared for the Spruce No. 1 project by the Army Corps of Engineers Huntington District pursuant to the National Environmental Policy Act, 42 U.S.C. 4332(C). The original project application also launched events that led to the Interagency Mountaintop Mining/Valley Fills in Appalachia Programmatic EIS which was finalized in October 2005 (PEIS). The PEIS is available at *http://www.epa.gov/Region3/mtntop/eis2005.htm*.

In accordance with Section 309 of the Clean Air Act (CAA), EPA reviews all EISs and provides comments to the lead agency, in this case, the Corps' Huntington District, that identify and recommend corrective actions for significant environmental impacts associated with the proposal. EPA also reviews the adequacy of information and analyses contained in the EIS, as needed to support this objective. The initial 2002 Spruce No. 1 Draft EIS evaluated a project similar in scope and size to the original project. EPA's review of the Draft EIS found gaps in the analyses of the proposed mine and related adverse environmental impacts. EPA was particularly concerned by the lack of information regarding the nature and extent of impacts to the high quality streams that would be buried under valley fills, and recommended additional evaluation to support the analysis of less environmentally damaging alternatives. EPA Region III, in a letter dated August 12, 2002, indicated the EIS contained inadequate information for public review and decision-makers.

Partly as a result of EPA's concerns, a revised 2006 Spruce No. 1 Draft EIS was prepared and the project was reconfigured to reduce impacts. The permittee, Mingo Logan, revised the plan to avoid impacts to White Oak Branch, a very good quality stream and the project area was reduced from 3,113 to 2,278 acres with direct stream impacts reduced to 7.48 miles. According to the 2006 EIS, the proposed project would include mining an average of 2.73 million tons of bituminous coal annually via mountaintop mining methods. The Spruce No. 1 Mine would result in a total surface disturbance of 2,278 acres of land and discharge of approximately 110 million cubic yards of dredged and fill material into waters of the United States over a period of 15 years.

In its June 16, 2006, letter of comment on the 2006 Draft EIS, EPA recognized that impacts from the proposed mine had been reduced and the quality of EIS information had improved. However, the letter also noted that EPA had remaining environmental concerns associated with the proposed Spruce No. 1 Mine, including potential adverse impacts to water quality (specifically, the potential to discharge selenium and the known correlation between similar mining operations and degradation of downstream aquatic communities), uncertainties regarding the proposed mitigation, need for additional analysis of potential environmental justice issues, and lack of study related to the cumulative impact of multiple mining operations within the Little Coal River watershed. EPA continued to stress its belief that corrective measures should be required to reduce environmental impacts and that other identified information, data, and analyses should be included in the final EIS.

Concerns regarding the Spruce No. 1 project were also raised by the U.S. Fish and Wildlife Service (FWS), Ecological Services West Virginia Field Office in a letter dated May 30, 2006 from the Department of Interior, Philadelphia to the Huntington District Army Corps of Engineers. In that letter, the FWS expressed concerns over the permittee's compensatory mitigation plan. The FWS claimed there was inadequate compensatory mitigation proposed for the project because the assessment methodology used by the permittee to evaluate stream impacts considered only the physical characteristics of the impacted streams, without considering the equally important biological or chemical characteristics. The FWS expressed concern the project would impact healthy, biologically functional streams and the proposed mitigation included erosion control structures designed to convey water that would not replace the streams' lost ecological services.

The Corps issued the Spruce No. 1 Final EIS on September 22, 2006. On October 23, 2006, EPA commented on the Final EIS, noting continuing concerns with the proposed project's contribution to cumulative impacts within the Little Coal River watershed, and highlighting concerns over adequacy of mitigation proposals and limited analyses of potential impacts to low-income and minority communities. In a letter dated November 30, 2006, EPA offered its assistance to the Corps in developing a stream functional assessment protocol and willingness to work with Mingo Logan through EPA's Conflict Prevention and Resolution Center to develop a cumulative impact assessment and watershed restoration plan for the Little Coal River watershed.

Despite concerns raised by EPA and the FWS, on January 22, 2007, the Corps issued a Clean Water Act § 404 Permit (DA Permit No. 199800436–3 (Section 10: Coal River)) to Mingo Logan for its

Spruce No. 1 Mine. On January 30, 2007, a number of environmental groups filed a complaint against the Corps in federal district court challenging its decision to issue the permit. That litigation remains pending.

In addition to its DA Permit No. 199800436–3 (Section 10: Coal River), the project received authorizations from the West Virginia Department of Environmental Protection (WVDEP), including authorization pursuant to the State's surface mining program approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201–1328 (SMCRA permit), and a National Pollutant Discharge Elimination System (NPDES) permit for discharges of pollutants from 25[1] outfalls pursuant to Section 402 of the Clean Water Act, 33 U.S.C. 1342.

In early 2007, Mingo Logan commenced limited operations on Spruce No. 1 pursuant to DA Permit No. 199800436–3 (Section 10: Coal River) subject to an agreement with the environmental groups who are plaintiffs in the litigation. Pursuant to that agreement, Mingo Logan has been operating in a portion of the project in the Seng Camp Creek drainage area, including construction of one valley fill. Under the agreement, Mingo Logan must give plaintiffs 20 days' notice before expanding operations beyond the area subject to the agreement, and has done so once without objection from the plaintiffs.

B. Project Description

The project as authorized is located in the East District of Logan County, West Virginia at Latitude 38°52′39″ and Longitude 81°47′52″ depicted on the United States Geological Survey 7.5-minute Clothier and Amberstdale Quadrangles. The mine site is located approximately two miles northeast of Blair, in Logan County, West Virginia. The project as authorized would result in discharge of dredged or fill material into Right Fork of Seng Camp Creek, Pigeonroost Branch, Oldhouse Branch, and several of their unnamed tributaries (hereafter, references to Seng Camp Creek, Pigeonroost Branch, and Oldhouse Branch also include all tributaries to those waters that would be impacted by the project as authorized). Streams on-site exhibit surface water connections to Spruce Fork of the Little Coal River, which ultimately flows into the Coal River, a navigable (Section 10) water of the United States.

The Spruce No. 1 project would result in a total surface disturbance of 2,278 acres of land with approximately 500 acres actively mined at any one time, based on sequential backfilling and concurrent reclamation of mined areas. The mining process would remove 400 to 450 vertical feet or 501 million cubic yards of overburden material. Nearly 391 million cubic yards would be placed within the mined area and the remaining 110 million cubic yards placed in 6 proposed valley fills. The proposed Spruce No. 1 Mine would result in the discharge of approximately 110 million cubic yards of dredged and fill material into waters of the United States over a period of 15 years. A detailed discussion of Spruce No. 1 project can be found in the 2006 Spruce No. 1 Draft EIS on pages 2–35 through 2–61.

According to its Draft EIS, the Spruce No. 1 project is a mountaintop mining project targeting bituminous coal seams overlying and including the Middle Coalburg coal seam in the western portion of the proposed project area. In the eastern portion of the project area, mountaintop mining would be limited to those seams including and overlying the Upper Stockton seam, with contour mining in conjunction with auger and/or highwall/thin-seam mining utilized to recover the Middle Coalburg seam. The project would disturb a total of 2,278 acres and recover seventy-five percent (75%) of the coal reserve targeted for extraction within the project area during fifteen (15) phases. The applicant describes its proposal as placing dredged and fill material into approximately 0.12 acre of emergent wetland, 10,630 linear feet (1.83 acres) of ephemeral stream channels (all permanent), and 28,698 linear feet (6.12 acres) of intermittent stream channels (26,184 linear feet [5.77 acres] permanent and 2,514 linear feet [0.35 acre] temporary), and 165 linear feet (0.034 acre) of perennial stream channel (all temporary), in conjunction with the construction, operation and reclamation of the Spruce No.1 Mine [Surface Mining Control and Reclamation Act (SMCRA) Permit S–5013–97, Incidental Boundary Revision (IBR) 2]. As set forth more fully below, EPA does not agree that the Spruce No. 1 EIS accurately describes and quantifies stream resources that will be impacted. The foregoing summary of impacts from the Spruce No. 1 EIS is set forth here for descriptive purposes.

Including operations being conducted in the Seng Camp Creek area (including construction of Fill 1A), the mining plan is described in the Spruce No. 1 EIS as a fifteen-phase mining and reclamation plan, which generally includes "Construction" (Phases 1 and 2), "Operations" (Phases 3–13), and "Closure and Reclamation" (Phases 14–15). As initially proposed, the phases are described in the Spruce No. 1 EIS. DA Permit No. 199800436–3 (Section 10: Coal River) which authorizes construction of six valley fills: Valley Fills 1A and 1B in Seng Camp Creek; Valley Fills 2A, 2B, and 3 in Pigeonroost Branch; and Valley Fill 4 in Oldhouse Branch, and numerous sedimentation ponds, minethroughs and other fills.

Additional components of the project include requirements for compensatory mitigation to offset adverse project impacts. The November 2006 Compensatory Mitigation Plan (CMP) submitted by Mingo Logan describes on-site, in-kind mitigation at a minimum 1:1 ratio on a linear footage basis to compensate for permanent and temporary impacts to waters of the United States through stream channel reclamation and off-site mitigation. This mitigation is intended to restore, reconstruct, or enhance segments of Spruce Fork and Rockhouse Creek. On-site compensation would include restoration of 7,132 linear feet of stream segments temporarily impacted by sedimentation ponds, and creation of 43,565 linear feet of stream channel within the project area. Off-site compensation includes stream enhancements (11,272 linear feet) to Spruce Fork and Rockhouse Creek through a combination of physical, aquatic habitat, and stream stabilization improvements. The CMP proposes to direct surface water flow from the project area in existing drainage ways to promote the development of more defined channels, thus creating 26,625 linear feet of streams (existing, non-jurisdictional drainageways).

III. Characteristics and Functions of the Impacted Resources

The project will be located in Logan County, West Virginia. Logan County is located in the Cumberland Plateau and the Mountains Major Land Resource Area, which is dominated by very steep, rugged side slopes, which are broken by strongly sloping to steep ridgetops and very narrow bottoms along streams. The project site is predominantly forested. The nearest town is Blair, located 2 miles away. The project would be located in the Coal River sub-basin. The project as authorized would directly impact (by discharge of fill material) the Right Fork of Seng Camp Creek, Pigeonroost Branch, Oldhouse Branch and several of their unnamed

[1] In the most recent NPDES permit (WV1017021) issued August 8, 2007, the outfalls number up to 28, but there are no outfalls numbered 11, 13, or 16.

tributaries. These on-site streams are tributaries of and exhibit surface water connections to Spruce Fork of the Little Coal River, which ultimately flows into the Coal River.

The following subsections describe the characteristics and functions of the resources that could be impacted if the Spruce No. 1 Mine is constructed as currently authorized. Section IV then will describe the impacts that could be caused if the Spruce No. 1 Mine is constructed as currently authorized.

While the following subsections discuss watershed and stream conditions and wildlife in separate sections, it is important to remember that the two are closely interrelated. Wildlife living in or depending upon streams will be adversely impacted by adverse changes in water quality.

EPA derives its understanding of the potentially impacted resources and the predicted impacts of the project from several sources. The Draft (June 2003) and Final (October 2005) Interagency Mountaintop Mining/Valley Fills in Appalachia Programmatic EIS (PEIS) represent an important inter-agency effort designed to inform more environmentally sound decision-making for future permitting of mountaintop mining/valley fills. It had a geographic focus of 12 million acres encompassing most of eastern Kentucky, southern West Virginia, western Virginia, and scattered areas of eastern Tennessee, and included the Spruce No. 1 project area and the Coal River sub-basin. EPA also consulted information gathered by the WVDEP, including an assessment of the Coal River sub-basin conducted in 1997, data collected to support the 2006 Coal River sub-basin total maximum daily load (TMDL),[2] and WVDEP and nationally available GIS data. EPA also reviewed the 2006 Spruce No.1 EIS, and other sources of data including studies conducted by EPA scientists and discharge monitoring reports generated by Mingo Logan. In addition, EPA consulted a wide range of peer-reviewed studies and literature. A Technical Support Document containing more specific data, maps of the watershed, and an index of references is included in the docket as supporting material.

A. Watershed and Stream Conditions

1. The Coal River Sub-Basin

The Spruce No. 1 Mine project area is located in the unglaciated portion of the Appalachian Plateau physiographic province of West Virginia. The Appalachian Plateau province is where the majority of the mineable coal in WV is located. The specific project area is located within the upper headwaters of the Spruce Fork of the Little Coal River Watershed, which is a tributary of the Coal River.

The Coal River sub-basin is a component of the larger Kanawha River Basin and encompasses nearly 891 square miles within West Virginia. Major tributaries include Marsh Fork, Clear Fork, Pond Fork, Spruce Fork, Little Coal River, and the Coal River.

The Coal River sub-basin has approximately 283 miles of designated "high quality" streams, which are designated as such because they have five or more miles of desirable warm water fish populations or have native or stocked trout populations that are utilized by the public. The Coal River Sub-basin has approximately 51 species listed as endangered, threatened or state rare species. Many of these species rely on the aquatic ecosystems for all or part of their life cycle.

The Coal River sub-basin has been impacted by present and past surface mining. Based upon the National Land Cover Database (NLCD) change product for 1992–2001 and WVDEP's GIS mining files, more than 257 past and present surface mining permits have been issued in the Coal River sub-basin, which collectively occupy more than 13% of the land area. Some sub-watersheds in the Coal River sub-basin have more than 55% of the land occupied by surface mine permits. Trend analysis indicates mountaintop mining and valley fills as a percentage of the land cover will continue to increase in the Coal River sub-basin.

In 1997, the West Virginia Department of Environmental Protection (WVDEP) performed its first comprehensive ecological assessment of the Coal River sub-basin. WVDEP assessed three major aspects of watershed health when it performs an ecological assessment: water quality, habitat condition, and benthic macroinvertebrate community status. The subsequent report, *An Ecological Assessment of the Coal River Watershed* (1997), indicated that sediments, coal mining and inadequate sewage treatment were the major stressors on streams in this watershed. As a result of that assessment WVDEP identified as a priority the need to "[l]ocate and protect the few remaining high quality streams in the Coal River watershed. * * *" The assessment indicates that because the watershed is becoming increasingly impaired due to stressors such as mining there is a great need to protect the remaining quality resources.

The 1997 WVDEP assessment reported that the Little Coal River watershed (including the Little Coal River, Spruce Fork, and Pond Fork) had a higher rate of impairment (defined as failure to achieve compliance with water quality standards, including the aquatic life use and narrative criteria) than areas elsewhere in the Coal River sub-basin.

WVDEP collected additional biological and chemical data throughout the Coal River sub-basin in 2002–2003 in order to investigate causes and sources of impairments and to develop Total Maximum Daily Loads (TMDLs). These assessments indicated numerous impairments caused by mining related and other pollutants throughout the Coal River watershed and the Spruce Fork sub watershed.

2. The Spruce Fork Sub-Watershed

The Spruce No. 1 Mine is located in the Spruce Fork sub-watershed. As authorized, the Spruce No. 1 Mine would impact substantially all of the Right Fork of Seng Camp Branch, Pigeonroost Branch and Oldhouse Branch, all of which are tributaries of and flow to Spruce Fork. Spruce Fork is a fourth order tributary that combines with Pond Fork to form the Little Coal River. Spruce Fork is located in the southwestern portion of the Coal River watershed and drains approximately 126.4 square miles. The dominant landuse in the Spruce Fork watershed is forest. Other important landuse types include urban/residential and barren/mining land. The Spruce Fork watershed lies entirely within the Central Appalachian Ecoregion. This ecoregion is more rugged and forested and is cooler than the Western Allegheny Plateau Ecoregion to the north. Extraction of coal, oil, and natural gas is common and has degraded stream habitat in much of this ecoregion. However, some small streams disturbed by past logging or ongoing oil/gas extraction, such as those located in and around the Spruce No. 1 impact area (including Oldhouse Branch), still function at a high level and are currently of reference quality based on WVDEP reference criteria.

The Spruce Fork sub-watershed has been impacted by past and present surface mining activity. According to WVDEP Division of Mining and Reclamation (DMR) permit maps, within the Headwaters Spruce Fork subwatershed there are more than 34 past and present surface mine permits issued which collectively occupy more than 33% of the land area. Trend analysis indicates mountaintop mining and valley fills as a percentage of the

[2] A TMDL is a calculation of maximum amount of a pollutant that a waterbody can receive and still meet water quality standards

land cover will continue to increase in the Headwaters Spruce Fork sub-watershed and forest area will continue to decrease as a result. From 1992 to 2009 forest coverage has decreased from approximately 73% to 61% and can be expected to decrease to 53% of the sub-watershed in the reasonably foreseeable future.

The EPA sampled several streams within the Spruce Fork sub-watershed for the previously referenced interagency PEIS. The results of the PEIS studies indicate that the streams within and near the project area are currently good quality streams based on the benthic macroinvertebrate and water quality data.

Focusing on the Spruce No. 1 project area, the streams that will be filled, particularly Oldhouse Branch and Pigeonroost Branch, are generally healthy, functioning streams with good water quality. A useful comparison is to the nearby White Oak Branch. White Oak Branch, which flows into Spruce Fork upstream of the Spruce No. 1 Mine site, was identified from the WVDEP 1997 surveys as a high quality stream. White Oak Branch was part of the original Spruce No. 1 impact area but was subsequently avoided when the project was reconfigured because of it high quality designation. WVDEP has, in fact, adopted White Oak Branch as a reference site and has stated that "It is also important that the agency make a concerted effort to find the apparently few remaining streams within the watershed that have not been significantly impacted by human disturbances."

Oldhouse Branch, which would be filled if the Spruce No. 1 Mine is constructed as currently authorized, lies adjacent to White Oak Branch and exhibits similar healthy biological diversity and water quality (U.S. EPA data). Using the West Virginia Stream Condition Index (WVSCI), an assessment method developed for use in West Virginia to help evaluate the health of benthic macroinvertebrate communities at the family level in wadeable streams, both Oldhouse Branch and White Oak Branch scored comparably well, meaning that both were of similar quality and supporting similar aquatic communities. The two streams also score comparably well when the benthic macroinvertebrate community is considered at the genus (as opposed to family) level. For instance, Oldhouse Branch shared 55 total genera (many of them pollution intolerant) with White Oak Branch (EPA data) indicating a diverse and healthy aquatic community in Oldhouse Branch similar to the high quality communities of White Oak Branch.

Pigeonroost Branch, which also would be filled if the Spruce No. 1 Mine is constructed as currently authorized, also shares many macroinvertebrate genera (many of them pollution intolerant) in common with the high quality community in White Oak Branch, again indicating the comparable health of the aquatic community in Pigeonroost Branch. The WVSCI assessment of Pigeonroost indicates water quality is relatively good despite some minor historic mining in the watershed.

The DA Permit also authorizes placement of fill into Right Fork Seng Camp Creek. While the WVSCI assessment of the lower Seng Camp Creek does not indicate a high quality designation, benthic data available to EPA show that many sensitive aquatic insects occur in the forested headwater reaches of the tributaries of Seng Camp Creek (Valley Fill 1B).

In summary, the streams that would be filled if the Spruce No. 1 Mine were constructed as authorized by the DA permit are high functioning streams supporting healthy aquatic communities. By way of comparison, Oldhouse Branch and Pigeonroost Branch are healthier than other streams in the Spruce Fork sub-watershed that have been impacted by mining operations similar to the Spruce No. 1 Mine. The 2006 and 2008 WVDEP 303(d) lists of impaired waters[3] and the 2006 TMDL report for the Coal River sub-basin indicate that several streams in the Spruce Fork watershed are impaired and already have TMDLs developed for mining related pollutants which include selenium, iron and aluminum. Four of these impaired streams are directly northwest of the Spruce No. 1 project, on the west side of Spruce Fork, and in part, are impacted by the Mingo Logan Dal-Tex Mining Operation. Spruce Fork itself, which will receive discharges flowing from the Spruce No. 1 project, is already listed as impaired by mining related pollutants. Seng Camp Creek, a tributary to Spruce Fork, which will be directly impacted by and will drain the Spruce No. 1 project, also has documented water quality impairments.

The results of PEIS studies and other data described above indicate that the streams within and near the project area represent streams that WVDEP has stated need protecting within the Coal River watershed.

B. Wildlife

The Central Appalachians ecoregion where the Spruce No. 1 project will be located has some of the greatest aquatic animal diversity of any area in North America, especially for species of amphibians, fishes, mollusks, aquatic insects, and crayfishes. Salamanders in particular reach their highest North American diversity in the Central Appalachian ecoregion. The area includes one of the most prominent biodiversity hot spots identified by the Nature Conservancy. It has been documented that other specialized wildlife such as some neotropical migrant birds and forest amphibians rely on the natural headwater stream condition and adjacent forest types exhibited by Pigeonroost Branch and Oldhouse Branch for maintenance of their populations.

1. Invertebrates

In a body of water, benthic macroinvertebrates are the bottom-dwelling (benthic) organisms that are large enough to be seen without the aid of microscopes (macro), and are not equipped with backbones (invertebrate). Freshwater macroinvertebrates, such as mayflies and stoneflies, serve as indicators of ecosystem health, and play a vital role in food webs and in the transfer of energy in river systems. These organisms essentially convert plant material into food sources (fats and proteins) essential for the maintenance of healthy fish and amphibian populations, and for foraging terrestrial vertebrates such as birds, bats, reptiles, and small mammals. Because of their productivity and secondary position in the aquatic food chain, macroinvertebrates play a critical role in the delivery of energy and nutrients along a stream continuum. They also are instrumental in cleaning excess living and nonliving organic material from freshwater systems, a service that contributes to the overall quality of the resource.

Stream order typically dictates the community structure of the resident aquatic life. Headwater streams harbor primarily benthic macroinvertebrate communities. In the southern Appalachian Mountains, macroinvertebrates of several orders including Ephemeroptera, Plecoptera and Trichoptera (mayflies, stoneflies and caddiflies, all pollution sensitive groups), have been found to be rich in species, including many endemic species and species considered to be rare. This diversity and unique

[3] According to WV water quality standards a stream is designated as impaired by WVDEP if it does not fully support one or more of its designated uses.

assemblage has been attributed to the unique geological, climatological and hydrological features of this region.

Macroinvertebrates are good indicators of watershed health and are used by West Virginia, states in the Mid-Atlantic and nationally to determine compliance with water quality standards. They are good indicators because they live in the water for all or most of their life. Macroinvertebrates can be found in all streams, are relatively stationary and cannot escape pollution. They also differ in their tolerance to the amount and types of pollution. Macroinvertebrate communities integrate the effects of stressors over time and some taxa (*i.e.,* taxonomic category or group such as phylum, class, family, genus, or species) are considered pollution-tolerant and will survive in degraded conditions. Some taxa are pollutant-intolerant and will die when exposed to certain levels of pollution. Thus, the composition of communities informs scientists about the quality of the water.

Different taxa are more sensitive to pollution and other stressors than other taxa. In a healthy stream, one would expect to find a high diversity of taxa and a large number of different taxa including species that are more sensitive to (*i.e.,* less tolerant of) stressors. Using the mayfly as an example, some genera of mayfly are more sensitive than others. The presence of a large number of individuals from the more sensitive mayfly genera indicates good water quality conditions.

Mayflies (Insecta: Ephemeroptera) in particular have long been recognized as important indicators of stream ecosystem health. Mayflies are a very important part of the native organisms in these streams. In Appalachian headwater streams, they routinely make up between 30%–50% of the insect assemblages in certain seasons. Numerous studies demonstrate that mayfly community structure reflects the chemical and physical environment of watercourses.

Not only do trout rely on mayflies and stoneflies, but a group of colorful benthic fishes known as Darters (Percidae) feed primarily on mayflies. A dietary study of small stream fishes in the Appalachian coalfields of Kentucky showed that gut contents of several darters contained mostly mayflies. Darters are an important part of the fish assemblage and many are hosts for mussel larvae. Several darter species inhabit Spruce Fork in the immediate vicinity of the project area.

Sampling data included in the PEIS, the Spruce No. 1 EIS and from the WVDEP monitoring database indicate that macroinvertebrates are diverse in the Spruce No. 1 project area. This diversity suggests that the streams in the project area are healthy. Data collected in Oldhouse Branch indicates that the quality of the macroinvertebrate community in Oldhouse Branch is in the top 5% of all streams in the Central Appalachia ecoregion. In 1999–2000, EPA collected eighty-five (85) macroinvertebrate genera in riffle complexes of Pigeonroost Branch and Oldhouse Branch. Data from EPA and the permittee's consultants (Sturm Env. Services, BMI, Inc.) from the Spruce No. 1 EIS show that collectively, Pigeonroost, Seng Camp, and Oldhouse Branch contain a high number of sensitive mayfly genera and individuals. A total of 21 genera have been identified from these three headwater streams, indicating that these systems offer high water quality and habitat. Many of these mayfly genera are not shared with the receiving Spruce Fork, making these headwater streams unique to the permit area (those few genera shared with Spruce Fork are moderately pollution-tolerant genera such as *Baetisca, Baetis,* and *Isonychia*). This count represents only an estimate of mayfly richness in these streams; several other genera have been found by WVDEP in other Spruce Fork tributaries and are potentially present in the project area. As many as nine genera of mayflies have been collected in Oldhouse Branch in any one season-specific sample, with an average of seven genera across multiple samples. These data, cited above, are significant and indicate that less than 5% of all other streams in this ecoregion have more mayflies than Oldhouse Branch. Previous government and academic research on the effects of Appalachian coal mining on mayfly communities indicate that the Spruce No. 1 Mine may eradicate most of the species currently occupying the project area and in the immediate downstream receiving waters.

Stoneflies (Plecoptera) also represent an important group of aquatic insects in the structure and functioning of stream ecosystems. Stoneflies fill important trophic roles in stream ecosystems, as displayed by their detritivory (decomposers) and predatory nature. Stoneflies are primarily stenothermic, meaning they require cool to cold water and high oxygen concentration to survive. Data compiled from EPA, WVDEP, and the permittee's consulting firms show that Oldhouse, Pigeonroost, and Seng Camp collectively yielded 16 genera of stoneflies. Oldhouse and Pigeonroost both had 11 genera. Only 2% of stream samples in all of Central Appalachia had more stonefly genera than Oldhouse within a single sampling event.

Based on this information, the headwater streams draining the proposed Spruce No. 1 project area appear to contain high richness and abundance of sensitive macroinvertebrate wildlife and indicate a healthy aquatic ecosystem that is vital to downstream waters and the fish and wildlife that depend on them. Moreover, because of the high degree of taxonomic similarity between these streams and White Oak Creek (a DEP-designated high quality water), and the strong evidence that many of the sensitive taxa have been eliminated from the adjacent Dal-Tex mine discharges, EPA believes that as proposed, the Spruce No. 1 Mine could cause or contribute to unacceptable degradation of this sensitive aquatic life and the ecosystem that depends on them.

2. Vertebrates

Two important groups of vertebrates, fish and salamanders, are the major stream-dwelling vertebrates in the project area.

a. Salamanders

Salamanders are a diverse and unique form of Appalachian wildlife and are an important ecological component in the mesic forests of the ecoregion. Ecologically, salamanders are intimately associated with forest ecosystems acting as predators of small invertebrates and serving as prey to larger predators. They are often the most abundant group of vertebrates in both biomass and number. Some species of salamanders are aquatic; others are semi-aquatic, splitting their lives between forests and headwaters and depending upon intact forest-headwater connections for movement. Typically, salamanders occupy small, high-gradient headwater streams while fish occur farther downstream.

The PEIS identified thirty-one (31) species of salamanders in the West Virginia portion of the study area. Of these, 21 species are known to occupy cove hardwood forests while 25 species are known to inhabit mixed mesophytic hardwood forests like those present within portions of the Spruce No. 1 project area. Petranka (1993) presented a conservative estimate that there are about 4,050 salamanders per acre of mature forest floor in Eastern forests. Twice as many larval salamanders are estimated to occur (~8,000/acre) in these same areas.

The southern Appalachians, where the Spruce No. 1 project is located, have

one of the richest salamander fauna in the world. Nearly ten percent of global salamander diversity is found within streams of the southern Appalachians. Most of the species found in the project area belong to the family Plethodontidae, the lungless salamanders, which require high moisture retaining leaf-litter, dense shade, and cool flowing streams to survive and reproduce.

With respect to the Spruce No. 1 project area, salamanders have been surveyed in White Oak Branch. White Oak Branch had good numbers of Northern Dusky (9 adult, 7 larvae), Appalachian Seal (15 adult, 12 larvae), and Two Lined salamanders (1 adult and 15 larvae). Although not specifically sampled, the salamander populations in Pigeonroost and Oldhouse Branch are likely very similar to those in White Oak Branch. Applying these numbers from White Oak Branch, EPA would expect abundant and diverse salamander populations (~5 per square meter) in the project area.

b. Fish

WVDNR fish assemblage data in the mainstem of Spruce Fork indicate that the fishery is in relatively good condition, and that it is an important ecological and recreational resource that should be protected. Spruce Fork is a locally important rock bass and smallmouth bass fishery. Rock bass and smallmouth bass are moderately sensitive gamefish species. Although impacted by mining, fish assemblage data collected in 2007 in the mainstem of Spruce Fork indicate that the assemblage is still in relatively good condition.

c. Birds

Many terrestrial species depend on the headwater streams like those of the Spruce Fork for their survival. The ecotone (transition area) between terrestrial and aquatic habitats results in diverse flora and fauna. For example, unique avifauna assemblages can be found along the riparian zone of headwater streams. The Acadian flycatcher (*Empidonax virescens*) is commonly encountered throughout the region, but despite the large expanse of existing forest habitat, it is primarily restricted to forested tracts with understory vegetation along small headwater streams, where it can feed on emergent aquatic insects. Spruce Fork [appears to] meet[s] these habitat requirements. Neotropical migrant songbirds are also often attracted to headwater streams for breeding areas because of the diversity of the habitat and the availability of emergent aquatic insects.

The Louisiana waterthrush (*Seirus motacilla*), another neotropical migrant song bird, is considered an obligate headwater riparian songbird (an example of water-dependent wildlife) because its diet is comprised predominantly of immature and adult aquatic macroinvertebrates found in and alongside these streams and it builds its nest in the stream banks. Breeding waterthrushes nest and forage primarily on the ground along medium- to high-gradient, first- to third-order, clear, perennial headwater streams flowing through closed-canopy forest. Good water quality is a key component of the species breeding habitat. Headwater streams like those of Spruce Fork that support healthy macroinvertebrate communities would be important food sources for species such as the Louisiana waterthrush.

The Appalachian Mountain Bird Conservation Region (AMBCR), which extends from southeastern New York south to northern Alabama, is thought to support a substantial portion of the Louisiana waterthrush's breeding population, perhaps as much as 45 percent. West Virginia, the only state that lies entirely within the AMBCR, encompasses the largest contiguous area of high relative breeding abundance over the species' entire breeding range, based on North American Breeding Bird Survey (BBS) data from 1994–2003. The West Virginia population may serve as a source for populations elsewhere in the breeding range. The Louisiana waterthrush is also an area-sensitive species, requiring undisturbed forest tracts of 865 acres to sustain a population. The most effective management protocol for the Louisiana waterthrush would appear to be protection of forest tracts and water systems inhabited on both breeding and wintering areas particularly moderate- to high-gradient headwater streams, which compose 75–80% of stream length in a typical watershed

Bird species that rely on mature forest habitats that are on the Audubon watch list as declining species and are listed as probable in the area include the Swainson warbler (*Limnothlypis swainsonii*), Kentucky warbler (*Oporornis formosus*), and Cerulean warbler (*Dendroica cerulean*). The woodthrush was a confirmed breeder in this area and is declining at 1.7% per year, according to the Audubon Watch List. A primary cause of the decline is forest fragmentation, which leads to increased nest parasitism by the brown headed cowbird (*Molothrus ater*).

The Cerulean warbler in particular is considered an area-sensitive species; it is thought to require large (730 sq miles) tracts of mature interior forest habitat to support stable breeding populations. It is a canopy-foraging insectivorous neotropical migrant songbird that breeds in mature deciduous forests with broken, structurally-diverse canopies across much of the eastern United States and winters in middle elevations of the Andes Mountains of northern South America. Important among a number of breeding season constraints are the loss of mature deciduous forest, particularly along stream valleys, and fragmentation and increasing isolation of remaining mature deciduous forest. The cerulean warbler appears to be more sensitive than most other North American birds to landscape-level changes in habitat. The U.S. Fish and Wildlife Service has designated the cerulean warbler a Species of Management Concern and a Species of Conservation Concern throughout its range. It has also been preliminarily designated by the Appalachian Mountains Joint Venture as a Species of Highest Conservation Priority within the Appalachian Mountains Bird Conservation Region, which encompasses West Virginia. The AMBCR is thought to support about 80 percent of the species' entire breeding population, and the AMBCR breeding population likely functions as a source for populations elsewhere in the breeding range.

d. Bats

Thirteen species of bats are found in West Virginia. Most North American bats are insectivorous, which capture their prey by foraging on the wing, catching flying insects from a perch, or collecting insects from plants.

Different species of bats often have distinct life history traits and behaviors. Some bats are solitary and hang in tree foliage, attics, barns, and other protected places during the day. Other bats are colonial and cluster in caves and mine tunnels. Bats have one of the slowest reproductive rates for animals their size. Most bats in northeastern North America have only one or two pups a year and many females do not breed until their second year. This low reproductive rate is somewhat offset by a long life span, often over 20 years. The little brown bat, common in North America and in West Virginia, is the world's longest lived mammal for its size, with a maximum life span over 32 years.

During the winter, some bats migrate south in search of food, while others hibernate through the cold weather when insects are scarce. Bats that do

migrate usually travel less than 200 miles, often following the same routes as migratory birds.

Species that have potential to be found in the area of south-central West Virginia include the northern bat (*Myotis septentrionalis*), big brown bat (*Eptesicus fuscus*), red bat (*Lasiurus borealis*), eastern small-footed bat (*Myotis leibii*), Virginia big-eared bat (*Corynorhinus townsendii virginianus*) and the Indiana bat (*Myotis sodalis*). Both the Indiana and Virginia big-eared bats are listed as endangered under the Endangered Species Act.

Indiana bats have been described as once one of the most common mammals in the eastern United States. Between 1960 and 2004, biologists have documented a 56 percent population decline in Indiana bats. Indiana bats feed solely on emerged aquatic and terrestrial flying insects. They are habitat generalists and their selection of prey reflects the environment in which they forage. In a study in the Allegheny Mountains, activity in non-riparian upland forest and forests in which timber harvest had occurred was low relative to forested riparian areas. This evidence suggests that the forested riparian zones of the project area would be more suitable habitats for Indiana bat populations than active or restored mining sites.

IV. Basis for Proposed Determination

A. Section 404(c) Standards

The CWA requires that exercise of the final Section 404(c) authority be based on a determination of "unacceptable adverse effect" to municipal water supplies, shellfish beds, fisheries, wildlife, or recreational areas. While EPA strongly prefers to initiate the Section 404(c) process prior to issuance of a permit, Section 404(c) and EPA's implementing regulations clearly authorize EPA to initiate the Section 404(c) process after a permit has been issued.

Section 404(c) authorizes the Administrator "to prohibit the specification (*including the withdrawal of specification*) of any defined area as a disposal site." (emphasis added). Section 404(b) makes clear that disposal sites are specified for each permit by the Secretary of the Army (and such specification must be consistent with the 404(b)(1) Guidelines). Thus, EPA's implementing regulations make clear that under Section 404(c) "the Administrator may exercise a veto over the specification by the U.S. Army Corps of Engineers or by a state of a site for the discharge of dredged or fill material." 40 CFR 231.1(a); see also definition of "withdraw specification," 40 CFR 231.2(a).

EPA's regulations at 40 CFR 231.2(e) define "unacceptable adverse effect" as:

> Impact on an aquatic or wetland ecosystem which is likely to result in significant degradation of municipal water supplies or significant loss of or damage to fisheries, shellfishing, or wildlife habitat or recreation areas. In evaluating the unacceptability of such impacts, consideration should be given to the relevant portions of the Section 404(b)(1) Guidelines (40 CFR Part 230).

Among other things, the Section 404(b)(1) Guidelines require consideration of whether there are less damaging practicable alternatives to meet the project purpose; whether the project would violate other environmental standards, including applicable water quality standards; whether the project would cause or contribute to significant degradation of the Nation's waters; and whether the project as authorized fails to adequately minimize and compensate for impacts to aquatic resources.

Specifically, those portions of the Guidelines which are particularly important in evaluating the unacceptability of environmental impacts in this case are described below and further detailed in this proposed determination:

- Less environmentally damaging practicable alternatives (230.10(a));
- Water quality impacts (230.10(b));
- Significant degradation of waters of the United States (230.10(c));
- Minimization of adverse impacts to aquatic ecosystems (230.10(d));
- Impacts on existing indigenous aquatic organisms or communities (230.10(e));
- Cumulative effects (230.11(g)); and
- Secondary effects (230.11(h)).

The purpose of the Clean Water Act is to "restore and maintain the physical, chemical, and biological integrity of the Nation's waters." 33 U.S.C. 1251(a). Part of the concept of protecting the "biological integrity" of the Nation's waters is protection of the indigenous, naturally occurring community. This goes beyond protecting the function performed by various members of the aquatic community and extends to protection of the quality of the aquatic community itself. See *Alameda Water & Sanitation District v. EPA,* 930 F. Supp.486 (D. Colo. 1996).

West Virginia has defined an aquatic life designated use for its waters, and has adopted or developed numeric and narrative water quality standards to protect resident aquatic life. While numeric criteria help protect a water body from the effects of specific chemicals, narrative criteria protect a water body from the effects of pollutants that are not easily measured, or for pollutants that do not yet have numeric criteria, such as chemical mixtures, suspended and bedded sediments and floatable debris. Narrative criteria have the same effect and importance as numeric criteria, and interpretation of narrative criteria fills an important gap in Clean Water Act protection. See 54 FR 23868, 23875 (June 2, 1989).

B. Adverse Impacts of the Proposed Project

The impacts from the Spruce No. 1 project will occur through several different pathways. There will be direct impacts caused by the discharge of fill (excess spoil and construction of valley fills) into headwater streams. Loss of this habitat will impact wildlife that depend on headwater streams for all or part of their lifecycles. The loss of streams and wildlife will have an effect on other areas by the removal of functions (such as contribution of flow and nutrients) performed by these areas and by discharges from the fill that may contribute pollutants to downstream waters. The project could contribute to conditions that would support blooms of golden algae that release toxins that can kill fish and other aquatic life. In addition, impacts from the project could contribute to cumulative impacts from multiple surface mining activities in the Coal River sub-basin.

An understanding of the adverse impacts of the proposed project requires an understanding of the nature and importance of headwater streams and their contribution to the overall health of the watershed and to wildlife living in the watershed. Headwater streams play a significant role in the ecology of the Appalachian region. They are sources of clean, abundant water for larger streams and rivers and provide active sites for biogeochemical processes that support both aquatic and terrestrial ecosystems. The benefits of healthy headwaters are cumulative as the critical ecological functions of many small streams flowing into the same river system are necessary to maintain ecological integrity of the larger stream and river systems. Ecosystem functions performed by headwaters are lost when the headwater stream is buried or removed. These functions are lost not only to the headwater stream itself, but also to downstream ecosystems. Some of the functions of Appalachian headwater streams include interfacing with the terrestrial environment and transformation of organic matter from the surrounding landscape (such as leaf litter) into nutrients; storing and retaining nutrients, organic matter, and

sediments; exporting water and nutrients downstream; and moderating flow rate and temperature.

In addition, as set forth below, the project has the potential of not only removing the ecosystem functions performed by the impacted areas, but also turning the impacted areas into sources discharging pollutants and degradation into the downstream ecosystem.

In order to predict the impacts of the proposed Spruce No. 1 project, EPA has examined impacts caused by similar projects both in the Coal River sub-basin and elsewhere, including but not limited to the similar and nearby Mingo Logan Dal-Tex operation. The impacts from the Spruce No. 1 Mine as authorized are likely to be similar to those caused by the Mingo Logan Dal-Tex operation. This was acknowledged in the Spruce No. 1 EIS, which stated: "The past and present impacts to topography, geology, and mineral resources of the previous mining along the western side of Spruce Fork are similar to the anticipated impacts of the Spruce No. 1 Mine, as mining is proposed to occur in the same strata." EPA also has considered information related to impacts from the portions of the Spruce No. 1 Mine that have been constructed. Unless modified, the Spruce No. 1 project as currently authorized could cause impacts similar to the impacts caused by the Mingo Logan Dal-Tex Operation and other mining activity in the watershed.

Thus, EPA believes that the predicted impacts from the Spruce No. 1 Mine if constructed, as currently authorized, could have unacceptable effects on wildlife and fisheries. Consistent with the agency's implementing regulations, EPA has given consideration to the relevant portions of the Guidelines and we also believe that the project is inconsistent with the 404(b)(1) Guidelines.

1. Impacts to Wildlife and Fisheries

Impacts from the Spruce No. 1 project will occur in several ways. First there will be discharge of excess spoil and construction of valley fills that will result in the loss of headwater streams of the Right Branch of Seng Camp Branch, Pigeonroost Branch, and Oldhouse Branch, all tributaries to Spruce Fork. Wildlife that live in those streams or within the footprint of the valley fills, including ecologically valuable aquatic organisms, will be buried. Loss of these types of headwater streams by valley fills may cause permanent loss of ecosystems that play a critical role in ecological processes. Disruptions in the biological processes of first- and second-order streams impact not only aquatic life within the stream, but also the functions aquatic life contributes to downstream aquatic systems in the form of nutrient cycling, food web dynamics, and species diversity.

Additionally, the removal of Pigeonroost Branch and Oldhouse Branch as sources of freshwater dilution combined with potential pollutant discharges from the project could adversely affect downstream water chemistry, which in turn could have an adverse impact on aquatic and water-dependent wildlife. Associated disturbances caused by the project (clearing, road construction, etc.) may impact habitat and result in discharges that could adversely affect water chemistry.

Large-scale deforestation proposed at Spruce No. 1 Mine may adversely affect habitat and result in adverse effects on terrestrial wildlife. Approximately 2,278 acres of deciduous forests will be destroyed by the Spruce No. 1 Mine. Appalachian forests support some of the highest biodiversity in North America. Additionally, these forested headwaters are important components of the overall ecosystem and provide valuable services, such as contributing organic matter from coarse wood to dissolved organic matter, which provides sustenance to stream biota and contributes to habitat structure. Loss of this valuable input to downstream waters could have an adverse impact on aquatic organisms that depend on these ecological processes for maintenance of their populations.

a. Freshwater Macroinvertebrates

As previously described, macroinvertebrates are diverse in the Spruce No. 1 project area and because of their productivity and secondary position in the aquatic food chain; they play a critical role in the delivery of energy and nutrients along a stream continuum. They also are instrumental in cleaning excess living and nonliving organic material from freshwater systems, a service that contributes to the overall quality of the watershed. The Spruce No. 1 project may adversely impact most of the mayfly, stonefly, and caddisfly genera that currently inhabit waters in or downstream of the project area through both burying their stream habitats and increasing chemical loading to receiving waters.

Data from other MTM/VF related studies within this subecoregion show a correlation between MTM/VF activity and downstream patterns of extirpation with many of these genera. Aquatic life is unlikely to survive in the erosion control ditches proposed for mitigating the loss headwater streams because of extreme chemical conditions, temperature extremes, and the overall lack of a lotic (flowing) flow regime. Some of the most sensitive genera will likely be extirpated or drastically reduced from the sites due to chemical and habitat degradation.

As previously noted, it is useful for predictive purposes to consider the impact from similar, nearby mining operations. EPA compared benthic collections from the Spruce No. 1 site to Mingo Logan's nearby Dal-Tex Mining site. Both areas had equal numbers of benthic samples collected. Eighty-five (85) total genera were collected from Pigeonroost Branch and Oldhouse Branch between 1999–2000, while only 55 generally opportunistic genera were collected from Beech Fork and Left Fork Beech Fork that drain now-idled Dal-Tex operations. This represents a significant loss of macroinvertebrate genera. In particular, the decrease in the number of genera and individuals from more sensitive genera indicates degrading water quality conditions. These conditions can be expected to occur in the Spruce No. 1 Mine if the project proceeds as authorized.

The EPA also sampled several streams within the Spruce Fork watershed for the PEIS. Eight monitoring stations were established within the watershed. Three monitoring sites were located within or near the Spruce No. 1 project area (White Oak Branch, Oldhouse Branch, and Pigeonroost Branch), and three were located in areas that historically had been impacted by mining (Rockhouse Creek, Beech Creek, and Left Fork of Beech Creek). The remaining two monitoring stations were located on the mainstem of Spruce Fork and other stressors such as residences may have influenced the water quality and biological communities.

The results of the PEIS studies indicate that the streams within and near the project area currently support high quality benthic macroinvertebrate communities and water quality, while the streams located in historically MTM/VF mined areas are impaired based on the WVSCI and presence/absence of indicator macroinvertebrate taxa. One can predict from these data sets that the high quality streams in the project area (*i.e.,* Oldhouse Branch and Pigeonroost Branch) could be unacceptably adversely impacted by the Spruce No. 1 Mine.

b. Salamanders

The southern Appalachians, where the Spruce No. 1 project is located, have one of the richest salamander fauna in

the world. Impacts from the activities authorized as part of the project could have a significant adverse impact on this wildlife group located within the project area. The Spruce No. 1 Mine will have significant adverse impacts on the salamander community either through direct burial, habitat degradation, or discharges of toxic chemicals.

As previously stated, thirty-one (31) species of salamanders are known from the West Virginia portion of the PEIS study area. Of these, 21 species are known to occupy cove hardwood forests while 25 species are known to inhabit mixed mesophytic hardwood forests like those present within portions of the Spruce No. 1 project area. Petranka (1993) presented a conservative estimate of about 4,050 salamanders per acre in mature forest floors in Eastern forests. Twice as many larval salamanders are estimated to occur (~8,000/acre) in these same areas.

Applying these conservative estimates to the Spruce No. 1 Mine project area indicates that more than 20 million salamanders could be buried by the authorized valley fills and adjacent mined uplands. In stark contrast, recent data from Gingerich (2009) showed that coal mine erosion control ditches (like those proposed for mitigation in the Spruce No. 1 permit) between three and 20 years old had strikingly different amphibian communities than undisturbed sites. Specialist salamander species present in undisturbed sites were replaced with more generalist frog species on the reclaimed sites. Frogs are not ecological equivalents of headwater salamander species. The loss of specialist salamanders and the specific functions they provide, therefore, may result in significant adverse impacts to the aquatic ecosystem.

Additional data from a USFWS study conducted in MTM/VF areas of the Appalachian mountains found salamander assemblages in valley-filled streams had lower SPAR index scores (a salamander index of biological integrity) than non-filled streams. A 2004 study by FWS compared the unmined White Oak Branch to the mine-impacted Rockhouse Creek. The salamander assemblage in Rockhouse Creek scored a 6.7 on the SPAR compared to a perfect 10 of White Oak Branch. No larval Northern Dusky or Appalachian Seal salamanders were found in Rockhouse Creek, which may indicate reproductive effects on these sensitive species. Moreover, salamanders in Rockhouse Creek as well as in other valley filled streams had higher concentrations of selenium than salamanders from non-filled streams.

These data indicate that salamanders decline or disappear from surface mined areas and that certain mining mitigation measures do not offset these impacts. Because salamanders represent the main vertebrate predator in these headwater channels and will be eradicated under the proposed project, EPA believes that a key component of the aquatic food web will be lost from the aquatic ecosystem which may have unacceptable adverse affects on wildlife and fish resources in the project area.

c. Fish

The fish assemblage in Spruce Fork is currently considered healthy. While fish are less sensitive to water chemistry changes with respect to TDS/conductivity, it is important to ensure that the currently healthy fish assemblage is protected. Some studies have shown that mountaintop mining for coal and creation of valley fills has had a harmful effect on the composition of stream fish communities. Comparison of streams without mining in the watershed and sites downstream of valley fills in Kentucky and West Virginia indicate that streams affected by mining had significantly fewer total fish species and fewer benthic fish species than streams without mining in the same areas. A similar pattern of fewer taxa in streams affected by mining was observed with respect to species richness.

Fulk *et al.* (2003) used the Mid-Atlantic Highlands Index of Biotic Integrity (IBI—a multi-metric index used to assess biotic health) to analyze fish data from 27 streams in West Virginia. In this study streams were classified based on existing levels of disturbance (*e.g.,* no mining in the watershed, sites downstream of valley fills, sites with mountaintop mining in the watershed, sites downstream of valley fills, and sites with residential development in the watershed) and compared fish health among stream classes. The study showed that assessment scores from the sites downstream of valley fills were significantly lower than scores from sites without mining in the watershed, indicating that fish communities were degraded in sites downstream of valley fills.

EPA believes that the loss of 2,278 acres of forest and healthy headwater streams of Spruce Fork and the permanent loss of their ecological processes such as nutrient cycling and production of organic matter for downstream food webs may result in adverse impacts to downstream fishery resources.

Furthermore, due to the removal of freshwater dilution currently being provided by Pigeonroost Branch and Oldhouse Branch to Spruce Fork there is the potential for pollutants such as selenium to bioaccumulate and be toxic to fish and wildlife. Adverse impacts of increased levels of selenium include birth defects in fish and other aquatic life and can also result in toxic affects to embryos, resulting in abnormal development or death for those organisms. WVDEP is currently conducting several studies on the sublethal effects of selenium on fish. Other studies suggest a link between the degradation of fish health and mountaintop mining activities. As a result of these studies, EPA believes that Spruce No. 1 as authorized has the potential to have unacceptable adverse affects on fish resources.

d. Birds

Approximately 2,278 acres of deciduous forests will be destroyed by the Spruce No. 1 Mine and 7.48 miles of headwater stream will be buried as a result of valley fills authorized by the project. Loss of headwater streams from the project could impact water dependent birds, such as the Louisiana waterthrush, that require forested headwater streams for foraging on insects and nesting by elimination of the headwater areas associated with Pigeonroost and Oldhouse Branch. The West Virginia Breeding Bird Atlas (1984–1989) lists the Louisiana waterthrush as a probable breeder in the Spruce No. 1 project area.

As indicated previously, the Appalachian Mountain Bird Conservation Region (AMBCR) is thought to support a substantial portion of the species' breeding population, perhaps as much as 45 percent. Due to the large proportion of the population that breeds there and the threats to habitat and water quality posed by a variety of land and water uses that are predicted to intensify in coming years (including large-scale loss of habitat and water quality degradation associated with Appalachian surface mining), the U.S. Fish and Wildlife Service has designated the Louisiana waterthrush a Species of Management Concern and a Species of Conservation Concern within the AMBCR.

The Louisiana waterthrush's diet is comprised predominantly of immature and adult aquatic macroinvertebrates found in and alongside headwater streams. Studies indicate that breeding territory density and occupancy were reduced along streams where benthic macroinvertebrate communities had been degraded due to anthropogenic

land uses and acidification. Lower breeding territory densities occurred along streams impacted by acid mine drainage than along circumneutral streams. Similarly, some indices of benthic macroinvertebrate integrity were higher where breeding Louisiana waterthrushes were present than areas from which they were absent. Stream reaches where breeding birds were detected had a greater proportion of pollution-sensitive benthic macroinvertebrates than reaches where they were not detected supporting the concept that good water quality is a key component of the species breeding habitat.

In addition to stream pollution from anthropogenic land uses, elevated predator numbers from landscape-scale forest fragmentation and the loss of riparian forest canopy could also negatively impact future population levels of the Louisiana waterthrush. Ongoing impacts associated with landscape disturbances, including defoliation, increased stream temperatures, and compositional shifts in benthic macroinvertebrate communities, also could reduce populations in the AMBCR. Therefore, measures of Louisiana waterthrush distribution and reproduction may be useful indicators of both stream and forest ecosystem integrity.

Management for this species has focused on protecting core wooded riparian habitat, including establishment of undisturbed riparian forest cover, and preservation and improvement of water quality to ensure aquatic insect biomass and diversity. Data from the PEIS showed that most of these forest-specific bird species were eliminated from the adjacent Dal-Tex mine area. For water-dependent wildlife, like the Loiusiana waterthrush, preservation of large tracts of forest containing headwater streams is needed for the conservation of this species in the central Appalachians.

The project also could impact other bird species that rely on mature forest habitats. Bird species that rely on mature forest habitats that are abundant in the Appalachian region are Kentucky warblers in the understory; and wood thrush, Swainson's warbler, Acadian flycatcher, and ovenbirds in mesic hardwoods. These and many other avian species are all impacted by forest fragmentation and habitat loss caused by surface coal mining.

Most notable is the Cerulean warbler, a species that has declined rapidly over the last 40 years, which relies on mature forests, and whose core range mirrors the Appalachian Coalfields. Analyses of North American Breeding Bird Survey (BBS) data for the cerulean warbler indicate that the species declined sharply and steadily by 3–3.2% per year from 1966–2005, the steepest rate of decline of any North American warbler monitored by the BBS. Geostatistical analysis of BBS data concluded that declines in the species' abundance was concentrated in areas of formerly high abundance within the breeding range. The species is now absent or much reduced in some portions of its range, and the overall population trend is one of rapid range-wide decline. Today's population of Cerulean warblers is more than 75% lower than the population in 1966.

The decline of the cerulean warbler is likely related to habitat loss and degradation on both the wintering and breeding ranges. Up to 60 percent of the species' wintering habitat may have already been converted from primary forest to other land uses, and loss, fragmentation, and degradation of eastern North American forests represent a threat to its reproductive success.

Recent studies have documented poor reproductive success for this species in areas with low overall forest cover and high degrees of forest fragmentation. Recommended conservation strategies focused on minimizing habitat loss in more productive forested habitats. Others studies found that cerulean warbler abundance increased with distance from edges created by surface mining in southwestern West Virginia, and that abundance was positively correlated with large blocks of mature deciduous forest and low amounts of edge in the landscape. The authors concluded that mountaintop mining-valley fills altered the spatial configuration of forest habitats and created edge and area effects that negatively impacted the abundance and occurrence of cerulean warblers in the vicinity of reclaimed mines.

Additional investigators found that the Cerulean warbler breeding population in forested areas of southern West Virginia, which constitutes a substantial portion of the overall population, may be threatened by loss and degradation of forested habitats from mountaintop mining-valley fill activities. These investigators reported that territory density was about 6.5 times higher in intact forests (4.6 territories per 10 ha) than in fragmented forests (0.7 territories per 10 ha). They also found that territories occurred more frequently on ridges than at mid-slope or in valleys, and suggested that mountaintop mining-valley fill may have a greater impact on breeding populations of cerulean warblers than other types of forest fragmentation because it removes these ridges. Investigators concluded that the species was negatively affected by mining activities from loss of forested habitat, particularly ridge tops, and from the degradation of remaining forests, as indicated by lower territory density in fragmented forests and lower territory density closer to mine edges.

Spatial analyses of the effect of Appalachian mountaintop mining on interior forest indicate that the loss of interior forest is 1.75–5.0 times greater than the direct loss of forest due to mountaintop mining. Investigators concluded that the loss of Southern Appalachian interior forest is of global significance due to the rarity worldwide of large expanses of temperate deciduous forest.

The Spruce No. 1 Mine will impact mature forested habitat, over a long timeframe, replacing the impacted areas with reclaimed areas dominated by grasses and herbaceous species. Many reclaimed areas such as those expected at Spruce No. 1 show little or no regrowth of woody vegetation even after 15 years. The PEIS found significant differences in bird populations between forested and reclaimed sites, namely the loss of the above mentioned species, and subsequent replacement by more opportunistic grassland species. Also, the loss of the healthy headwater areas of Spruce Fork will reduce the feeding and foraging areas available to specialist Central Appalachian bird species thereby potentially impacting their viability in the Spruce Fork watershed and the greater Central Appalachian ecoregion.

Additional impacts to avian species may be realized by elevated levels of selenium in the Spruce Fork waters that are feeding areas for birds. In some freshwater food webs, selenium has bioaccumulated to four times the level considered toxic, which can expose birds to reproductive failure when they eat fish or insects with high selenium levels.

As a result of the potential for these impacts to occur to avian species within the project area, EPA believes that the Spruce No. 1 project as authorized has the potential to cause or contribute to unacceptable adverse impacts to wildlife.

e. Bats

Large-scale mountaintop removal/valley fill mining has been listed among the threats to bat species in the region according to information supplied to EPA by the FWS. Loss of the bat's habitat, foraging areas, and food sources—in conjunction with recently

indentified concerns related to white-nose syndrome—may result in unacceptable adverse impacts to wildlife resources.

In the time since the Spruce Fork No. 1 EIS was produced and the SMCRA and CWA Section 404 permits were issued, white-nose syndrome (WNS), a fungal infection, was first reported among hibernating bats in West Virginia. In the winter of 2008–2009, WNS was found in 4 caves in West Virginia, including known hibernation locations for Indiana bats (*Myotis sodalis*) and Virginia big-eared bats (*Corynorhinus townsendii virginianus*). Both the Indiana and Virginia big-eared bats are listed as endangered under the Endangered Species Act.

If WNS affects West Virginia bats as it has bats in other states, and if large die-offs occur, it will further complicate the already complex challenge of conserving bat species. Previous mining and logging activities and forest loss have also been identified as having adverse affects on bat populations. Commonly used reclamation techniques, many of which are designed to minimize erosion and provide backfill stability, are incompatible with re-establishment of trees necessary for successful roosting by bats. Such reclamation techniques have the potential to further stress bat populations.

2. Impacts to Water Quality

In considering water quality, it is important to recognize that adverse changes in water chemistry frequently have a corresponding impact on wildlife and fisheries that live in or depend upon the water. Potential adverse impacts to water chemistry are considered because they may affect the native aquatic and water-dependent communities in the Spruce Fork watershed. Additionally, the 404(c) regulations require consideration of whether the project would violate other environmental standards, including applicable water quality standards and as such EPA has considered the potential adverse impacts of the project on water quality of Spruce Fork and its contributing watershed.

a. Selenium (Se)

Discharges from the Spruce No. 1 project are likely to increase selenium loading to downstream waters. Selenium is a naturally occurring chemical element that is an essential micronutrient, but excessive amounts of selenium can also have toxic effects. Adverse impacts of increased levels of selenium include birth defects in fish and other aquatic life and can also result in toxic effects to embryos, resulting in abnormal development or death for those organisms. For aquatic animals, the concentration range between essential and toxic is very narrow, being only a few micrograms per liter in water. As described above, selenium toxicity is primarily manifested as reproductive impairment due to maternal transfer, resulting in embryotoxicity (embryonic death) and teratogenicity (birth defects) in egglaying vertebrates. The most sensitive toxicity endpoints in fish larvae are teratogenic deformities such as skeletal, craniofacial, and fin deformities, and various forms of edema. Embryo mortality and severe development abnormalities can result in impaired recruitment of individuals into populations. WVDEP has also studied fish larval deformity rates and selenium concentrations within fish eggs, although not in the vicinity of the Spruce No. 1 project area. This draft study indicates that elevated selenium concentrations in fish eggs, increased larval deformity rates and increased deformity rates in mature fish were all associated with elevated water column selenium, indicating unacceptable adverse effects on fisheries. The sedimentation ponds traditionally used to treat drainage from mining operations generally are not effective in removing selenium from the discharge.

West Virginia has established a numeric chronic water quality criterion for selenium of 5 ug/l to protect instream aquatic life. Current exceedances of West Virginia's numeric water quality criterion for selenium within the Coal River sub-basin generally and the Spruce Fork sub-watershed have been identified by WVDEP. These confirmed exceedances of the numeric water quality criterion for selenium demonstrate that the geology in the area of the Spruce No. 1 Mine is likely to release selenium during mining. In West Virginia, coals that contain the highest selenium concentrations are found in a region of south central West Virginia where the Allegheny and Upper Kanawha Formations of the Middle Pennsylvanian are mined. WVDEP reports that some of the highest coal selenium concentrations are found in the central portion of the Coal River watershed where significant active mining and selenium impaired streams are located, in the immediate vicinity of the Spruce No. 1 project.

Water quality monitoring data from streams draining the nearby Dal-Tex mine and from the outfalls draining the currently operational portions of the Spruce No. 1 Mine indicate levels of Se that exceed the chronic numeric water quality criterion of 5 μg/l. The data from the Dal-Tex mine do not indicate any decrease in Se concentrations over time (from 2000–2007). These data strongly suggest that the Spruce No. 1 Mine is likely to cause exceedances of the Se water quality criterion and lead to significant degradation of water quality.

In addition, as noted above, portions of the Spruce No. 1 project have been constructed in the Seng Camp Creek sub-watershed. The NPDES permit issued for the Spruce No. 1 project imposes effluent limitations for selenium in only four of 25 outfalls and requires only monitoring (no limitations) for selenium at the remaining outfalls. Recent NPDES discharge monitoring reports show that the constructed portion of the Spruce No. 1 project is discharging selenium at levels that exceed West Virginia's numeric water quality standard.

This project-specific data from both Dal-Tex and the current operational portions of Spruce No. 1 confirms EPA's concern based on data from nearby projects and other water quality data for the Sub-basin that the project may discharge high levels of selenium to downstream receiving waters. WVDEP data from several years of sampling in the Beech Creek watershed where the majority of the mining has occurred, has revealed Se levels that range from 5.6 μg/l to 22 μg/l, exceeding the chronic water quality criterion for selenium of 5 ug/l to protect instream aquatic life. EPA has reason to believe, based on existing and adjacent mine data that Spruce No. 1 has the potential to cause or contribute to discharges of selenium that could cause unacceptable adverse impacts to fish and wildlife resources.

In some freshwater food webs, Se has bioaccumulated to four times the toxic level; this can cause teratogenic deformities in larval fish, leave fish with Se concentrations above the threshold for reproductive failure (4 ppm), and expose birds to reproductive failure when they eat fish with selenium concentrations greater than 7 ppm. An important aspect of selenium residues in aquatic food chains is not direct toxicity to the organisms themselves, but rather the dietary source of selenium they provide to fish and wildlife species that feed on them.

b. Total Dissolved Solids/Conductivity

Discharges from the Spruce No. 1 project are likely to include high levels of total dissolved solids (TDS), which will increase instream specific conductivity downstream of the project and adversely affect the naturally occurring aquatic communities. Several

studies have documented significant and strong correlations between degraded instream resident biota and high specific conductivity or TDS concentrations downstream of mining operations. The scientific literature indicates that several ions can be toxic, and they have varying relative toxicity to aquatic life. Furthermore, mixtures of ions can have ameliorative, synergistic or additive effects, depending on the mix of ions. Typical Central Appalachian alkaline mine drainage includes several component ions (magnesium, sulfate, bicarbonate, potassium) that can be toxic to aquatic life individually or as a mixture. Conductivity is an excellent indicator of the mixture of ions and is also a good predictor of aquatic life use impairment. Increases in conductivity impair aquatic life use, are persistent over time, and cannot be easily mitigated or removed from streams.

To understand the impacts, it is helpful to understand the relationship among salinity, TDS, and specific conductivity. Salinity reflects the amount of TDS in water. The majority of TDS in many waters are simply salts. Salinity is the mass of salt in a given mass of water, and is normally reported in parts per thousand (ppt) or parts per million (ppm). TDS is a measure of the combined content of all inorganic and organic substances contained in a solution in molecular, ionized or micro-granular (colloidal) suspended form and is normally reported in the units mg/l. Specific Conductivity (hereafter referred to as conductivity) is the ability of a solution to carry an electric current at a specific temperature (normally 25°C) and is normally reported in the units µS/cm. Conductivity and TDS both increase as the concentration of ions in a solution increase and are very strongly correlated. Normally, conductivity is reported by state and federal monitoring agencies because it is an instantaneous measurement that can be collected in situ with a meter, does not require a laboratory analysis, and is precise and accurate.

Natural waters in the Spruce No. 1 project area have very low conductivity (50–100 uS/cm) and TDS and are considered fresh water. However, water impacted by alkaline mine drainage such as those exhibited at Dal-Tex and anticipated for Spruce No. 1 has been shown to have elevated conductivity. Several component ions of alkaline mine drainage (magnesium, sulfate, bicarbonate) are known to be toxic to aquatic life and models have been developed to predict the acute toxicity of mixtures of ions to aquatic organisms. EPA Region III research based on ion toxicity models indicates that ion concentrations in alkaline mine drainage in the Central Appalachians (such as those likely to be discharged by the Spruce No. 1 Mine) commonly reach levels that could cause acute toxicity in native aquatic organisms.

Neither WVDEP nor EPA has numeric water quality criteria designed to protect aquatic life from elevated TDS (which can be measured by conductivity). However, there is strong scientific evidence that indicates what levels of conductivity would likely protect aquatic life. These data and science can be used to assess current conductivity levels in nearby mines and to predict the effects from the proposed Spruce No. 1 Mine. As described below, current instream water quality in the proposed project area is in excellent/good condition, and conductivity levels are less than the most protective level suggested by the data. In contrast, conductivity levels in the previously mined streams adjacent to the project area exceed the highest of the levels suggested by the data, which means there is potential for degradation of water quality and a high likelihood of harm to aquatic life. The table below, summarized from WVDEP data and scientific literature, identifies conductivity levels at which adverse impacts may occur.

CONDUCTIVITY LEVELS FOR EVALUATING THE POTENTIAL FOR ADVERSE IMPACTS

Level at which conductivity ruled out as a possible stressor in WV TMDL analysis	<327 uS/cm.
High probability of impairment to native biota	>500 uS/cm.
Corresponds to levels of TDS identified as likely to support growth of toxic golden algae	>714 uS/cm.
Level at which conductivity may be a “moderate” stressor in recent TMDL studies	>767 uS/cm.

Data from WVDEP indicates the average conductivity values for the unmined streams on the Spruce No. 1 project area are very low. Oldhouse Branch had an average conductivity level of 90 uS/cm; White Oak Branch had an average conductivity level of 118 uS/cm. Both of these conductivity values indicate excellent water quality. Sulfate concentrations in these streams are also low (28 mg/l in Oldhouse and 24 mg/l in White Oak Branch). Two of the streams draining the project area (Pigeonroost Branch and Seng Camp Creek) contain small amounts of historical mining in their watersheds. WVDEP data indicate the average conductivity for Piegeonroost Branch was 199 uS/cm and sulfate was 99 mg/l, and in Seng Camp Creek conductivity was 189 uS/cm and sulfate was 61 mg/l. The slightly elevated average conductivity and sulfate values reflect the relatively small amount of historical mining landuse in these watersheds.

By contrast, the average conductivity and sulfate levels are elevated in other tributaries to Spruce Fork where historical mining is similar to what would occur if Spruce No. 1 Mine was constructed as authorized. For example, the streams draining mined areas to the west of Spruce Fork have the following average conductivity and sulfate values: Rockhouse Creek, 1012 uS/cm conductivity, 407 mg/l sulfate; Left Fork of Beech Creek, 2426 uS/cm conductivity, 1019 mg/l sulfate; Beech Creek, 1432 uS/cm conductivity, 557 mg/l sulfate; and Trace Branch, 971 uS/cm conductivity, 569 mg/l sulfate.

The average conductivity and sulfate concentrations in the mainstem of Spruce Fork are also strongly elevated to as much as ten times above the natural background levels in Oldhouse Branch. The average conductivity at almost every monitoring site on the mainstem Spruce Fork exceeded 500 uS/cm. Only one site had an average conductivity of < 500 uS/cm, which was located upstream of the project area, upstream of Adkins Fork, and southeast of Blair, WV.

Conductivity values for several tributaries draining the Spruce No. 1 project currently indicate excellent water quality. These waters with lower conductivity, such as Pigeonroost Branch and Oldhouse Branch, may be providing freshwater dilution to Spruce Fork thereby preventing conductivity levels in Spruce Fork from becoming even more elevated. Discharges from valley fills into Pigeonroost Branch and Oldhouse Branch would both remove sources of freshwater dilution to Spruce Fork and create new sources of TDS/conductivity.

Additionally, WVDEP data from 2002–2003 strongly indicate that any assimilative capacity for TDS or conductivity and component ions on the

main stem of Spruce Fork has already been used by other mining discharges in the watershed. In light of the known relationship between elevated levels of TDS/conductivity and extirpation of portions of the native assemblages, any additional TDS or conductivity added to the mainstem of Spruce Fork by the project could cause unacceptable adverse impacts to the receiving streams and to Spruce Fork.

Increases in conductivity associated with the Spruce No.1 project could also increase the likelihood of an outbreak of toxic golden algae. This is supported by evidence of a recent algal bloom of an invasive, brackish-water golden algae species (linked to increased conductivity) in the northern coalfields of WV, which caused a devastating aquatic life kill (fishes, mussels, salamanders).

3. Potential to Contribute to Conditions That Support Growth of Toxic Golden Algae

The Spruce No. 1 project is likely to contribute to instream conditions (including increased instream total dissolved solids/conductivity and construction of sedimentation ponds) in or near Spruce Fork that may support golden algae *Prymnesium parvum* that releases toxins that kill fish and other gill-breathing aquatic organisms.

P. parvum is associated with an extensive and severe aquatic life kill that killed thousands of fish, mussels, and other aquatic organisms in Dunkard Creek, West Virginia and Pennsylvania in September 2009. At the time of the Dunkard Creek aquatic life kill, biologists reported observations of not only dead organisms, but also fish and other aquatic life behaving aberrantly in an effort to escape the toxin. Biologists reported mud puppies (an aquatic salamander that lives its entire life underwater) crawling out of the water and onto rocks and the shoreline in an apparent attempt to escape from the toxic water. These organisms, which are obligate aquatic organisms with no functioning lung system, also died from effects of golden algae. Field biologists observed numerous individuals as dried-up carcasses on rocks and along the shoreline. Fish were observed avoiding the mainstem of Dunkard Creek by practically "stacking up" in the mouths of tributaries, subjecting themselves to feeding by blue heron rather than escaping to the mainstem of Dunkard Creek.

The identification of *P. parvum* in 2009 in Dunkard Creek, on the Pennsylvania and West Virginia border near Morgantown, WV, was the first identification of this invasive aquatic species in the Mid-Atlantic States. The factors that are most closely associated with this risk are believed to be:

- Proximity to a known source of *Prymnesium parvum;*
- TDS in high enough amounts to support *P. parvum* (estimated to be between 500 and 1,000 mg/l (conductivity 714–1428 uS/cm);
- Nutrients of great enough amount to initiate a bloom of *P. parvum;*
- pH greater than 6.5. Risk increases with increasing pH;
- Areas of habitat that are pooled (large beaver dams, natural residual pools, or manmade ponds).

WVDEP has identified Spruce Fork as a "water of concern" because of its potential (due to already high levels of TDS/conductivity) to support golden algae blooms. Other waters of concern near the Spruce No. 1 project include the Little Coal River and West Fork/Pond Fork.

Golden algae was identified (in very high numbers) in Cabin Creek of the Kanawha drainage, only 25 miles over the ridge to the East. Because this alga can easily move with waterfowl, the risk of introducing *P. parvum* in the Spruce drainage is high. As described above, the Spruce No. 1 project is likely to increase levels of TDS/conductivity in Spruce Fork, thus creating conditions more favorable to golden algae. In addition, numerous sedimentation ponds will be constructed, which could create areas of pooled habitat more favorable to golden algae.

Because of the likelihood that the Spruce No. 1 project as authorized will create pooled water in the form of sedimentation ponds and discharge high levels of TDS to the remainder of Pigeonroost Branch, Oldhouse Branch and Spruce Fork, the project could contribute to conditions, especially in Spruce Fork, that could support *P. parvum* with the resultant possibility of aquatic life kills including fish. Based on this information EPA believes that Spruce No. 1 as authorized could result in unacceptable adverse impacts to fish and wildlife resources.

4. Proposed Mitigation May Not Offset Anticipated Impacts to an Acceptable Level

Compensatory mitigation involves actions taken to offset unavoidable adverse impacts to wetlands, streams and other aquatic resources authorized by Clean Water Act Section 404 permits and other Department of the Army (DA) permits.

While we recognize that the project includes mitigation (including stream creation and enhancement of existing streams) to compensate for unavoidable adverse impacts, EPA believes that the quality and function of the impacted resources were not appropriately assessed and accounted for in the mitigation plan. EPA is therefore concerned that the mitigation proposed for the Spruce No. 1 project may not offset the anticipated impacts to an acceptable level.

In order to develop an effective compensatory mitigation plan the following steps are required:

- Fully assess the range of physical, chemical and biological features that contribute to the pre-project level of function of targeted ecological systems. This would include areas both directly affected (*e.g.,* filled streams and valleys), and indirectly affected (*e.g.,* downstream receiving waters, stream reaches targeted for enhancement).
- Develop a range of mitigation practices that fully compensate for all lost or modified features (physical, chemical, biological) and the concomitant loss of both function and areal extent.
- Develop a protocol for monitoring the extent (over space) and rate (over time) of compensatory practices. This should include remedial practices to offset any unplanned failure in the compensatory mitigation plan.

An adequate compensatory mitigation plan should be based upon a delineation of on-site impacts to ephemeral, intermittent, and perennial stream-types in the Spruce Fork watershed. EPA is concerned that the proposed mitigation underestimates the impacts to perennial and intermittent streams by misclassifying them, thereby resulting in an insufficient baseline to begin designing adequate stream compensation. These determinations made by consultants for the project do not correspond with current scientific information concerning the designation of these stream types.

EPA is concerned that the approved delineation of streams-types in the project area may not accurately reflect the stream-types exhibited on-site. The delineations are now nine years old and EPA believes new field studies using more up-to-date assessment tools would provide a better representation of proposed impacted water resources. EPA compared lengths of stream channel in Pigeonroost, Seng Camp, and Oldhouse from USGS estimates to estimates made by the permittee. The median drainage areas for ephemeral/intermittent (14.5 acres) and intermittent/perennial (40.1 acres) have been documented by USGS. Further studies by US EPA Office of Research and Development, US EPA Region III and University of Kentucky show that

these USGS drainage area estimates are accurate. Using this information and on-the-ground field observations in the Spruce No. 1 project area, EPA believes that the proposed valley fills will likely impact a greater quantity (by thousands of feet) of intermittent and perennial stream channels than is proposed to be compensated by the project's Compensatory Mitigation Plan (CMP).

In addition, the CMP utilized an assessment referred to as the Stream Habitat Unit (SHU) method to calculate debits and credits. This assessment is a combination of linear footage of impact, habitat assessment scores, and stream hydrological status. EPA believes that such a calculation of debits and credits inadequately quantifies the mitigation needed for this project. The SHU as presented in the CMP only accounts for the physical aspects of stream condition and completely ignores the interrelationship of water chemistry and biological resources in stream functioning, in contravention of the multiple factor assessment approach noted above. In addition, while the current DA permit refers to biological success criteria, it is not clear that it requires replacement of lost biological function and comparable stream chemistry in order to meet adequate compensatory mitigation success criteria.

The FWS also expressed concern regarding the proposed CMP in a letter dated May 30, 2006 from the Department of Interior, Philadelphia to the Huntington District Army Corps of Engineers. Determinations made by the FWS at that time concluded that (partially excerpted here):

> The Stream Habitat Unit (SHU) assessment methodology selected by the applicant only considers the physical characteristics of the stream. It does not include biological or chemical characteristics of the stream. Without those attributes, the assessment does not meet the requirements of a "functional" assessment. The Service recommends that the applicant use an assessment method that incorporates biological and chemical, as well as habitat, characteristics to determine the true function of the stream.

Since the permittee applied the SHU methodology to describe the streams, the compensatory mitigation also only addresses the physical component of the streams. Compensatory mitigation must replace the aquatic resource function lost or adversely affected by authorized activities. Therefore, to conclude that the functions are being replaced, the compensatory mitigation must create streams that are capable of sustaining the same biological, chemical, and physical characteristics of the streams that have been eliminated by mining activity.

The project's compensatory mitigation plan is unlikely to sustain the biological, chemical, and physical characteristics of the affected streams for two primary reasons. First, it is difficult to replace the stream functions when they have not been adequately assessed in the first place. Second, creating streams using on-site drainage ditches, employing enhancement measures that include channel or habitat improvement and changing the classification of a stream from intermittent to perennial are not sufficient to replace the quality of the streams impacted.

Although the permittee considers on-site erosion control structures equivalent to existing streams, drainage ditches are designed strictly with a physical component and lack a replacement of stream function. The resources that are being lost are healthy, biologically functional streams. The erosion control structures are designed to convey water and, thus, cannot replace the streams' lost ecological services. Erosion control structures lack groundwater-derived and nutrient-rich base flow, temperature regimes, habitat diversity, gradient, floodplains, connectivity to downstream ecosystems, and other critical features of natural streams.

The permittee indicates that the streams will be enhanced by additional flow, changing them from intermittent to perennial. However, many species rely on intermittent streams as part of their life history strategy.

The permittee also proposes to improve channel or habitat on nearby streams. Streams are complex systems whose hydrogeomorphic behavior and biotic recovery are not easily predicted. Extensive, long-term monitoring is required to demonstrate enough ecological benefit to already-functioning streams to offset the proposed losses. Such actions would have to be taken at a ratio substantially greater than 1:1 to raise the mitigation areas' functions enough to compensate for the loss of stream functions.

The permittee has not indicated that water quality and biological diversity monitoring will be conducted after completion of the proposed project. Water chemistry and biological diversity should be used as indicators of project success. The project will be successful when the function of the restored streams (chemistry and biological diversity), is equivalent to that of the impacted streams. Without a thorough functional assessment prior to initiation of the project, it is impossible to determine when the mitigation is successful.

In summary, the current proposal is problematic for several reasons: First, it fails to recognize the true functioning of healthy headwater streams and so therefore fails to replace the streams' lost ecological services; and second, the planned control structures are waste treatment systems designed to control poor quality waters and then convey those waters offsite. These systems have the potential to export poor-quality water to downstream waters, in direct contrast to current headwater streams that provide fresh water to downstream reaches and to Spruce Fork.

EPA also believes that other proposed stream channels located at the project impact area also have the potential to export poor water quality to downstream waters. If water quality in these created channels and the erosion control channels are taken into account, they not only fail to replace true stream function, but they could cause additional adverse impacts downstream.

Although more recent efforts have been made to more fully assess some physical and biological attributes of regional headwater stream systems, the instream biota and chemistry component continue to be effectively ignored. In effect, the baseline starting point for developing an adequate compensatory mitigation plan has not been developed.

Studies have demonstrated, moreover, that replacement of streams is among the most difficult and frequently unsuccessful forms of mitigation. Even if stream structure and hydrology can be replaced, it is not clear that replacing structure and hydrology will result in true replacement of functions, especially the native aquatic community and headwater functions. Moreover, the mitigation does not account or compensate for many of the downstream impacts caused by the project. Finally, there is no evidence in the peer-reviewed literature that the type of stream creation proposed in the CMP will successfully replace lost biological function and comparable stream chemistry.

As a result of these concerns, EPA believes that the adverse impacts associated with the Spruce No. 1 project as authorized, are not adequately offset by the CMP and as such we believe the project may have unacceptable adverse impacts to fish and wildlife resources as described throughout this notice.

5. Consistency With the 404(b)(1) Guidelines

The CWA requires that exercise of final Section 404 (c) authority be based

on a determination of "unacceptable adverse effect" on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas at 40 CFR 231.2(e) including taking into account:

> * * * all information available to him (the Administrator), including any written determination of compliance with the Section 404(b)(1) Guidelines made in 40 CFR Part 230.

The Guidelines prohibit the discharge of dredged or fill material into waters of the United States if there is a less environmentally damaging practicable alternative, if it would cause or contribute to a violation of a state water quality standard, or if it would cause or contribute to significant degradation of waters of the United States. As described above, those portions of the Guidelines which are particularly important in evaluating the unacceptability of environmental impacts in this case are:

- Less environmentally damaging practicable alternatives (230.10(a));
- Water quality impacts (230.10(b));
- Significant degradation of waters of the United States (230.10(c));
- Minimization of adverse impacts to aquatic ecosystems (230.10(d));
- Impacts on existing indigenous aquatic organisms or communities (230.10(e));
- Cumulative effects (230.11(g)); and
- Secondary effects (230.11(h)).

a. Alternatives

As indicated in EPA's letter dated October 16, 2009, EPA believes that this project may be modified in a way that will address the environmental impacts described herein. EPA believes that additional avoidance and minimization of anticipated impacts may be achieved by constructing the project sequentially and allowing monitoring data from each portion of the project to inform decisions regarding the remainder of the project. These monitoring data would then be used as a basis for specific actions in response to adverse changes in water quality.

b. Water Quality

With respect to water quality and significant degradation, neither the Corps nor WVDEP considered information demonstrating that surface mining with valley fills in Central Appalachia is strongly related to downstream water quality degradation. Specifically, the Corps apparently did not consider the relevance of impairment to waters draining the nearby Dal-Tex operation. The water quality degradation caused by nearby mining operations is an important source of information for predicting the impacts from the Spruce No. 1 project.

The Spruce No. 1 EIS recognizes that discharges from the Spruce No. 1 Mine are likely to be similar to those from the Dal-Tex mine: "The past and present impacts to topography, geology, and mineral resources of the previous mining along the western side of Spruce Fork are similar to the anticipated impacts of the Spruce No. 1 Mine, as mining is proposed to occur in the same strata." While the EIS notes that the water quality draining the Dal-Tex complex is alkaline, it does not consider the water quality impairments (including violations of the iron and selenium numeric criteria and adverse biological impacts) identified by WVDEP in the streams draining the Dal-Tex operation.

The Corps and WVDEP also failed to consider adequately the potential for discharges of TDS from Spruce No. 1 to raise instream conductivity levels downstream from the project, resulting in impairment to the naturally occurring aquatic community. The Spruce No. 1 EIS states: "Total dissolved solids may increase in mine area discharges, depending on the nature and timing of groundwater contributions to sediment pond/storm water management system. However, discharges during the life of the mine would be anticipated to meet the requirements of the CWA Section 401 and 402 water quality standards. If discharges would exhibit concentrations out of compliance with effluent limits, the discharges would be treated as necessary to meet WVNPDES and state water quality standards." The EIS does not consider that the 402 permit does not include an analysis pursuant to 40 CFR 122.4(d)(1), an analysis of the project's reasonable potential to cause or contribute to an impairment of the aquatic life use as described in West Virginia's narrative water quality criteria and does not include controls (or even monitoring) for TDS/conductivity. The Corps also did not consider whether the Section 401 certification for Spruce No. 1 considered TDS nor did the Corps consider data showing increased levels of conductivity downstream of the Dal-Tex operation and other mines.

Data from operations at the project site show that the project is likely to discharge selenium at levels above West Virginia's chronic exposure water quality criterion. That information was not available to and therefore was not considered by the Corps or WVDEP.

In addition, the Corps and WVDEP did not consider the potential for discharges from the Spruce No. 1 project to contribute to conditions that could potentially support golden algae blooms as described in this proposed determination.

V. Proposed Determination

The Regional Administrator proposes to recommend that the discharge of dredged or fill material to Pigeonroost Branch and Oldhouse Branch for the purpose of constructing the Spruce No. 1 Surface Mine as currently authorized by DA Permit No. 199800436–3 (Section 10: Coal River) be prohibited or restricted. Based on current information, the Regional Administrator has reason to believe that the Spruce No. 1 Surface Mine as currently authorized could result in unacceptable adverse impacts and that these adverse impacts can be reduced or avoided through appropriate modification of the project.

This proposed determination is based on unacceptable adverse impacts to wildlife pursuant to Section 404(c). EPA has reason to believe the project as currently authorized would cause or contribute to significant degradation of waters of the United States and violate the Section 404(b)(1) Guidelines. There will be discharge of excess spoil and construction of valley fills that will bury headwater streams. Wildlife that live in those streams or within the footprint of the valley fills will be buried. Other wildlife will lose important habitat on which they depend for all or part of their lifecycles. The streams and wildlife that will be buried cannot be viewed in a vacuum. When those streams and wildlife are buried, there will be effects to downstream waters and downstream wildlife caused by the removal of functions performed by the buried resources and by transformation of the buried areas into sources that may contribute pollutants to downstream waters. In addition, the project could contribute to conditions that would support blooms of golden algae that release toxins that can kill fish and other aquatic life. There also will be an effect from deforestation of the project site on terrestrial wildlife. In addition, impacts from the project could contribute to cumulative impacts from multiple surface mining activities in the Coal River sub-basin.

VI. Other Considerations

A. Environmental Justice

Environmental Justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. EPA has this

goal for all communities and persons across this Nation. In this case these goals are promoted through the requirement that all agencies of the Federal government shall include an analysis of environmental justice issues when considering the impacts related to the Spruce No. 1 project. Although the Spruce No. 1 Draft EIS contained some information regarding environmental justice, EPA remains concerned that these issues were not adequately addressed in the Final EIS.

Spruce No. 1 is located in a Census block group where the per capita income is roughly half that of the national average and $6,000 less than the West Virginia state average. Moreover, 24% of the residents of Logan County live below the poverty line which also exceeds state and national averages. Accordingly, additional analysis of the potential for disproportionately high and adverse effects on these low-income populations needs to be conducted.

Specifically, a characterization of the economic status of residents near the site and the conditions they face including any effects relating to the proximity of the blasting zone, locations of discharges of fill material, truck traffic, noise, fugitive dust, and habitat loss needs to be conducted. Additional consideration must also be given to these activities' potential impacts on subsistence fishing, hunting, foraging and gardening in the area. Additional information is needed concerning sources of drinking water for the affected populations (including municipal water supplies and private sources of drinking water including streams and/or wells).

Furthermore, the cultural implications of mountaintop mining must not be ignored. The mountains being affected by Spruce No. 1 are considered a cultural resource by many residents. The mountains influence residents' daily lives and in many cases have helped define Appalachian society. Removing them may have profound cultural changes on area residents, so it is important that cultural impacts be considered as well.

It is important that consideration be given as to whether these impacts will range over a broad area or will be concentrated in particular areas. Detailed maps outlining the residential areas in relation to these activities may help in conducting this evaluation. It is also important that the effects be considered both independently and cumulatively. Considering the effects cumulatively provides the most realistic "snapshot" of what the community will be facing when the project reaches fruition. Having this information readily available will help engage the affected communities during public outreach and ensure that they can be meaningfully involved.

B. Cumulative Effects

The Clean Water Act Section 404(b)(1) Guidelines require that "no discharge of dredged or fill material shall be permitted if it causes or contributes, after consideration of disposal site dilution and dispersion, to violation of any applicable State water quality standard." In addition, the Guidelines prohibit any discharge of dredged or fill material that would cause or contribute to significant degradation of the aquatic ecosystem, with special emphasis placed on the persistence and permanence of effects, both individually and *cumulatively.* Cumulative impacts are "the impact on the environment which results from the incremental impact of the action when added to other past, present and reasonably foreseeable future actions, regardless of what agency or person undertakes such other actions." (40 CFR 1508.7) Individual adverse impacts from an action may be insignificant individually, but may accumulate over time from one or more origins and collectively result in significant adverse impacts that degrade important natural resources. The cumulative impacts of a particular action can be viewed as the total effects on natural resources (including wildlife), socioeconomic resources, human health, recreation, quality of life aspects, and cultural and historical resources of that action and all other activities affecting those resources, compounding the effects of all actions over time. Surface mining of coal has the potential to cumulatively impact natural resources, both aquatic and terrestrial. In the West Virginia portion of the PEIS study area, the projected loss of riparian habitat from MTM/VF is 30.72 km^2, 3.2% of the baseline. Approximately 42% of these projected losses occur in headwater (first and second-order) streams.

As currently authorized, the Spruce No. 1 project is one of the largest mountaintop mining projects authorized in West Virginia. The project would directly impact nearly seven and one-half miles of valuable headwater streams, and would indirectly impact Spruce Fork and potentially other downstream waters in the Coal River Sub-basin. These indirect impacts can include but are not limited to discharges of pollutants from the valley fills, such as total dissolved solids (TDS) and selenium and removal of freshwater dilution currently being provided by Pigeonroost Branch and Oldhouse Branch.

Spruce No. 1 project lies within the Little Coal River watershed within the Coal River sub-basin. The Little Coal watershed contains 98 miles of impaired streams, representing 33% of the streams in the watershed, and the Coal River sub-basin has 743 miles of impaired streams, representing 30% of the streams in the sub-basin. Stream segments are listed for selenium and biological impairment by WVDEP, indicating that the relationship between mining and watershed quality is strong.

In addition to impacts from discharges and removal of riparian habitat and sources of freshwater dilution, there also will be an adverse effect from deforestation of the project site on terrestrial wildlife. Approximately 2,278 acres of deciduous forest will be destroyed by the Spruce No. 1 Mine. Forests like these in Appalachia support some of the highest biodiversity in North America and are unique in its expansiveness. In its natural condition, the Appalachian landscape is dominated by interior forest. A decrease in forest cover by mining followed by conversion to grasslands or other less valuable land cover has the potential to shift the fauna of the region from that found in intact, high elevation forests to one dominated by grassland and edge dwelling species.

Numerous studies have demonstrated that the region is losing forest, especially ecologically valuable interior forest, at a significant pace due largely to surface mining operations. Studies conducted in connection with the PEIS concluded that surface mining had deforested 1,540 km^2 or 380,542 ac (3.4%) of the study area during the 10 years between 1992 and 2002. An estimated 5,700 km^2 or 1,408,500 ac (11.5%) of the PEIS study area was projected to be deforested by 2012, an area 1.4 times the size of the state of Rhode Island. A 3-fold increase has been shown in acres classified as "surface mining/quarries/gravel pits indicating a degrading land-use change at the expense of the natural condition of the area.

Because of fragmentation of forests by mountaintop mining activities, the area of interior forest lost was 1.75–5.0 times greater than the direct forest lost between 1992 and 2001. Such an increase in habitat fragmentation has the potential to isolate natural populations, reduce population sizes, reduce gene flow, increase the risk of extirpation or extinction of rare species, and increase the rate of invasion by exotic species, especially plants. Fragmentation of the terrestrial environment due to mining,

projected from land cover data in the West Virginia Gap Analysis Program (GAP) and the permit rates observed during the 10 years preceding the publication of the PEIS, indicates:

- 40% increase in the number of isolated forest habitat fragments
- 41% decrease in the average size of habitat fragments from 24.64 to 14.3 acres
- 2.7% increase in the amount of edge habitat, caused by fragmentation of interior forests

The Spruce No. 1 project will destroy approximately 2,278 acres of functional deciduous forests replacing it with grasslands or other land cover. According to WVDEP Division of Mining and Reclamation (DMR) permit maps, within the Headwaters Spruce Fork sub-watershed, where Spruce No. 1 is to be located, there are more than 34 past and present surface mine permits issued which collectively occupy more than 33% of the land area. From 1992 to 2009 forest coverage decreased from approximately 73% to 61% and can be expected to decrease to 53% of the sub-watershed in the reasonably foreseeable future. Additionally, other sub-watersheds in the Coal River sub-basin have more than 55% of the land occupied by surface mine permits.

Within the Coal River sub-basin there are more than 257 past and present surface mining permits issued which collectively occupy more than 13% of the land area. Furthermore, EPA is aware of at least 11 additional mining operations either proposed or authorized but not constructed in addition to Spruce No. 1 in the Coal River sub-basin. The Spruce No. 1 proposal along with these 11 additional projects in the Coal River Sub-basin, if constructed as proposed, would impact approximately 29.4 miles of stream channels resulting in potential impairment to more streams in the Coal River sub-basin.

Trend analysis indicates mountaintop mining and valley fills as a percentage of the land cover will continue to increase in the Coal River sub-basin and forest area will continue to decrease as a result. These 11 additional projects, if constructed, have not been assessed and factored in the regulatory decision-making for Spruce No. 1 in terms of their cumulative affects on water quality, aquatic, and forest resources of the region. EPA believes that the Spruce No. 1 project, in conjunction with the numerous other mining operations either under construction or proposed for the Coal River sub-basin, will contribute to the cumulative loss of water quality, aquatic and forest resources. The Coal River sub-basin is already heavily mined and substantially impaired. Landscape and site specific assessments reveal that past and current mountaintop mining has caused substantial, irreplaceable loss of resources and an irreversible effect on these resources within the Coal River sub-basin.

At the sub-basin level, surface mining of coal has the potential to cumulatively impact natural resources, both aquatic and terrestrial, and the number of mining operations, permitted or proposed, in the Coal River watershed have the potential to have significant cumulative effects on the aquatic ecosystem as described above. The cumulative effects of these operations in the Coal River sub-basin and its contributing watersheds have resulted in many miles of headwater stream destruction, downstream water quality degradation, and the destruction and fragmentation of many acres of productive and functional forests. EPA believes these impacts have not been sufficiently acknowledged or analyzed by the permittee or the Corps of Engineers for this project.

Additional data from the PEIS's Landscape-Scale Cumulative Impact Study modeled terrestrial impacts based on past surface mine permit data. These data suggest that for the entire 22-year period from 1992 to 2013, the estimated forest clearing in the study area would be 1,189 square miles (761,000 acres). Should these forests not be adequately restored, invaluable water quality and ecological services will be permanently lost.

Forest losses of this magnitude, although largely temporary (on the scale of decades), are not inconsequential. In addition to the popularly appreciated wildlife, recreational, and timber resources associated with forest systems, many ecological services can be attributed to forest systems. We are just beginning to understand and assign value to these ecological services. For example, forests are known to be natural areas of carbon sequestration. The cumulative loss of 1,189 square miles of forest would conservatively equate to the loss of 1.7M tons of carbon dioxide sequestration potential per year or the equivalent of taking 300,000 cars off the road. Additionally, forests dampen flooding potential and act as natural nutrient sinks. One study estimates that forest cover of 1,189 square miles cumulatively provides approximately $138 million in aquatic nutrient-cycling and waste treatment services.

VII. Solicitation of Comments

EPA today is soliciting comments on all issues discussed in this notice. In particular, we request:

(1) Additional information on the likely adverse impacts to fish and values of the receiving waters that will be directly (Right Fork of Seng Camp Creek, Pigeonroost Branch, Oldhouse Branch) or indirectly affected (Spruce Fork, Little Coal River, Coal River) by the Spruce No. 1 Surface Mine as currently authorized in DA Permit No. 199800436–3 (Section 10: Coal River).

(2) Additional information pertaining to the water quality, flora, fauna and hydrology of the waters identified in no. 1 above, and information on the fish and wildlife species which would be affected by changes in the aquatic ecosystem if the project is constructed.

(3) Additional information about drinking water (including municipal water supplies and private sources of drinking water including streams and/or wells).

(4) Additional information about recreational uses of the project area and how they would be impacted if the project were constructed.

(5) Additional information on the potential for mitigation to reduce the impacts of the project.

(6) Additional information describing the known or potential cumulative impacts to human health and the environment within the Coal River sub-basin and the Spruce Fork sub-watershed.

(7) Consistent with Executive Order 12898, information about low-income and minority populations likely to be affected by the Spruce No. 1 Surface Mine and the disproportionately high adverse human health or environmental effects, if any, on these populations if EPA makes a final determination to rescind the proposed determination or to prohibit or restrict the use of Seng Camp Creek, Pigeonroost Branch and Oldhouse Branch as disposal sites for dredged or fill material in connection with the project.

(8) During the course of the past year, various techniques have been identified to or by EPA as means by which impacts from this project or other similar projects may be reduced to an acceptable level. As indicated in EPA's letter dated October 16, 2009, EPA has not ruled out the possibility that this project may be modified in a way that will address the environmental impacts described herein. Accordingly, in addition to the information sought in items 1–7 above, EPA is seeking comment on potential techniques to reduce or mitigate the environmental impacts described herein.

(9) Whether the discharge should be permanently prohibited, allowed as authorized by the Corps, or restricted in time, size or other manner.

All relevant data, studies, knowledge of studies, or informal observations are appropriate.

The record will remain open for comment until *June 1, 2010.* All comments will be fully considered in reaching a decision to either rescind the proposed determination or forward to EPA Headquarters a recommended determination to prohibit or restrict the discharge of dredged or fill material into Pigeonroost Branch and Oldhouse Branch in connection with construction and operation of Spruce No. 1 Surface Mine.

Dated: March 26, 2010.

Shawn M. Garvin,

Regional Administrator, Region III.

[FR Doc. 2010–7532 Filed 4–1–10; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Notice of Open Special Meeting of the Sub-Saharan Africa Advisory Committee (SAAC) of the Export-Import Bank of the United States (Export-Import Bank)

SUMMARY: The Sub-Saharan Africa Advisory Committee was established by Public Law 105–121, November 26, 1997, to advise the Board of Directors on the development and implementation of policies and programs designed to support the expansion of the Bank's financial commitments in Sub-Saharan Africa under the loan, guarantee, and insurance programs of the Bank. Further, the committee shall make recommendations on how the Bank can facilitate greater support by U.S. commercial banks for trade with Sub-Saharan Africa.

Time and Place: April 21, 2010, at 9:30 a.m. to 12:30 p.m. The meeting will be held at the Export-Import Bank in Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

Agenda: Presentation on recent developments in Sub-Saharan Africa markets by Export-Import Bank staff; an update on the Bank's on-going business development initiatives in the region; and Committee discussion of current challenges and opportunities for U.S. exporters.

Public Participation: The meeting will be open to public participation, and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to April 21, 2010, Richard Thelen, 811 Vermont Avenue, NW., Washington, DC 20571, *Voice:* (202) 565–3515 or TDD (202) 565–3377.

FOR FURTHER INFORMATION CONTACT: For further information, contact Richard Thelen, 811 Vermont Avenue, NW., Washington, DC 20571, (202) 565–3515.

Jonathan Cordone,

Senior Vice President and General Counsel.

[FR Doc. 2010–7434 Filed 4–1–10; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 27, 2010.

A. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Veritex Holdings, Inc., Dallas, Texas; to become a bank holding company by acquiring 100 percent of Professional Capital, Inc., Dallas, Texas, and indirectly acquire Professional Bank, N.A., Dallas, Texas.

B. Federal Reserve Bank of San Francisco (Kenneth Binning, Vice President, Applications and Enforcement) 101 Market Street, San Francisco, California 94105-1579:

1. SKBHC Holdings, LLC, Corona del Mar, California; to become a bank holding company by acquiring 100 percent of Starbuck Bancshares, Inc. and thereby indirectly acquire The First National Bank of Starbuck, both of Starbuck, Minnesota.

Board of Governors of the Federal Reserve System, March 30, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–7443 Filed 4–1–10; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL MARITIME COMMISSION

[Docket No. 10–02]

BDP International, Inc. v. United Transport Tankcontainers, Inc.; Notice of Filing of Complaint and Assignment

Notice is given that a complaint has been filed with the Federal Maritime Commission ("Commission") by BPD International, Inc. ("BPD"), hereinafter "Complainant," against United Transport Tankcontainers, Inc. ("United"), hereinafter "Respondent." Complainant asserts that it is a corporation organized and existing pursuant to the laws of Pennsylvania and an FMC licensed freight forwarder. Complainant asserts that Respondent is a corporation organized and existing pursuant to the laws of Delaware and is a licensed and bonded non-vessel-operating common carrier.

Complainant asserts that by failing to pay freight forwarder compensation to Complainant pursuant to Respondent's published tariff, Respondent violated Section 10(b)(2)(a) of the Shipping Act of 1984, 46 U.S.C. 41104(2), which prohibits provision of service that is not in accordance with the rates, charges, classifications, rules, and practices contained in a tariff. Complainant asserts that as a direct consequence of Respondent's unlawful conduct, Complainant has suffered damages in the amount of $143,765.63. Complainant requests that the Commission compel Respondent to answer the charges made by Complainant; that the Commission hold that Respondent's actions were in

violation of the Act; that the Commission award reparations to Complainant of $143,765.63, in addition to interest, costs and attorney's fees; and order any such other and further relief as the Commission deems just and proper.

This proceeding has been assigned to the Office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR. 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record.

Pursuant to the further terms of 46 CFR. 502.61, the initial decision of the presiding officer in this proceeding shall be issued by March 28, 2011 and the final decision of the Commission shall be issued by July 26, 2011.

Karen V. Gregory,

Secretary.

[FR Doc. 2010–7274 Filed 4–1–10; 8:45 am]

BILLING CODE P

OFFICE OF GOVERNMENT ETHICS

Agency Information Collection Activities; Submission for OMB Review; Proposed Collection; Comment Request for an Unmodified OGE Form 450 Executive Branch Confidential Financial Disclosure Report

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice of request for agency and public comments.

SUMMARY: After publication of this second round notice, OGE intends to submit an unmodified OGE Form 450 Executive Branch Confidential Financial Disclosure Report to the Office of Management and Budget (OMB) for review and approval of a three-year extension under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

DATES: Written comments by the public and the agencies on this proposed extension are invited and must be received by May 3, 2010.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Sharon Mar, OMB Desk Officer for the Office of Government Ethics, by either of the following methods within 30 days from the date of publication in this **Federal Register**.

Fax: 202–395–6974, Attn: Ms. Sharon Mar, OMB Desk Officer for the Office of Government Ethics;

E-mail: smar@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: Paul Ledvina at the Office of Government Ethics; telephone: 202–482–9247; TTY: 800–877–8339; FAX: 202–482–9237; E-mail: *paul.ledvina@oge.gov.* An electronic copy of the OGE Form 450 is available in the Forms Library section of OGE's Web site at *http://www.usoge.gov.* A paper copy may also be obtained, without charge, by contacting Mr. Ledvina.

SUPPLEMENTARY INFORMATION:

Title: Executive Branch Confidential Financial Disclosure Report.

Agency Form Number: OGE Form 450.

OMB Control Number: 3209–0006.

Type of Information Collection: Extension without change of a currently approved collection.

Type of Review Request: Regular.

Respondents: Private citizens who are potential (incoming) regular Federal employees whose positions are designated for confidential disclosure filing, and special Government employees whose agencies require that they file new entrant disclosure reports prior to assuming Government responsibilities.

Estimated Annual Number of Respondents: 20,174.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden: 20,174 hours.

Abstract: The OGE Form 450 collects information from covered department and agency employees as required under OGE's executive branchwide regulatory provisions in subpart I of 5 CFR part 2634. The basis for the OGE reporting regulation is section 201 (d) of Executive Order 12674 of April 12, 1989 (as modified by Executive Order 12731 of October 17, 1990, 3 CFR, 1990 Comp., pp. 306–311, at p. 308) and section 107(a) of the Ethics Act, 5 U.S.C. app., sec. 107(a).

Request for Comments: OGE published a first round notice of its intent to request paperwork clearance for the proposed unmodified OGE Form 450 Executive Branch Confidential Financial Disclosure Report on January 25, 2010 (*see* 75 FR 3905). OGE received no responses to that notice. Agency and public comment is again invited specifically on the need for and practical utility of this information collection, the accuracy of OGE's burden estimate, the enhancement of quality, utility and clarity of the information collected, and the minimization of burden (including the use of information technology). Comments received in response to this notice will be summarized for, and may be included with, the OGE request for extension of OMB paperwork approval. The comments will also become a matter of public record.

Approved: March 29, 2010.

Robert I. Cusick,

Director, Office of Government Ethics.

[FR Doc. 2010–7471 Filed 4–1–10; 8:45 am]

BILLING CODE 6345–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0001]

Agency Information Collection Request, 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed

to the OS Paperwork Clearance Officer at the above e-mail address within 60 days.

Proposed Project: Application for Waiver of the 2-Year Foreign Residence Requirement of the Exchange Visitor Waiver Program, OMB No. 0990–0001—Extension, Office of the Secretary, Office of Global Health Affairs.

Abstract: The Office of Global Health Affairs is requesting an extension on a previous approved collection OMB #0990–0001—Application for Waiver of the 2-Year Foreign Residence Requirement of the Exchange Visitor Waiver Program. This form and supplementary information sheets is used by this Department to make a determination, in accordance with its published regulations, as to whether or not to request from the Department of State, a waiver of the two-year foreign residence requirement for applicants in the United States on a J–1 visa. The type of respondent is voluntary; the affected public is business for profit, not-for profit institutions, Federal Government, State, Local or Tribal Government

ESTIMATED ANNUALIZED BURDEN TABLE

Forms	Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
HHS–426	Research Applications	150	1	10	1500
HHS–426	Clinical Care Research	50	1	10	500
Total					2000

Seleda Perryman,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2010–7445 Filed 4–1–10; 8:45 am]

BILLING CODE 4150–38–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Determination and Declarations Regarding Emergency Use of Certain In vitro Diagnostic, Antiviral, and Personal Respiratory Products Accompanied by Emergency Use Information

AGENCY: Office of the Secretary (OS), HHS.

ACTION: Notice.

SUMMARY: The Secretary of Health and Human Services (HHS) is issuing this notice pursuant to section 564(b) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 360bbb–3(b)(4). On April 26, 2009, the then Acting Secretary of HHS determined that a public health emergency exists nationwide involving Swine Influenza A (now known as 2009 H1N1 Influenza A, or 2009 H1N1 Influenza) that affects or has significant potential to affect national security. On the basis of this determination, on April 26 and April 27, 2009, the then Acting Secretary declared emergencies justifying the authorization of emergency use of certain in vitro diagnostic, antiviral, and personal respiratory protection products accompanied by emergency use information subject to the terms of any authorization issued by the Commissioner of Food and Drugs (Commissioner) under 21 U.S.C. 360bbb–3(a). The then Acting Secretary also specified that these declarations are declarations of emergency as defined by former Secretary Michael O. Leavitt in the October 10, 2008 Declaration under the Public Readiness and Emergency Preparedness (PREP) Act for Influenza Antivirals Oseltamivir Phosphate and Zanamavir, as amended, and the December 17, 2008 Declaration under the PREP Act for Pandemic Influenza Diagnostics, Personal Respiratory Protection Devices, and Respiratory Support Devices. The Secretary renewed the then Acting Secretary's determination that a public health emergency exists nationwide involving Swine Influenza A (now known as 2009 H1N1 Influenza) on July 24, October 1, and December 28, 2009, and March 26, 2010. Also on March 26, 2010, the Secretary renewed the then Acting Secretary's declarations of emergency justifying the authorization of emergency use of certain in vitro diagnostic, antiviral, and personal respiratory protection products accompanied by emergency use information subject to the terms of any authorization issued by the Commissioner of Food and Drugs (Commissioner) under 21 U.S.C. 360bbb–3(a).

DATES: The declaration of an emergency justifying the authorization of emergency use of certain in vitro diagnostic products is renewed effective March 26, 2010. The declaration of an emergency justifying the authorization of certain antiviral products is renewed effective March 26, 2010. The declaration of an emergency justifying the authorization of emergency use of certain respiratory protection products is renewed effective March 26, 2010.

FOR FURTHER INFORMATION CONTACT: Nicole Lurie, M.D., MSPH, Assistant Secretary for Preparedness and Response, Office of the Secretary, Department of Health and Human Services, 200 Independence Avenue, SW., Washington, DC 20201, Telephone (202) 205–2882 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

I. Background

Under Section 564 of the FFDCA, the Commissioner, acting under delegated authority from the Secretary of HHS, may issue an Emergency Use Authorization (EUA) authorizing the emergency use of an unapproved drug, an unapproved or uncleared device, or an unlicensed biological product, or an unapproved use of an approved drug, approved or cleared device, or licensed biological product. Before an EUA may be issued, the Secretary of HHS must declare an emergency justifying the authorization based on one of three determinations: A determination of a domestic emergency, or a significant potential for a domestic emergency, by the Secretary of Homeland Security; a determination of a military emergency, or a significant potential for a military emergency, by the Secretary of Defense; or a determination of a public health emergency by the Secretary of HHS. *See* 21 U.S.C. 360bbb–3(b)(1). In the case of a determination by the Secretary of HHS (as was made here), the Secretary must determine that a public health emergency exists under section 319 of the Public Health Service (PHS) Act that affects, or has a significant potential to affect, national security, and that involves a specified biological, chemical, radiological, or nuclear agent or agents, or a specified disease or

condition that may be attributable to such agent or agents. Based on such a determination, the Secretary of HHS may then declare an emergency that justifies the EUA, at which point the Commissioner may issue an EUA if the criteria for issuance of an authorization under section 564 of the FFDCA are met.

The Centers for Disease Control and Prevention (CDC), HHS, requested that the Food and Drug Administration (FDA) issue EUAs for certain in vitro diagnostic, antiviral, and personal respiratory protection products accompanied by emergency use information. The determination of a public health emergency by the then Acting Secretary and declarations of an emergency by the then Acting Secretary based on that determination, published at 74 FR 38628 (August 4, 2009), enabled the then Acting Commissioner to issue EUAs for certain in vitro diagnostic, antiviral, and personal respiratory protection products, published at 74 FR 38636 (August 4, 2009), 71 FR 38641 (August 4, 2009) and 71 FR 38645 (August 4, 2009). The CDC has requested that the FDA continue these EUAs to support continued surveillance of 2009 H1N1 influenza through use of certain in vitro diagnostic products. Continuation of the EUAs is also important to support continued availability and disposition of certain antiviral products to treat individuals who are ill following exposure to 2009 H1N1 influenza and to support continued availability and disposition of certain personal respiratory products to help reduce wearer exposure to airborne viruses during the 2009 H1N1 influenza emergency. The renewed determination of a public health emergency by the Secretary of HHS and the renewed declarations of an emergency by the Secretary of HHS based on that determination justify the authorization of the emergency use of the above products.

In this public health emergency involving 2009 H1N1 influenza, time continues to be of the essence in detecting, preventing, and treating illness and death by getting in vitro diagnostic, antiviral, and personal respiratory protection products, accompanied by emergency use information, to the general public, laboratories, and public health and health care professionals. By continuing to distribute certain in vitro diagnostic products accompanied by emergency use information, public health and health care professionals can ensure that any continued spread of the 2009 H1N1 influenza is quickly and accurately detected. By dispensing certain personal respiratory products accompanied by emergency use information, the appropriate State and/or public health authority(ies) can ensure that the products are provided quickly, as appropriate, to help reduce wearer exposure to airborne germs. By dispensing certain antiviral products accompanied by emergency use information, public health and medical professionals and the authorities having jurisdiction to respond to the emergency in each locality can ensure that the products are provided quickly, as appropriate, to treat those who may have been exposed or are ill.

This is one part of the Federal Government's strategy to encourage continued preparedness at all levels of government to enable the nation to respond effectively in response to this public health emergency.

II. Determination of the Secretary of Health and Human Services

On March 26, 2010, the Secretary renewed the April 26, 2009 determination by then Acting Secretary Charles E. Johnson that a public health emergency exists nationwide involving Swine Influenza A (now called 2009 H1N1 Influenza) that affects or has significant potential to affect national security. The Secretary renewed the Acting Secretary's determination, after consultation with public health officials as necessary and pursuant to authority under section 319 of the Public Health Service Act 42 U.S.C. 247d, because the 2009 H1N1 Influenza outbreak remains a worldwide public health threat. The Secretary previously renewed the Acting Secretary's determination on July 24, 2009, October 1, 2009, and December 28, 2009.

III. Declarations of the Secretary of Health and Human Services

On March 26, 2010, the Secretary renewed the April 26, 2009 declaration by then Acting Secretary Charles E. Johnson of an emergency justifying the authorization of the emergency use of certain in vitro diagnostics for detection of Swine Influenza A (now called 2009 H1N1 Influenza) accompanied by emergency use information subject to the terms of any authorization issued under 21 U.S.C. 360bbb–3(a). This renewal was made on the basis of the April 26, 2009 determination by then Acting Secretary Charles E. Johnson, pursuant to section 319 of the Public Health Service Act, 42 U.S.C. 247d, that a public health emergency exists nationwide involving Swine Influenza A (now called 2009 H1N1 Influenza) that affects or has significant potential to affect national security, a determination which was renewed on July 24, 2009, October 1, 2009, December 28, 2009 and March 26, 2010 because 2009 H1N1 flu outbreak remains a public health threat and the Department should use all available tools to ensure that the nation is prepared. The renewal of this April 26, 2009 declaration was made pursuant to section 564(b) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 360bbb–3(b). In renewing the declaration, the Secretary further specified that the declaration is a declaration of emergency, as defined in the December 17, 2008 Declaration under the Public Readiness and Emergency Preparedness Act for Influenza Diagnostics, Personal Respiratory Protection Devices, and Respiratory Support Devices, 73 FR 78362 (December 22, 2008).

Also on March 26, 2010, the Secretary renewed the April 26, 2010 declaration by then Acting Secretary Charles E. Johnson of an emergency justifying the authorization of the emergency use of certain products from the neuraminidase class of Antivirals Oseltamivir Phosphate and Zanamivir accompanied by emergency use information subject to the terms of any authorization issued under 21 U.S.C. 360bbb–3(a). This renewal was made on the basis of the April 26, 2009 determination by then Acting Secretary Charles E. Johnson, pursuant to section 319 of the Public Health Service Act, 42 U.S.C. 247d, that a public health emergency exists nationwide involving Swine Influenza A (now called 2009 H1N1 Influenza) that affects or has significant potential to affect national security, a determination which was renewed on July 24, 2009, October 1, 2009, December 28, 2009, and March 26, 2010 because 2009 H1N1 flu outbreak remains a public health threat and the Department should use all available tools to ensure the nation is prepared. The renewal of this April 26, 2009 declaration was made pursuant to section 564(b) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 360bbb–3(b). In renewing the declaration, the Secretary further specified that the declaration is a declaration of emergency, as defined in the October 10, 2008 Declaration under the Public Readiness and Emergency Preparedness Act for Influenza Antivirals Oseltamivir Phosphate and Zanamivir, 73 FR 61861 (October 17, 2008), as amended at 74 FR 2913 (April 26, 2009).

Also on March 26, 2010, the Secretary renewed the April 27, 2009 declaration by then Acting Secretary Charles E. Johnson of an emergency justifying the authorization of the emergency use of

certain personal respiratory protection devices, accompanied by emergency use information subject to the terms of any authorization issued under 21 U.S.C 360bbb–3(a). This renewal was made on the basis of the April 26, 2009 determination by then Acting Secretary Charles E. Johnson, pursuant to section 319 of the Public Health Service Act, 42 U.S.C. 247d, that a public health emergency exists nationwide involving Swine Influenza A (now called 2009 H1N1 Influenza) that affects or has significant potential to affect national security, a determination which was renewed on July 24, 2009, October 1, 2009, December 28, 2009 and March 26, 2010 because 2009 H1N1 flu outbreak remains a public health threat and the Department should use all available tools to ensure that the nation is prepared. The renewal of this April 27, 2009 declaration was made pursuant to section 564(b) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 360bbb–3(b). In renewing this declaration, the Secretary further specified that the declaration is a declaration of emergency, as defined in the December 17, 2008 Declaration under the Public Readiness and Emergency Preparedness Act for Influenza Diagnostics, Personal Respiratory Protection Devices, and Respiratory Support Devices, 73 FR 78362 (December 22, 2008).

Dated: March 26, 2010.

Kathleen Sebelius,

Secretary.

[FR Doc. 2010–7529 Filed 4–1–10; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Multiplier Surveys—NEW

While all SAMHSA programming is intended to support the SAMHSA vision of a life in the community for everyone, and its strategic goals of accountability, capacity, and effectiveness, there has been little systematic investigation of the long-range impact of different categories of discretionary programs. The Multiplier Surveys will inform SAMHSA policy and budget development by determining which types of investments are most appropriate for achieving different policy objectives, including sustainability of the program or its intended outcomes after Federal funding ends. It also seeks to determine which program types or factors are best at achieving certain objectives after the conclusion of Federal funding, such as capacity improvement, system change, sustainability and influence on other programs. Findings will be used to make recommendations to SAMHSA management to better inform policy and budget development and to determine which types of investments are most appropriate for achieving different policy objectives.

To achieve the goals of the Multiplier Surveys four programs have been chosen from each of SAMHSA's three Centers. Four Project Directors from each of the 12 programs (48 respondents in all), whose Federal funding ended no later than September 30, 2008 will be interviewed by telephone to determine how the project was sustained after Federal funding ended and what factors contributed to its sustainability.

In addition, all grantees from each of the 12 selected programs meeting inclusion criteria will be invited via e-mail to complete a short on-line survey about their project and how/if it was sustained after Federal funding ended. A 20 percent response rate or about 100 respondents to the on-line survey is expected.

The estimated response burden is as follows:

Information source	Number of respondents	Responses per respondent	Total responses	Hours per response	Total hours
Project Director	48	1	48	1.25	60
Web-based Survey	100	1	100	.75	75
Total	148		148		135

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 7–1044, One Choke Cherry Road, Rockville, MD 20857 and e-mail her a copy at *summer.king@samhsa.hhs.gov.* Written comments should be received within 60 days of this notice.

Dated: March 23, 2010.

Elaine Parry,

Director, Office of Program Services.

[FR Doc. 2010–7432 Filed 4–1–10; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10197]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Evaluation of the Medicare National Competitive Bidding Program for DME; *Use:* Data collection materials consisting of beneficiary surveys and interview/discussion group guides are necessary to conduct the congressionally mandated evaluation of the Medicare National Competitive Bidding Program. Section 303(d) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) requires a Report to Congress on the program, covering program savings, reductions in cost sharing, impacts on access to and quality of affected goods and services, and beneficiary satisfaction. This project's purpose is to provide information for this Report to Congress. Due to substantial legislative and regulatory delays in program implementation, the Report to Congress in 2011 will be released just as the program is being implemented, and before the evaluation is complete. This project will continue after the Report to Congress, to evaluate the impact of the program on beneficiaries, on Medicare costs, and on changes in the Medicare Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) market.

In response to public comments received on the 60-day notice that published on December 18, 2009 (74 FR 67227), we have made several revisions to this information collection request. Most notably, the revisions include but are not limited to revised burden calculations due to an increase in the number of respondents and the addition of another data collection wave. *Form Number:* CMS–10197 (OMB#: 0938–1015); *Frequency:* Occasionally; *Affected Public:* Individuals or households, Private Sector, Business or other for-profits, not-for-profit institutions, and Federal Government; *Number of Respondents:* 8,470; *Total Annual Responses:* 8,470; *Total Annual Hours:* 4,342. (For policy questions regarding this collection contact Ann Meadow at 410–786–6602. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on *May 3, 2010.*

OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–6974, E-mail: *OIRA_submission@omb.eop.gov.*

Dated: March 26, 2010.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2010–7469 Filed 4–1–10; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies Federal agencies of the laboratories currently certified to meet the standards of Subpart C of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908), on September 30, 1997 (62 FR 51118), and on April 13, 2004 (69 FR 19644).

A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://www.workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov.*

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh, Division of Workplace Programs, SAMHSA/CSAP, Room 2–1042, One Choke Cherry Road, Rockville, Maryland 20857; 240–276–2600 (voice), 240–276–2610 (fax).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. Subpart C of the Mandatory Guidelines, "Certification of

Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards that laboratories must meet in order to conduct drug and specimen validity tests on urine specimens for Federal agencies. To become certified, an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A laboratory must have its letter of certification from HHS/SAMHSA (*formerly:* HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Mandatory Guidelines dated April 13, 2004 (69 FR 19644), the following laboratories meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840/800–877–7016, (*Formerly:* Bayshore Clinical Laboratory);

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 585–429–2264; Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150;

Aegis Analytical Laboratories, 345 Hill Ave., Nashville, TN 37210, 615–255–2400, (*Formerly:* Aegis Sciences Corporation, Aegis Analytical Laboratories, Inc.);

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823, (*Formerly:* Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.);

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130, (*Formerly:* Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.);

Baptist Medical Center-Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783, (*Formerly:* Forensic Toxicology Laboratory Baptist Medical Center);

Clinical Reference Lab, 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917;

Doctors Laboratory, Inc., 2906 Julia Drive, Valdosta, GA 31602, 229–671–2281;

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, 215–674–9310;

DynaLIFE Dx,* 10150–102 St., Suite 200, Edmonton, Alberta, Canada T5J 5E2, 780–451–3702/800–661–9876, (*Formerly:* Dynacare Kasper Medical Laboratories);

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609;

Gamma-Dynacare Medical Laboratories,* A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630;

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387;

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986, (*Formerly:* Roche Biomedical Laboratories, Inc.);

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984, (*Formerly:* LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group);

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339, (*Formerly:* LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center);

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845, (*Formerly:* Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.,);

Maxxam Analytics,* 6740 Campobello Road, Mississauga, ON, Canada L5N 2L8, 905–817–5700, (*Formerly:* Maxxam Analytics Inc., NOVAMANN (Ontario), Inc.);

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244;

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295;

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088;

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515;

One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504, 888–747–3774, (*Formerly:* University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory);

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942, (*Formerly:* Centinela Hospital Airport Toxicology Laboratory);

Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/800–541–7891x7;

Phamatech, Inc., 10151 Barnes Canyon Road, San Diego, CA 92121, 858–643–5555;

Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590/800–729–6432, (*Formerly:* SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories);

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216, (*Formerly:* SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories);

Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405, 866–370–6699/818–989–2521, (*Formerly:* SmithKline Beecham Clinical Laboratories);

S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300/800–999–5227;

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 574–234–4176 x1276;

Southwest Laboratories, 4625 E. Cotton Center Boulevard, Suite 177, Phoenix, AZ 85040, 602–438–8507/800–279–0027;

St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052;

STERLING Reference Laboratories, 2617 East L Street, Tacoma, Washington 98421, 800–442–0438;

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 573–882–1273;

Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260;

U.S. Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085.

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of

Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on April 13, 2004 (69 FR 19644). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

March 24, 2010.

Elaine Parry,

Director, Office of Program Services, SAMHSA.

[FR Doc. 2010–7170 Filed 4–1–10; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; OBT Member Conflict—Cancer Biology.

Date: April 21, 2010.

Time: 10:30 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Angela Y. Ng, MBA, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6200, MSC 7804 (For courier delivery, use MD 20817), Bethesda, MD 20892, 301–435–1715, *nga@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Addiction, Learning and Stress.

Date: May 4–5, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Brian Hoshaw, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5181, MSC 7844, Bethesda, MD 20892, 301–435–1033, *hoshawb@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 29, 2010.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–7510 Filed 4–1–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Mechanism for Time-Sensitive Drug Abuse Research.

Date: April 8, 2010.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Meenaxi Hiremath, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6101 Executive Blvd., Suite 220, MSC 8401, Bethesda, MD 20892, 301–402–7964, *mh392g@nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: March 29, 2010.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–7509 Filed 4–1–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of per personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; N44DA–10–5541: The Computerized Screening of Dual Diagnosed Adolescents.

Date: April 9, 2010.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Minna Liang, PhD, Scientific Review Officer, Training and Special Projects Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, 6101 Executive Blvd., Room 220, MSC 8401, Bethesda, MD 20852, 301–435–1432, *liangm@nida.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: March 24, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–7076 Filed 4–1–10; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel; Loan Repayment.

Date: April 29, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Carol Lambert, PhD, Scientific Review Officer, Office of Review, NCRR, National Institutes of Health, 6701 Democracy Blvd., One Democracy Plaza, Room 1076, MSC 4874, Bethesda, MD 20892–4874, 301–435–0814, *lambert@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure; 93.306, 93.333; 93.702, ARRA Related Construction Awards, National Institutes of Health, HHS)

Dated: March 29, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–7562 Filed 4–1–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, NCI SPORE in Skin and Prostate Cancers.

Date: June 15–16, 2010.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Caron A Lyman, PhD, Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd, Room 8119, Bethesda, MD 20892–8328, 301–451–4761, *lymanc@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 26, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–7561 Filed 4–1–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, External Quality Assurance Program.

Date: April 20, 2010.

Time: 11 a.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6700A Rockledge Drive, Room 105, Bethesda, MD 20817. (Telephone Conference Call)

Contact Person: Eric Lorenzo, PhD, Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, Room 3134, 6700B Rockledge Drive, MSC–7616, Bethesda, MD 20892–7616, 301–496–2550, *lorenzoe@niaid.nih.gov*.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Loan Repayment Program.

Date: April 29–30, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Room 3245, Bethesda, MD 20817. (Telephone Conference Call)

Contact Person: Edward W. Schroder, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301–435–8537, *eschroder@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 29, 2010.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–7556 Filed 4–1–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2010–N–0001]

2010 Scientific Meeting of the National Antimicrobial Resistance Monitoring System; Public Meeting; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

The Food and Drug Administration (FDA) is announcing a public meeting entitled "2010 Scientific Meeting of the National Antimicrobial Resistance Monitoring System." The topic to be discussed is the results from the National Antimicrobial Resistance Monitoring System (NARMS) and related antimicrobial resistance monitoring and research, including activities in other national programs.

Date and Time: The public meeting will be held on July 15 and 16, 2010, from 8 a.m. to 5 p.m.

Location: The public meeting will be held at Hyatt Regency-Atlanta hotel, 265 Peachtree St. NE, Atlanta, GA 30303, 404–577–1234, FAX: 404–588–4137.

Contact Person: Joanne Kla, Center for Veterinary Medicine (HFV–12), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20857, 240–276–9129, e-mail: *NARMSinternational Meeting@fda.hhs.gov*, FAX: 240–276–9115.

Registration and Requests for Oral Presentations: Send registration information (including name, title, firm name, address, telephone and fax number, and e-mail address), and written material and requests to make oral presentations, to the contact person (see *Contact Person*) on or before July 7, 2010. There is no registration fee for the public meeting. Early registration is recommended because seating is limited. Registration on the day of the public meeting will be provided on a space available basis beginning at 8 a.m. on the day of the meeting.

If you need special accommodations due to a disability, please contact the Hyatt Regency-Atlanta hotel, (see *Location*) at least 7 days in advance.

Interested persons may present data, information, or views, orally or in writing, on the topic of the discussion of the meeting. Written submissions may be made to the contact person on or before July 1, 2010, for distribution at the meeting. Oral presentations from the public during the open public comment period will be scheduled between approximately 4 p.m. and 5 p.m. on July 16, 2010. Those desiring to make oral presentations should notify the contact person by July 1, 2010, and submit a brief statement of the general nature of information they wish to present and an indication of the approximate time requested to make their presentation. Time allotted for each presentation may be limited. The contact person will inform each speaker of their schedule prior to the meeting.

Comments: Regardless of attendance at the public meeting, interested persons may submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified 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. The docket will remain open for written or electronic comments for 30 days following the meeting.

Agenda: The meeting will address goals and challenges of monitoring antimicrobial susceptibility in foodborne bacteria, and present research on the microbiology and epidemiology of resistance. The agenda for the public meeting will be made available on the agency's Web site at *http://www.fda.gov/AnimalVeterinary/SafetyHealth/AntimicrobialResistance/NationalAntimicrobialResistance MonitoringSystem/ucm059135.htm*.

Transcripts: FDA will prepare a meeting transcript and make it available on the agency's Web site (see *Agenda*) after the meeting. FDA anticipates that transcripts will be available approximately 30 business days after the meeting. The transcript will be available for public examination at the Division of Dockets Management (HFA–305), 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday. A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to Division of Freedom of Information (HFI–35), Office of Management Programs, Food and Drug Administration, 5600 Fishers Lane, rm. 6–30, Rockville, MD 20857.

Dated: March 30, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–7496 Filed 4–1–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Meeting for Software Developers on the Technical Specifications for Common Formats for Patient Safety Data Collection and Event Reporting

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a meeting to discuss the technical specifications for AHRQ's common definitions and reporting formats (Common Formats) Version 1.1 that allow for reporting of patient safety information to Patient Safety Organizations (PSOs). The Patient Safety and Quality Improvement Act of 2005, 42 U.S.C. 299b–21 to b–26, (Patient Safety Act) provides for the formation of PSOs, which collect, aggregate, and analyze confidential information regarding the quality and safety of healthcare delivery. The Patient Safety Act (at 42 U.S.C. 299b–23) authorizes the collection of this information in a standardized manner, as explained in the related Patient Safety and Quality Improvement Final Rule, 42 CFR part 3 (Patient Safety Rule), published in the **Federal Register** on November 21, 2008: 73 FR 70731–70814. As authorized by the Secretary of HHS, AHRQ coordinates the development of the Common Formats that allow healthcare providers to voluntarily collect and submit standardized information regarding patient safety events. More information on the Common Formats Version 1.1, including the technical specifications, can be obtained through AHRQ's PSO Web site: *http://www.PSO.AHRQ.gov/index.html.*

Technical specifications promote standardization by ensuring that data collected by PSOs and other entities are clinically and electronically comparable. This meeting is designed as an interactive forum where PSOs and software developers can provide input on these technical specifications for the Common Formats Version 1.1. AHRQ especially requests input from those entities which have implemented, or

plan to implement, the formats electronically.

DATES: The meeting will be held from 10 a.m. to 5 p.m. on May 5, 2010.

ADDRESSES: The meeting will be held at the Hyatt Regency Baltimore, 300 Light Street, Baltimore, Maryland 21202.

FOR FURTHER INFORMATION CONTACT: Susan Grinder, Center for Quality Improvement and Patient Safety, AHRQ, 540 Gaither Road, Rockville, MD 20850; Telephone (toll free): (866) 403–3697; Telephone (local): (301) 427–1111; TTY (toll free): (866) 438–7231; TTY (local): (301) 427–1130; E-mail: *PSO@AHRQ.hhs.gov.*

If sign language interpretation or other reasonable accommodation for a disability is needed, please contact the Food and Drug Administration (FDA) Office of Equal Employment Opportunity and Disability Management on (301) 827–4840, no later than April 21, 2010.

SUPPLEMENTARY INFORMATION:

Background

The Patient Safety Act and Patient Safety Rule establish a framework by which doctors, hospitals, and other healthcare providers may voluntarily report information regarding patient safety events and quality of care. AHRQ develops and maintains the Common Formats to improve the safety and quality of healthcare delivery. AHRQ's Common Formats Version 1.1 includes:

○ Descriptions of patient safety events and unsafe conditions to be reported (event descriptions),

○ Specifications for patient safety aggregate reports and individual event summaries,

○ Delineation of data elements to be collected for specific types of events,

○ A user's guide and quick guide, and

○ Technical specifications for electronic data collection and reporting.

This meeting will focus on presentation and discussion of these new technical specifications, which provide direction to software developers that plan to implement the Common Formats electronically. The technical specifications are a critical component that will allow for the aggregation of patient safety event data by standardizing the patient safety event information collected and specifying standard rules for data collection, as well as providing guidance for how and when to create data elements, their valid values, and conditional and go-to logic for the data elements. In addition to standardizing the information collected, they specify the data submission file format.

The technical specifications consist of the following:

○ Data dictionary—defines data elements and their attributes (data element name, answer values, field length, guide for use, etc.) included in Common Formats Version 1.1;

○ Clinical document architecture (CDA) implementation guide—provides instructions for developing a Health Level Seven (HL7) CDA Extensible Markup Language (XML) file to transmit the Common Formats Patient Safety data from the PSO to the PPC using the Common Formats;

○ Validation rules and errors document-specifies and defines the validation rules that will be applied to the Common Formats data elements submitted to the PPC;

○ Common Formats flow charts—diagrams the valid paths to complete generic and event specific formats (a complete event report);

○ Local specifications—provides specifications for processing, linking and reporting on events and details specifications for reports; and

○ Metadata registry—includes descriptive facts about information contained in the data dictionary to illustrate how such data corresponds with similar data elements used by other Federal agencies and standards development organizations [e.g., HL–7, International Standards Organization (ISO)].

Agenda, Registration and Other Information About the Meeting

On Wednesday, May 5, 2010, the meeting will convene at 10 a.m. with an overview of the Common Formats Version 1.1, including the technical specifications. Next, AHRQ staff and contractors who developed the formats will review the different components of the technical specifications. Throughout the meeting there will be interactive discussion to allow meeting participants not only to provide input, but also to respond to the input provided by others. A more specific proposed agenda will be posted before the meeting at *https://www.psoppc.org/web/patientsafety.*

AHRQ requests that interested persons register with the PSO Privacy Protection Center (PSO PPC) on the Internet at *https://www.psoppc.org/web/patientsafety* to participate in the meeting. The contact at the PSO PPC is Lauren Richie who can be reached by telephone at (630) 792–5977 and by e-mail at *support@psoppc.org.* Additional logistical information for the meeting is also available from the PSO PPC. The meeting space will accommodate approximately 130 participants. Interested persons are encouraged to register as soon as possible for the meeting. Non-registered individuals will be able to attend the meeting in person if space is available.

We invite review of the technical specifications for Common Formats Version 1.1 prior to the meeting. The formats can be accessed through AHRQ's PSO Web site at *http://www.pso.AHRQ.gov/formats/commonfmt.htm.* AHRQ is committed to continuing refinement of the Common Formats. AHRQ welcomes questions from prospective meeting participants and interested individuals on the technical specifications for Common Formats Version 1.1. These questions should be e-mailed to *support@psoppc.org* no later than April 28, 2010. AHRQ will use the input received at this meeting as we continue to update and refine the Common Formats.

A summary of the meeting will be provided to all meeting participants. If you are unable to participate in the meeting and would like a copy of the summary, please send an e-mail to *support@psoppc.org* and it will be sent as soon as it is available after the meeting.

Dated: March 24, 2010.

Carolyn M. Clancy,

Director.

[FR Doc. 2010–7049 Filed 4–1–10; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel; NEI Training Grants.

Date: April 21–22, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Eye Institute, 5635 Fishers Lane, Suite 1300, Bethesda, MD 20892. (Virtual Meeting)

Contact Person: Daniel R. Kenshalo, PhD, Scientific Review Officer, National Eye Institute, National Institutes of Health, 5635 Fishers Lane, Suite 1300, MSC 9300, Bethesda, MD 20892, 301–451–2020, *kenshalod@nei.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93867, Vision Research, National Institutes of Health, HHS)

Dated: March 26, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–7435 Filed 4–1–10; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3310–EM; Docket ID FEMA–2010–0002]

Minnesota; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Minnesota (FEMA–3310–EM), dated March 19, 2010, and related determinations.

DATES: *Effective Date:* March 19, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 19, 2010, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of Minnesota resulting from flooding beginning on March 1, 2010, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* ("the Stafford Act"). Therefore, I declare that such an emergency exists in the State of Minnesota.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program. This assistance excludes regular time costs for subgrantees' regular employees.

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Lawrence Sommers, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of Minnesota have been designated as adversely affected by this declared emergency:

The counties of Big Stone, Blue Earth, Brown, Carver, Chippewa, Clay, Dakota, Goodhue, Hennepin, Kittson, Lac Qui Parle, Le Sueur, Lyon, Marshall, Nicollet, Norman, Polk, Ramsey, Redwood, Renville, Scott, Sibley, Swift, Traverse, Washington, Wilkin, Wright, and Yellow Medicine and the Tribal Nation of the Upper Sioux Community for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–7450 Filed 4–1–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5383–N–06]

Notice of Proposed Information Collection for Public Comment Civil Rights Front End and Limited Monitoring Review

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of proposed information collection.

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: *Comments Due Date:* June 1, 2010.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Leroy McKinney, Jr., Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Room 4178, Washington, DC 20410–5000; telephone 202–402–8048, (this is not a toll-free number) or e-mail Mr. McKinney at *Leroy.McKinneyJr@hud.gov* for a copy of the proposed forms, or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339. (Other than the HUD USER information line and TTY numbers, telephone numbers are not toll-free.)

FOR FURTHER INFORMATION CONTACT: Dacia Rogers, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street, SW., Room 4116, Washington, DC 20410; telephone 202–402–3374, (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed 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: Civil Rights Front End and Limited Monitoring Review.

OMB Control Number: 2577–0251.

Description of the Need for the Information and Proposed Use: In support of the HUD Office of Public and Indian Housing (PIH) and the Office of Fair Housing and Equal Opportunity (FHEO), the effort will address civil rights related program requirements. Civil rights Front-End Limited Monitoring reviews shall be conducted for twenty (20) Tier 1 PHAs. The purpose of the review is to alert PIH and FHEO of a PHA's Failure to comply with civil rights requirements that pertain to Low-Rent Public Housing Programs, The Housing Choice Voucher Program and Section 504 of the Rehabilitation Act of 1973 as amended.

Agency Form Numbers, if Applicable: HUD–52510–A; 52510–B.

Members of Affected Public: State, Local, or Tribal Government; Public Housing Agencies (PHAs).

Estimation of the Total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: 20 respondents; requiring annually of 20 responses; 40 total burden hours; average of 2 burden hours per respondent.

Status of the Proposed Information Collection: Extension of a currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: March 25, 2010.

Merrie Nichols-Dixon,

Acting Deputy Assistant Secretary for Policy, Programs, and Legislative Initiatives, PP.

[FR Doc. 2010–7484 Filed 4–1–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5376–N–22]

Delegated Processing for Certain 202 Supportive Housing for the Elderly Projects

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been 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.

Under the Delegated Processing Procedure, a Delegated Processing Agency (DPA) is vested with the processing authority provided by section 2835(b) of the Housing and Economic Recovery Act of 2008, Public Law 110–289. The DPA must act under this authority in accordance with applicable NOFA and program regulations, notices, handbooks, forms and other directives. These forms formally establish this relationship between HUD and the DPA.

DATES: *Comments Due Date:* May 3, 2010.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–New) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Leroy McKinney, Jr., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Leroy McKinney, Jr. at *Leroy.McKinneyJr@hud.gov* or telephone (202) 402–5564. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. McKinney.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting 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: Delegated Processing for certain 202 Supportive Housing for the Elderly projects.

OMB Approval Number: 2502–New.

Form Numbers: Schedule of Projects HUD–90000, Delegated Processing Agreement HUD–90001, and Delegated Processing Certifications HUD–90002.

Description of the Need for the Information and Its Proposed Use: Under the Delegated Processing Procedure, a Delegated Processing Agency (DPA) is vested with the processing authority provided by section 2835(b) of the Housing and Economic Recovery Act of 2008, Public Law 110–289. The DPA must act under this authority in accordance with applicable NOFA and program regulations, notices, handbooks, forms and other directives. These forms formally establish this relationship between HUD and the DPA.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	15	2.333		1.428		50

Total Estimated Burden Hours: 50.

Status: New Collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 25, 2010.

Leroy McKinney, Jr.,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2010–7487 Filed 4–1–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5376–N–23]

Insured Healthcare Facilities 232 Loan Application

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been 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.

Information provided is the application for HUD/FHA multifamily mortgage insurance. The information form sponsors and general contractors, and submitted by a HUD-approved mortgages, is needed to determine project feasibility, mortgagor/contractor acceptability, and construction cost. Documentation form operators/managers of health care facilities is also required as part of the application from firm commitment for mortgage insurance. Other information requested enables HUD to determine the suitability of improvements; extent, quality, and duration of earning capacity; the value of real estate proposed or existing as security for a long-term mortgages; and several other factors which have a bearing on the economic soundness of the subject property.

DATES: *Comments Due Date: May 3, 2010.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–New) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Leroy McKinney, Jr., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Leroy McKinney, Jr. at *Leroy.McKinneyJr@hud.gov* or telephone (202) 402–5564. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. McKinney.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting 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: Insured Healthcare Facilities 232 Loan Application.

OMB Approval Number: 2502–New.

Form Numbers: HUD–92013–NHICF, HUD–92264–HCF, HUD–92264–T.

Description of the Need for the Information and its Proposed Use: Information provided is the application for HUD/FHA multifamily mortgage insurance. The information form sponsors and general contractors, and submitted by a HUD-approved mortgages, is needed to determine project feasibility, mortgagor/contractor acceptability, and construction cost. Documentation form operators/managers of health care facilities is also required as part of the application from firm commitment for mortgage insurance. Other information requested enables HUD to determine the suitability of improvements; extent, quality, and duration of earning capacity; the value of real estate proposed or existing as security for a long-term mortgages; and several other factors which have a bearing on the economic soundness of the subject property.

Frequency of Submission: Annually, Required with each project application.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	300	1		178		53,410

Total Estimated Burden Hours: 53,410.

Status: New Collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 26, 2010.

Stephen A. Hill,

Director, Office of Investments Strategies, Policy Management.

[FR Doc. 2010–7483 Filed 4–1–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5376–N–21]

Housing Finance Agency Risk-Sharing Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been 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.

Section 542(c) of the Risk Sharing Program authorizes qualified Housing Finance Agencies (HFAs) to underwrite and process loans. HUD provides full mortgage insurance on affordable multifamily housing project processed by HFAs under this program. Qualified HFAs are vested with the maximum amount of processing responsibilities. By entering into Risk-Sharing Agreement with HUD, HFAs contract to

reimburse HUD for a portion of the loss from any defaults that occur while HUD insurance is in force.

DATES: *Comments Due Date: May 3, 2010.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0500) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Leroy McKinney, Jr., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Leroy McKinney, Jr. at *Leroy.McKinneyJr@hud.gov* or telephone (202) 402–5564. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. McKinney.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. 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: Housing Finance Agency Risk-Sharing Program.

OMB Approval Number: 2502–0500.

Form Numbers: HUD–2703B, HUD–92080, HUD–92426, HUD–94193, HUD–94196, HUD–2744–A, HUD–2744–B, HUD–2744–C, HUD–2744–D, HUD–2744–E, HUD–94194, HUD–94192, SF–LLL, HUD–7015.15, HUD–7015.16.

Description of the Need for the Information and its Proposed Use: Section 542(c) of the Risk Sharing Program authorizes qualified Housing Finance Agencies (HFAs) to underwrite and process loans. HUD provides full mortgage insurance on affordable multifamily housing project processed by HFAs under this program. Qualified HFAs are vested with the maximum amount of processing responsibilities. By entering into Risk-Sharing Agreement with HUD, HFAs contract to reimburse HUD for a portion of the loss from any defaults that occur while HUD insurance is in force.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	915	16.1836		1.9529		28,919

Total Estimated Burden Hours: 28,919.

Status: Revision, with change, of previously approved collection for which approval has expired.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 25, 2010.

Leroy McKinney, Jr.,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2010–7488 Filed 4–1–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5375–N–12]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7266, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Rita, Division of Property Management, Program Support Center, HHS, room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions

for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: COAST GUARD: Commandant, United States Coast Guard, Attn: Jennifer Stomber, 2100 Second St., SW., Stop 7901, Washington, DC 20593–0001; (202) 475–5609; GSA: Mr. Gordon Creed, Acting Deputy Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th & F Streets, NW., Washington, DC 20405; (202) 501–0084; INTERIOR: Mr. Michael Wright, Acquisition & Property Management, Department of the Interior, 1849 C Street, NW., Washington, DC 20240: (202) 208–5399; NAVY: Mr. Albert Johnson, Director of Real Estate, Department of the Navy, Naval Facilities Engineering Command, Washington Navy Yard, 1330 Patterson Ave., SW., Suite 1000, Washington, DC 20374; (202) 685–9305; (These are not toll-free numbers).

Dated: March 25, 2010.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

Title V, Federal Surplus Property Program

Federal Register Report for 04/02/2010

SUITABLE/AVAILABLE PROPERTIES

BUILDING

ALASKA

Dalton-Cache Border Station
Mile 42 Haines Highway
Haines AK 99827
Landholding Agency: GSA
Property Number: 54201010019
Status: Excess
GSA Number: 9–G–AK–0833
Directions: Bldgs. 1 and 2
Comments: 1,940 sq. ft., most recent use-residential, and off-site removal only

TENNESSEE

2 Bldgs.
National Military Park
Shiloh TN 38376
Landholding Agency: Interior
Property Number: 61201010015
Status: Unutilized
Directions: Tracts 01–173 and 01–180
Comments: 928 sq. ft and 2,000 sq. ft, most recent use-residential, and off-site removal

UNSUITABLE PROPERTIES

BUILDING

MARYLAND

7 Bldgs.
Naval Recreation Center
Solmons MD
Landholding Agency: Navy
Property Number: 77201010032
Status: Underutilized
Directions: 301, 303, 305, 307, 309, 411, 411A
Reasons: Secured Area

34 Bldgs.
Naval Recreation Center
Solomons MD
Landholding Agency: Navy
Property Number: 77201010033
Status: Underutilized
Directions: 217 thru 237, C2, C4, C5, C6, C8, C9, C10, C12, C13, C15, C17, C18, C19
Reasons: Secured Area

Bldgs. 370, 371, 381
Naval Recreation Center
Solomons MD
Landholding Agency: Navy
Property Number: 77201010034
Status: Underutilized
Reasons: Secured Area

5 Facilities
Naval Recreation Center
Solomons MD
Landholding Agency: Navy
Property Number: 77201010035
Status: Underutilized
Directions: 399, 400, 401, 402, 456
Reasons: Secured Area

Bldgs. 255, 423, 455/Site 1
Naval Recreation Center
Solomons MD
Landholding Agency: Navy
Property Number: 77201010036
Status: Underutilized
Reasons: Secured Area

5 Facilities
Naval Recreation Center
Solomons MD
Landholding Agency: Navy
Property Number: 77201010037
Status: Underutilized
Directions: 408, 404, 426, 452, 487
Reasons: Secured Area

12 Bldgs.
Naval Recreation Center
Solomons MD
Landholding Agency: Navy
Property Number: 77201010038
Status: Underutilized
Directions: 9, 14, 20, 418, 458, 459, 460, 35, 41, 261, 262, 82
Reasons: Secured Area

13 Bldgs.
Naval Recreation Center
Solomons MD
Landholding Agency: Navy
Property Number: 77201010039
Status: Underutilized
Directions: 99A, 99B, 126, 126A, 457, 135, 380, 147, 412, 453, 465, 466, 468
Reasons: Secured Area

14 Bldgs.
Naval Recreation Center
Solomons MD
Landholding Agency: Navy
Property Number: 77201010040
Status: Underutilized
Directions: 472, 486, 494, B2, B2A, 10, 463, 442, 11A, 26, 86, 132, 27, 85
Reasons: Secured Area

7 Bldgs.
Naval Recreation Center
Solomons MD
Landholding Agency: Navy
Property Number: 77201010041
Status: Underutilized
Directions: 103, 105, 105B, 10B, 103B, 116, 130
Reasons: Secured Area

14 Bldgs.
Naval Recreation Center
Solomons MD
Landholding Agency: Navy
Property Number: 77201010042
Status: Underutilized
Directions: 238, 240, 254, 313, 397, 403, 433, 443, 444, 471, 503, 445, 446, 454
Reasons: Secured Area

Bldgs. 462, 432, 464
Naval Recreation Center
Solomons MD
Landholding Agency: Navy
Property Number: 77201010043
Status: Underutilized
Reasons: Secured Area

5 Facilities
Naval Recreation Center
Solomons MD
Landholding Agency: Navy
Property Number: 77201010044
Status: Underutilized
Directions: 470, 469, 467, 405, 330
Reasons: Secured Area

4 Facilities/Site 2
Naval Recreation Center

Solomons MD
Landholding Agency: Navy
Property Number: 77201010045
Status: Underutilized
Directions: 392, 193, 386, 387
Reasons: Secured Area

Facility 451/Site 3
Naval Recreation Center
Solomons MD
Landholding Agency: Navy
Property Number: 77201010046
Status: Underutilized
Reasons: Secured Area

8 Facilities
Naval Recreation Center
Solomons MD
Landholding Agency: Navy
Property Number: 77201010047
Status: Underutilized
Directions: 369, 407, 473, 474, 311, 731P2, 361, 420
Reasons:Secured Area

3 Facilities/Site 4
Naval Recreation Center
Solomons MD
Landholding Agency: Navy
Property Number: 77201010048
Status: Underutilized
Directions: 243, 396, S379A
Reasons: Secured Area

5 Bldgs.
Naval Recreation Center
Solomons MD
Landholding Agency: Navy
Property Number: 77201010049
Status: Underutilized
Directions: B1, 376, 376A 385, 312
Reasons: Secured Area

9 Bldgs.
Naval Recreation Center
Solomons MD
Landholding Agency: Navy
Property Number: 77201010050
Status: Underutilized
Directions: 389, 390, 391, 373, 372, 377, 378, 388, 328
Reasons: Secured Area

Bldgs. & approx. 41.68 acres
Naval Air Station
Patuxent River MD
Landholding Agency: Navy
Property Number: 77201010051
Status: Underutilized
Directions: 416, 419, 433–438, 462, 1597, 1598, 1598B, 2494
Reasons: Secured Area

4 Bldg.
Coast Guard
Annapolis MD 21403
Landholding Agency: Coast Guard
Property Number: 88201010006
Status: Excess
Directions: Qtrs. A–OJ1 and Qtrs. B–OJ2 Qtrs. A–OV4 and Qtrs. B–OV5
Reasons: Secured Area

MINNESOTA

2 Bldgs.
Voyagers national Park
Crain Lake MN 55725
Landholding Agency: Interior
Property Number: 61201010013
Status: Unutilized
Directions: Tract 37101 and Tract 70–143
Reasons: Not accessible by road
Extensive deterioration

MISSISSIPPI

Tract 02–167
Natl Military Park
Vickburg MS 39180
Landholding Agency: Interior
Property Number: 61201010014
Status: Unutilized
Reasons: Extensive deterioration

TEXAS

2 Bldgs.
Amistad National Rec Area
Del Rio TX 78840
Landholding Agency: Interior
Property Number: 61201010016
Status: Unutilized
Directions: Bldg. Nos. 4 and 5
Reasons: Extensive deterioration

Bldgs. H–A thru H–J
Naval Air Station
Corpus Christi TX 78419
Landholding Agency: Navy
Property Number: 77201010052
Status: Unutilized
Reasons: Extensive deterioration

LAND

COLORADO

0.12 Acres
Highway 348
Olathe CO 81425
Landholding Agency: Interior
Property Number: 61201010012
Status: Unutilized
Reasons: Other—Legal Constraints

[FR Doc. 2010–7272 Filed 4–1–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5401–N–01]

Notice of Modifications to U.S. Commitments Under the World Trade Organization Government Procurement Agreement To Implement Agreement With Canada Regarding Section 1605 of the Recovery Act (Buy American Requirement) Applicable to Community Development Block Grant Recovery Funds

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

DATES: *Effective Date:* February 16, 2010 through September 30, 2011.

SUMMARY: The domestic purchasing requirement of section 1605(a) of the American Reinvestment and Recovery Act of 2009 (Recovery Act) will not be applied as a condition of Recovery Act financing in the Community Development Block Grants Recovery (CDBG–R) Program with respect to Canadian iron, steel, and manufactured products in procurement above $7,804,000 for construction services through September 30, 2011.

FOR FURTHER INFORMATION CONTACT: *For CDBG–R:* Stanley Gimont, Director, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7286, Washington, DC 20410, telephone number 202–708–3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at 800–877–8339. FAX inquiries may be sent to Mr. Gimont at 202–401–2044. Except for the "800" number, these telephone numbers are not toll-free.

SUPPLEMENTARY INFORMATION: The Recovery Act appropriated $980 million out of the $1 billion in CDBG–R funds to state and local governments to carry out eligible activities on an expedited basis. Section 1605(a) of the Recovery Act, the "Buy American" provision, states that for Recovery Act funds used for a project for the construction, alteration, maintenance, or repair of a public building or public work, all of the iron, steel, and manufactured goods used in the project must be produced in the United States. Interim final guidance (2 CFR Part 176) for implementing the Buy American provision was issued by the Office of Management and Budget (OMB) on April 23, 2009 at 74 **Federal Register** 18449, and applies to CDBG–R grants. HUD issued Buy American guidance in CPD Notice 2009–5, issued October 7, 2009, see *http://portal.hud.gov/portal/page/portal/HUD/program_offices/administration/hudclips/notices/cpd.* OMB is issuing Amendments of Interim Final Guidance to reflect changes with respect to U.S. international obligations.

Section 1605(d) of the Recovery Act provides that the Buy American requirement in section 1605 shall be applied in a manner consistent with U.S. obligations under international agreements. The OMB guidance provides that the Buy American requirement shall not be applied where the iron, steel, or manufactured goods used in the project are from a Party to an international agreement, listed in 2 CFR 176.90(b) and the recipient is required under an international agreement, described in the Appendix to subpart B of 2 CFR 176, to treat the goods and services of that Party the same as domestic goods and services. As of January 1, 2010, this obligation shall only apply to projects with an estimated value of $7,804,000 or more and projects that are not specifically excluded from the application of those agreements. Based on the recently concluded

Agreement between the Government of the United States of America and the Government of Canada on Government Procurement (Canada-U.S. Agreement), the Buy American requirement in section 1605(a) of the Recovery Act will not be applied as a condition of Recovery Act financing in the CDBG–R Program with respect to Canadian iron, steel, or manufactured goods in projects above $7,804,000. This is effective February 16, 2010 through September 30, 2011. This means that with respect to CDBG–R grantees, Canadian iron, steel, or manufactured goods in procurement above the $7,804,000 threshold for construction projects shall be treated the same as U.S. iron, steel, or manufactured goods for purposes of the Buy American requirement of section 1605 of the Recovery Act.

The United States is not undertaking any other commitments with respect to the CDBG–R grants, which means that the CDBG–R grantees can continue to apply their own procurement procedures that are consistent with HUD requirements. State and local governments receiving CDBG–R assistance must continue to follow all other requirements including obligation and expenditure requirements. In summary, if a CDBG–R grantee has a construction project involving a public work/building, and is using CDBG–R as a source of funding for this construction project, and the total construction project has an estimated value of more than $7,804,000, Canadian-sourced iron, steel and manufactured goods may be used and no additional HUD exception will be required.

Dated: March 29, 2010.

Mercedes M. Márquez,

Assistant Secretary for Community Planning and Development.

[FR Doc. 2010–7485 Filed 4–1–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5400–N–01]

Notice of Modifications to U.S. Commitments Under the World Trade Organization Government Procurement Agreement To Implement Agreement With Canada Regarding Section 1605 of the Recovery Act (Buy American Requirement) Applicable to Public Housing Capital Fund Recovery Formula and Competitive Grant Programs

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

DATES: *Effective Date:* February 16, 2010 through September 30, 2011.

SUMMARY: The domestic purchasing requirement of section 1605(a) of the American Reinvestment and Recovery Act of 2009 (Recovery Act) will not be applied as a condition of Recovery Act financing in Public Housing Capital Fund Recovery Formula and Competitive Grant Programs (Capital Fund Recovery Program) with respect to Canadian iron, steel, and manufactured products in procurement above $7,804,000 for construction services through September 30, 2011.

FOR FURTHER INFORMATION CONTACT: *For Public Housing Capital Fund Recovery Formula and Competitive Grants:* Dominique G. Blom, Deputy Assistant Secretary for Public Housing Investments, Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4210, Washington, DC 20410–4000, telephone 202–402–8500 (this is not a toll-free number). Persons with hearing- or speech-impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

The Recovery Act appropriated $4,000,000,000 for Capital Fund Recovery Program grants to public housing authorities (PHAs) to carry out eligible activities on an expedited basis. Section 1605(a) of the Recovery Act, the "Buy American" provision, states that for Recovery Act funds used for a project for the construction, alteration, maintenance, or repair of a public building or public work, all of the iron, steel, and manufactured goods used in the project must be produced in the United States. Interim final guidance (2 CFR Part 176) for implementing the Buy American provision was issued by the Office of Management and Budget (OMB) on April 23, 2009 at 74 **Federal Register** 18449, and applies to the Capital Fund Recovery Program. HUD issued Buy American guidance in Public Housing Notice 2009–31, issued August 21, 2009, see *http://www.hud.gov/offices/adm/hudclips/notices/pih/09pihnotices.cfm.* OMB is issuing Amendments of Interim Final Guidance to reflect changes with respect to U.S. international obligations.

Section 1605(d) of the Recovery Act provides that the Buy American requirement in section 1605 shall be applied in a manner consistent with U.S. obligations under international agreements. The OMB guidance provides that the Buy American requirement shall not be applied where the iron, steel, or manufactured goods used in the project are from a Party to an international agreement, listed in 2 CFR 176.90(b) and the recipient is required under an international agreement, described in the Appendix to Subpart B of 2 CFR 176, to treat the goods and services of that Party the same as domestic goods and services. As of January 1, 2010, this obligation shall only apply to projects with an estimated value of $7,804,000 or more and projects that are not specifically excluded from the application of those agreements. Based on the recently concluded Agreement between the Government of the United States of America and the Government of Canada on Government Procurement (Canada-U.S. Agreement), the Buy American requirement in section 1605(a) of the Recovery Act will not be applied as a condition of Recovery Act financing in the Capital Fund Recovery Program with respect to Canadian iron, steel, or manufactured goods in projects above $7,804,000. This is effective February 16, 2010 through September 30, 2011. This means that with respect to PHAs in the Capital Fund Recovery Program, Canadian iron, steel, or manufactured goods in procurement above the $7,804,000 threshold for construction projects shall be treated the same as U.S. iron, steel, or manufactured goods for purposes of the Buy American requirement of section 1605 of the Recovery Act.

The United States is not undertaking any other commitments with respect to Capital Fund Recovery Program grants, which means that the PHAs can continue to apply their procurement procedures that are consistent with HUD's Recovery Act. PHAs receiving Capital Fund Recovery Program grant assistance must continue to follow all other requirements including obligation and expenditure requirements. In summary, if a PHA has a construction project involving a public work/building, and is using Capital Fund Recovery Program grant assistance as a source of funding for this construction project, and the total construction project has an estimated value of more than $7,804,000, Canadian-sourced iron, steel and manufactured goods may be used and no additional HUD exception will be required.

Dated: March 5, 2010.

Sandra B. Henriquez,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 2010–7490 Filed 4–1–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Notice of Proposed Information Collection

AGENCY: Office of the Secretary, Office of Acquisition and Property Management.

ACTION: Notice and request for comments.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary of the Department of the Interior announces the proposed extension of an information collection required by Office of Management and Budget (OMB) Circular A–45 (Revised): "Private Rental Survey," OMB Control No. 1084–0033, and that it is seeking comments on its provisions. After public review, the Office of the Secretary will submit the information collection to OMB for review and approval.

DATES: Consideration will be given to all comments received by June 1, 2010.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Office of the Secretary Information Collection Budget Officer, Rachel Drucker, 1951 Constitution Avenue, NW., MS 116 SIB, Washington, DC 20240, or by e-mail to *Rachel_Drucker@nbc.gov.* Individuals providing comments should reference OMB control number 1084–0033, "Private Rental Survey."

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instrument, please write or e-mail Lavera Hamidi, Mail Stop 2607, 1849 C Street, NW., Washington, DC 20240, *Lavera_Hamidi@ios.doi.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8 (d)). This notice identifies an information collection activity that the Office of the Secretary will submit to OMB for extension or re-approval.

Public Law 88–459 authorizes Federal agencies to provide housing for Government employees under specified circumstances. In compliance with OMB Circular A–45 (Revised), Rental and Construction of Government Quarters, a review of private rental market housing rates is required at least once every 5 years to ensure that the rental, utility charges, and charges for related services to occupants of Government Furnished Housing (GFH) are comparable to corresponding charges in the private sector. To avoid unnecessary duplication and inconsistent rental rates, the Department of the Interior, Office of the Secretary, National Business Center, conducts housing surveys in support of employee housing management programs for the Departments of the Interior (DOI), Agriculture, Commerce, Homeland Security, Justice, Transportation, Health and Human Services, and Veterans Affairs. In this survey, two collection forms are used: OS–2000, covering "Houses—Apartments—Mobile Homes" and OS–2001, covering "Trailer Spaces."

This collection of information provides data that helps DOI and the other Federal agencies to manage GFH in accordance with the requirements of OMB Circular A–45 (Revised). If this information were not collected from the public, DOI and the other Federal agencies required to provide GFH would be required to use professional appraisals of open market rental costs for GFH, again, in accordance with OMB Circular A–45.

II. Data

(1) *Title:* Private Rental Survey.

OMB Control Number: 1084–0033.

Current Expiration Date: 07/31/2010.

Type of Review: Information Collection: Renewal.

Affected Entities: Individuals or households, Businesses and other for-profit institutions.

Estimated annual number of respondents: OS–2000: 3,841; OS–2001: 200; Total: 4,041.

Frequency of response: Ranges from 1 to 2.1 per respondent every fourth year.

Note: Three or four of 15 total survey regions are surveyed every year. Therefore each respondent may be potentially be surveyed every fourth year, if an individual respondent lives in the same unit, or if an individual business is a significant rental property owner or rental property manager in the community.

(2) Annual reporting and recordkeeping burden.

Estimated burden per response: OS–2000: 12 minutes; OS–2001: 10 minutes.

Total annual reporting: OS–2000: 768 hours; OS–2001: 33 hours, Total: 801 hours.

(3) *Description of the need and use of the information:* This information collection provides the data that enables DOI to determine open market rental costs for GFH. These rates, in turn, enable DOI and other Federal agencies to set GFH rental rates in accordance with the requirements of OMB Circular A–45 (Revised).

III. Request for Comments

The Department of the Interior invites comments 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 and the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number.

All written comments will be available for public inspection in the Main Interior Building, 1849 C Street, NW., Washington, DC, during normal business hours, excluding legal holidays. For an appointment to inspect comments, please contact Rachel Drucker by telephone on (202) 208–3568, or by e-mail at *Rachel_Drucker@nbc.gov,* to make an appointment. A valid picture identification is required for entry into the Department of the Interior.

Dated: March 29, 2010.

Debra E. Sonderman,

Director, Office of Acquisition and Property Management.

[FR Doc. 2010–7436 Filed 4–1–10; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CACA 48254, LLCAD08000L5101 FX0000LVRWB09B2410]

Notice of Availability of the Draft Granite Mountain Wind, LLC Wind Energy Generation Project Environmental Impact Statement/ Environmental Impact Report, California, and the Draft California Desert Conservation Area Plan Amendment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, the Bureau of Land Management (BLM), in cooperation with the County of San Bernardino, has prepared a Draft California Desert Conservation Area (CDCA) Plan Amendment and a Draft Environmental Impact Statement (EIS)/ Environmental Impact Report (EIR) for the proposed Granite Mountain Wind Energy Generation Project and by this notice is announcing the opening of the comment period.

DATES: To ensure that comments will be considered, the BLM must receive written comments on the CDCA Plan Amendment and Draft EIS/EIR within 90 days following the date the Environmental Protection Agency publishes its Notice of Availability in the **Federal Register.** The BLM will announce future meetings or hearings and any other public involvement activities at least 15 days in advance through public notices, media releases, or mailings.

ADDRESSES: You may submit comments related to the proposed Granite Mountain Wind Energy Generation Project by any of the following methods:

- *Web site: http://www.blm.gov/ca/st/en/fo/barstow.html.*
- *E-mail: GraniteWindProject@blm.gov.*
- *Fax:* (760) 252–6099.
- *Mail:* Edythe Seehafer, BLM Barstow Field Office, 2601 Barstow Road, Barstow, California 92311.

Copies of the Draft CDCA Plan Amendment and Draft EIS/EIR for the proposed Granite Mountain Wind Energy Generation Project are available in the Barstow Field Office at the above address; copies are also available at the following Web site: *http://www.blm.gov/ca/st/en/fo/barstow.html*; the BLM California State Office, 2800 Cottage Way, Sacramento, California 95825; County of San Bernardino Land Use Services Department, 385 N. Arrowhead Avenue, San Bernardino, California 92415 and County of San Bernardino Land Use Services Department, 15456 West Sage Street, Victorville, California 92392. Electronic (CD–ROM) or paper copies may also be obtained by contacting Edythe Seehafer at (760) 252–6021 or by e-mailing your request to *GraniteWindProject@blm.gov* and including your name and mailing address.

FOR FURTHER INFORMATION CONTACT: Edythe Seehafer, telephone (760) 252–6021; address BLM Barstow Field Office, 2601 Barstow Road, California 92311; e-mail *GraniteWindProject@blm.gov.*

SUPPLEMENTARY INFORMATION: Granite Wind LLC has applied to the BLM under Title V of the FLPMA (43 U.S.C. 1761) for authorization of a right-of-way (ROW) on BLM managed lands to construct, operate, and decommission a wind energy facility and associated infrastructure in compliance with FLPMA, BLM ROW regulations, and other applicable Federal laws. The BLM will decide whether to approve, approve with modification, or deny issuance of a ROW authorization to Granite Wind LLC for the proposed Granite Mountain Wind Energy Project. Pursuant to the BLM's CDCA Plan (1980, as amended), sites associated with power generation or transmission not identified in the CDCA Plan will be considered through the plan amendment process; the BLM will also decide whether the project site itself is suitable or unsuitable for wind energy generation.

The Project is proposed on approximately 2,086 acres of public lands administered by the BLM's Barstow Field Office and 670 acres of private lands under the jurisdiction of the County of San Bernardino. Total disturbance for the project and ancillary facilities would be approximately 200 acres, of which approximately 90 acres would be long-term disturbance (for the life of operations). The Project would include the installation of up to twenty-eight 2.3-megawatt (MW) Siemens wind turbines (or a similar model of wind turbine with a 2.1 to 3 MW capacity). At full capacity, the proposed project is anticipated to produce approximately 185,000 MW-hours per year.

Alternatives include:

- A no action (no project) alternative with a plan amendment making the project area unavailable to wind energy projects;
- A no action (no project) alternative with a plan amendment making the project area available to other wind energy projects;
- The proposed action, including a plan amendment making the project area available for wind energy generation and providing for a portion of a new 230-kilovolt (kV) transmission line to occur outside of a utility corridor;
- A modified proposed action to access the site from the east instead of the west to minimize visual impacts from the project and to mitigate biological impacts to Bendire's Thrasher, a BLM sensitive bird species; and
- A modified proposed action that would interconnect to the transmission grid at an alternative location further east that would minimize impacts to an active golden eagle nest.

The proposed towers would be up to 262 feet tall. The turbine blades would extend an additional 166 feet for a total height of up to 428 feet above the ground. Twenty of the wind turbines would be located on Federal lands administered by the BLM, and eight would be on adjacent private land within unincorporated San Bernardino County. The proposed project would require the construction of a new access road; an on-site electrical switchyard; an overhead transmission line; a small operations and maintenance building; a temporary construction office; temporary facilities including a cement mixing facility, asphalt batch plant, and construction staging areas; and an electrical substation for interconnection to the Southern California Edison 230 kV transmission system. Each wind turbine would have a pad-mounted transformer located beside the wind turbine tower, a maintenance road, and underground electrical and communication lines. Two permanent meteorological towers would be installed to measure wind speed and direction across the site and control the turbines. The proposed project is expected to have an operating lifetime of 25–30 years.

A Notice of Intent for this project was published in the **Federal Register** on December 6, 2007 (72 FR 68894). This was followed by a 30-day public scoping period, which was extended upon the request of San Bernardino County. This extension ended on May 5,

2008. Public workshops and scoping meetings were held in Apple Valley, California in March and April 2008. Predominant issues identified during scoping included visual, biological, noise, recreation, transportation, economic, and cumulative impacts.

The issues and concerns identified during scoping are addressed in the Draft EIS/EIR. Please note that public comments and information submitted including names, street addresses, and e-mail addresses of persons who submit comments will be available for public review and disclosure at the above address during regular business hours (8 a.m. to 4 p.m.), Monday through Friday, except holidays.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1506.6, 1506.10 and 43 CFR 1610.2.

Thomas Pogacnik,

Deputy State Director.

[FR Doc. 2010–7474 Filed 4–1–10; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOPRP0600 L51010000.ER0000 LVRWH09H0600; HAG 10–0137]

Notice of Availability of the Draft Environmental Impact Statement for the Proposed West Butte Wind Power Right-of-Way, Crook and Deschutes Counties, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, the Bureau of Land Management (BLM) has prepared a Draft Environmental Impact Statement (EIS) for the West Butte Wind Power Right-of-Way and by this notice is announcing the opening of the comment period.

DATES: To ensure comments will be considered, the BLM must receive written comments on the Draft EIS within 45 days following the date the Environmental Protection Agency publishes its Notice of Availability of this Draft EIS in the **Federal Register**. The BLM will announce future meetings or hearings and any other public involvement activities at least 15 days in advance through public notices, media releases, and/or mailings.

ADDRESSES: You may submit comments related to the West Butte Wind Power Right-of-Way by any of the following methods:

- *Web site: http://www.blm.gov/or/districts/prineville/plans/wbw_power_row/request.php.*
- *E-mail: or_west_butte_eis@blm.gov.*
- *Fax:* (541) 416–6798.
- *Mail:* West Butte Wind Power Right of Way, BLM Prineville District Office, 3050 N.E. 3rd Street, Prineville, Oregon 97754.

Copies of the West Butte Wind Power Right-of-Way Draft EIS are available at the Prineville District Office at the above address.

FOR FURTHER INFORMATION CONTACT: The West Butte Wind Power Right-of-Way Project Lead, telephone (541) 416–6885; address 3050 N.E. 3rd Street, Prineville, Oregon 97754; e-mail *or_west_butte_eis@blm.gov.*

SUPPLEMENTARY INFORMATION: The applicant, West Butte Wind Power, LLC, has requested a right-of-way authorization to construct 3.9 miles of road and an adjacent power transmission line on public land to support renewable energy production on private land, including the construction of up to 52 wind turbines and ancillary facilities. The project is 25 miles southeast of Bend, Oregon on the north side of U.S. Highway 20. The Draft EIS analyzes impacts of the Proposed Action, the Proposed Action with mitigation, and the No Action alternatives, and identifies measures to mitigate adverse impacts. Major issues brought forward during the public scoping process and addressed in the Draft EIS include:

(1) Vegetation;
(2) Wildlife Habitat;
(3) Sensitive Species;
(4) Visual Resources;
(5) Cultural and Tribal Resources;
(6) Noise;
(7) Socioeconomic Impacts; and
(8) Public Safety.

The agency's preferred alternative is the Proposed Action with mitigation.

A Notice of Intent to Prepare an EIS for the West Butte Wind Power Right-of-Way Project was published in the **Federal Register** on January 19, 2010 (75 FR 2886). Public participation was solicited through the media, mailings, and the BLM Website. The formal scoping period ended February 5, 2010.

Please note that public comments and information submitted including names, street addresses, and e-mail addresses of persons who submit comments will be available for public review and disclosure at the above address during regular business hours (8 a.m. to 4 p.m.), Monday through Friday, except holidays.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1506.6 and 1506.10.

February 23, 2010.

Stephen Robertson,

Prineville Associate District Manager.

[FR Doc. 2010–7352 Filed 4–1–10; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Notice of Intent To Prepare and Scope an Environmental Impact Statement (EIS) for the Outer Continental Shelf (OCS) Oil and Gas Leasing Program for 2012–2017

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of intent and request for comments.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), the Minerals Management Service (MMS) is providing notice of its intent to prepare an EIS with respect to the OCS Oil and Gas Leasing Program for 2012–2017 and requests comments for the purposes of determining the scope of the EIS we plan to prepare.

DATES: Please submit comments and information to the MMS on scoping no later than June 30, 2010.

ADDRESSES: Interested parties may submit their written scoping comments until June 30, 2010, to Mr. J. F. Bennett, Chief, Branch of Environmental Assessment, Minerals Management Service, 381 Elden Street, MS 4042, Herndon, Virginia 20170, or online at: *ocs5yeareis.anl.gov.*

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.

FOR FURTHER INFORMATION CONTACT: Mr. J. F. Bennett, Chief, Branch of Environmental Assessment, Minerals Management Service, 703–787–1660.

SUPPLEMENTARY INFORMATION: Pursuant to section 102(2)(C) of NEPA, the MMS intends to prepare an EIS for the new 5-year OCS oil and gas leasing program for 2012–2017. This notice starts the formal scoping process for the EIS under 40 CFR 1501.7, and solicits information regarding issues and alternatives that should be evaluated in the EIS. The EIS will analyze the potential impacts of the adoption of the proposed 5-year program.

Background

In January 2009, the previous Administration published a Draft Proposed Program (DPP) and a Notice of Intent to Prepare an EIS that set out a schedule for scoping meetings in the areas of the DPP. In February 2009, the Secretary of the Interior extended the comment period on the DPP and postponed the scoping meetings to allow time to consider further public comment before determining which areas in the DPP should be scoped for the EIS and thus be analyzed for consideration in the subsequent program proposals under section 18 of the OCS Lands Act, 43 U.S.C 1344. The fact that an area is analyzed in a 5-year EIS does not mean that it will be included in a final leasing program. However, an area must be analyzed pursuant to NEPA to be included in a 5-year program.

Areas To Be Scoped for the EIS

The draft EIS for the OCS Oil and Gas Program for 2012–2017 will evaluate offering all or portions of eight OCS planning areas for oil and gas leasing: Beaufort Sea, Chukchi Sea, and Cook Inlet, which are offshore Alaska; Western, Central, and Eastern Gulf of Mexico, the latter focusing on the southwestern third of the planning area rather than the entire area contemplated in the DPP; and South and Mid-Atlantic. These areas also will be the focus of the proposed program analyses.

Scoping Meetings

Public meetings will be held in coastal locations near these areas in June and early July 2010, to help determine the appropriate scope of the EIS in terms of geographical areas and issues. The meetings are being planned for, but not necessarily limited to:

- Kaktovik, Alaska
- Nuiqsut, Alaska
- Barrow, Alaska
- Anchorage, Alaska
- New Orleans, Louisiana;
- Mobile, Alabama;
- Tallahassee, Florida;
- Tampa/St. Petersburg, Florida;
- Savannah, Georgia and/or Wilmington, North Carolina
- Norfolk, Virginia;
- Trenton, New Jersey and/or Wilmington, Delaware; and
- Washington, DC.

Specific times and venues will be posted on the MMS website and published in the **Federal Register** per 40 CFR 1506.6.

The comments that MMS has received in response to the January 21, 2009 Notice of Intent to prepare an EIS (74 FR 3631) and the August 2008 Request for Comments on the preparation of a new 5-year program (73 FR 45065), and the comments received during scoping for the 2007–2012 Five Year EIS, have identified environmental issues and concerns that MMS will consider in the EIS. In summary, these include climate change as an impact factor in cumulative analyses, the effects of the OCS program on climate change, potential impacts from accidental oil spills, potential impacts to tourism and recreation activities, and ecological impacts from potential degradation of marine and coastal habitats. Additionally, alternatives will be developed and analyzed during the EIS process based on scoping comments and governmental communications. Alternatives may include increasing or decreasing the number or frequency of sales, coastal buffers, limiting areas available for leasing, and excluding parts of or entire planning areas.

Written Scoping Comments for the EIS

The MMS will consider comments for the purposes of determining the scope of the EIS we plan to prepare. Comments on the relationship between the Oil and Gas Program and the Alternative Energy Program are also welcome. Interested parties may submit their written scoping comments until June 30, 2010, to Mr. J. F. Bennett, Chief, Branch of Environmental Assessment, Minerals Management Service, 381 Elden Street, MS 4042, Herndon, Virginia 20170, or online at: *ocs5yeareis.anl.gov*. 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.

Cooperating Agency

The Department of the Interior invites other Federal agencies, state, tribal, and local governments to consider becoming cooperating agencies in the preparation of the EIS. We invite qualified government entities to inquire about cooperating agency status for the EIS for the proposed 5-year program. Using the guidelines from the Council on Environmental Quality (CEQ), qualified agencies and governments are those with "jurisdiction by law or special expertise." Potential cooperating agencies should consider their authority and capacity to assume the responsibilities of a cooperating agency and to remember that an agency's role in the environmental analysis neither enlarges nor diminishes the final decision making authority of any agency involved in the NEPA process. Agencies should also consider the "Factors for Determining Cooperating Agency Status" in Attachment 1 to CEQ's January 30, 2002, Memorandum for the Heads of Federal Agencies: Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act. The appropriate pages can be found at: *http://ceq.hss.doe.gov/nepa/regs/cooperating/cooperatingagenciesmemorandum.html* and *http://ceq.hss.doe.gov/nepa/regs/cooperating/cooperatingagencymemofactors.html*.

The MMS, as the lead agency, will not provide financial assistance to cooperating agencies. Even if an organization is not a cooperating agency, opportunities will exist to provide information and comments to MMS during the normal public input phases of the NEPA/EIS process. The MMS will also consult with tribal governments on a government-to-government basis. If further information about cooperating agencies is needed, please contact Mr. James F. Bennett, at (703) 787–1660.

Dated: March 30, 2010.

S. Elizabeth Birnbaum,

Director, Minerals Management Service.

[FR Doc. 2010–7580 Filed 4–1–10; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Geological and Geophysical Exploration (G&G) on the Mid- and South Atlantic Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service, Interior.

ACTION: Reopening of Comment Period and Notice of Public Scoping Meetings for the Programmatic Environmental Impact Statement (PEIS) for Future Industry G&G Activity on the Mid- and South Atlantic OCS.

SUMMARY: Pursuant to the regulations implementing the procedural provisions of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.* (1988)) (NEPA), MMS will reopen the comment period for a period of 45 days from the date of this **Federal Register** notice. Public scoping meetings will be held during this 45-day period to solicit information that will be used to prepare a PEIS to evaluate potential environmental effects of multiple G&G activities on the Atlantic OCS. These activities are associated with Atlantic OCS siting for renewable energy projects, oil and gas exploration, and marine minerals extraction; these activities could take place over a period of several years. The purpose of the scoping meetings will be to receive comments on the scope of the PEIS, identify significant resources and issues to be analyzed in the PEIS, and identify possible alternatives to the proposed action.

DATES: Comments should be submitted no later than May 17, 2010. The MMS estimates completion of the PEIS by mid-2012.

ADDRESSES: Comments may be submitted in one of the following two ways:

- In written form enclosed in an envelope labeled "Comments on the PEIS Scope" and mailed (or hand carried) to the Regional Supervisor, Leasing and Environment (MS 5410), Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394; or
- Electronically to the MMS e-mail address: *GGEIS@mms.gov.*

For further information regarding the Atlantic OCS G&G PEIS, please visit our Web site at *http://www.gomr.mms.gov/homepg/offshore/atlocs/gandg.html.*

FOR FURTHER INFORMATION CONTACT: For information on the public scoping meetings, the submission of comments, or MMS's policies associated with this notice, please contact Mr. Gary Goeke, Section Chief, Environmental Assessment Section, Leasing and Environment (MS 5410), Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, telephone (504) 736–3233.

SUPPLEMENTARY INFORMATION: An initial comment period was commenced by the Notice of Intent (NOI) to prepare the PEIS, which was published in the **Federal Register** on January 21, 2009, (74 FR 3636). The comment period on the earlier NOI closed on March 23, 2009. MMS did not move forward on the PEIS at that time. Comments made during this 2009 scoping period will still be considered and need not be resubmitted.

The Atlantic OCS area that will be analyzed within the Mid- and South Atlantic G&G PEIS is illustrated in Figure 1 as the Mid-Atlantic Planning Area and the South Atlantic Planning Area.

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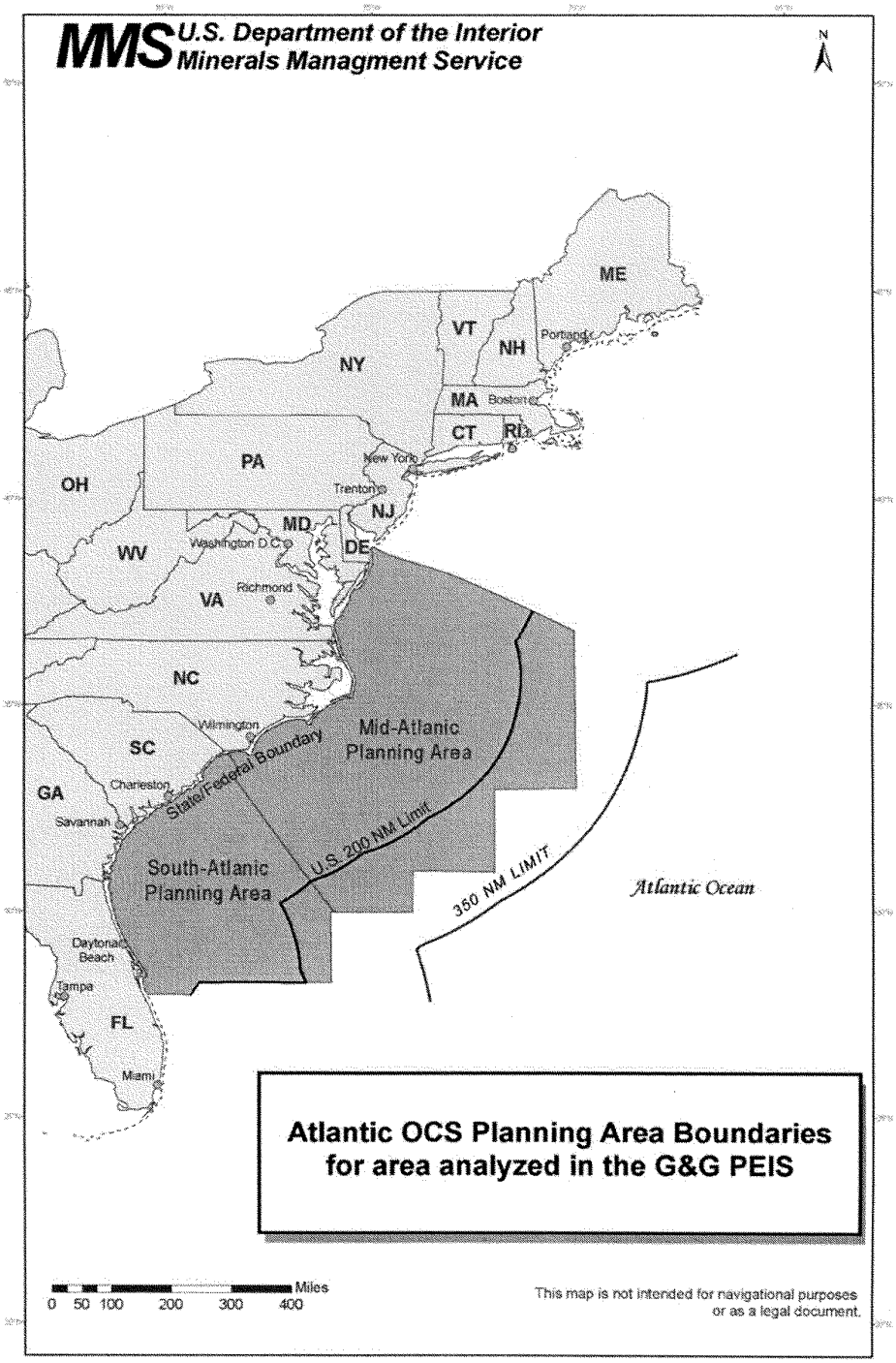

Figure 1. Atlantic OCS Planning Area Boundaries for area analyzed in the G&G PEIS.

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Statements, both oral and written, will be received at the venues listed below. All persons wishing to speak will have an opportunity to do so. Time limits may be set on speakers to allow time for all speakers to participate.

The following public scoping meetings are planned for the PEIS:

- *April 20, 2010*—Marriott Houston Intercontinental Hotel, George Bush Intercontinental Airport, 18700 John F. Kennedy Boulevard, Houston, Texas 77032; one meeting beginning at 1 p.m. CST;
- *April 21, 2010*—Jacksonville Marriott, 4760 Salisbury Road, Jacksonville, Florida 32256; two meetings, the first beginning at 1 p.m. EST and the second beginning at 7 p.m. EST;
- *April 23, 2010*—Coastal Georgia Center, 305 Fahm Street, Savannah, Georgia 31401; two meetings, the first beginning at 1 p.m. EST and the second beginning at 7 p.m. EST;
- *April 27, 2010*—Sheraton Newark Airport Hotel, 128 Frontage Road, Newark, New Jersey 07114; two meetings, the first beginning at 1 p.m. EST and the second beginning at 7 p.m. EST;
- *April 27, 2010*—Embassy Suites North Charleston, 5055 International Boulevard, North Charleston, South Carolina 29418; two meetings, the first beginning at 1 p.m. EST and the second beginning at 7 p.m. EST;
- *April 29, 2010*—Hilton Wilmington Riverside, 301 North Water Street, Wilmington, North Carolina 28401; two meetings, the first beginning at 1 p.m. EST and the second beginning at 7 p.m. EST; and
- *April 29, 2010*—Hilton Norfolk Airport, 1500 N. Military Highway, Norfolk, Virginia 23502; two meetings, the first beginning at 1 p.m. EST and the second beginning at 7 p.m. EST.

Through the scoping process, Federal, State, and local government agencies and other interested parties have the opportunity to help MMS determine the significant resources, issues, and alternatives for analysis in the PEIS. Comments received in response to this notice and at the public scoping meetings will assist MMS in developing the content and scope of the PEIS. This early planning and consultation step is important to ensure that all interests and concerns are communicated to MMS as it develops this PEIS and ultimately for future decisions regarding G&G operations under MMS regulatory authority. It is envisioned that this PEIS would cover G&G activity for renewable energy projects, minerals extraction, and oil and gas activities for any Atlantic OCS applications within the area analyzed within the PEIS that are received within the foreseeable future. Possible alternatives for analysis may represent a range of levels of activities from unrestricted to no seismic and could address the following, although this list is not exhaustive:

Levels of Activity

Number, scale/size, location, and duration of seismic activities;

Number, scale/size, location, and duration of associated support activities (vessel, aircraft, shore); and

The degree to which those activities can overlap in space and time.

Mitigation

Exclusion zones based on received levels of sounds;

Exclusion zones based on presence of specific biological factors in combination with received levels of sound; and

Limitations on certain combinations of activities in specific temporal/spatial circumstances. The MMS invites other Federal agencies and State, Tribal, and local governments to consider becoming cooperating agencies in the preparation of the PEIS. Following the guidelines from the Council on Environmental Quality (CEQ), qualified agencies and governments are those with "jurisdiction by law or special expertise." Potential cooperating agencies should consider their authority and capacity to assume the responsibilities of a cooperating agency and note that an agency's role in the environmental analysis neither enlarges nor diminishes the final decisionmaking authority of any other agency involved in the NEPA process. Upon request, MMS will provide potential cooperating agencies with a written summary of ground rules for cooperating agencies, including time schedules and critical action dates, milestones, responsibilities, scope and detail of cooperating agencies' contributions, and the availability of pre-decisional information. The MMS anticipates this summary will form the basis for a Memorandum of Agreement between MMS and each cooperating agency. Agencies should also consider the "Factors for Determining Cooperating Agency Status" in Attachment 1 to CEQ's January 30, 2002, Memorandum for the Heads of Federal Agencies: Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act. A copy of this document is available at *http://ceq.hss.doe.gov/nepa/regs/cooperating/cooperatingagenciesmemorandum.html* and *http://ceq.hss.doe.gov/nepa/regs/cooperating/cooperatingagencymemofactors.html.*

The MMS, as the lead agency, will not provide financial assistance to cooperating agencies. Even if an organization is not an official cooperating agency, opportunities exist to provide information and comments to MMS during the normal public input phases of the NEPA/PEIS process. If further information about cooperating agencies is needed, please contact Mr. Gary Goeke at (504) 736–3233.

Authority: The MMS has the authority under the Outer Continental Shelf Lands Act (OCSLA, as amended; 43 U.S.C. 1331–1356, (2007)) and its implementing regulations at 30 CFR 251 to issue prelease permits for the collection of G&G data. These regulations discuss the types of G&G activities that require a permit, the instructions for filing a permit, and the obligations and rights under a permit. This notice is published pursuant to the regulations (40 CFR 1501.7) implementing the provisions of NEPA.

Background: Scoping is the initial step in the NEPA process. The MMS plans to fully comply with all pertinent laws, rules, and regulations and will allow the public an adequate opportunity to participate in the NEPA process, including scoping meetings and public comment periods.

The PEIS will evaluate environmental impacts of G&G activities in the area analyzed by the PEIS on the Mid- and South Atlantic OCS subject to MMS regulatory authority that may be proposed over several years. MMS has decided at this time not to move forward with scoping and a PEIS for the Northern Atlantic and Straits of Florida planning areas. In addition, the PEIS would serve as a reference document to implement the "tiering" objective detailed in NEPA's implementing regulations (40 CFR 1502.20), allowing that future site-specific environmental assessments (SEA's) may reference appropriate sections of this PEIS to reduce reiteration of issues and effects, allowing analyses to focus on specific issues and effects related to a particular G&G activity. The proposed G&G activities include, but are not limited to, seismic surveys, sidescan-sonar surveys, electromagnetic surveys, geological and geochemical sampling, and remote sensing. These activities could support siting needs for renewable energy projects, oil and gas operations, and research for sand deposits. The MMS, to date, has received approximately 11 proposed applications for various types of G&G activity on the Atlantic OCS. Information on the details of these proposals and their scope can be found at *http://www.gomr.mms.gov/homepg/offshore/atlocs/gandg.html.* The PEIS

will be completed prior to authorizing any new, large-scale G&G activities on the Atlantic OCS. In the interim, MMS may still consider small-scale, limited permit requests, but only if a NEPA environmental assessment is conducted and finds there is no potential for significant impacts from that specific proposed activity or that the cumulative nature of a collection of smaller, limited surveys would not result in significant impacts under NEPA.

More information on G&G activities can be found on pages 13–15 of MMS's *Leasing Oil and Natural Gas Resources: Outer Continental Shelf* (*see http://www.mms.gov/ld/PDFs/GreenBook-LeasingDocument.pdf*) and MMS's *Geological and Geophysical Exploration for Mineral Resources on the Gulf of Mexico Outer Continental Shelf: Final Programmatic Environmental Assessment* (*see http://www.gomr.mms.gov/PDFs/2004/2004-054.pdf*).

Comments: In lieu of participation in the scoping meetings listed above, all interested parties, including Federal, State, and local government agencies and the general public, may submit written comments on the scope of the PEIS, significant issues that should be addressed, alternatives that should be considered, and the types of G&G activities and geographical areas of interest on the Mid- and South Atlantic OCS. Comments made during the initial 2009 scoping period will still be considered and need not be resubmitted.

Dated: March 30, 2010.

S. Elizabeth Birnbaum,

Director, Minerals Management Service.

[FR Doc. 2010–7581 Filed 4–1–10; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Preliminary Revised 5-Year Outer Continental Shelf (OCS) Oil and Gas Leasing Program for 2007–2012

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of availability and request for comments.

SUMMARY: The Minerals Management Service (MMS) requests comments on the Preliminary Revised 5-Year OCS Oil and Gas Leasing Program for 2007–2012. This is the Preliminary Revised Program (PRP), required by the order of the U.S. Court of Appeals for the District of Columbia in *Center for Biological Diversity* v. *U.S. Dept. of Interior,* DC Cir. No. 07–1247, 07–1344, for lease sales covering the 2007–2012 time frame.

DATES: Please submit comments and information to the MMS no later than May 3, 2010.

Public Comment Procedure

The MMS will accept comments in one of three formats: By our Internet commenting system, e-mail, or regular mail. Please submit your comments using only one of these formats, and include full names and addresses. Comments submitted by other means may not be considered. 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. See further information about commenting below.

The MMS encourages commenters to focus on the expanded relative environmental sensitivity analysis and the Secretary's revisions to the leasing schedule that reflect his balancing of the potential for discovery of petroleum with the potential for harm to the environment or coastal zone. The balance of the PRP document consists of analyses that were already subject to public comment prior to July 2007.

ADDRESSES: You may submit comments on the PRP by any of the following methods.

- *Federal eRulemaking Portal: http://www.regulations.gov.* In the entry titled "Enter Keyword or ID," enter docket ID MMS–2009–OMM–0016 then click search. Under the tab "View By Docket Folder", you can submit public comments and view supporting and related materials available for this Notice. The MMS will post all comments.
- *E-mail: PRPcomments@mms.gov.*
- Mail or hand-carry comments on the PRP to the Department of the Interior; Attention: Leasing Division (LD); 381 Elden Street, MS–4010; Herndon, Virginia 20170–4817. Please reference "Remand of the 2007–2012 OCS Oil and Gas Leasing Program" in your comments and include your name and address.

FOR FURTHER INFORMATION CONTACT: Renee Orr, 5–Year Program Manager, at (703) 787–1215.

SUPPLEMENTARY INFORMATION: On June 29, 2007, the previous Secretary approved the Proposed Final OCS Oil and Gas Leasing Program for 2007–2012 (PFP) that became effective on July 1, 2007.

On July 2, 2007, the Center for Biological Diversity filed suit against the Department of the Interior (DOI) alleging agency failures under various laws in relation to the OCS 2007–2012 leasing program. On August 28, 2007, the Native Village of Point Hope, Alaska Wilderness League, and Pacific Environment filed a similar suit. The cases were consolidated.

On April 17, 2009, the U.S. Court of Appeals for the District of Columbia Circuit vacated and remanded DOI's OCS 2007–2012 leasing program. The Court found that DOI's determination of when and where to offer areas for leasing of oil and gas resources was based on a flawed analysis that failed to assess fully the relative environmental sensitivity and marine productivity of the OCS because it looked only at the effects of spills on the shoreline. The Court specified that on remand the Secretary must first conduct a more complete comparative analysis of the environmental sensitivity of different areas of the OCS, as required under section 18(a)(2)(g) of the OCSLA, and must at least attempt to identify those areas most and least sensitive to OCS activity. The Court directed the Secretary to rebalance the program under the factors set forth in section 18(a)(3) of the OCSLA once this new analysis is complete.

Pursuant to the Government's petition for amendment and/or clarification of the Court's order, on July 28, 2009, the Court issued an order staying its mandate until DOI completed its analysis and rebalancing under the OCSLA. The Court also clarified that the relief granted in its April 17th decision applied only to the Beaufort, Chukchi, and Bering Seas off Alaska. The Bering Sea includes the North Aleutian Basin OCS Planning Area, the only planning area in the Bering Sea with lease sales scheduled in the 2007–2012 PFP.

At the direction of the Secretary, MMS re-analyzed all 26 OCS planning areas to better determine the relative environmental sensitivity of several ecological components to multiple impacts of offshore oil and gas development. The original environmental sensitivity analysis relied on only two studies conducted by Continental Shelf Associates in 1990 and 1991, and one dataset, the National Oceanic and Atmospheric Administration's Environmental Sensitivity Index (ESI) (*http://response.restoration.noaa.gov*). The expanded analysis continues to rely on

those sources to analyze the sensitivity of shoreline/coastal habitats, but also analyzes the sensitivity of offshore/marine resources to oil and gas activities.

The expanded environmental sensitivity analysis is divided into the three components of the marine environment that may be affected by oil and gas activities: marine habitats, marine productivity, and marine fauna (*i.e.,* birds, fish, marine, and sea turtles). The expanded analysis considers the relative sensitivity of the marine environment of all 26 planning areas to oil spills and other potential factors, such as sound, physical disturbance, climate change, and ocean acidification. The expanded analysis relies on approximately 50 reports and studies, including many that were not considered when the original 2007–2012 relative environmental sensitivity analysis was prepared.

Distribution, abundance, and/or environmental sensitivities of four ecological components within and/or on the adjacent coast of each OCS planning area are evaluated based on their present condition. Because relatively small differences suggest a level of precision that is not possible for this analysis, the revised analysis presents the OCS planning areas grouped into four categories of relative sensitivity ranging from "most" to "least" sensitive to OCS oil and gas activities. Categorization of an OCS planning area as "less" or "least" sensitive does not mean that environmental resources of that OCS planning area are not sensitive, but that they are found to be relatively less sensitive than other OCS planning areas to the types of impacts anticipated from OCS oil and gas activities. The revised analysis identified the OCS planning areas "most" sensitive to OCS oil and gas activities as the South Atlantic, Eastern Gulf of Mexico, Mid-Atlantic, and Central Gulf of Mexico, and the "least" sensitive as the Aleutian Arc, Navarin Basin, Bowers Basin, and Aleutian Basin, all in the OCS southwest of Alaska.

In support of his PRP decisions, the Secretary relied on the expanded environmental sensitivity analysis described above; the PFP for 2007–2012 and the supporting administrative record, including the April 2007 analysis of the other OCSLA section 18 factors; and the 2007 Final Environmental Impact Statement (EIS) and all comments, reports, and studies incorporated therein. The decision is based on the Secretary's independent review of the record and fulfills his statutory obligation under section 18(a)(3) to obtain a proper balance between the potential for environmental damage, the potential for the discovery of oil and gas, and the potential for adverse impact on the coastal zone, in accordance with the Court's remand order. Thus, while the environmental sensitivity analysis is expanded, it is important to remember that the Secretary's decisions are not based on just one factor, but require consideration of all section 18 factors and the other supporting information and subsequent balancing as described below. For example, the Secretary's decision to remove the Beaufort and Chukchi Seas sales, other than Chukchi Sea Sale 193, recognizes the importance of gathering additional information from activities on existing leases and ongoing research into oil-spill cleanup in icy waters to help MMS and industry plan for future leasing.

Following the end of the comment period, the Secretary will consider any comments received in making his final decision on a final revised leasing program for 2007–2012. Pursuant to the Court's July 28, 2009 order, DOI will file an appropriate motion regarding disposition of the litigation.

The PRP document may be downloaded off the MMS Web site at *http://www.mms.gov.* The document also is available as part of our electronic commenting system noted above. Hard copies will be made available to persons who contact the 5-Year Program Office at 703–787–1215.

Much of the text of the document is repetitive of the April 2007 PFP document, as approved on June 29, 2007. New text is shown in a larger font to distinguish it from the text retained from the 2007 PFP document and some text from the PFP has been rewritten or not included as appropriate to reflect the revised decision. Please refer to the PFP for historical information.

Summary of the Preliminary Revised Program

The PRP includes 16 sales in 6 areas (2 areas off Alaska, 1 area off the Atlantic coast, and 3 areas in the Gulf of Mexico. Maps A and B show the areas scheduled for leasing (Preliminary Revised Program areas). Table A lists the location and timing of the proposed lease sales in areas that are offered for leasing consideration, including Sale 224 in the Eastern Gulf of Mexico Planning Area, a sale mandated by the Gulf of Mexico Energy Security Act (GOMESA) of 2006 (Pub. L. 109–432, December 20, 2006) and exempted from section 18 analysis.

TABLE A—PRELIMINARY REVISED PROGRAM FOR 2007–2012—LEASE SALE SCHEDULE

Sale No.	Area	Year*
204	Western Gulf of Mexico	2007
205	Central Gulf of Mexico	2007
193	Chukchi Sea	2008
206	Central Gulf of Mexico	2008
224	Eastern Gulf of Mexico**	2008
207	Western Gulf of Mexico	2008
208	Central Gulf of Mexico	2009
210	Western Gulf of Mexico	2009
211	Cook Inlet	2009
213	Central Gulf of Mexico	2010
215	Western Gulf of Mexico	2010
216	Central Gulf of Mexico	2011
218	Western Gulf of Mexico	2011
219	Cook Inlet	2011
220	Mid-Atlantic	2011
222	Central Gulf of Mexico	2012

* All of the sales scheduled for 2007–2009 listed above were conducted prior to the preparation of this PRP, with the exception of Cook Inlet Sale 211 that was not held due to lack of expressed industry interest. Sale 193 in the Chukchi Sea is the only sale conducted in an area subject to the Court's remand.

** Sale 224 is not a section 18 sale, but mandated by GOMESA.

Alaska Region

In the Alaska Region, the PRP retains one lease sale in the Chukchi Sea Planning Area and two special interest sales in the Cook Inlet Planning Area. The Chukchi Sea sale is a carryover from the 2002–2007 program because there was insufficient time to complete the necessary pre-lease steps and environmental documentation during the program period. Chukchi Sea Sale 193 was held in 2008.

The Cook Inlet Planning Area is retained on the schedule with two special interest sales. However, there was no industry interest expressed in the 2008 Request for Interest and Sale 211 was not held.

Consistent with the Secretary's approach of developing frontier areas based on the best available science and other data, the PRP removes Beaufort Sea Sales 209 and 217 and Chukchi Sea Sales 212 and 221 from the 2007–2012 program.

Sale 214 in the North Aleutian Basin also is removed due to the area's unique value to Alaska and the Nation. The North Aleutian Basin contains nationally significant fishery resources as compared to other Alaska planning areas, supporting the greatest diversity of fish species for all Alaska areas. It also is adjacent to more national monuments and wildlife reserves than any other Alaska OCS area. Therefore, the Secretary concluded that the area should not be leased.

For the Beaufort Sea and Chukchi Sea Planning Areas, the Secretary determined that, on balance, lease sales in the Arctic under the 2007–2012 program, other than Chukchi Sea Sale 193, are not justified at this time. Before additional lease sales are offered, it is important to gather additional scientific information and data from exploration on existing leases. This decision reflects the potential difficulty of removing oil spilled in icy waters, limited infrastructure available to respond to spills, and environmental considerations such as climate change. There is research underway that along with new information will provide the opportunity to make more informed decisions regarding Arctic sales in the next 5-year program. Secretary Salazar has also requested that the United States Geological Survey (USGS) conduct an initial, independent evaluation of science needs to understand the resilience of Arctic coastal and marine ecosystems to OCS resource extraction activities. The study will summarize what information is available, where knowledge gaps exist, and what research is needed to mitigate risks. This type of information will help target areas for future lease sales and allow better prevention and mitigation of environmental impacts. Industry holds many existing leases that have yet to be explored. In the Beaufort Sea, there are 181 leases (approximately 0.96 million acres) issued under the 2002–2007 program and in the Chukchi Sea, there are 487 leases (approximately 2.75 million acres) issued in Chukchi Sea Lease Sale 193 in the current program. The removal of these areas from further leasing in the PRP should not be construed to suggest that the exploration of existing leases cannot be conducted safely.

Gulf of Mexico Region

The Central and Western Gulf of Mexico Planning Areas provide a large share of domestic oil and gas production and are a major source of employment for nearby States. Although vigilance is still necessary in protecting environmental resources and local communities, the areas are supported by a vast system of infrastructure. Gulf of Mexico oil and gas activities provide an important spur to technological innovation and industry has a track record of safe activity. In addition, OCS activity in the Gulf draws significant support from adjacent State and local governments as well as from local citizens. Therefore, the PRP retains the annual, area wide lease sales on the schedule for 2007–2012 in the Central and Western Gulf of Mexico.

Atlantic Region

As in the PFP, the PRP retains Mid-Atlantic Sale 220 offshore Virginia as a special interest sale. The MMS estimates that the area comprising Sale 220 could contain 130 million barrels of oil and 1.14 trillion cubic feet of natural gas. This area had been subject to Presidential withdrawal under section 12 of the OCSLA as well as Congressional moratorium. As the withdrawal was lifted and the moratorium discontinued in 2008, a request for nominations and comments was issued in November 2008. No other pre-lease steps have occurred. The next step in this process would be scoping for the Draft EIS.

Assurance of Fair Market Value

Section 18 of the OCSLA requires receipt of fair market value for OCS oil and gas leases and the rights they convey. The PRP retains the provisions of the PFP: Setting minimum bid levels by individual lease sale based on market conditions and continuing use of a two-phase bid evaluation process.

Information Requested

Section 18(g) of the OCSLA authorizes confidential treatment of privileged or proprietary information. In order to protect the confidentiality of such information, respondents should submit it separately from other comments submitted and mark it prominently as confidential. On request, MMS will treat such information as confidential from the time of its receipt until 5 years after approval of the revised leasing program, subject to the standards of the Freedom of Information Act. The MMS will not treat as confidential any aggregate summaries of such information, the names of respondents, and comments not containing such information.

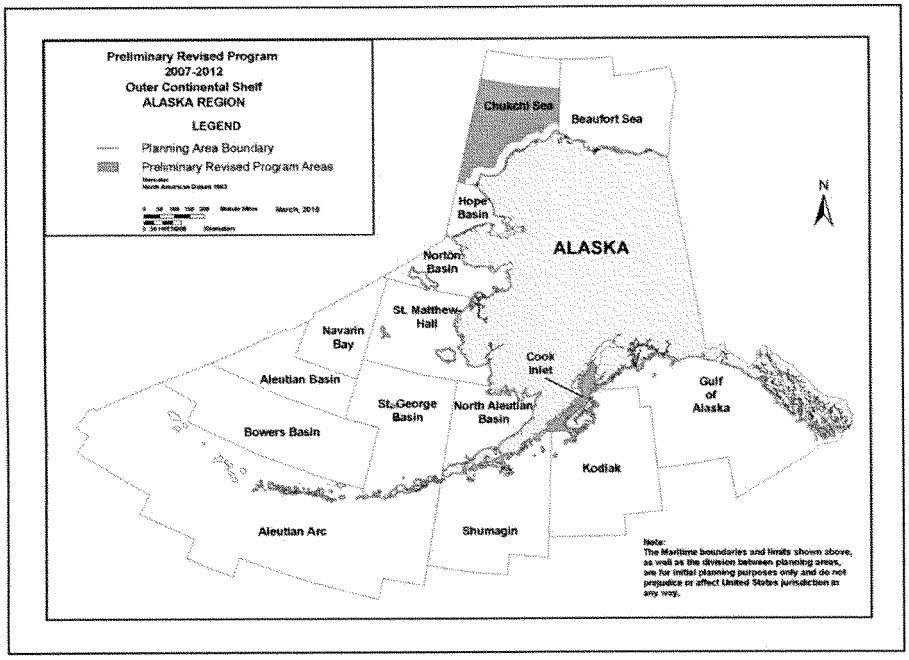
Dated: March 30, 2010.

S. Elizabeth Birnbaum,

Director, Minerals Management Service.

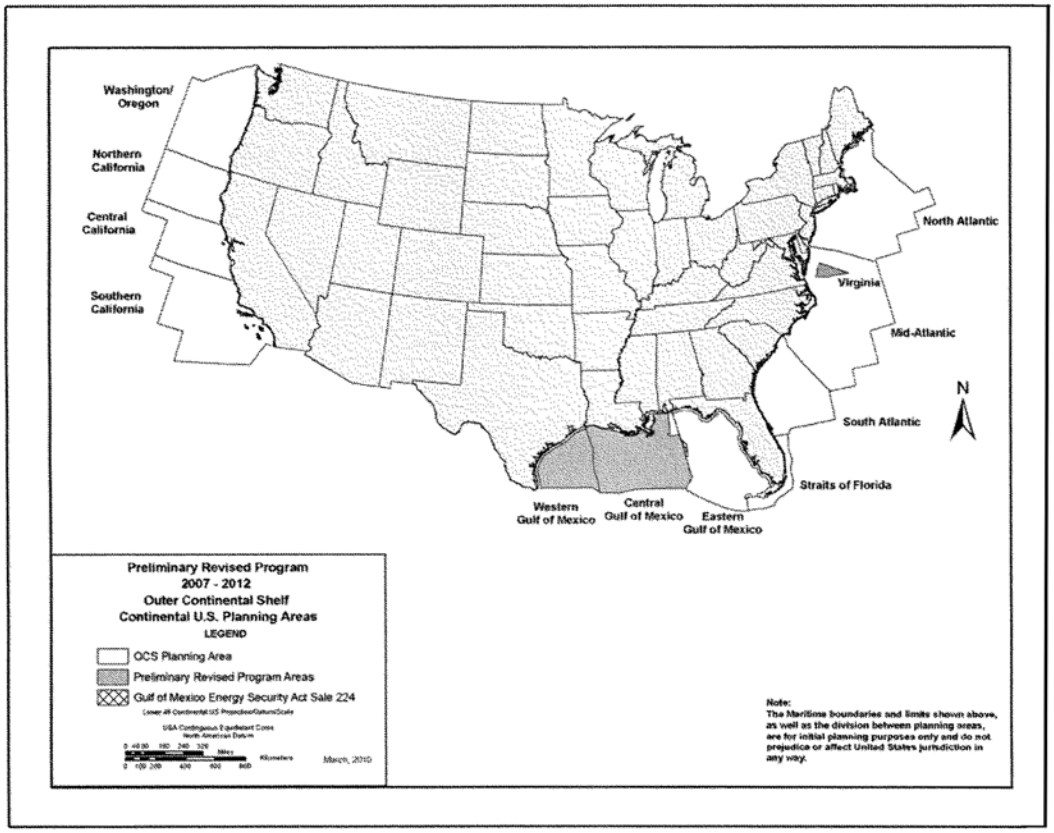
BILLING CODE 4310–MR–P

Map A [Alaska Program Areas]



Map A: Shows the Alaska Program Areas

Map B [Lower 48 Program Areas]



Map B: Shows the U.S. Program Areas

[FR Doc. 2010–7579 Filed 4–1–10; 8:45 am]
BILLING CODE 4310–MR–C

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

Public Review of Draft United States Thoroughfare, Landmark, and Postal Address Data Standard

AGENCY: Department of the Interior, U.S. Geological Survey.

ACTION: Notice; request for comments on draft United States Thoroughfare, Landmark, and Postal Address Data Standard through June 16, 2010.

SUMMARY: The Federal Geographic Data Committee (FGDC) is conducting a public review of the draft United States Thoroughfare, Landmark, and Postal Address Data Standard. The United States Thoroughfare, Landmark, and Postal Address Data Standard covers data content, data classification, data exchange, and data quality. The Urban and Regional Information Systems Association (URISA), in conjunction with the FGDC Subcommittee on Cultural and Demographic Statistics chaired by the U.S. Census Bureau, developed this draft standard. The FGDC Coordination Group, comprised of representatives of Federal agencies, approved releasing this draft standard for public review at its March 16, 2010 meeting. The FGDC invites both public and private sector data users, producers and software vendors to comment on this standard to ensure that the standard meets their needs.

The draft United States Thoroughfare, Landmark, and Postal Address Data Standard may be downloaded at: *ftp://ftpext.usgs.gov/pub/er/va/reston/FGDC/AddressStandardJanuary_22_2010_formatted.doc* (No user name or password required). Reviewer's comments shall be sent to Julie Binder Maitra, of the FGDC Secretariat via electronic mail, *jmaitra@usgs.gov* by June 16, 2010. Reviewers should follow Directive #2d, Standards Working Group Review Guidelines: Review Comment Template, *http://www.fgdc.gov/standards/process/standards-directives/directive-2d-standards-working-group-review-guidelines-review-comment-template*, when preparing their comments. The review comment template is available at *http://www.fgdc.gov/standards/process/standards-directives/template.doc*.

Comments that concern specific issues/changes/additions may result in revisions to the draft United States Thoroughfare, Landmark, and Postal Address Data Standard. After evaluation of comments, participants will receive written notification of how their comments were addressed by electronic or postal mail. After formal endorsement of the standard by the FGDC, the standard and a summary analysis of the changes will be made available to the public on the FGDC Web site.

DATES: Comments on the draft United States Thoroughfare, Landmark, and Postal Address Data Standard must be received by the FGDC on or before Wednesday, June 16, 2010.

FOR FURTHER INFORMATION CONTACT: Ms. Julie Binder Maitra, U.S. Geological Survey, Federal Geographic Data Committee, *jmaitra@fgdc.gov*, 703–648–4627.

SUPPLEMENTARY INFORMATION: The FGDC coordinates the development of the National Spatial Data Infrastructure (NSDI), which encompasses the policies, standards, and procedures for organizations to cooperatively produce and share geospatial data. Federal agencies that make up the FGDC develop the NSDI in cooperation with organizations from State, local and tribal governments, the academic community, and the private sector. Authority for the FGDC is OMB Circular No. A–16 Revised on Coordination of Geographic Information and Related Spatial Data Activities (Revised August 19, 2002). More information on the FGDC and the NSDI is available at *http://www.fgdc.gov.* Standards are a foundational component of the NSDI.

Organizations often have detailed specifications about the structure of their address information but have not defined the elements that constitute an address. Knowledge of structure, content, and quality is required to successfully share information in a digital environment. The United States Thoroughfare, Landmark, and Postal Address Data Standard codifies discrete elements of address information and provides standardized terminology and definitions to alleviate inconsistencies in the use of these elements and to simplify documentation.

The United States Thoroughfare, Landmark, and Postal Address Data Standard applies to addresses of entities having a spatial component. It does not apply to addresses of entities lacking a spatial component and specifically excludes electronic addresses such as e-mail addresses. It recognizes that some organizations are prohibited by statute from sharing addresses or other address information, due to requirements for confidentiality and security: Therefore, it does not require that addresses be shared and does not provide guidelines for determining whether addresses can be shared. The United States Thoroughfare, Landmark, and Postal Address Data Standard places no requirement on internal organization of use or structure of address data: however, its principles can be extended to all addresses.

Dated: March 18, 2010.

Ivan DeLoatch,

FGDC Executive Director.

[FR Doc. 2010–7438 Filed 4–1–10; 8:45 am]

BILLING CODE 4311–MM–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–709]

In the Matter of Certain Integrated Circuits, Chipsets, and Products Containing Same Including Televisions, Media Players, and Cameras; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on March 1, 2010, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Freescale Semiconductor, Inc. of Austin, Texas. A letter supplementing the complaint was filed on March 18, 2010. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain integrated circuits, chipsets, and products containing same including televisions, media players, and cameras by reason of infringement of certain claims of U.S. Patent Nos. 5,467,455; 5,715,014; and 7,199,306. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is 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., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD

terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server 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*.

FOR FURTHER INFORMATION CONTACT: Benjamin Levi, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2781.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2009).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on March 25, 2010, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain integrated circuits, chipsets, or products containing same including televisions, media players, or cameras that infringe one or more of claims 1, 8–10, 22, and 26 of U.S. Patent No. 5,467,455; claims 1 and 10 of U.S. Patent No. 5,715,014; and claims 1, 6, 11, and 13–16 of U.S. Patent No. 7,199,306, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:

Freescale Semiconductor, Inc., 6501 William Cannon Dr., West, Austin, TX 78735.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Panasonic Corporation, 1006 Oaza Kadoma, Kadoma, Osaka 571–8501, Japan;
Panasonic Semiconductor Discrete Devices Co., Ltd., 8–1, Minamihirocho, Umezu, Ukyo-Ku, 615–0901 Kyoto, Kyoto, Japan;
Panasonic Corporation of North America, 1 Panasonic Way, Secaucus, New Jersey 07094;
Funai Electric Co., Ltd., 7–7–1 Nakagaito, Daito, Osaka 574–0013, Japan;
Funai Corporation, Inc., 201 Route 17, Ste. 903, Rutherford, New Jersey 07070;
JVC Kenwood Holding, Inc., 3–12, Moriyacho, Kanagawa-ku, Yokohama-shi, Kanagawa 221–8528, Japan;
Victor Company of Japan Limited, 12, Moriya-cho, 3-chome, Kanagawa-ku, Yokohama, 221–8528, Japan;
JVC Americas Corp., 1700 Valley Rd. Ste. 1, Wayne, New Jersey 07470;
Best Buy Co., Inc., 7601 Penn Ave. S., Richfield, Minnesota 55423;
B & H Foto & Electronics Corp., 420 9th Ave., New York, New York 10001;
Huppin's Hi-Fi Photo & Video, Inc., 421 W. Main Ave., Spokane, Washington 99201;
Buy.com Inc., 85 Enterprise, Aliso Viejo, California 92656;
Liberty Media Corporation, 12300 Liberty Blvd., Englewood, Colorado 80112;
QVC, Inc., 1200 Wilson Dr., West Chester, Pennsylvania 19380;
Crutchfield Corporation, 1 Crutchfield Pk., Charlottesville, Virginia 22911;
Wal-Mart Stores, Inc., 708 SW 8th St., Bentonville, Arkansas 72716;
Computer Nerds International, Inc., 2680 NE 188th St., Miami, Florida 33180.

(c) The Commission investigative attorney, party to this investigation, is Benjamin Levi, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, Paul J. Luckern, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)–(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: March 29, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–7442 Filed 4–1–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–708]

In the Matter of Certain Stringed Musical Instruments and Components Thereof (II); Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on February 26, 2010, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Geoffrey Lee McCabe of Hollywood, California. A letter supplementing the complaint was filed on March 18, 2010. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain stringed musical instruments and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 5,965,831, 5,986,191, 6,175,066, 6,891,094, and 7,470,841. The complaint, as supplemented, further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint and supplement, except for any confidential information contained therein, are 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., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://www.usitc.gov/secretary/edis.htm.*

FOR FURTHER INFORMATION CONTACT: Jeffrey T. Hsu, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2579.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2009).

Scope of Investigation: Having considered the amended complaint, the U.S. International Trade Commission, on March 25, 2010, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain stringed musical instruments or components thereof by reason of infringement of one or more of claims 1–3, 5, and 6 of U.S. Patent No. 5,965,831; claims 1–3, 6, and 14 of U.S. Patent No. 5,986,191; claims 1–5, 8, 9, and 11 of U.S. Patent No. 6,175,066; claims 1, 14–18, 20–22, and 24 of U.S. Patent No. 6,891,094; and claims 6, 8–11, 27, 29, and 31 of U.S. Patent No. 7,470,841; and whether an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Geoffrey Lee McCabe, 6104 Glen Oak, Hollywood, CA 90068.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Floyd Rose Guitars, 6855 176th Avenue, NE., Redmond, WA 98052.

Floyd Rose Marketing, Inc., 3301 State Route 66, Neptune, NJ 07753–2705.

Davitt & Hanser Music Co., d/b/a HHI, 2395 Arbor Tech Drive, Hebron, KY 41048.

Ping Well Industrial Co., Ltd., 51, Sho Yi 5 Lane, Taichung, Taiwan.

Ibanez, Inc. (Hoshino) US, 1726 Westchester Road, Bensalem, PA 19020.

Ibanez, Inc. (Hoshino) Japan, Fuji Gakki Co., LTD, No. 22, 3-Chome, Shumoku-cho, Higashi-Ku, Nagoya, Japan 461–8717.

(c) The Commission investigative attorney, party to this investigation, is Jeffrey T. Hsu, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, Paul J. Luckern, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint, as supplemented, and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16 (d)–(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint, as supplemented, and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or cease and desist order or both directed against a respondent.

By order of the Commission.

Issued: March 29, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–7441 Filed 4–1–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–44 (Third Review)]

Sorbitol From France

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject review.

DATES: *Effective Date:* Date of Commission approval.

FOR FURTHER INFORMATION CONTACT: Dana Lofgren (202–708–4721), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: On December 10, 2009, the Commission established a schedule for the conduct of the review (74 FR 66992, December 17, 2009). Due to a scheduling conflict the Commission is issuing a revised schedule. The Commission's new schedule for the review is as follows:

Staff report.—The prehearing staff report in the review will be placed in the nonpublic record on April 21, 2010, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the review beginning at 9:30 a.m. on May 11, 2010, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before May 5, 2010. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on May 7, 2010, at the U.S.

International Trade Commission Building.

Written submissions.—Each party to the review may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is April 30, 2010. The deadline for filing posthearing briefs is May 19, 2010; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the review may submit a written statement of information pertinent to the subject of the review on or before May 19, 2010.

For further information concerning the review see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.
Issued: March 29, 2010.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. 2010–7428 Filed 4–1–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on March 25, 2010, a proposed consent decree with the City of Ottawa, Illinois ("Consent Decree") in *United States* vs. *City of Ottawa, Civil Action No. 10–1887* was lodged with the United States District Court for the Northern District of Illinois.

In this action the United States sought injunctive relief and recovery of unreimbursed costs incurred for response activities undertaken in response to the release and threatened release of hazardous substances from facilities at the Ottawa Radiation Areas Superfund Site in Ottawa, Illinois. The Consent Decree provides for the City of Ottawa to pay $150,000, a figure determined in accordance with an ability to pay analysis, and also provide approximately $4.35 million in in-kind services, primarily through the provision of clean fill and top soil.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *City of Ottawa, D.J. Ref. 90–11–3–06883/2.*

The Consent Decree may be examined at the Office of the United States Attorney, 219 S. Dearborn St., Fifth Floor, Chicago, IL 60604, and at U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604–3590. During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $18.75 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2010–7420 Filed 4–1–10; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Office of the Secretary

Delegation of Authority

On February 24, 2010, the Department of Labor issued a memorandum delegating to the Assistant Secretary for Employment and Training the authority to supervise, direct and perform all responsibilities relating to the administration of the Office of Job Corps for an interim period. A copy of that memorandum is annexed hereto as an Appendix.

FOR FURTHER INFORMATION CONTACT: Jane Oates, Assistant Secretary for Employment and Training, Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. *Telephone:* 202–693–2700. This is not a toll-free number.

Signed at Washington, DC, this 26th day of March 2010.

Hilda L. Solis,

Secretary of Labor.

U.S. Department of Labor

Office of the Secretary

February 24, 2010

MEMORANDUM FOR JANE OATES
Assistant Secretary for Employment and Training

FROM: HILDA L. SOLIS
Secretary of Labor

SUBJECT: Delegation of Authority

I am delegating to you, effective March 1, 2010, the authority to supervise, direct and perform all responsibilities relating to the administration of the Office of Job Corps within the Office of the Secretary for an interim period while preparatory work is completed for the transfer of the Office of Job Corps from the Office of the Secretary to the Employment and Training Administration. The Acting Director of the Office of Job Corps will report directly to you while this delegation of authority remains in effect.

This delegation shall be considered revoked upon the effective date of a Secretary's Order that completes the transfer of the Office of Job Corps to the Employment and Training Administration.

[FR Doc. 2010–7456 Filed 4–1–10; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection Request Submitted for Public Comment; Model Employer CHIP Notice

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. Currently, the Employee Benefits Security

Administration is soliciting comments on the Model CHIP Employer Notice. A copy of the information collection request (ICR) may be obtained by contacting the office listed in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office shown in the **ADDRESSES** section on or before June 1, 2010.

ADDRESSES: Direct all written comments regarding the information collection request and burden estimates to G. Christopher Cosby, Office of Policy and Research, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5647, Washington, DC 20210. Telephone: (202) 693–8410; Fax: (202) 219–4745. These are not toll-free numbers. Comments may also be submitted electronically to the following Internet e-mail address: *ebsa.opr@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On February 4, 2009, President Obama signed the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA, Pub. L. 111–3). Under ERISA section 701(f)(3)(B)(i)(I), PHS Act section 2701(f)(3)(B)(i)(I), and section 9801(f)(3)(B)(i)(I) of the Internal Revenue Code, as added by CHIPRA, an employer that maintains a group health plan in a State that provides medical assistance under a State Medicaid plan under title XIX of the Social Security Act (SSA), or child health assistance under a State child health plan under title XXI of the SSA, in the form of premium assistance for the purchase of coverage under a group health plan, is required to make certain disclosures. Specifically, the employer is required to notify each employee of potential opportunities currently available in the State in which the employee resides for premium assistance under Medicaid and CHIP for health coverage of the employee or the employee's dependents.

ERISA section 701(f)(3)(B)(i)(II) requires the Department of Labor to provide employers with model language for the Employer CHIP Notices to enable them to timely comply with this requirement. The Model Employer CHIP Notice is required to include information on how an employee may contact the State in which the employee resides for additional information regarding potential opportunities for premium assistance, including how to apply for such assistance.

Section 311(b)(1)(D) of CHIPRA provides that the Departments of Labor and Health and Human Services shall develop the initial Model Employer CHIP Notice under ERISA section 701(f)(3)(B)(i)(II), and the Department of Labor shall provide such notices to employers, by February 4, 2010. Moreover, each employer is required to provide the initial annual notices to such employer's employees beginning with the first plan year that begins after the date on which the initial model notices are first issued. The ICR relates to the Model Employer CHIP Notice.

On January 26, 2010, the Office of Management and Budget (OMB) approved the Model Employer CHIP Notice under OMB Control Number 1210–0137 pursuant to the emergency procedures for review and clearance in accordance with the Paperwork Reduction Act of 1995 (P.L. 104–13, 44 U.S.C. Chapter 35) and 5 CFR 1320.13. On February 4, 2010, the Department published a **Federal Register** notice (75 FR 5808) announcing the availability of the Model Employer CHIP Notice on its Web site. OMB's approval of the notice currently is schedule to expire on July 31, 2010.

II. Current Actions

This notice requests public comment pertaining to the Department's request for extension of OMB's approval of the Model CHIP Employer Notice (OMB Control Number 1210–0137). After considering comments received in response to this notice, the Department intends to submit an ICR to OMB for continuing approval. No change to the existing ICR is proposed or made at this time. The Department notes that an agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a valid OMB control number. A summary of the ICR and the current burden estimates follows:

Agency: Employee Benefits Security Administration.

Title of Collection: Model Employer CHIP Notice.

Type of Collection: New.

OMB Control Number: 1210–0137.

Frequency of Collection: On occasion.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Total Estimated Number of Respondents: 7,056,000.

Total Estimated Number of Responses: 203,794,701.

Total Estimated Annual Burden Hours: 1,053,000.

Total Net Estimated Annual Costs Burden (other than hourly costs): $25,271,000.

III. Desired Focus of Comments

The Department of Labor (Department) 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.,* by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Dated: March 29, 2010.

Joseph S. Piacentini,

Director, Office of Policy and Research, Employee Benefits Security Administration.

[FR Doc. 2010–7500 Filed 4–1–10; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection Request Submitted for Public Comment; COBRA Notification Requirements—American Recovery and Reinvestment Act of 2009 as Amended

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the

Department's information collection requirements and provide the requested data in the desired format. Currently, the Employee Benefits Security Administration is soliciting comments on the revision of the information collection provisions of its final rule at 29 CFR part 2590, Health Care Continuation Coverage to reflect the hour and cost burden associated with the COBRA notification requirements under the American Recovery and Reinvestment Act of 2009 as amended by the Department of Defense Appropriations Act of 2010 (Pub. L. 111–118). A copy of the information collection request (ICR) may be obtained by contacting the office listed in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office shown in the **ADDRESSES** section on or before June 1, 2010.

ADDRESSES: Direct all written comments regarding the information collection request and burden estimates to G. Christopher Cosby, Office of Policy and Research, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5647, Washington, DC 20210. Telephone: (202) 693–8410; Fax: (202) 219–4745. These are not toll-free numbers. Comments may also be submitted electronically to the following Internet e-mail address: *ebsa.opr@dol.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The continuation coverage provisions of section 601 through 608 of ERISA (and parallel provisions of the Internal Revenue Code (Code)) generally require group health plans to offer qualified beneficiaries' the opportunity to elect continuation coverage following certain events that would otherwise result in the loss of coverage. Continuation coverage is a temporary extension of the qualified beneficiary's previous group health coverage. The right to elect continuation coverage allows individuals to maintain group health coverage under adverse circumstances and to bridge gaps in health coverage that otherwise could limit their access to health care.

COBRA provides the Secretary of Labor (the Secretary) with authority under section 608 of ERISA to carry out the continuation coverage provisions. The Conference Report that accompanied COBRA divided interpretive authority over the COBRA provisions between the Secretary and the Secretary of the Treasury (the Treasury) by providing that the Secretary has the authority to issue regulations implementing the notice and disclosure requirements of COBRA, while the Treasury is authorized to issue regulations defining the required continuation coverage.

On February 17, 2009, President Obama signed the American Recovery and Reinvestment Act (ARRA) of 2009 (Pub. L. 111–5). ARRA includes a requirement that the Secretary of Labor (the Secretary), in consultation with the Secretaries of the Treasury and Health and Human Services, develop model notices for use by group health plans and other entities that, pursuant to ARRA, must provide notices of the availability of premium reductions and additional election periods for health care continuation coverage. On December 19, 2009, President Obama signed the Department of Defense Appropriations Act of 2010 (Pub. L. 111–118), which amended the ARRA COBRA provisions by extending the availability of the health care continuation coverage premium reduction provided for COBRA and other health care continuation coverage, and the Department revised its model notices to reflect these amendments..

On January 12, 2010, the Office of Management and Budget (OMB) approved the revised model notices as a revision to OMB Control Number 1210–0123 under the emergency procedures for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35) and 5 CFR 1320.13. On January 15, 2010, the Department published a **Federal Register** notice (75 FR 2562) announcing the availability of the revised model health care continuation coverage notices required by ARRA as amended on its Web site at *http://www.dol.gov/ebsa/COBRAmodelnotice.html.* OMB's approval of the revision currently is schedule to expire on July 31, 2010.

II. Current Actions

This notice requests public comment pertaining to the Department's request for extension of OMB's approval of its revision to OMB Control Number 1210–0123 relating to the revised ARRA model notices. After considering comments received in response to this notice, the Department intends to submit an ICR to OMB for continuing approval. No change to the existing ICR is proposed or made at this time. The Department notes that an agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a valid OMB control number. A summary of the ICR and the current burden estimates follows:

Agency: Employee Benefits Security Administration, Department of Labor.

Title: COBRA Notification Requirements—American Recovery and Reinvestment Act of 2009 as amended.

Type of Review: Revision of a currently approved collection of information.

OMB Number: 1210–0123.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 593,000.

Frequency of Responses: On occasion.

Responses: 38,115,000.

Estimated Total Burden Hours: None.

Estimated Total Burden Cost (Operating and Maintenance): $34,500,000.

III. Desired Focus of Comments

The Department of Labor (Department) 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.,* by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Dated: March 29, 2010.

Joseph S. Piacentini,

Director, Office of Policy and Research, Employee Benefits Security Administration.

[FR Doc. 2010–7499 Filed 4–1–10; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–70,457; TA–W–70,457a]

Core Manufacturing, Multi-Plastics, Inc., Division, Sipco, Inc., Division, Including Leased Workers of M–Ploy Temporaries, Inc., Saegertown, PA; Sipco Molding Technologies, Meadville, PA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 13, 2009, applicable to workers of Core Manufacturing, Multi-Plastics, Inc., Division and Sipco, Inc., Division, including leased workers of M–Ploy Temporaries, Inc., Saegertown, Pennsylvania. The Department's Notice was published in the **Federal Register** on January 25, 2010 (75 FR 3935).

After the certification was issued, the Department received new information that revealed that the worker group includes workers at an auxiliary facility operating in conjunction with the Saegertown, Pennsylvania facility.

Accordingly, the Department is amending this certification to property reflect this matter.

The intent of the Department's amended certification is to include all workers of the subject firm who are adversely-impacted secondary workers.

The amended notice applicable to TA–W–70,457 is hereby issued as follows:

"All workers of Core Manufacturing, Multi-Plastics, Inc., Division and Sipco, Inc., Division, including leased workers of M–Ploy Temporaries, Inc., Saegertown, Pennsylvania (TA–W–70,457) and Sipco Molding Technologies, Meadville, Pennsylvania (TA–W–70,457A), who became totally or partially separated from employment on or after May 20, 2008, through November 13, 2011, and all workers in the group threatened with total or partial separation from employment on November 13, 2009 through November 13, 2011, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended."

Signed in Washington, DC, this 16th day of March, 2010.

Del Min Amy Chen,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–7498 Filed 4–1–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Prohibited Transaction Exemptions Grant of Individual Exemptions Involving: 2010–09, Ivy Asset Management Corporation, D–11492; 2010–10, Deutsche Bank AG and Its Affiliates, D–11518; 2010–11, The Coca-Cola Company (TCCC), D–11555

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

Ivy Asset Management Corporation Located in Jericho, NY

[Prohibited Transaction Exemption No. 2010–09; Exemption Application No: D–11492]

Exemption

Section I: Transactions

The restrictions of sections 406(a)(1)(A) through (D), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code,[1] shall not apply, effective December 31, 2008, to:

(a) The sale for cash of certain equity interests (the Shares) in hedge funds organized outside the United States,[2] which Shares are held in the Ivy Enhanced Income Fund (the Fund), a sub-fund established under the Alternative Investment-Master Group Trust (the Group Trust), to Ivy Asset Management Corporation (Ivy), a party in interest with respect to certain employee benefit plans, including a defined benefit plan (the Retirement Plan) sponsored by Ivy's parent corporation, The Bank of New York Mellon Corporation,[3] (collectively, the Plan(s)), and certain individual retirement accounts (the IRA(s)), where such Plans and IRAs have interests in the Fund; provided that at the time the Shares were sold, the conditions set forth, below, in section I(b)(1)-(6) of this exemption, and the general conditions, set forth below, in section II, of this exemption, were satisfied;

(b) The sale for cash of certain restricted shares (the Restricted Shares) of the D. E. Shaw Composite International Fund, Ltd. (the DE Shaw Fund), a hedge fund organized outside the United States, to Ivy Holding

[1] For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

[2] It is represented that to the extent that, prior to the effective date of the final exemption, the Fund had received distributions from the hedge funds in connection with interests in such hedge funds held by the Fund, those proceeds would have been distributed by the Fund to each holder of units in the Fund in proportion to each such holder's interest in the Fund; and accordingly, would not have been purchased by Ivy or by any affiliate of Ivy, pursuant to this exemption.

[3] The Bank of New York Mellon Corporation is hereinafter referred to as BNYMC.

Cayman, LTS, an affiliate of Ivy (the Affiliate) which is also organized outside of the United States, and which is a party in interest with respect to the Plans and the IRAs, where such Plans and IRAs have interests in the Fund; provided that at the time the Restricted Shares were sold to the Affiliate, the conditions set forth below, in section I(b)(1)–(6) of this exemption, and the general conditions, set forth below, in section II of this exemption, were satisfied:

(1) The sale of the Shares to Ivy and the sale of the Restricted Shares to the Affiliate were each one-time transactions for cash;

(2) The purchase price paid by Ivy for the Shares and the purchase price paid by the Affiliate for the Restricted Shares was equal to the value of such shares, as reported to the Fund by investment managers of the hedge funds (the Manager(s)), who are independent of and unrelated to Ivy and any of its affiliates, as set forth on the most recent statement issued to the Fund immediately prior to the effective date of this exemption;

(3) The Fund did not incur any commissions or transaction costs with respect to the sale of the Shares to Ivy and with respect to the sale of the Restricted Shares to the Affiliate;

(4) On January 29, 2008, Ivy solicited and received from each of the Plans and IRAs which have an interest in the Fund (the Unit Holder(s)) an affirmative consent to the sale by the Fund of the Shares and of the Restricted Shares;

(5) On January 29, 2008, Ivy solicited and received from each Unit Holder in the Fund an affirmative consent to the entry into a promissory note (the Promissory Note(s)), and as of the effective date of this exemption Ivy entered into such Promissory Notes; and

(6) Pursuant to the terms of each of the Promissory Notes entered into between Ivy and each Unit Holder, in the event that Ivy receives redemption proceeds in excess of the purchase price paid by Ivy to the Fund for the Shares, and/or in the event the Affiliate receives redemption proceeds in excess of the purchase price paid by the Affiliate to the Fund for the Restricted Shares, Ivy will pay, as soon as practicable after receipt of such amounts by Ivy and/or by the Affiliate, the entirety of such excess in cash to each Unit Holder in proportion to each such Unit Holder's investment in the Fund; and Ivy will absorb the loss, if the aggregate redemption proceeds are less than the aggregate purchase price from the sale of the Shares and the sale of the Restricted Shares.

Section II: General Conditions

(a) Ivy, as investment manager of the Fund, represents that the subject transactions are appropriate for and in the interest of the Fund, and each of the Unit Holders which have an interest in the Fund.

(b) Ivy takes all appropriate actions necessary to safeguard the interests of the Fund, and the interests of the Unit Holders in the Fund, in connection with the subject transactions;

(c) The decision by a Unit Holder as to whether to engage in the subject transactions was made, in the case of a Plan by the trustee of each such Plan, in the case of an IRA, by the IRA holder, and in the case of the Retirement Plan by the Benefits Investment Committee (the Committee), which serves as the named fiduciary of the Retirement Plan.

(d) Notwithstanding affirmative consent given by each of the Unit Holders to the sale by the Fund of the Shares and of the Restricted Shares, and notwithstanding the entry into the Promissory Notes between Ivy and each Unit Holder:

(i) The Plans and IRAs have not waived or released and do not waive or release any claims, demands, and/or causes of action which such Plans and IRAs may have against BNYMC and/or Ivy in connection with the acquisition and retention of the Shares and the acquisition and retention of the Restricted Shares; and

(ii) The Plans and IRAs have not waived or released and do not waive or release any claims, demands, and/or causes of action which such Plans and IRAs may have against BNYMC and/or Ivy in connection with the sale of the Shares to Ivy and the sale of the Restricted Shares to the Affiliate;

(e) Ivy will maintain, or cause to be maintained, for a period of six (6) years from the date of any of the subject transactions such records as are necessary to enable the persons described, below, in section II(f)(1) of this exemption, to determine whether the conditions of this exemption have been met, except that—

(1) No party in interest with respect to a Plan or to an IRA which engaged in the subject transactions, other than Ivy and the Affiliate, shall be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or not available for examination, as required, below, by section II(f)(1) of this exemption; and

(2) A separate prohibited transaction shall not be considered to have occurred solely because, due to circumstances beyond the control of Ivy, such records are lost or destroyed prior to the end of the six-year period.

(f)(1) Except as provided, below, in section II(f)(2) of this exemption, and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to, above, in section II(e) of this exemption, are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the Securities and Exchange Commission; or

(B) Any fiduciary of any Plan or any IRA that engaged in the subject transactions, or any duly authorized employee or representative of such fiduciary; or

(C) Any employer of participants and beneficiaries and any employee organization whose members are covered by a Plan or an IRA that engaged in the subject transactions, or any authorized employee or representative of these entities; or

(D) Any participant or beneficiary of a Plan or an IRA that engaged in the subject transactions, or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described, above, in section II(f)(1)(B)–(D) of this exemption, shall be authorized to examine trade secrets of Ivy, or commercial or financial information which is privileged or confidential; and

(3) Should Ivy refuse to disclose information on the basis that such information is exempt from disclosure, Ivy shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

DATES: *Effective Date:* This exemption is effective, December 31, 2008.

Written Comments

In the Notice of Proposed Exemption (the Notice), the Department invited all interested persons to submit written comments and requests for a hearing on the proposed exemption within 45 days of the date of the publication of the Notice in the **Federal Register** on November 16, 2009.[4] All comments and requests for hearing were due by December 31, 2009.

The applicant informed the Department by letter dated December 18, 2009, that the Notice, along with a

[4] 74 FR 58996, November 16, 2009.

cover letter from the applicant, the supplemental statement (the Supplemental Statement), described at 29 CFR 2570.43(b)(2) of the Department's regulations, and a copy of the January 29, 2008, Notice to all Unit holders was sent on December 1, 2009, to all interested persons. However, in a telephone call on February 3, 2010, the applicant informed the Department that page 58997 was inadvertently omitted from the copy of the Notice that was sent to all interested persons. In light of the fact that notification to these interested persons was defective and in order to allow all such interested persons the benefit of the full thirty (30) day comment period, the Department required, and the applicant agreed to, an extension of the deadline within which all interested persons could comment and/or request a hearing on the proposed exemption. In this regard, in accordance with the Department's instructions, the applicant sent a cover letter on February 4, 2009, to all interested persons informing such interested persons of the omission of page 58997 from the Notice, and of the extension of the comment period until March 5, 2010. Accompanying the February 4, cover letter, was a copy of the Notice, including page 58997, a copy of the Supplemental Statement, and a copy of the January 29, 2008, Notice to all Unit holders.

During the comment period, the Department received no requests for hearing. However, the Department did receive a comment letter on March 11, 2010, from the applicant, Ivy. In the comment letter, the applicant requested two changes/clarifications to the Summary of Facts and Representations (SFR), as published in the Notice in the **Federal Register**. The applicant's requested changes/clarifications to the SFR are discussed, below, in an order that corresponds to the appearance of the relevant language in the Notice.

1. The applicant has requested a change in representation 1, as set forth in the SFR on page 58997, column 2, lines 26–27 in the Notice. In this regard, the sentence in the Notice which indicates that the applicant's principal place of business is located in Garden City, New York should be changed to reflect the fact that the applicant's principal place of business has moved to Jericho, New York.

The Department concurs with the applicant's requested change.

2. The applicant has requested a clarification of the language in the third paragraph of representation 3, as set forth in the SFR on page 58997, column 3, lines 7–13 in the Notice. In this regard, the third paragraph of representation 3 in the Notice reads, as follows:

> The Retirement Fund is the only holder of Class E units. The Retirement Fund invested $25 million in Class E units in the Fund in 1996 and over time has received in excess of $33,503,000 in distributions. Ivy does not receive any fees with respect to the Class E units.

In this regard, the applicant wishes to clarify that the distributions in excess of $33,503,000 received by the Retirement Fund includes approximately $8.5 million profit on such Retirement Fund's original investment of $25 million.

The Department concurs with the applicant's requested clarification.

After full consideration and review of the entire record, including the written comment filed by the applicant, the Department has determined to grant the exemption, as corrected, and clarified above. Comments submitted by the applicant to the Department have been included as part of the public record of the exemption application. The complete application file (D–11492), including all supplemental submissions received by the Department, is available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice of Exemption published on November 16, 2009, at 74 FR 58996.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena C. Le Blanc of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

Deutsche Bank AG and Its Affiliates (together, Deutsche Bank or the Applicant)
Located in New York, New York
[Prohibited Transaction Exemption 2010–10; Exemption Application No. D–11518]

Exemption

Section I. Sales of Auction Rate Securities From Plans to Deutsche Bank: Unrelated to a Settlement Agreement

Effective February 1, 2008, the restrictions of section 406(a)(1)(A) and (D) and section 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A), (D), and (E) of the Code, shall not apply, to the sale by a Plan (as defined in Section V(e)) of an Auction Rate Security (as defined in Section V(c)) to Deutsche Bank, where such sale (an Unrelated Sale) is unrelated to, and not made in connection with, a Settlement Agreement (as defined in Section V(f)), provided that the conditions set forth in Section II have been met.[5]

Section II. Conditions Applicable to Transactions Described in Section I

The transactions described in Section I of this exemption are subject to the following conditions:

(a) The Plan acquired the Auction Rate Security in connection with brokerage or advisory services provided by Deutsche Bank;

(b) The last auction for the Auction Rate Security was unsuccessful;

(c) Except in the case of a Plan sponsored by Deutsche Bank for its own employees (a Deutsche Bank Plan), the Unrelated Sale is made pursuant to a written offer by Deutsche Bank (the Offer) containing all of the material terms of the Unrelated Sale, including, but not limited to the most recent rate information for the Auction Rate Security (if reliable information is available). Either the Offer or other materials available to the Plan provide the identity and par value of the Auction Rate Security. Notwithstanding the foregoing, in the case of a pooled fund maintained or advised by Deutsche Bank, this condition shall be deemed met to the extent each Plan invested in the pooled fund (other than a Deutsche Bank Plan) receives written notice regarding the Unrelated Sale, where such notice contains the material terms of the Unrelated Sale (including, but not limited to, the material terms described in the preceding sentence);

(d) The Unrelated Sale is for no consideration other than cash payment against prompt delivery of the Auction Rate Security;

(e) The sales price for the Auction Rate Security is equal to the par value of the Auction Rate Security, plus any accrued but unpaid interest or dividends;

(f) The Plan does not waive any rights or claims in connection with the Unrelated Sale;

(g) The decision to accept the Offer or retain the Auction Rate Security is made by a Plan fiduciary or Plan participant or IRA owner who is independent (as defined in Section V(d)) of Deutsche Bank. Notwithstanding the foregoing: (1) In the case of an individual retirement account (an IRA, as described in Section V(e) below) which is beneficially owned

[5] For purposes of this exemption, references to section 406 of ERISA should be read, unless otherwise specified, to refer to the corresponding provisions of section 4975 of the Code.

by an employee, officer, director or partner of Deutsche Bank, the decision to accept the Offer or retain the Auction Rate Security may be made by such employee, officer, director or partner; or (2) in the case of a Deutsche Bank Plan or a pooled fund maintained or advised by Deutsche Bank, the decision to accept the Offer may be made by Deutsche Bank after Deutsche Bank has determined that such purchase is in the best interest of the Deutsche Bank Plan or pooled fund; [6]

(h) Except in the case of a Deutsche Bank Plan or a pooled fund maintained or advised by Deutsche Bank, neither Deutsche Bank nor any affiliate exercises investment discretion or renders investment advice within the meaning of 29 CFR 2510.3–21(c) with respect to the decision to accept the Offer or retain the Auction Rate Security;

(i) The Plan does not pay any commissions or transaction costs with respect to the Unrelated Sale;

(j) The Unrelated Sale is not part of an arrangement, agreement or understanding designed to benefit a party in interest to the Plan;

(k) Deutsche Bank and its affiliates, as applicable, maintain, or cause to be maintained, for a period of six (6) years from the date of the Unrelated Sale, such records as are necessary to enable the persons described below in paragraph (l)(1), to determine whether the conditions of this exemption, if granted, have been met, except that—

(1) No party in interest with respect to a Plan which engages in an Unrelated Sale, other than Deutsche Bank and its affiliates, as applicable, shall be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or not available for examination, as required, below, by paragraph (l)(1); and

(2) A separate prohibited transaction shall not be considered to have occurred solely because, due to circumstances beyond the control of Deutsche Bank or its affiliates, as applicable, such records are lost or destroyed prior to the end of the six-year period;

(l)(1) Except as provided below in paragraph (l)(2), and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to above in paragraph (k) are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the U.S. Securities and Exchange Commission; or

(B) Any fiduciary of any Plan, including any IRA owner, that engages in a Sale, or any duly authorized employee or representative of such fiduciary; or

(C) Any employer of participants and beneficiaries and any employee organization whose members are covered by a Plan that engages in the Unrelated Sale, or any authorized employee or representative of these entities;

(2) None of the persons described above in paragraph (l)(1)(B)–(C) shall be authorized to examine trade secrets of Deutsche Bank, or commercial or financial information which is privileged or confidential; and

(3) Should Deutsche Bank refuse to disclose information on the basis that such information is exempt from disclosure, Deutsche Bank shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

Section III. Sales of Auction Rate Securities From Plans to Deutsche Bank: Related to a Settlement Agreement

Effective February 1, 2008, the restrictions of section 406(a)(1)(A) and (D) and section 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A), (D), and (E) of the Code, shall not apply, to the sale by a Plan of an Auction Rate Security to Deutsche Bank, where such sale (a Settlement Sale) is related to, and made in connection with, a Settlement Agreement, provided that the conditions set forth in Section IV have been met.

Section IV. Conditions Applicable to Transactions Described in Section III

The transactions described in Section III of this exemption are subject to the following conditions:

(a) The terms and delivery of the Offer are consistent with the requirements set forth in the Settlement Agreement;

(b) The Offer or other documents available to the Plan specifically describe, among other things:

(1) How a Plan may determine: the Auction Rate Securities held by the Plan with Deutsche Bank, the purchase dates for the Auction Rate Securities, and (if reliable information is available) the most recent rate information for the Auction Rate Securities;

(2) The number of shares and par value of the Auction Rate Securities available for purchase under the Offer;

(3) The background of the Offer;

(4) That participating in the Offer will not result in or constitute a waiver of any claim of the tendering Plan;

(5) The methods and timing by which Plans may accept the Offer;

(6) The purchase dates, or the manner of determining the purchase dates, for Auction Rate Securities tendered pursuant to the Offer;

(7) The timing for acceptance by Deutsche Bank of tendered Auction Rate Securities;

(8) The timing of payment for Auction Rate Securities accepted by Deutsche Bank for payment;

(9) The methods and timing by which a Plan may elect to withdraw tendered Auction Rate Securities from the Offer;

(10) The expiration date of the Offer;

(11) The fact that Deutsche Bank may make purchases of Auction Rate Securities outside of the Offer and may otherwise buy, sell, hold or seek to restructure, redeem or otherwise dispose of the Auction Rate Securities;

(12) A description of the risk factors relating to the Offer as Deutsche Bank deems appropriate;

(13) How to obtain additional information concerning the Offer; and

(14) The manner in which information concerning material amendments or changes to the Offer will be communicated to affected Plans.

(c) The terms of the Settlement Sale are consistent with the requirements set forth in the Settlement Agreement; and

(d) All of the conditions in Section II have been met.

Section V. Definitions

For purposes of this exemption:

(a) The term "affiliate" means: Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(b) The term "control" means: The power to exercise a controlling influence over the management or policies of a person other than an individual;

(c) The term "Auction Rate Security" means a security that:

[6] The Department notes that the Act's general standards of fiduciary conduct also apply to the transactions described herein. In this regard, section 404 requires, among other things, that a fiduciary discharge his duties respecting a plan solely in the interest of the plan's participants and beneficiaries and in a prudent manner. Accordingly, a plan fiduciary must act prudently with respect to, among other things, the decision to sell the Auction Rate Security to Deutsche Bank for the par value of the Auction Rate Security, plus any accrued but unpaid interest or dividends. The Department further emphasizes that it expects Plan fiduciaries, prior to entering into any of the transactions, to fully understand the risks associated with this type of transaction following disclosure by Deutsche Bank of all relevant information.

(1) Is either a debt instrument (generally with a long-term nominal maturity) or preferred stock; and

(2) Has an interest rate or dividend that is reset at specific intervals through a Dutch auction process;

(d) A person is "independent" of Deutsche Bank if the person is: (1) Not Deutsche Bank or an affiliate; and (2) not a relative (as defined in ERISA section 3(15)) of the party engaging in the transaction;

(e) The term "Plan" means: An individual retirement account or similar account described in section 4975(e)(1)(B) through (F) of the Code (an IRA); an employee benefit plan as defined in section 3(3) of ERISA; or an entity holding plan assets within the meaning of 29 CFR 2510.3–101, as modified by ERISA section 3(42); and

(f) The term "Settlement Agreement" means: A legal settlement involving Deutsche Bank and a U.S. state or federal authority that provides for the purchase of an Auction Rate Security by Deutsche Bank from a Plan.

DATES: *Effective Date:* This exemption is effective as of February 1, 2008.

After giving full consideration to the entire record, the Department has decided to grant the exemption, as described above. The complete application file is made available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, Room N–1513, US Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on January 19, 2010, at 75 FR 3074.

FOR FURTHER INFORMATION CONTACT: Warren Blinder of the Department, telephone (202) 693–8553. (This is not a toll-free number.)

The Coca-Cola Company (TCCC) Located in Atlanta, Georgia

[Prohibited Transaction Exemption 2010–11; Exemption Application No. D–11555]

Exemption

The restrictions of section 406(a) and (b) of the Act shall not apply to the reinsurance of risks and the receipt of premiums therefrom by Red Re Inc. (Red Re), in connection with a medical stop-loss insurance policy sold by the Prudential Insurance Company of America (Prudential), or any successor insurance company to Prudential which is unrelated to TCCC, which would pay for certain benefits under the TCCC Retiree Health Plan (the Plan), provided the following conditions are met:

(a) Red Re—

(1) Is a party in interest with respect to the Plan by reason of a stock or partnership affiliation with TCCC that is described in section 3(14)(E) or (G) of the Act;

(2) Is licensed to sell insurance or conduct reinsurance operations in at least one State as defined in section 3(10) of the Act;

(3) Has obtained a Certificate of Authority from the Insurance Commissioner of its domiciliary state that has not been revoked or suspended;

(4)(A) Has undergone an examination by an independent certified public accountant for its last completed taxable year immediately prior to the taxable year of the reinsurance transaction; or

(B) Has undergone a financial examination (within the meaning of the law of its domiciliary State) by the Insurance Commissioner of the State within 5 years prior to the end of the year preceding the year in which the reinsurance transaction occurred; and

(5) Is licensed to conduct reinsurance transactions by a State whose law requires that an actuarial review of reserves be conducted annually by an independent firm of actuaries and reported to the appropriate regulatory authority; and

(b) The Plan pays no more than adequate consideration for the insurance contracts;

(c) No commissions are paid by the Plan with respect to the direct sale of such contracts or the reinsurance thereof;

(d) In the initial year of any contract involving Red Re, there will be an immediate and objectively determined benefit to the Plan's participants and beneficiaries in the form of increased benefits;

(e) In subsequent years, should the relationship with Prudential be terminated, the formula used to calculate premiums by any successor insurer will be similar to formulae used by other insurers providing comparable stop-loss coverage under similar programs. Furthermore, the premium charge calculated in accordance with the formula will be reasonable and will be comparable to the premium charged by the insurer and its competitors with the same or a better rating providing the same coverage under comparable programs;

(f) To the extent Red Re earns any profit due to favorable claims experience, such profit will be promptly returned to the Plan.

(g) The Plan only contracts with insurers with a rating of A or better from A.M. Best Company. The reinsurance arrangement between the insurer and Red Re will be indemnity insurance only, *i.e.,* the insurer will not be relieved of liability to the Plan should Red Re be unable or unwilling to cover any liability arising from the reinsurance arrangement;

(h) The Plan retains an independent fiduciary (the Independent Fiduciary), at TCCC's expense, to analyze the transactions and render an opinion that the requirements of sections (a) thorough (g) have been complied with. For purposes of this exemption, the Independent Fiduciary is a person who:

(1) Is not directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with TCCC or Red Re (this relationship hereinafter referred to as an "Affiliate");

(2) Is not an officer, director, employee of, or partner in TCCC or Red Re (or any Affiliate of either);

(3) Is not a corporation or partnership in which TCCC or Red Re has an ownership interest or is a partner;

(4) Does not have an ownership interest in TCCC or Red Re, or any of either's Affiliates;

(5) Is not a fiduciary with respect to the Plan prior to the appointment; and

(6) Has acknowledged in writing acceptance of fiduciary responsibility and has agreed not to participate in any decision with respect to any transaction in which the Independent Fiduciary has an interest that might affect its best judgment as a fiduciary.

For purposes of this definition of an "Independent Fiduciary," no organization or individual may serve as an Independent Fiduciary for any fiscal year if the gross income received by such organization or individual (or partnership or corporation of which such individual is an officer, director, or 10 percent or more partner or shareholder) from TCCC, Red Re, or their Affiliates (including amounts received for services as Independent Fiduciary under any prohibited transaction exemption granted by the Department) for that fiscal year exceeds 3 percent of that organization or individual's annual gross income from all sources for the prior fiscal year.

In addition, no organization or individual who is an Independent Fiduciary, and no partnership or corporation of which such organization or individual is an officer, director, or 10 percent or more partner or shareholder, may acquire any property from, sell any property to, or borrow funds from TCCC, Red Re, or their Affiliates during the period that such organization or individual serves as Independent Fiduciary, and continuing for a period of six months after such

organization or individual ceases to be an Independent Fiduciary, or negotiates any such transaction during the period that such organization or individual serves as Independent Fiduciary.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on December 22, 2009 at 74 FR 68106.

Written Comments and Hearing Requests

During the comment period, the Department received approximately 30 telephone calls and three written comments in response to the notice of proposed exemption, one of which also requested a hearing. The request for a hearing was subsequently withdrawn. The telephone calls and written comments raised no substantive issues, but rather reflected the commenters' failure to fully understand the notice of proposed exemption or the effect of the proposed exemption on the commenters' health care benefits. The Department provided explanations to each of the commentators by telephone, and each was satisfied with the responses provided by the Department.

The Department has given full consideration to the entire record, including the comment letters received. Because the comments were not germane to the subject matter of the proposed exemption, the Department has determined to grant the exemption as it was proposed.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 693–8546. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 30th day of March, 2010.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2010–7446 Filed 4–1–10; 8:45 am]

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DEPARTMENT OF LABOR

Employee Benefits Security Administration

Application Nos. and Proposed Exemptions; D–11533 and D–11534; CUNA Mutual Pension Plan for Non-Represented Employees (Together, the Plans); and D–11565; Citizens Bank Wealth Management, N.A., et al.

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N–5700, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No.____, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: "*moffitt.betty@dol.gov*", or by FAX to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

Warning: If you submit written comments or hearing requests, do not include any personally-identifiable or confidential business information that you do not want to be publicly-disclosed. All comments and hearing requests are posted on the Internet exactly as they are received, and they can be retrieved by most Internet search engines. The Department will make no deletions, modifications or redactions to the comments or hearing requests received, as they are public records.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type

requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

CUNA Mutual Pension Plan for Represented Employees and CUNA Mutual Pension Plan for Non-Represented Employees (together, the Plans), Located in Madison, Wisconsin.

[Application Nos. D–11533 and 11534, Respectively]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a)(1)(A), 406(a)(1)(B), 406(a)(1)(D), 406(b)(1), and (b)(2) of the Act, and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (i) The February 20, 2009 cash sale (the Sale), at aggregate cost basis plus interest, by each of the Plans of interests in certain private equity funds (the Funds) to the CUNA Mutual Insurance Society (the Applicant), the sponsor of the Plans and a party in interest with respect to the Plans, pursuant to a contract between the Applicant and the trustee of the Plans concluded on that same date; (ii) the September 14, 2009 payment by the Applicant of certain additional cash amounts, including interest (the Top-Up Payments); to the Plans pursuant to the terms of the foregoing contract; and (iii) the extension of credit between the Plans and the Applicant from the date of the Sale (February 20, 2009) to the date of the Top-Up Payments (September 14, 2009), provided that the following conditions were satisfied:

(a) An independent fiduciary reviewed the terms and conditions of the Sale and of the Top-Up Payments prior to their execution, and determined that both were protective of the interests of the Plans;

(b) The independent fiduciary determined that the terms and conditions of both the Sale and of the Top-Up Payments were at least as favorable to the Plans as those that would have been obtained in an arm's length transaction between unrelated parties;

(c) The terms and conditions of both the Sale and of the Top-Up Payments were at least as favorable to the Plans as those that would have been obtained in an arm's length transaction between unrelated parties; and

(d) The independent fiduciary provided its opinion in written reports on behalf of the Plans as to the fairness and reasonableness of the Sale of the Plans' interests in the Funds to the Applicant, and determined that the terms of the original Sale and subsequent Top-Up Payments were especially beneficial to each of the Plans because: (i) On February 20, 2009, the Plans received a return of their aggregate cost basis of their interests in the Funds (which cost basis was determined by the independent fiduciary to exceed the aggregate fair market value of the Plans' interests in the Funds as of October 31, 2008), plus interest accrued on the Funds from their date of acquisition by each Plan through the date of the Sale; and (ii) On September 14, 2009, the independent fiduciary determined that, in instances where the fair market value of any Fund on December 31, 2008 exceeded its original cost basis, each of the Plans received a Top-Up Payment on September 14, 2009 comprised of the increased value of such Fund, plus interest accrued on such increased value from December 31, 2008 to the date of the Top-Up Payments (September 14, 2009).

Summary of Facts and Representations

1. The Applicant is the parent of each of the companies forming the CUNA Mutual Group, which is a leading provider of financial services to cooperatives, credit unions, their members, and other customers. The Applicant represents that its primary products include group credit life and group credit disability products sold to credit unions; retirement plans and group life and disability products sold to credit union employees; and health, life, and annuity policies for credit union members.

2. The Applicant sponsors the Plans, each of which is a defined benefit pension plan. The Applicant represents that, as of December 31, 2008, the CUNA Mutual Pension Plan for Represented Employees had 1,271 participants and assets of $90,282,987. The Applicant also represents that, as of December 31, 2008, the CUNA Mutual Pension Plan for Non-Represented Employees had 5,749 participants and assets of $326,563,333. The trustee (Trustee) of each of the Plans is the State Street Bank and Trust Company of Boston, Massachusetts.

3. The Applicant represents that, during the years 2006 and 2007, both it and the Plans co-invested their respective assets in ten private equity Funds.[1] The Applicant further represents the decision of each Plan to invest in the Funds[2] was made by the Employee Benefit Plan Administrative Committee (the Committee), the named fiduciary of both of the Plans, and that no additional interests in the Funds were acquired by the Plans after the year 2007.[3] The Applicant also states that, as of November of 2008, the Plans' interest in the Funds represented a relatively small portion (*i.e.,* less than 7%) of the Applicant's overall position in the Funds, and that the Applicant's overall interest in each Fund in turn represented only a small portion of the overall funding commitments to each Fund.

4. On November 25, 2008, the Committee contracted with U.S. Trust, Bank of America Private Wealth Management (U.S. Trust) to serve as an independent fiduciary (the Independent Fiduciary) on behalf of the Plans to determine whether the terms of the

[1] The ten private equity Funds in which each of the Plans acquired interests were: (1) AIG Highstar Capital III; (2) Audax Mezzanine Fund II LP; (3) Capital Partners Private Equity Fund; (4) Citigroup Capital Partners II; (5) CP Lone Star; (6) Crimson Capital Partners III; (7) EnerVest Energy Institutional Fund XI; (8) New Science Ventures Fund I; (9) Webster Capital II; and (10) Five Arrows Realty Securities V, LP.

[2] With respect to the co-investment arrangement of both the Applicant and the Plans in the Funds, the Department notes that if a plan fiduciary causes a plan to enter into a transaction where, by the terms or nature of the transaction, a conflict of interest between the plan and the fiduciary (or persons in which the fiduciary has an interest) exists or will arise in the future, that transaction would violate section 406(a)(1)(D) and 406(b)(1) of the Act (or the parallel provisions under the Code). In this connection, the fiduciary must not rely upon and cannot be otherwise dependent upon the participation of the plan in order for the fiduciary (or persons in which the fiduciary has an interest) to undertake or to continue his or her share of the investment. Furthermore, even if at its inception the transaction did not involve a violation, if a divergence of interests develops between the plan and the fiduciary (or persons in which the fiduciary has an interest), the fiduciary must take steps to eliminate the conflict of interest in order to avoid engaging in a prohibited transaction. See ERISA Advisory Opinion Letter 2000–10A (July 27, 2000).

[3] Section 404 of the Act requires, among other things, that a plan fiduciary act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making decisions on behalf of a plan. Accordingly, the Department is not expressing an opinion herein as to whether any investment decisions or other actions taken by the Committee regarding the acquisition and subsequent holding of the interests in the Funds by the Plans were consistent with, or in violation of, its fiduciary obligations under Part 4 of Title I of the Act.

proposed Sale of the Plans' interests in the Funds to the Applicant would be in the interest of the Plans.[4] The Applicant represents that both U.S. Trust and its eventual successor as Independent Fiduciary, Evercore Trust Company N.A. (Evercore) are experienced and qualified fiduciaries with extensive trust and management capabilities such as discretionary asset management, asset allocation and diversification, investment advice, securities trading, and the performance of independent fiduciary assignments for plans covered by the Act. In addition, U.S. Trust and Evercore each represent that less than 1% of their annual revenues during their respective periods of service as Independent Fiduciary were derived from the Applicant and its affiliates.

In its engagement letter dated December 5, 2008, the original Independent Fiduciary, U.S. Trust, agreed to: (1) Review and evaluate the consideration to be paid to the Plans in connection with the Sale to determine whether such consideration is fair and reasonable and in the interests of the Plans; (2) review and evaluate the terms of the Sale to determine whether they are at least as favorable to the Plans as terms that would have been agreed to between unrelated parties; (3) determine whether the Plans should enter into the Sale on such terms; (4) direct the trustee of the Plans whether or not to enter into the Sale; and (5) provide a written opinion on behalf of the Plans concerning the fairness and reasonableness of the Sale.

5. In order to assist it in rendering its decision, the Independent Fiduciary engaged LCB Capital LLC (LCB) of Chicago, Illinois to perform an analysis of the Funds and to provide U.S. Trust with an initial report (the Initial LCB Report) detailing its conclusions. LCB represents that it receives less than 1% of its revenue directly from the Applicant and its affiliates. A supplement to the Initial LCB Report also states that the LCB managing director who conducted the valuation analysis of the Funds, Mr. Daniel Bayston, founded LCB in 2008 after a 25-year career with the financial services and business valuation firm of Duff & Phelps. The Applicant represents that during his career, Mr. Bayston managed a wide range of corporate finance and business valuation assignments for publicly-traded and privately-held corporate clients and ERISA fiduciaries, and that such assignments have included merger and acquisition analyses, fairness opinions, shareholder liquidity analyses, private equity and debt placements, and corporate valuation matters. The Applicant also represents that Mr. Bayston is a member of the CFA Institute and the Business Valuation Association. In December of 2008, the Initial LCB Report was issued to the Independent Fiduciary. In the executive summary of this report, LCB stated that it had examined all relevant information that was provided by the Fund managers, including the amount and date of the original investment, current valuation information provided by the Fund managers, as well as business descriptions and relevant industry classifications.

6. Subsequent to the issuance of the Initial LCB Report, the Independent Fiduciary issued a report on January 15, 2009 (the Initial I/F Report) detailing its analysis and opinion regarding the proposed Sale of the Plans' interests in the Funds. The Independent Fiduciary represented that the valuation analysis contained in the Initial LCB Report focused on specific industry and financial market trends which were likely to have had an impact on the value of the Funds. The Independent Fiduciary further represented in the Initial I/F Report that it had reviewed the content of the Initial LCB Report, and determined that the assumptions, methodology, and conclusions contained in the report were reasonable and reliable. The Initial I/F Report stated that the comparison by LCB of market conditions at the end of 2008 relative to those prevailing in 2006 and 2007 when the interests in the Funds were acquired by the Plans provided compelling evidence that the value of the Funds had declined significantly from their original cost.

7. Taking into account the foregoing contents of the Initial LCB Report, the Independent Fiduciary determined in its Initial I/F Report that a purchase by the Applicant of the Plans' interests in the Funds at their original cost was fair and reasonable to, and in the interest of, the Plans. The Independent Fiduciary represented in this report that it had concluded that there was no separate benefit to the Applicant in engaging in the Sale transaction, and that the only discernible benefit was enabling the Plans to liquidate, at original cost, a series of investments which had lost money. Pursuant to its determination that the proposed Sale was in the interest of the Plans, the Independent Fiduciary issued a letter to the Trustee of the Plans on February 18, 2009 directing the Trustee to sell the Plans' interests in the Funds to the Applicant.

In connection with the Independent Fiduciary's direction, the Applicant and the Trustee of each of the Plans entered into agreements (the Transfer Agreements) on February 20, 2009, pursuant to which all of the interests in the Funds held by each Plan were sold on that same date to the Applicant. In addition to determining the price paid by the Applicant for the Plans' interests in the Funds, each of the Transfer Agreements contained a provision (the Top-Up Provision) stipulating that in the event that year-end (*i.e.,* December 31, 2008) stated valuations of any of the Funds in which the Plans held an interest exceeded the Plans' original cost, the Trustee of each of the Plans would be entitled to receive on behalf of the Plans the difference between the December 31, 2008 valuation and the original cost. In accordance with the requirements of the Top-Up Provision, the Independent Fiduciary stated at the conclusion of the Initial I/F Report that it would update its analysis to reflect year-end December 31, 2008 Fund data as soon as it became available from the Fund managers.

The Applicant represents that, on February 20, 2009, the cash Sale of the Plans' interests in the Funds to the Applicant was consummated. The total cash payment to the Plans incident to the Sale was the higher of (i) the aggregate cost basis of the Plans' interests in the Funds as of October 31, 2008 or (ii) the aggregate stated fair market value of the interests in the Funds held by the Plans as of October 31, 2008. The Independent Fiduciary further represented that the total cash Sale price of $20,754,736.58 was comprised of the Plans' aggregate cost basis in the Funds ($19,168,999.58) plus interest ($1,585,737.00).[5] The Applicant further represents that the total cash Sale price was allocated between the Plans, with $4,981,186.84 being paid to the CUNA Mutual Pension Plan for Represented Employees and $15,773,549.74 being paid to the CUNA Mutual Pension Plan for Non-Represented Employees.

[4] It is represented that, in accordance with this contractual arrangement, Evercore Trust Company N.A. (a subsidiary of Evercore LP) assumed all of U.S. Trust's existing obligations as the Independent Fiduciary with respect to the Plans as a consequence of the May 1, 2009 sale of U.S. Trust's Special Fiduciary Services business to Evercore LP.

[5] The Applicant represents that the interest paid to the Plans incident to the February 20, 2009 Sale was calculated based upon the Plans' original cost basis in the Funds, plus interest accrued from the date of the Plans' capital contribution to each Fund through the date of the Sale. Specifically, the per annum interest rate utilized was 5.49% for capital contributions made by the Plans in 2006 and 5.52% for capital contributions made in 2007. This interest rate reflects the credited interest rate paid by the Applicant's general account over the relevant time periods.

8. In September of 2009, immediately after the completion of the audits of the 2008 financial statements of the Funds (and in accordance with Top-Up Provisions of the Transfer Agreements), the Independent Fiduciary (which, as of July 1, 2009, was Evercore) issued an updated analysis of the Sale transaction (the Updated I/F Report) to determine, as of December 31, 2008, whether the fair market value of any of the Funds held by the Plans was greater than the Plans' cost basis in the Funds at the time of their acquisition. The Updated I/F Report relied upon an August 2009 written valuation analysis prepared by LCB (the Updated LCB Report) which, according to the Independent Fiduciary, utilized a valuation approach that was identical to that employed by LCB in its Initial Report. In the Updated LCB Report, LCB stated that it examined information such as the date and amount of the original investment by the Plans, relevant industry classification, and any available current valuation information provided by the Fund manager. LCB then determined the appropriate industry valuation multiple at or near the time of the investment and compared that with the same industry valuation multiple as of December 31, 2008. The Updated LCB Report also noted that industry valuation metrics and earnings multiples for virtually all industries had declined significantly from the time of the Plans' original investments in the Funds through December 31, 2008.

Utilizing the updated information provided by the managers of the Funds and contained in the Updated LCB Report, the Independent Fiduciary noted in its Updated I/F Report that the December 31, 2008 fair market value of eight of the ten Funds in which the Plans held an interest on that date remained below the Plans' original cost basis in those Funds. However, the Updated I/F Report also stated that the December 31, 2008 stated fair market value of two of the Funds (*i.e.,* CP Lone Star and New Science Venture Fund I) exceeded the Plans' cost basis in these Funds. The aggregate valuation gains (and losses) experienced by the Plans' combined holdings in the Funds through December 31, 2008, as compiled in the Updated I/F Report, are summarized below in the following chart:

Funds in which the plans held interests	Date of acquisition of interests in each fund by the plans	Aggregate amount invested in each fund by the plans (cost basis)	Value of each fund as stated by the fund managers as of 12/31/08	Aggregate gains (or losses) experienced by the plans based upon the 12/31/08 stated value of each fund
AIG Highstar Capital III	5/25/07	$2,490,691	$2,297,321	($193,370)
Audax Mezzanine Fund II LP	11/30/06	914,682	873,787	(40,894)
Capital Partners Private Equity Fund	5/3/07	1,128,158	1,022,935	(105,223)
Citigroup Capital Partners II	11/15/06	8,709,246	5,532,666	(3,176,579)
CP Lone Star	5/3/07	666,667	722,280	55,613
Crimson Capital Partners III	9/28/07	278,275	153,390	(124,885)
EnerVest Energy Institutional Fund XI	6/22/07	1,496,003	1,190,539	(305,464)
Five Arrows Realty Securities V, LP	8/23/07	358,123	342,081	(16,042)
New Science Ventures Fund I	10/31/06	2,452,255	2,489,795	37,495
Webster Capital II	5/11/07	675,000	587,378	(87,622)

9. The Independent Fiduciary's Updated I/F Report determined that a purchase price of the Plans' interests in the Funds at original cost plus interest (with additional Top-Up Payments plus interest to the Plans for those individual Funds whose December 31, 2008 fair market value exceeded their cost basis) was fair and reasonable to, and in the interest of, the Plans. Accordingly, the Independent Fiduciary further determined that, for those Funds whose stated fair market value was greater than cost, the Plans were entitled to receive Top-Up Payments totalling $96,583, comprised of $93,108 plus an interest payment of $3,475.[6] On September 14, 2009, pursuant to the direction of the Independent Fiduciary and in accordance with the provisions of the February 20, 2009 Transfer Agreements between the Applicant and the Trustee of the Plans, the Top-Up Payments were made to the Plans.[7] The Independent Fiduciary reaffirmed in its Updated I/F Report that there was no separate benefit to the Applicant of engaging in the Sale. Instead, the Independent Fiduciary represented that the only discernible benefit was to enable the Plans to liquidate a series of investments which had lost money at their original cost.

10. The Applicant represents that the Sale of the Plans' interests in the Funds was beneficial to, and in the interest of, each of the Plans for several reasons. First, the Applicant represents that the Sale allowed the Plans to sell illiquid assets for a price that, in the aggregate, exceeded the fair market value of those assets. Second, the Applicant represents that the Sale allowed the Plans to reduce their exposure to a class of investments with an uncertain future. Third, the Applicant represents that the Sale allowed the Plans to obtain cash for their respective interests in the Funds, thereby permitting allocation of the assets of the Plans to more favorable investment vehicles. Fourth, in instances where the fair market value of any Fund on December 31, 2008 exceeded its original cost basis, each of the Plans received a Top-Up Payment on September 14, 2009 comprised of the increased value of such Fund, plus interest accrued on such increased value from December 31, 2008 to the date of the Top-Up Payments.

11. In summary, the Applicant represents that the past transactions described herein for which exemptive relief is sought satisfied the statutory criteria of section 408(a) of the Act because: (a) The Independent Fiduciary

[6] This Top-Up Payment figure was the sum of (1) an aggregate gain of $37,495 experienced by the Plans from their investment in New Science Ventures Fund I, (2) an aggregate gain of $55,613 experienced by the Plans from their investment in the CP Lone Star Fund, plus (3) the $3,475 interest payment described above.

[7] In this connection, the Applicant represents that, on September 14, 2009, it made a Top-Up Payment of $23,180 (including $834 in interest accrued from December 31, 2008 to September 14, 2009) to the CUNA Mutual Pension Plan for Represented Employees and a Top-Up Payment of $73,403 (including $2,641 in interest accrued from December 31, 2008 to September 14, 2009) to the CUNA Mutual Pension Plan for Non-Represented Employees. The Applicant represents that the interest component of the Top-Up Payments was calculated at the rate of 5.28%, which was the rate of interest credited to the Plans when the Applicant purchased the Plans' interests in the Funds on February 20, 2009.

reviewed the terms and conditions of the Sale and of the Top-Up Payments and determined that both were protective of the interests of the Plans; (b) The Independent Fiduciary determined that the terms and conditions of both the Sale and the Top-Up Payments were at least as favorable to the Plans as those that would have been obtained in an arm's length transaction between unrelated parties; (c) The terms and conditions of both the Sale and of the Top-Up Payments were at least as favorable to the Plans as those that would have been obtained in an arm's length transaction between unrelated parties; and (d) The Independent Fiduciary provided its opinion in written reports on behalf of the Plans as to the fairness and reasonableness of the Sale of the Plans' interests in the Funds to the Applicant, and determined that the terms of the original Sale and subsequent Top-Up Payments were especially beneficial to each of the Plans because: (i) On February 20, 2009, the Plans received a return of their aggregate cost basis of their interests in the Funds (which cost basis was determined by the Independent Fiduciary to exceed the aggregate fair market value of the Plans' interests in the Funds as of October 31, 2008), plus interest accrued on the Funds from their date of acquisition by each Plan through the date of the Sale; and (ii) On September 14, 2009, the Independent Fiduciary determined that, in instances where the fair market value of any Fund on December 31, 2008 exceeded its original cost basis, each of the Plans received a Top-Up Payment on September 14, 2009 comprised of the increased value of such Fund, plus interest accrued on such increased value from December 31, 2008 to the date of the Top-Up Payments (September 14, 2009).

Notice to Interested Persons: Notice of the proposed exemption shall be given to all interested persons in the manner agreed upon by the Applicant and the Department within 15 days of the date of publication in the **Federal Register**. Comments and requests for a hearing are due forty-five (45) days after publication of the notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Judge of the Department at (202) 693–8550. (This is not a toll-free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which are the subject of the exemption.

Signed at Washington, DC, this 30th day of March 2010.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2010–7447 Filed 4–1–10; 8:45 am]

BILLING CODE 4510–29–P

LIBRARY OF CONGRESS

Copyright Royalty Board

Notice of Intent To Audit

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Public notice.

SUMMARY: The Copyright Royalty Judges are announcing receipt of notices of intent to audit the 2009 statements of account submitted by Sirius Satellite Radio Inc. and XM Satellite Radio Inc.

FOR FURTHER INFORMATION CONTACT: Richard Strasser, Senior Attorney, or Gina Giuffreda, Attorney Advisor, by telephone at (202) 707–7658 or by e-mail at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION: Section 106(6) of the Copyright Act, title 17 of the United States Code, gives a copyright owner of sound recordings an exclusive right to perform the copyrighted works publicly by means of a digital audio transmission. This right is limited by section 114(d), which allows certain non-interactive digital audio services, including preexisting satellite digital audio radio services, to make digital transmissions of a sound recording under a compulsory license. Moreover, these services may make any necessary ephemeral reproductions to facilitate the digital transmission of the sound recording under a second license set forth in section 112(e) of the Copyright Act.

Licensees may operate under these licenses provided they pay the royalty fees and comply with the terms of the licenses set by the Copyright Royalty Judges ("Judges"). On January 24, 2008, the Judges issued their final determination setting rates and terms for the section 112 and 114 licenses for the period 2007–2012. 73 FR 4080, *affirmed in part, remanded in part, SoundExchange* v. *Librarian of Congress,* 571 F.3d 1220 (DC Cir. 2009). As part of the terms set for these licenses, the Judges designated SoundExchange, Inc., as the organization charged with collecting the royalty payments and statements of account and distributing the royalties to the copyright owners and performers entitled to receive such royalties under the section 112 and 114 licenses. 37 CFR 382.13(b)(1). As the designated Collective, SoundExchange may conduct a single audit of a licensee for any calendar year for the purpose of verifying their royalty payments. SoundExchange must first file with the Judges a notice of intent to audit a licensee and serve the notice on the licensee to be audited. 37 CFR 382.15(b), (c).

On March 23, 2010, pursuant to 37 CFR 382.15(c), SoundExchange filed with the Judges separate notices of intent to audit Sirius Satellite Radio Inc. ("Sirius") and XM Satellite Radio Inc. ("XM") for the year 2009.[1] Section

[1] On February 13, 2009, SoundExchange filed with the Judges separate notices of intent to audio

382.15(c) requires the Judges to publish a notice in the **Federal Register** within 30 days of receipt of the notice announcing the Collective's intent to conduct an audit.

In accordance with 37 CFR 382.15(c), the Copyright Royalty Judges are publishing today's notice to fulfill this requirement with respect to SoundExchange's separate notices of intent to audit Sirius Satellite Radio Inc. and XM Satellite Radio Inc. each filed March 23, 2010.

Dated: March 30, 2010.

James Scott Sledge,

Chief U.S. Copyright Royalty Judge.

[FR Doc. 2010–7444 Filed 4–1–10; 8:45 am]

BILLING CODE 1410–72–P

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

Office of the Director of National Intelligence; Privacy Act of 1974; System of Records

AGENCY: Office of the Director of National Intelligence.

ACTION: Notice to establish systems of records.

SUMMARY: The Office of the Director of National Intelligence (ODNI) provides notice that it is establishing fourteen (14) new systems of records subject to the Privacy Act of 1974, as amended, 5 U.S.C. 552a. These systems of records are maintained by the ODNI.

DATES: This action will be effective on May 12, 2010, unless comments are received that result in a contrary determination.

ADDRESSES: You may submit comments, identified by RIN number, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov.

Mail: Director, Information Management, Office of the Director of National Intelligence, Washington, DC 20511.

FOR FURTHER INFORMATION CONTACT: Mr. John F. Hackett, Director, Information Management, 703–275–2215.

SUPPLEMENTARY INFORMATION: The ODNI was created by the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), Public Law 108–458, 118 Stat. 3638 (Dec. 17, 2004). ODNI published its final Privacy Act Regulation on March 28, 2008 (73 FR 16531) and twelve Privacy Act systems of records notices on December 28, 2007 (72 FR 73887). ODNI now adds fourteen (14) additional systems of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a). These systems of records are subject to routine uses established by final rule dated March 28, 2008 (73 FR 16531, 16541). To protect classified and sensitive personnel or law enforcement information contained in these systems, the Office of the Director of National Intelligence is proposing to exempt these systems of records from certain portions of the Privacy Act where necessary, as permitted by law. As required by the Privacy Act, a proposed rule is being published concurrently with this notice to seek public comment on exemption of these systems. The ODNI has previously established a rule that it will preserve the exempt status of records it receives when the reason for the exemption remains valid (73 FR 16537). In accordance with 5 U.S.C. 552a (r), the ODNI has provided a report of these new systems of records to the Office of Management and Budget and to Congress.

Dated: March 25, 2010.

John F. Hackett,

Director, Information Management.

SYSTEM NAME:

Manuscript, Presentation, and Resume Review Records (ODNI–01).

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Office of the Director of National Intelligence, Washington, DC 20511.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the Office of the Director of National Intelligence (ODNI), including assignees and detailees to the ODNI, contractors, individuals hired under the Intergovernmental Personnel Act, and other individuals who have had access to ODNI information or facilities and who are subject to prepublication review of writings or presentations pursuant to non-disclosure agreements.

CATEGORIES OF RECORDS IN THE SYSTEM:

Manuscripts and other writings (including those supporting oral presentations), resumes, videos, internet postings, and other works or products relating to the activities of the ODNI; records consulted in conducting pre-publication review; records generated in documenting pre-publication review decisions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended, 50 U.S.C. 401–442; The Federal Records Act of 1950, as amended, 44 U.S.C. 3101 *et seq.;* Executive Order 12333, as amended (73 FR 45325); Executive Order 12958, as amended (68 FR 15315); Executive Order 9397, as amended (73 FR 70239); and 32 CFR 1701 *et seq.* (73 FR 16531, 16541).

PURPOSE(S):

ODNI reviews writings intended for publication to ensure that potentially classified material or information that requires protection from public disclosure is not compromised.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See General Routine Uses Applicable to More than One ODNI Privacy Act System of Records, Subpart C of ODNI's Privacy Act Regulation published at 32 CFR part 1701 (73 FR 16531, 16541) and incorporated by reference (*see also http://www.dni.gov*). In addition, a record from this system of records maintained by ODNI may be disclosed as a routine use to Federal agencies involved in a classification review of ODNI records.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are stored in secured areas within the control of the ODNI. Electronic records are stored in secure file-servers located within secure facilities under control of the ODNI.

RETRIEVABILITY:

By name and case number. Information may be retrieved from this system of records by automated or hand search based on indices and automated capabilities utilized in the normal course of business. All searches of this system of records will be performed in ODNI offices by authorized staff.

SAFEGUARDS:

Information in this system is safeguarded in accordance with recommended and/or prescribed administrative, physical, and technical safeguards. Records are maintained in a secure government or contractor facility with access to the facility limited to authorized personnel only and authorized and escorted visitors. Physical security protections include

Sirius and XM for the years 2007 and 2008. *See* 74 FR 8585 (February 25, 2009).

guards and locked facilities requiring badges and passwords for access. Records are accessed only by authorized government personnel and contractors holding appropriate security clearances and whose official duties require access to the records. Communications are encrypted where required and other safeguards are in place to monitor and audit access and to detect intrusions. System backup is maintained separately.

RETENTION AND DISPOSAL:

Pursuant to 44 U.S.C. 3303a(d) and 36 CFR chapter 12, subchapter B, part 1228–Disposition of Federal Records, records will not be disposed of until such time as the National Archives and Records Administration (NARA) approves an applicable ODNI Records Control Schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Office of the Director, Information Management, Office of the Director of National Intelligence, Washington, DC 20511.

NOTIFICATION PROCEDURE:

As specified below, records in this system are exempt from certain notification, access, and amendment procedures. Individuals seeking to learn whether this system contains non-exempt information about them should address inquiries to the ODNI at the address and according to the requirements set forth below under the heading "Record Access Procedures."

RECORD ACCESS PROCEDURES:

As specified below, records in this system have been exempted from certain notification, access, and amendment procedures. A request for access to non-exempt records shall be made in writing with the envelope and letter clearly marked "Privacy Act Request." Requesters shall provide their full name and complete address. The requester must sign the request and have it verified by a notary public. Alternately, the request may be submitted under 28 U.S.C. 1746, certifying the requester's identity and understanding that obtaining a record under false pretenses constitutes a criminal offense. Requests for access to information must be addressed to the Director, Information Management, Office of the Director of National Intelligence, Washington, DC 20511. Regulations governing access to one's records or for appealing an initial determination concerning access to records are contained in the ODNI regulation implementing the Privacy Act.

CONTESTING RECORD PROCEDURES:

As specified below, records in this system are exempt from certain notification, access, and amendment procedures. Individuals seeking to correct or amend non-exempt records should address their requests to the ODNI at the address and according to the requirements set forth above under the heading "Records Access Procedures." Regulations governing access to and amendment of one's records or for appealing an initial determination concerning access to or amendment of records are contained in the ODNI regulation implementing the Privacy Act.

RECORD SOURCE CATEGORIES:

Records received from individuals covered by this system; records generated internally in reviewing proposed publications; records from other elements of the Intelligence Community used in conducting pre-publication reviews.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Records contained in this System of Records may be exempted from the requirements of subsections (c)(3); (d)(1), (2), (3), (4); (e)(1) and (e)(4)(G), (H), (I); and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(1). Records may be exempted from these subsections or, additionally, from the requirements of subsections (c)(4); (e)(2), (3), (5), (8), (12); and (g) of the Privacy Act consistent with any exemptions claimed under 5 U.S.C. 552a(j) or (k) by the originator of the record, provided the reason for the exemption remains valid and necessary.

SYSTEM NAME:

Executive Secretary Action Management System Records (ODNI—02).

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Office of the Director of National Intelligence, Washington, DC 20511.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who communicate with the Office of the Director of National Intelligence (ODNI) via e-mail, fax, courier, and mail, and individuals who are the subject of official communications to and from the ODNI.

CATEGORIES OF RECORDS IN THE SYSTEM:

All incoming and outgoing official correspondence and communications encompassing the spectrum of ODNI missions, policies, procedures, operations, and activities, including public and congressional affairs. The system incorporates taskings, messages, correspondence, reports, studies, and communications with the Congress, the National Security Council, the White House, other government departments and agencies as well as ODNI components, non-government organizations and the public. Also included are minutes and other records of the Intelligence Community Leadership Committee and other high level councils, committees, task forces, and groups in which the ODNI leadership holds functional or secretariat responsibilities.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended, 50 U.S.C. 401–442; Executive Order 12333, as amended (73 FR 45325); Executive Order 12958, as amended (68 FR 15315); and Executive Order 12968, as amended (73 FR 38103).

PURPOSE(S):

ODNI personnel use records in the ODNI Action Management System to track and manage incoming and outgoing official correspondence.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See General Routine Uses Applicable to More than One ODNI Privacy Act System of Records, Subpart C of ODNI's Privacy Act Regulation published at 32 CFR part 1701 (73 FR 16531, 16541) and incorporated by reference (*see also http://www.dni.gov*).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and other hard-copy records are stored in secured areas within the control of the ODNI. Electronic records are stored in secure file-servers located within secure facilities under control of the ODNI.

RETRIEVABILITY:

By name and action tracking number. Information may be retrieved from this system of records by automated or hand search based on indices and automated capabilities utilized in the normal course of business. All searches of this system of records will be performed by authorized staff.

SAFEGUARDS:

Information in this system is safeguarded in accordance with recommended and/or prescribed administrative, physical, and technical safeguards. Records are maintained in a secure government or contractor facility with access to the facility limited to authorized personnel only and authorized and escorted visitors. Physical security protections include guards and locked facilities requiring badges and passwords for access. Records are accessed only by authorized government personnel and contractors holding appropriate security clearances and whose official duties require access to the records. Communications are encrypted where required and other safeguards are in place to monitor and audit access and to detect intrusions. System backup is maintained separately.

RETENTION AND DISPOSAL:

Pursuant to 44 U.S.C. 3303a(d) and 36 CFR chapter 12, subchapter B, part 1228—Disposition of Federal Records, records will not be disposed of until such time as the National Archives and Records Administration (NARA) approves an applicable ODNI Records Control Schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Secretary, c/o Director, Information Management, Office of the Director of National Intelligence, Washington, DC 20511.

NOTIFICATION PROCEDURE:

As specified below, records in this system are exempt from certain notification, access, and amendment procedures. Individuals seeking to learn whether this system contains non-exempt information about them should address inquiries to the ODNI at the address and according to the requirements set forth below under the heading "Record Access Procedures."

RECORD ACCESS PROCEDURES:

As specified below, records in this system have been exempted from certain notification, access, and amendment procedures. A request for access to non-exempt records shall be made in writing with the envelope and letter clearly marked "Privacy Act Request." Requesters shall provide their full name and complete address. The requester must sign the request and have it verified by a notary public. Alternately, the request may be submitted under 28 U.S.C. 1746, certifying the requester's identity and understanding that obtaining a record under false pretenses constitutes a criminal offense. Requests for access to information must be addressed to the Director, Information Management, Office of the Director of National Intelligence, Washington, DC 20511. Regulations governing access to one's records or for appealing an initial determination concerning access to records are contained in the ODNI regulation implementing the Privacy Act.

CONTESTING RECORD PROCEDURES:

As specified below, records in this system are exempt from certain notification, access, and amendment procedures. Individuals seeking to correct or amend non-exempt records should address their requests to the ODNI at the address and according to the requirements set forth above under the heading "Records Access Procedures." Regulations governing access to and amendment of one's records or for appealing an initial determination concerning access to or amendment of records are contained in the ODNI regulation implementing the Privacy Act.

RECORD SOURCE CATEGORIES:

Officials and staff of the executive, judicial, and legislative branches, representatives of non-governmental organizations, and members of the general public who exchange official communications with the ODNI.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Records contained in this System of Records may be exempted from the requirements of subsections (c)(3); (d)(1), (2), (3), (4); (e)(1) and (e)(4)(G), (H), (I); and (f) of the Privacy Act pursuant to exemptions under subsection (k)(1) of the Privacy Act, 5 U.S.C. 552a. Records may be exempted from these subsections or, additionally, from the requirements of subsections (c)(4); (e)(2), (3), (5), (8), (12); and (g) of the Privacy Act consistent with any exemptions claimed under 5 U.S.C. 552a(j) or (k) by the originator of the record, provided the reason for the exemption remains valid and necessary.

SYSTEM NAME:

Public Affairs Office Records (ODNI—03).

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Office of the Director of National Intelligence, Washington, DC 20511.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Media representatives and other members of the public who exchange communications with the Office of the Director of National Intelligence (ODNI) about ODNI and Intelligence Community (IC) activities; and ODNI personnel, including those assigned and detailed to the ODNI, who report media contacts.

CATEGORIES OF RECORDS IN THE SYSTEM:

Media products and extracts; copies of media communications to and from the Public Affairs Office (PAO) including memoranda of conversations; relevant correspondence from the public and ODNI responses; ODNI memoranda regarding matters under the purview of the PAO; and names of ODNI personnel who have reported contacts with the media.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended, 50 U.S.C. 401–442; Executive Order 12333, as amended (73 FR 45325); Executive Order 12958, as amended (68 FR 15315); and Executive Order 12968, as amended (73 FR 38103).

PURPOSE(S):

PAO personnel use this system to track institutional communications with the media and the public, including speeches, press releases and fact sheets, issuances and messages to the IC, as well as individual ODNI staff contacts with the media.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See General Routine Uses Applicable to More than One ODNI Privacy Act System of Records, Subpart C of ODNI's Privacy Act Regulation published at 32 CFR part 1701 (73 FR 16531, 16541) and incorporated by reference (*see also http://www.dni.gov*).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are stored in secured areas within the control of the ODNI. Electronic records are stored in secure file-servers located within secure facilities under control of the ODNI.

RETRIEVABILITY:

By name or other key word. Information may be retrieved from this system of records by automated or hand

search based on indices and automated capabilities utilized in the normal course of business. All searches of this system of records will be performed by authorized staff.

SAFEGUARDS:

Information in this system is safeguarded in accordance with recommended and/or prescribed administrative, physical, and technical safeguards. Records are maintained in a secure government or contractor facility with access to the facility limited to authorized personnel only and authorized and escorted visitors. Physical security protections include guards and locked facilities requiring badges and passwords for access. Records are accessed only by authorized government personnel and contractors holding appropriate security clearances and whose official duties require access to the records. Communications are encrypted where required and other safeguards are in place to monitor and audit access and to detect intrusions. System backup is maintained separately.

RETENTION AND DISPOSAL:

Pursuant to 44 U.S.C. 3303a(d) and 36 CFR chapter 12, subchapter B, part 1228—Disposition of Federal Records, records will not be disposed of until such time as the National Archives and Records Administration (NARA) approves an applicable ODNI Records Control Schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Public Affairs Office, c/o Director, Information Management, Office of the Director of National Intelligence, Washington, DC 20511.

NOTIFICATION PROCEDURE:

As specified below, records in this system are exempt from certain notification, access, and amendment procedures. Individuals seeking to learn whether this system contains non-exempt information about them should address inquiries to the ODNI at the address and according to the requirements set forth below under the heading "Record Access Procedures."

RECORD ACCESS PROCEDURES:

As specified below, records in this system have been exempted from certain notification, access, and amendment procedures. A request for access to non-exempt records shall be made in writing with the envelope and letter clearly marked "Privacy Act Request." Requesters shall provide their full name and complete address. The requester must sign the request and have it verified by a notary public. Alternately, the request may be submitted under 28 U.S.C. 1746, certifying the requester's identity and understanding that obtaining a record under false pretenses constitutes a criminal offense. Requests for access to information must be addressed to the Director, Information Management, Office of the Director of National Intelligence, Washington, DC 20511. Regulations governing access to one's records or for appealing an initial determination concerning access to records are contained in the ODNI regulation implementing the Privacy Act.

CONTESTING RECORD PROCEDURES:

As specified below, records in this system are exempt from certain notification, access, and amendment procedures. Individuals seeking to correct or amend non-exempt records should address their requests to the ODNI at the address and according to the requirements set forth above under the heading "Records Access Procedures." Regulations governing access to and amendment of one's records or for appealing an initial determination concerning access to or amendment of records are contained in the ODNI regulation implementing the Privacy Act.

RECORD SOURCE CATEGORIES:

Records in the system are received from or generated by individuals covered by this system of records or produced by the ODNI concerning ODNI or IC activities.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Records contained in this System of Records may be exempted from the requirements of subsections (c)(3); (d)(1), (2), (3), (4); (e)(1) and (e)(4)(G), (H), (I); and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(1). Records may be exempted from these subsections or, additionally, from the requirements of subsections (c)(4); (e)(2), (3), (5), (8), (12); and (g) of the Privacy Act consistent with any exemptions claimed under 5 U.S.C. 552a(j) or (k) by the originator of the record, provided the reason for the exemption remains valid and necessary.

SYSTEM NAME:

Office of Legislative Affairs Records (ODNI–04).

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Office of the Director of National Intelligence, Washington, DC 20511.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former members of the U.S. Congress and Congressional staff; individuals whose inquiries are forwarded by members of the U.S. Congress or Congressional staff to the Office of the Director of National Intelligence (ODNI) for response; or individuals who are the subject of official ODNI correspondence with members of Congress or Congressional staff.

CATEGORIES OF RECORDS IN THE SYSTEM:

Congressional notifications; communications between ODNI's Office of Legislative Affairs (OLA), members of Congress, Congressional staff, constituents, other ODNI offices and/or U.S. Government entities regarding constituent or other inquiries sent to the ODNI for response; and memoranda, correspondence, position papers and other communications supporting ODNI's liaison with Congress, including documentation of briefings, debriefings and reports on ODNI activities.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended, 50 U.S.C. 401–442; Executive Order 12333, as amended (73 FR 45325); Executive Order 12958, as amended (68 FR 15315); and Executive Order 12968, as amended (73 FR 38103).

PURPOSE(S):

ODNI collects and maintains records regarding communications and interactions with Congress, constituents, and legislative matters.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See General Routine Uses Applicable to More than One ODNI Privacy Act System of Records, Subpart C of ODNI's Privacy Act Regulation published at 32 CFR part 1701 (73 FR 16531, 16541) and incorporated by reference (*see also http://www.dni.gov*)

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are stored in secured areas within the control of the ODNI. Electronic records are stored in secure file-servers located within secure facilities under control of the ODNI.

RETRIEVABILITY:

By name or other key word. Information may be retrieved from this system of records by automated or hand search based on indices and automated capabilities utilized in the normal course of business. All searches of this system of records will be performed by authorized staff.

SAFEGUARDS:

Information in this system is safeguarded in accordance with recommended and/or prescribed administrative, physical, and technical safeguards. Records are maintained in a secure government or contractor facility with access to the facility limited to authorized personnel only and authorized and escorted visitors. Physical security protections include guards and locked facilities requiring badges and passwords for access. Records are accessed only by authorized government personnel and contractors holding appropriate security clearances and whose official duties require access to the records. Communications are encrypted where required and other safeguards are in place to monitor and audit access and to detect intrusions. System backup is maintained separately.

RETENTION AND DISPOSAL:

Pursuant to 44 U.S.C. 3303a(d) and 36 CFR chapter 12, subchapter B, part 1228—Disposition of Federal Records, records will not be disposed of until such time as the National Archives and Records Administration (NARA) approves an applicable ODNI Records Control Schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Legislative Affairs c/o Director, Information Management, Office of the Director of National Intelligence, Washington, DC 20511.

NOTIFICATION PROCEDURE:

As specified below, records in this system are exempt from certain notification, access, and amendment procedures. Individuals seeking to learn whether this system contains non-exempt information about them should address inquiries to the ODNI at the address and according to the requirements set forth below under the heading "Record Access Procedures."

RECORD ACCESS PROCEDURES:

As specified below, records in this system have been exempted from certain notification, access, and amendment procedures. A request for access to non-exempt records shall be made in writing with the envelope and letter clearly marked "Privacy Act Request." Requesters shall provide their full name and complete address. The requester must sign the request and have it verified by a notary public. Alternately, the request may be submitted under 28 U.S.C. 1746, certifying the requester's identity and understanding that obtaining a record under false pretenses constitutes a criminal offense. Requests for access to information must be addressed to the Director, Information Management, Office of the Director of National Intelligence, Washington, DC 20511. Regulations governing access to one's records or for appealing an initial determination concerning access to records are contained in the ODNI regulation implementing the Privacy Act.

CONTESTING RECORD PROCEDURES:

As specified below, records in this system are exempt from certain notification, access, and amendment procedures. Individuals seeking to correct or amend non-exempt records should address their requests to the ODNI at the address and according to the requirements set forth above under the heading "Records Access Procedures." Regulations governing access to and amendment of one's records or for appealing an initial determination concerning access to or amendment of records are contained in the ODNI regulation implementing the Privacy Act.

RECORD SOURCE CATEGORIES:

Current and former members of the U.S. Congress and their staffs; ODNI officials and offices; and individuals communicating with the ODNI.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Records contained in this System of Records may be exempted from the requirements of subsections (c)(3); (d)(1), (2), (3), (4); (e)(1) and (e)(4)(G), (H), (I); and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(1). Records may be exempted from these subsections or, additionally, from the requirements of subsections (c)(4); (e)(2), (3), (5), (8), (12); and (g) of the Privacy Act consistent with any exemptions claimed under 5 U.S.C. 552a(j) or (k) by the originator of the record, provided the reason for the exemption remains valid and necessary.

SYSTEM NAME:

ODNI Guest Speaker Records (ODNI–05).

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Office of the Director of National Intelligence, Washington, DC 20511.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who may be or have been engaged as guest speakers (academics, business professionals, and government officials), trainers and other presenters.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographic data including academic credentials; publicly available information (e.g., publications authored by the speaker); correspondence; and administrative records concerning the engagements.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended, 50 U.S.C. 401–442; Executive Order 12333, as amended (73 FR 45325); Executive Order 12958, as amended (68 FR 15315); and Executive Order 12968, as amended (73 FR 38103).

PURPOSE(S):

The Office of the Director of National Intelligence (ODNI) maintains records of speakers' presentations and biographies as a resource for Intelligence Community elements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See General Routine Uses Applicable to More than One ODNI Privacy Act System of Records, Subpart C of Office of the Director of National Intelligence (ODNI)'s Privacy Act Regulation published at 32 CFR part 1701 (73 FR 16531, 16541) and incorporated by reference (*see also http://www.dni.gov*).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are stored in secured areas within the control of the ODNI. Electronic records are stored in secure file-servers located within secure facilities under control of the ODNI.

RETRIEVABILITY:

By name or other key word. Information may be retrieved from this system of records by automated or hand search based on indices and automated capabilities utilized in the normal course of business. All searches of this system of records will be performed by authorized staff.

SAFEGUARDS:

Information in this system is safeguarded in accordance with recommended and/or prescribed administrative, physical, and technical safeguards. Records are maintained in a secure government or contractor facility with access to the facility limited to authorized personnel only and authorized and escorted visitors. Physical security protections include guards and locked facilities requiring badges and passwords for access. Records are accessed only by authorized government personnel and contractors holding appropriate security clearances and whose official duties require access to the records. Communications are encrypted where required and other safeguards are in place to monitor and audit access and to detect intrusions. System backup is maintained separately.

RETENTION AND DISPOSAL:

Pursuant to 44 U.S.C. 3303a(d) and 36 CFR chapter 12, subchapter B, part 1228—Disposition of Federal Records, records will not be disposed of until such time as the National Archives and Records Administration (NARA) approves an applicable ODNI Records Control Schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director of National Intelligence for Policy, Plans, and Requirements c/o Director, Information Management, Office of the Director of National Intelligence, Washington, DC 20511.

NOTIFICATION PROCEDURE:

As specified below, records in this system are exempt from certain notification, access, and amendment procedures. Individuals seeking to learn whether this system contains non-exempt information about them should address inquiries to the ODNI at the address and according to the requirements set forth below under the heading "Record Access Procedures."

RECORD ACCESS PROCEDURES:

As specified below, records in this system have been exempted from certain notification, access, and amendment procedures. A request for access to non-exempt records shall be made in writing with the envelope and letter clearly marked "Privacy Act Request." Requesters shall provide their full name and complete address. The requester must sign the request and have it verified by a notary public. Alternately, the request may be submitted under 28 U.S.C. 1746, certifying the requester's identity and understanding that obtaining a record under false pretenses constitutes a criminal offense. Requests for access to information must be addressed to the Director, Information Management, Office of the Director of National Intelligence, Washington, DC 20511. Regulations governing access to one's records or for appealing an initial determination concerning access to records are contained in the ODNI regulation implementing the Privacy Act.

CONTESTING RECORD PROCEDURES:

As specified below, records in this system are exempt from certain notification, access, and amendment procedures. Individuals seeking to correct or amend non-exempt records should address their requests to the ODNI at the address and according to the requirements set forth above under the heading "Records Access Procedures." Regulations governing access to and amendment of one's records or for appealing an initial determination concerning access to or amendment of records are contained in the ODNI regulation implementing the Privacy Act.

RECORD SOURCE CATEGORIES:

Records in the system are obtained from individuals covered by this system; ODNI officials and offices; and academic institutions, private organizations, libraries, commercial databases, and federal agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Records contained in this System of Records may be exempted from the requirements of subsections (c)(3); (d)(1), (2), (3), (4); (e)(1) and (e)(4)(G), (H), (I); and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(1). Records may be exempted from these subsections or, additionally, from the requirements of subsections (c)(4); (e)(2), (3), (5), (8), (12); and (g) of the Privacy Act consistent with any exemptions claimed under 5 U.S.C. 552a(j) or (k) by the originator of the record, provided the reason for the exemption remains valid and necessary.

SYSTEM NAME:

Office of General Counsel Records (ODNI–06).

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Office of Director of National Intelligence, Washington, DC 20511.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former staff and contract employees, personal services independent contractors, employees of industrial contractors, military and civilian personnel detailed or assigned to the Office of the Director of National Intelligence (ODNI); applicants for employment with the ODNI; current and former employees and contractors of other U.S. Government agencies; individuals in contact with the ODNI, including individuals whose inquiries concerning the ODNI or the Intelligence Community (IC) are forwarded to the Office of General Counsel for response; attorneys in private practice who hold ODNI security clearances or access approvals; individuals in government, academia, the business community, or other elements of the private sector with expertise on matters of interest to the Office of General Counsel; and individuals involved in matters subject to the ODNI or the IC's legal authorities, responsibilities, and obligations, including but not limited to administrative claimants, grievants, parties in litigation, witnesses, targets or potential targets of investigations or intelligence collection, and individuals who are interviewed by, or provide information to the ODNI or the IC.

CATEGORIES OF RECORDS IN THE SYSTEM:

Legal documents, including but not limited to pleadings, subpoenas, motions, affidavits, declarations, briefs, litigation reports, and legal opinions; crimes reports obtained from the U.S. Department of Justice or other law enforcement agencies; public and confidential Financial Disclosure Reports; internal ODNI documents and cables, and correspondence with members of the public, members of the U.S. Congress, Congressional staff, and federal, state, local, international and foreign agencies, courts and administrative tribunals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended, 50 U.S.C. 401–442; Executive Order 12333, as amended (73 FR 45325); Executive Order 12958, as amended (68 FR 15315); and Executive Order 12968, as amended (73 FR 38103).

PURPOSE(S):

Records in this system are used by attorneys in the ODNI Office of General Counsel to provide legal advice and representation to the ODNI and its officers; provide factual information necessary for the preparation of legal documents, including but not limited to pleadings, subpoenas, motions,

affidavits, declarations, briefs, legal opinions, litigation reports, and reports to law enforcement agencies; provide a record of all private attorneys who have received security clearances and/or access approvals for information necessary to their representation of ODNI-affiliated clients, and documentation of the nature, scope and duration of their representation of ODNI-affiliated clients; and maintain a record of federal, state, local, international or foreign litigation, administrative claims, and other legal matters in which ODNI is a party or has an interest.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See General Routine Uses Applicable to More than One ODNI Privacy Act System of Records, Subpart C of ODNI's Privacy Act Regulation published at 32 CFR part 1701 (73 FR 16531, 16541) and incorporated by reference (*see also http://www.dni.gov*).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are stored in secured areas within the ODNI. Electronic records are stored in secure file-servers located within the ODNI.

RETRIEVABILITY:

By name, personal identifier, case number, or key word. Information may be retrieved from this system of records by automated or hand search based on indices and automated capabilities utilized in the normal course of business. All searches of this system of records will be performed in ODNI offices by authorized staff.

SAFEGUARDS:

Information in this system is safeguarded in accordance with recommended and/or prescribed administrative, physical and technical safeguards. Records are maintained in a secure government facility with access to the facility limited to only authorized personnel or authorized and escorted visitors. Physical security protections include guards and locked facilities requiring badges and passwords for access. Records are accessed only by authorized government personnel and contractors holding an appropriate security clearance and whose official duties require access to the records. Communications are encrypted where required and other safeguards are in place to monitor and audit access and to detect intrusions. System backup is maintained separately.

RETENTION AND DISPOSAL:

Pursuant to 44 U.S.C. 3303a(d) and 36 CFR chapter 12, subchapter B, part 1228—Disposition of Federal Records, records will not be disposed of until such time as the National Archives and Records Administration (NARA) approves an applicable ODNI Records Control Schedule.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, c/o Director, Information Management, Office of the Director of National Intelligence, Washington, DC 20511.

NOTIFICATION PROCEDURE:

As specified below, records in this system are exempt from certain notification, access, and amendment procedures. Individuals seeking to learn whether this system contains non-exempt information about them should address inquiries to the ODNI at the address and according to the requirements set forth below under the heading "Record Access Procedures."

RECORD ACCESS PROCEDURES:

As specified below, records in this system have been exempted from certain notification, access, and amendment procedures. A request for access to non-exempt records shall be made in writing with the envelope and letter clearly marked "Privacy Act Request." Requesters shall provide their full name and complete address. The requester must sign the request; and have it verified by a notary public. Alternately, the request may be submitted under 28 U.S.C. 1746, certifying the requester's identity and understanding that obtaining a record under false pretenses constitutes a criminal offense. Requests for access to information must be addressed to the Director, Information Management, Office of the Director of National Intelligence, Washington, DC 20511. Regulations governing access to one's records or for appealing an initial determination concerning access to records are contained in the ODNI regulation implementing the Privacy Act.

CONTESTING RECORD PROCEDURES:

As specified below, records in this system are exempt from certain notification, access, and amendment procedures. Individuals seeking to correct or amend non-exempt records should address their requests to the ODNI at the address and according to the requirements set forth above under the heading "Records Access Procedures." Regulations governing access to and amendment of one's records or for appealing an initial determination concerning access to or amendment of records are contained in the ODNI regulation implementing the Privacy Act.

RECORD SOURCE CATEGORIES:

Records in the system are received from individuals covered by the system; generated by the ODNI and federal, state and local government agencies and courts; obtained from the media, the internet and commercial databases.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Records contained in this System of Records may be exempted from the requirements of subsections (c)(3); (d)(1), (2), (3), (4); (e)(1) and (e)(4)(G), (H), (I); and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(1), (k)(2), and (k)(5). Records may be exempted from these subsections or, additionally, from the requirements of subsections (c)(4); (e)(2), (3), (5), (8), (12); and (g) of the Privacy Act consistent with any exemptions claimed under 5 U.S.C. 552a(j) or (k) by the originator of the record, provided the reason for the exemption remains valid and necessary.

SYSTEM NAME:

Analytic Resources Catalog (ARC) (ODNI–07).

SYSTEM CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Office of the Director of National Intelligence, Washington, DC 20511.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former staff (employees, detailees, assignees and contractors) of the Intelligence Community (IC) elements, including military personnel and other federal employees with intelligence analysis duties.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records, including the Analyst Yellow Pages, reflecting the assignments, expertise, education, specialized foreign language and other skills, and experiences of federal government employees and contractors performing intelligence analysis duties; pre-set reports and other documentation about analytic resources at each IC element and across the IC.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended, 50 U.S.C. 401–442; Executive Order 12333, as amended (73 FR 45325); and Executive Order 9397, as amended (73 FR 70239).

PURPOSE:

Records in this system are used to: locate IC and other intelligence analysts for collaborative activities; identify analysts authorized to access on-line collaboration zones; obtain information about the expertise, skills and educational backgrounds of IC and other intelligence analysts; obtain aggregate information about the use of analytic resources across the IC; and assist in management and planning functions of each IC element and of the IC as a whole.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See General Routine Uses Applicable to More than One ODNI Privacy Act System of Records, Subpart C of ODNI's Privacy Act Regulation published at 32 CFR part 1701 (73 FR 16531, 16541) and incorporated by reference (*see also http://www.dni.gov*). In addition, as routine uses specific to this system, the ODNI may disclose relevant ARC records to the following persons or entities and under the circumstances or for the purposes described below:

(a) A record from this system of records may be disclosed, as a routine use, to appropriately cleared and authorized staff of the IC elements in order to identify and locate intelligence analysts possessing specific expertise, skills or experiences for the purpose of collaborative analytic endeavors.

(b) A record from this system of records may be disclosed, as a routine use, to appropriately cleared and authorized staff of the IC elements whose responsibility it is to assess the depth and strength of the IC's analytic skills, expertise and experience and for other workforce management, budgeting or planning purposes.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic records are stored in secure file-servers located within secure facilities under control of the ODNI.

RETRIEVABILITY:

Records about individual analysts can be searched and retrieved based on name or other key word (e.g., degrees held, foreign language ability, country or intelligence area of specialization) pertinent to analytic expertise.

SAFEGUARDS:

Information in this system is safeguarded in accordance with recommended and/or prescribed administrative, physical and technical safeguards. Records are maintained in a secure government facility with access to the facility limited to only authorized personnel or authorized and escorted visitors. Physical security protections include guards and locked facilities requiring badges and passwords for access. Records are accessed only by authorized government personnel and contractors holding an appropriate security clearance and whose official duties require access to the records. Communications are encrypted where required and other safeguards are in place to monitor and audit access and to detect intrusions. System backup is maintained separately.

RETENTION AND DISPOSAL:

Pursuant to 44 U.S.C. 3303a(d) and 36 CFR chapter 12, subchapter B, part 1228—Disposition of Federal Records, records will not be disposed of until such time as the National Archives and Records Administration (NARA) approves an applicable ODNI Records Control Schedule.

SYSTEM MANAGER(S) AND ADDRESS:

ARC Program Manager, c/o Director, Information Management, Office of the Director of National Intelligence, Washington, DC 20511.

NOTIFICATION PROCEDURE:

As specified below, records in this system are exempt from certain notification, access, and amendment procedures. Individuals seeking to learn whether this system contains non-exempt information about them ("notification") should address inquiries to the ODNI at the address and according to the requirements set forth below under the heading "Record Access Procedures."

RECORD ACCESS PROCEDURES:

As specified below, records in this system have been exempted from certain notification, access, and amendment procedures. A request for access to non-exempt records shall be made in writing with the envelope and letter clearly marked "Privacy Act Request." Requesters shall provide their full name and complete address. The requester must sign the request and have it verified by a notary public. Alternately, the request may be submitted under 28 U.S.C. 1746, certifying the requester's identity and understanding that obtaining a record under false pretenses constitutes a criminal offense. Requests for access to information must be addressed to the Director, Information Management, Office of the Director of National Intelligence, Washington, DC 20511. Regulations governing access to one's records or for appealing an initial determination concerning access to records are contained in the ODNI regulation implementing the Privacy Act.

CONTESTING RECORD PROCEDURES:

As specified below, records in this system are exempt from certain notification, access, and amendment procedures. Individuals seeking to correct or amend non-exempt records should address their requests to the ODNI at the address and according to the requirements set forth above under the heading "Records Access Procedures." Regulations governing access to and amendment of one's records or for appealing an initial determination concerning access to or amendment of records are contained in the ODNI regulation implementing the Privacy Act.

RECORDS SOURCE CATEGORIES:

Records in the system are obtained directly from individual analysts and from their employing agencies' human resource information systems.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Records contained in this System of Records may be exempted from the requirements of subsections (c)(3); (d)(1), (2), (3), (4); (e)(1) and (e)(4)(G), (H), (I); and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(1). Records may be exempted from these subsections or, additionally, from the requirements of subsections (c)(4); (e)(2), (3), (5), (8), (12); and (g) of the Privacy Act consistent with any exemptions claimed under 5 U.S.C. 552a(j) or (k) by the originator of the record, provided the reason for the exemption remains valid and necessary.

SYSTEM NAME:

Intelligence Community Customer Registry (ODNI–09).

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Office of the Director of National Intelligence, Washington, DC 20511.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former intelligence customers including U.S. policymakers, U.S. Government personnel, and other authorized recipients of Intelligence Community (IC) intelligence products.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographic data (including name, title, employing agency), organizational charts, contact information, security clearances and access approvals, subjects of intelligence interest to covered individuals, comments and feedback from covered individuals regarding preferred format for receiving intelligence products.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended, 50 U.S.C. 401–442; Executive Order 12333, as amended (73 FR 45325); Executive Order 12958, as amended (68 FR 15315); and Executive Order 12968, as amended (73 FR 38103).

PURPOSE(S):

Records in this system enable authorized personnel of the ODNI and other IC elements to ensure intelligence customers receive intelligence products in accordance with their expressed interests and particular requirements for format and delivery.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See General Routine Uses Applicable to More Than One ODNI Privacy Act System of Records, Subpart C of ODNI's Privacy Act Regulation published at 32 CFR part 1701 (73 FR 16531, 16541) and incorporated by reference (*see also http://www.dni.gov*). In addition, the Customer Registry will be made available to authorized U.S. Government analysts, analytical managers and other intelligence support personnel to ensure that customers receive relevant intelligence products and to identify new and under-served customers by name and title.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic records are stored in secure file-servers located within secure facilities under control of the ODNI or its Executive Agent.

RETRIEVABILITY:

By full text search, including name or identifying title. Information may be retrieved from this system of records by automated searches conducted by authorized members of the U.S. Government.

SAFEGUARDS:

Information in this system is safeguarded in accordance with recommended and/or prescribed administrative, physical and technical safeguards. Records are maintained in a secure government or contractor facility with access to the facility limited to only authorized personnel or authorized and escorted visitors. Physical security protections include guards and locked facilities requiring badges and passwords for access. Records are accessed only by authorized government personnel and contractors holding appropriate security clearances and whose official duties require access to the records. Communications are encrypted where required and other safeguards are in place to monitor and audit access and to detect intrusions. System backup is maintained separately.

RETENTION AND DISPOSAL:

Pursuant to 44 U.S.C. 3303a(d) and 36 CFR chapter 12, subchapter B, part 1228–Disposition of Federal Records, records will not be disposed of until such time as the National Archives and Records Administration (NARA) approves an applicable ODNI Records Control Schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director of National Intelligence for Analysis, c/o Director, Information Management, Office of the Director of National Intelligence, Washington, DC 20511.

NOTIFICATION PROCEDURE:

As specified below, records in this system are exempt from certain notification, access, and amendment procedures. Individuals seeking to learn whether this system contains non-exempt information about them should address inquiries to the ODNI at the address and according to the requirements set forth below under the heading "Record Access Procedures."

RECORD ACCESS PROCEDURES:

As specified below, records in this system have been exempted from certain notification, access, and amendment procedures. A request for access to non-exempt records shall be made in writing with the envelope and letter clearly marked "Privacy Act Request." Each request must provide the requester's full name and complete address. The requester must sign the request and have it verified by a notary public. Alternately, the request may be submitted under 28 U.S.C. 1746, certifying the requester's identity and acknowledging that obtaining records under false pretenses constitutes a criminal offense. Requests for access to information must be addressed to the Director, Information Management, Office of the Director of National Intelligence, Washington, DC 20511. Regulations governing access to one's records or for appealing an initial determination concerning access to records are contained in the ODNI regulation implementing the Privacy Act.

CONTESTING RECORD PROCEDURES:

As specified below, records in this system are exempt from certain notification, access, and amendment procedures. Individuals seeking to correct or amend non-exempt records should address their requests to the ODNI at the address and according to the requirements set forth above under the heading "Record Access Procedures." Regulations governing access to and amendment of one's records or for appealing an initial determination concerning access or amendment of records are contained in the ODNI regulation implementing the Privacy Act.

RECORD SOURCE CATEGORIES:

Records in the system are obtained from individual intelligence customers; intelligence support personnel; commercial subscription services; other agency repositories.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Records contained in this System of Records may be exempted from the requirements of subsections (c)(3);(d)(1),(2),(3),(4); (e)(1) and (e)(4)(G),(H),(I); and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(1). Records may be exempted from these subsections or additionally, from the requirements of subsections (c)(4);(e)(2),(3),(5),(8),(12); and (g) of the Privacy Act consistent with any exemptions claimed under 5 U.S.C. 552a(j) or (k) by the originator of the record, provided the reason for the exemption remains valid and necessary.

SYSTEM NAME:

Equal Employment Opportunity and Diversity Office (EEOD) Records (ODNI–10).

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Office of the Director of National Intelligence, Washington, DC 20511.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Office of the Director of National Intelligence (ODNI) staff and contract personal, and military and civilian personnel detailed or assigned to the ODNI; and applicants for employment with the ODNI.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to requests made by individuals or offices for reasonable accommodations (including medical records), and the products or services provided in response to such requests.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended, 50 U.S.C. 401–442; The Rehabilitation Act of 1973, as amended, 29 U.S.C. 791; The Federal Records Act of 1950, as amended, 44 U.S.C. 3101 et. seq; Executive Order 12333, as amended (73 FR 45325); Executive Order 12958, as amended (68 FR 15315); Executive Order 12968, as amended (73 FR 38103); and Executive Order 13164 (65 FR 46565).

PURPOSE(S):

Records in this system are used to track requests for and provision of reasonable accommodations based on medical disability.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See General Routine Uses Applicable to More than One ODNI Privacy Act System of Records, Subpart C of ODNI's Privacy Act Regulation published at 32 CFR part 1701 (73 FR 16531, 16541) and incorporated by reference (*see also http://www.dni.gov*).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are stored in secured areas within the ODNI. Electronic records are stored in secure file-servers located within the ODNI.

RETRIEVABILITY:

By name, and case number. Information may be retrieved from this system of records by automated or hand search based on indices and automated capabilities utilized in the normal course of business. All searches of this system of records will be performed in ODNI offices by authorized personnel.

SAFEGUARDS:

Information in this system is safeguarded in accordance with recommended and/or prescribed administrative, physical, and technical safeguards. Records are maintained in a secure government facility with access to the facility limited to authorized personnel only and authorized and escorted visitors. Physical security protections include guards and locked facilities requiring badges and passwords for access. Records are accessed only by authorized government personnel and contractors holding appropriate security clearances and whose official duties require access to the records. Communications are encrypted where required and other safeguards are in place to monitor and audit access and to detect intrusions. Backup tapes are maintained in a secure, off-site location.

RETENTION AND DISPOSAL:

EEOD records covered by the General Records Schedule 1, Items 24 through 27, will be retained and disposed according to those provisions. Any other EEOD records, pursuant to 44 U.S.C. 3303a(d) and 36 CFR chapter 12, subchapter B, part 1228—Disposition of Federal Records, will not be disposed of until such time as the National Archives and Records Administration (NARA) approves an applicable ODNI Records Control Schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Office of Equal Employment Opportunity and Diversity, c/o Director, Information Management, Office of the Director of National Intelligence, Washington, DC 20511.

NOTIFICATION PROCEDURE:

As specified below, records in this system are exempt from certain notification, access, and amendment procedures. Individuals seeking to learn whether this system contains non-exempt information about them should address inquiries to the ODNI at the address and according to the requirements set forth below under the heading "Record Access Procedures."

RECORD ACCESS PROCEDURES:

As specified below, records in this system have been exempted from certain notification, access, and amendment procedures. A request for access to non-exempt records shall be made in writing with the envelope and letter clearly marked "Privacy Act Request." Requesters shall provide their full name and complete address. The requester must sign the request and have it verified by a notary public. Alternately, the request may be submitted under 28 U.S.C. 1746, certifying the requester's identity and understanding that obtaining a record under false pretenses constitutes a criminal offense. Requests for access to information must be addressed to the Director, Information Management, Office of the Director of National Intelligence, Washington, DC 20511. Regulations governing access to one's records or for appealing an initial determination concerning access to records are contained in the ODNI regulation implementing the Privacy Act.

CONTESTING RECORD PROCEDURES:

As specified below, records in this system are exempt from certain notification, access, and amendment procedures. Individuals seeking to correct or amend non-exempt records should address their requests to the ODNI at the address and according to the requirements set forth above under the heading "Records Access Procedures." Regulations governing access to and amendment of one's records or for appealing an initial determination concerning access to or amendment of records are contained in the ODNI regulation implementing the Privacy Act.

RECORD SOURCE CATEGORIES:

Individuals covered by this system; medical and psychiatric professionals.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Records contained in this System of Records may be exempted from the requirements of subsections (c)(3); (d)(1), (2), (3), (4); (e)(1) and (e)(4)(G), (H), (I); and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(1), (k)(2), and (k)(5). Records may be exempted from these subsections or, additionally, from the requirements of subsections (c)(4); (e)(2), (3), (5), (8), (12); and (g) of the Privacy Act consistent with any exemptions claimed under 5 U.S.C. 552a(j) or (k) by the originator of the record, provided the reason for the exemption remains valid and necessary.

SYSTEM NAME:

Office of Protocol Records (ODNI—11).

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Office of the Director of National Intelligence, Washington, DC 20511.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals invited to and attending events organized by the Office of Protocol; U.S. officials receiving gifts and decorations from foreign sources.

CATEGORIES OF RECORDS IN THE SYSTEM:

Guest lists; details of visitor preferences or needs; records of access, escorts and travel arrangements of attendees to events sponsored by the Office of the Director of National Intelligence (ODNI); and records relating to gifts and decorations from foreign sources.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended, 50 U.S.C. 401–442; Executive Order 12333, as amended (73 FR 45325); Executive Order 12958, as amended (68 FR 15315); and Executive Order 12968, as amended (73 FR 38103).

PURPOSE(S):

Office of Protocol personnel use this system to record communications with those invited to or attending ODNI events and to record U.S. officials' receipt of gifts and decorations from foreign sources.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See General Routine Uses Applicable to More than One ODNI Privacy Act System of Records, Subpart C of ODNI's Privacy Act Regulation published at 32 CFR part 1701 (73 FR 16531, 16541) and incorporated by reference (*see also http://www.dni.gov*).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are stored in secured areas within the ODNI. Electronic records are stored in secure file-servers located within the ODNI.

RETRIEVABILITY:

By name or other key word. Information may be retrieved from this system of records by automated or hand search based on indices and automated capabilities utilized in the normal course of business. All searches of this system of records will be performed by authorized staff.

SAFEGUARDS:

Information in this system is safeguarded in accordance with recommended and/or prescribed administrative, physical, and technical safeguards. Records are maintained in a secure government facility with access to the facility limited to authorized personnel only and authorized and escorted visitors. Physical security protections include guards and locked facilities requiring badges and passwords for access. Records are accessed only by authorized government personnel and contractors holding appropriate security clearances and whose official duties require access to the records. Communications are encrypted where required and other safeguards are in place to monitor and audit access and to detect intrusions. System backup is maintained separately.

RETENTION AND DISPOSAL:

Pursuant to 44 U.S.C. 3303a(d) and 36 CFR chapter 12, subchapter B, part 1228—Disposition of Federal Records, records will not be disposed of until such time as the National Archives and Records Administration (NARA) approves an applicable ODNI Records Control Schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Protocol, c/o Director, Information Management, Office of the Director of National Intelligence, Washington, DC 20511.

NOTIFICATION PROCEDURE:

As specified below, records in this system are exempt from certain notification, access, and amendment procedures. Individuals seeking to learn whether this system contains non-exempt information about them should address inquiries to the ODNI at the address and according to the requirements set forth below under the heading "Record Access Procedures."

RECORD ACCESS PROCEDURES:

As specified below, records in this system have been exempted from certain notification, access, and amendment procedures. A request for access to non-exempt records shall be made in writing with the envelope and letter clearly marked "Privacy Act Request." Requesters shall provide their full name and complete address. The requester must sign the request and have it verified by a notary public. Alternately, the request may be submitted under 28 U.S.C. 1746, certifying the requester's identity and understanding that obtaining a record under false pretenses constitutes a criminal offense. Requests for access to information must be addressed to the Director, Information Management, Office of the Director of National Intelligence, Washington, DC 20511. Regulations governing access to one's records or for appealing an initial determination concerning access to records are contained in the ODNI regulation implementing the Privacy Act.

CONTESTING RECORD PROCEDURES:

As specified below, records in this system are exempt from certain notification, access, and amendment procedures. Individuals seeking to correct or amend non-exempt records should address their requests to the ODNI at the address and according to the requirements set forth above under the heading "Records Access Procedures." Regulations governing access to and amendment of one's records or for appealing an initial determination concerning access to or amendment of records are contained in the ODNI regulation implementing the Privacy Act.

RECORD SOURCE CATEGORIES:

Records in the system are (1) Obtained directly from the individuals or their representatives covered by this system of records; (2) publicly available information from the media, the Internet and commercial databases; and (3) ODNI materials produced in the course of ODNI events.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Records contained in this System of Records may be exempted from the requirements of subsections (c)(3); (d)(1), (2), (3), (4); (e)(1) and (e)(4)(G), (H), (I); and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(1). Records may be exempted from these subsections or, additionally, from the requirements of subsections (c)(4); (e)(2), (3), (5), (8), (12); and (g) of the Privacy Act consistent with any exemptions claimed under 5 U.S.C. 552a(j) or (k) by the originator of the record, provided the reason for the exemption remains valid and necessary.

SYSTEM NAME:

Intelligence Community Security Clearance and Access Approval Repository (ODNI–12).

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Office of the Director of National Intelligence, Washington, DC 20511.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Subjects of security clearance and access approval investigations, including current and former U.S. government employees, applicants for employment in the Intelligence Community (IC), military personnel, personal service independent contractors and industrial contractors to U.S. government programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographic data (including name, date and place of birth, social security number, and employer); current status of security clearances and security access approvals, and date and source of background investigation and, if applicable, of polygraph examination.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended, 50 U.S.C. 401–442; The Federal Records Act of 1950, as amended, 44 U.S.C. 3101 *et seq.;* Executive Order 12333, as amended (73 FR 45325); Executive Order 12958, as amended (68 FR 15315); and Executive Order 9397, as amended (73 FR 70239).

PURPOSE(S):

Records in this system enable authorized personnel of the ODNI and other IC elements to reciprocally share information about individuals who are currently cleared or individuals where some processing was previously conducted for a clearance/access. Such information supports clearance reciprocity and security business processes enabling the appropriate access to controlled facilities and classified information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records in this system are disclosed to elements of the IC and authorized government contractors to verify individuals' security clearances and access approvals. *See also* General Routine Uses Applicable to More Than One ODNI Privacy Act System of Records, Subpart C of ODNI's Privacy Act Regulation published at 32 CFR part 1701 (73 FR 16531, 16541) and incorporated by reference (*see also http://www.dni.gov*).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic records are stored in secure file-servers maintained by the ODNI.

RETRIEVABILITY:

By name, social security number, or other unique employee identifier. Information may be retrieved from this system of records by automated search based on indices and automated capabilities utilized in the normal course of business. All searches of the system are conducted by authorized staff or contractors of the IC member agencies.

SAFEGUARDS:

Information in this system is safeguarded in accordance with recommended and/or prescribed administrative, physical, and technical safeguards. Records are maintained in a secure facility with access to the facility limited to authorized personnel only and authorized and escorted visitors. Physical security protections include guards and locked facilities requiring badges and passwords for access. Records are accessed only by authorized government personnel holding appropriate security clearances and whose official duties require access to the records as certified by an Access Control List. Communications are encrypted where required and other safeguards are in place to monitor and audit access and to detect intrusions. System backup is maintained separately.

RETENTION AND DISPOSAL:

Records in this system are dynamic and are refreshed as necessary by the contributing IC element. Pursuant to 44 U.S.C. 3303a(d) and 36 CFR chapter 12 subchapter B, part 1228—Disposition of Federal Records, and in accordance with General Records Schedule (GRS) 18, Item 23, records in this system are destroyed when they are superseded or become obsolete for the purpose intended.

SYSTEM MANAGER(S) AND ADDRESS:

Personnel Security Databases Program Manager, c/o Director, Information Management, Office of the Director of National Intelligence, Washington, DC 20511.

NOTIFICATION PROCEDURE:

As specified below, records in this system are exempt from certain notification, access, and amendment procedures. Individuals seeking to learn whether this system contains non-exempt information about them should address inquiries to the ODNI at the address and according to the requirements set forth below under the heading "Record Access Procedures."

RECORD ACCESS PROCEDURES:

As specified below, records in this system have been exempted from certain notification, access, and amendment procedures. A request for access to non-exempt records shall be made in writing with the envelope and letter clearly marked "Privacy Act Request." Each request must provide the requester's full name and complete address. The requester must sign the request and have it verified by a notary public. Alternately, the request may be submitted under 28 U.S.C. 1746, certifying the requester's identity and acknowledging that obtaining records under false pretenses constitutes a criminal offense. Requests for access to information must be addressed to the Director, Information Management, Office of the Director of National Intelligence, Washington, DC 20511. Regulations governing access to one's records or for appealing an initial determination concerning access to records are contained in the ODNI regulation implementing the Privacy Act.

CONTESTING RECORD PROCEDURES:

As specified below, records in this system are exempt from certain notification, access, and amendment procedures. Individuals seeking to correct or amend non-exempt records should address their requests to the ODNI at the address and according to the requirements set forth above under the heading "Record Access Procedures."

Regulations governing access to and amendment of one's records or for appealing an initial determination concerning access or amendment of records are contained in the ODNI regulation implementing the Privacy Act.

RECORD SOURCE CATEGORIES:

Records in this system derive from background investigations conducted or maintained by government and private sector organizations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Records contained in this System of Records may be exempted from the requirements of subsections (c)(3); (d)(1), (2), (3), (4); (e)(1) and (e)(4)(G), (H), (I); and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(1), (2) and (5). Records may be exempted from these subsections or additionally, from the requirements of subsections (c)(4); (e)(2), (3), (5), (8), (12); and (g) of the Privacy Act consistent with any exemptions claimed under 5 U.S.C. 552a(j) or (k) by the originator of the

record, provided the reason for the exemption remains valid and necessary.

SYSTEM NAME:

Security Clearance Reform Research Records (ODNI–13).

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Office of the Director of National Intelligence, Washington, DC 20511.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former Intelligence Community (IC) civilian employees, military members and contractor employees who possess or have applied for a security clearance; individuals whose names, exclusive of other information, are captured in publicly available data sets (including those obtained through subscription or fee).

CATEGORIES OF RECORDS IN THE SYSTEM:

Completed Standard Forms 85, 85P and 86 and associated authorization and consent forms; financial disclosure forms; records of polygraph examinations (including reports, charts, tapes and notes of polygraph interviews); records from credit, criminal history and other databases and sources checked in conducting a suitability determination, background investigation, and/or personnel security continuing evaluation; background investigation reports; responses from personnel security-related interviews and questionnaires; and name-data sets obtained from publicly available sources, including those obtained for fee or by subscription.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended, 50 U.S.C. 401–442; Executive Order 12968, as amended (73 FR 38103); Internal Security Act of 1950, as amended, 50 U.S.C. 781–887; Executive Order 9397, as amended (73 FR 70239); Executive Order 10450, as amended (44 FR 1055); Executive Order 10865, as amended (68 FR 4075); Executive Order 12333, as amended (73 FR 45325); Executive Order 12958, as amended (68 FR 15315); Executive Order 13467 (73 FR 38103); and 5 U.S.C. 9101.

PURPOSE(S):

To conduct research, development and analyses for (1) Evaluating and improving IC personnel security procedures, programs and policies; (2) assisting in providing training, instruction and advice on personnel security subjects for IC elements; (3) encouraging cooperative research within and among IC elements on personnel security issues that have IC-wide programmatic or policy implications; and (4) conducting pilot test projects regarding personnel security and related research interests of the Office of the Director of National Intelligence (ODNI) or the IC.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See General Routine Uses Applicable to More Than One ODNI Privacy Act System of Records, Subpart C of ODNI's Privacy Act Regulation published at 32 CFR part 1701 (73 FR 16531, 16541) and incorporated by reference (*see also http://www.dni.gov*).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and other hard-copy records (computer output products, disks, etc.) are stored in secured areas maintained by the ODNI. Electronic records are stored in secure file-servers located within secure facilities under control of ODNI.

RETRIEVABILITY:

By name, social security number, or other unique employee identifier. Information may be retrieved from this system of records by automated or hand search.

SAFEGUARDS:

Information in this system is safeguarded in accordance with recommended and/or prescribed administrative, physical, and technical safeguards. Records are maintained in a secure government or contractor facility with access to the facility limited to authorized personnel only and authorized and escorted visitors. Physical security protections include guards and locked facilities requiring badges and passwords for access. Records are accessed only by authorized government personnel holding appropriate security clearances and whose official duties require access to the records. Communications are encrypted where required and other safeguards are in place to monitor and audit access and to detect intrusions. System backup is maintained separately.

RETENTION AND DISPOSAL:

Pursuant to 44 U.S.C. 3303a(d) and 36 CFR chapter 12, subchapter B, part 1228–Disposition of Federal Records, records will not be disposed of until such time as the National Archives and Records Administration (NARA) approves an applicable ODNI Records Control Schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Security Research Program Manager c/o Director, Information Management, Office of the Director of National Intelligence, Washington, DC 20511.

NOTIFICATION PROCEDURE:

As specified below, records in this system are exempt from certain notification, access, and amendment procedures. Individuals seeking to learn whether this system contains non-exempt information about them should address inquiries to the ODNI at the address and according to the requirements set forth below under the heading "Record Access Procedures."

RECORD ACCESS PROCEDURES:

As specified below, records in this system have been exempted from certain notification, access, and amendment procedures. A request for access to non-exempt records shall be made in writing with the envelope and letter clearly marked "Privacy Act Request." Each request must provide the requester's full name and complete address. The requester must sign the request and have it verified by a notary public. Alternately, the request may be submitted under 28 U.S.C. 1746, certifying the requester's identity and acknowledging that obtaining records under false pretenses constitutes a criminal offense. Requests for access to information must be addressed to the Director, Information Management, Office of the Director of National Intelligence, Washington, DC 20511. Regulations governing access to one's records or for appealing an initial determination concerning access to records are contained in the ODNI regulation implementing the Privacy Act.

CONTESTING RECORD PROCEDURES:

As specified below, records in this system are exempt from certain notification, access, and amendment procedures. Individuals seeking to correct or amend non-exempt records should address their requests to the ODNI at the address and according to the requirements set forth above under the heading "Record Access Procedures." Regulations governing access to and amendment of one's

records or for appealing an initial determination concerning access or amendment of records are contained in the ODNI regulation implementing the Privacy Act.

RECORD SOURCE CATEGORIES:

Records are obtained from the personnel security records of the member IC elements, the Defense Security Service (DSS) and other departmental intelligence elements; the DOD Joint Personnel Adjudication System (JPAS); the Office of Personnel Management's Clearance Verification (CVS) and Personnel Investigations Processing (PIPS) systems; other government data sources and publicly available commercial data sets; interviews with and questionnaires completed by covered individuals.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Records contained in this System of Records may be exempted from the requirements of subsections (c)(3); (d)(1), (2), (3), (4); (e)(1) and (e)(4)(G), (H), (I); and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(1), (k)(2) and (k)(5). Records may be exempted from these subsections or additionally, from the requirements of subsections (c)(4); (e)(2), (3), (5), (8), (12); and (g) of the Privacy Act consistent with any exemptions claimed under 5 U.S.C. 552a(j) or (k) by the originator of the record, provided the reason for the exemption remains valid and necessary.

SYSTEM NAME:

Civil Liberties and Privacy Office Complaint Records (ODNI–14).

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Office of the Director of National Intelligence, Washington, DC 20511.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Office of the Director of National Intelligence (ODNI) staff and staff of the Intelligence Community (IC) elements, including military and civilian personnel detailed to the ODNI or IC elements; contract employees, including personal services independent contractors and industrial contractors; and members of the public.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records alleging violations of civil liberties or privacy arising from the programs and activities of the ODNI or any of the IC elements; and records of review, investigation, acknowledgment or disposition of allegations received.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended, 50 U.S.C. 401–442; Executive Order 12333, as amended (73 FR 45325); Executive Order 12958, as amended (68 FR 15315); and Executive Order 12968, as amended (73 FR 38103).

PURPOSE(S):

Records in this system are used by authorized personnel of the Civil Liberties and Privacy Office (CLPO) to track, review, and, as appropriate, investigate complaints of civil liberties or privacy violations in the conduct of programs and activities by the ODNI or IC elements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See General Routine Uses Applicable to More Than One ODNI Privacy Act System of Records, Subpart C of ODNI's Privacy Act Regulation published at 73 FR 16531, 16541 and incorporated by reference (*see also http://www.dni.gov*).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and other hard-copy records are stored in secured areas within the CLPO. Electronic records are stored in secure file-servers located within the ODNI.

RETRIEVABILITY:

By name or case number. Information may be retrieved from this system of records by automated or hand search based on existing indices and automated capabilities utilized in the normal course of business. All searches of this system of records will be performed in ODNI offices by CLPO personnel.

SAFEGUARDS:

Information in this system is safeguarded in accordance with recommended and/or prescribed administrative, physical, and technical safeguards. Records are maintained in a secure government facility with access to the facility limited to authorized personnel only and authorized and escorted visitors. Physical security protections include guards and locked facilities requiring badges and passwords for access. Records are accessed only by authorized government personnel holding appropriate security clearances and whose official duties require access to the records. Communications are encrypted where required and other safeguards are in place to monitor and audit access and to detect intrusions. System backup is maintained separately.

RETENTION AND DISPOSAL:

Pursuant to 44 U.S.C. 3303a(d) and 36 CFR chapter 12, subchapter B, part 1228—Disposition of Federal Records, records will not be disposed of until such time as the National Archives and Records Administration (NARA) approves an applicable ODNI Records Control Schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Civil Liberties Protection Officer c/o Director, Information Management, Office of the Director of National Intelligence, Washington, DC 20511.

NOTIFICATION PROCEDURE:

As specified below, records in this system are exempt from certain notification, access, and amendment procedures. Individuals seeking to learn whether this system contains non-exempt information about them should address inquiries to the ODNI at the address and according to the requirements set forth below under the heading "Record Access Procedures."

RECORD ACCESS PROCEDURES:

As specified below, records in this system have been exempted from certain notification, access, and amendment procedures. A request for access to non-exempt records shall be made in writing with the envelope and letter clearly marked "Privacy Act Request." Each request must provide the requester's full name and complete address. The requester must sign the request and have it verified by a notary public. Alternately, the request may be submitted under 28 U.S.C. 1746, certifying the requester's identity and acknowledging that obtaining records under false pretenses constitutes a criminal offense. Requests for access to information must be addressed to the Director, Information Management, Office of the Director of National Intelligence, Washington, DC 20511. Regulations governing access to one's records or for appealing an initial determination concerning access to records are contained in the ODNI regulation implementing the Privacy Act.

CONTESTING RECORD PROCEDURES:

As specified below, records in this system are exempt from certain notification, access, and amendment procedures. Individuals seeking to correct or amend non-exempt records should address their requests to the ODNI at the address and according to

the requirements set forth above under the heading "Record Access Procedures." Regulations governing access to and amendment of one's records or for appealing an initial determination concerning access or amendment of records are contained in the ODNI regulation implementing the Privacy Act.

RECORD SOURCE CATEGORIES:

Individuals covered by this system; records generated by ODNI CLPO personnel in reviewing and addressing complaints.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Records contained in this System of Records may be exempted from the requirements of subsections (c)(3); (d)(1), (2), (3), (4); (e)(1) and (e)(4)(G), (H), (I); and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(1), (k)(2), and (k)(5). Records may be exempted from these subsections or additionally, from the requirements of subsections (c)(4); (e)(2), (3), (5), (8), (12); and (g) of the Privacy Act consistent with any exemptions claimed under 5 U.S.C. 552a(j) or (k) by the originator of the record, provided the reason for the exemption remains valid and necessary.

SYSTEM NAME:

National Intelligence Council (NIC) Consultation Records (ODNI–15).

SECURITY CLASSIFICATION:

The classification of records in this system can range from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Office of the Director of National Intelligence, Washington, DC 20511.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. Government personnel and personal services independent contractors and industrial contractors, or others who serve in liaison or contractual relationships with the National Intelligence Council (NIC) or with Intelligence Community (IC) elements; individuals in academia and the private sector with expertise on matters of intelligence interest to the NIC.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system include biographic, administrative, and contact information for individuals covered by the system; records about intelligence products and activities in which covered individuals collaborated or participated.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended, 50 U.S.C. 401–442; Executive Order 12333, as amended (73 FR 45325); Executive Order 12958, as amended (68 FR 15315); and Executive Order 12968, as amended (73 FR 38103).

PURPOSE(S):

Records in this system enable the NIC to enlist expertise from outside of the IC in furtherance of its responsibility to produce strategic intelligence products.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See General Routine Uses Applicable to More than One ODNI Privacy Act System of Records, Subpart C of ODNI's Privacy Act Regulation published at 32 CFR part 1701 (73 FR 16531, 16541) and incorporated by reference (*see also http://www.dni.gov*).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are stored in secured areas within ODNI facilities. Electronic records are stored in secure file-servers located within ODNI facilities.

RETRIEVABILITY:

By name or other key word. Information may be retrieved from this system of records by automated or hand search based on indices and automated capabilities utilized in the normal course of business.

SAFEGUARDS:

Information in this system is safeguarded in accordance with recommended and/or prescribed administrative, physical, and technical safeguards. Records are maintained in a secure government facility with access to the facility limited to authorized personnel only and authorized and escorted visitors. Physical security protections include guards and locked facilities requiring badges and passwords for access. Records are accessed only by authorized government personnel and contractors holding appropriate security clearances and whose official duties require access to the records. Communications are encrypted where required and other safeguards are in place to monitor and audit access and to detect intrusions. System backup is maintained separately.

RETENTION AND DISPOSAL:

Pursuant to 44 U.S.C. 3303a(d) and 36 CFR chapter 12, subchapter B, part 1228– Disposition of Federal Records, records will not be disposed of until such time as the National Archives and Records Administration (NARA) approves an applicable ODNI Records Control Schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Plans and Production, National Intelligence Council, c/o Director, Information Management, Office of the Director of National Intelligence, Washington, DC 20511.

NOTIFICATION PROCEDURE:

As specified below, records in this system are exempt from certain notification, access, and amendment procedures. Individuals seeking to learn whether this system contains non-exempt information about them should address inquiries to the ODNI at the address and according to the requirements set forth below under the heading "Record Access Procedures."

RECORD ACCESS PROCEDURES:

As specified below, records in this system have been exempted from certain notification, access, and amendment procedures. A request for access to non-exempt records shall be made in writing with the envelope and letter clearly marked "Privacy Act Request." Requesters shall provide their full name and complete address. The requester must sign the request and have it verified by a notary public. Alternately, the request may be submitted under 28 U.S.C. 1746, certifying the requester's identity and understanding that obtaining a record under false pretenses constitutes a criminal offense. Requests for access to information must be addressed to the Director, Information Management, Office of the Director of National Intelligence, Washington, DC 20511. Regulations governing access to one's records or for appealing an initial determination concerning access to records are contained in the ODNI regulation implementing the Privacy Act.

CONTESTING RECORD PROCEDURES:

As specified below, records in this system are exempt from certain notification, access, and amendment procedures. Individuals seeking to correct or amend non-exempt records should address their requests to the ODNI at the address and according to the requirements set forth above under the heading "Record Access Procedures." Regulations governing

access to and amendment of one's records or for appealing an initial determination concerning access or amendment of records are contained in the ODNI regulation implementing the Privacy Act.

RECORD SOURCE CATEGORIES:

Individuals covered by this system; U.S. Government employees, agencies and organizations; private sector entities, academia, media, libraries and commercial databases.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Records contained in this System of Records may be exempted from the requirements of subsections (c)(3); (d)(1), (2), (3), (4); (e)(1) and (e)(4)(G), (H), (I); and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(1). Records may be exempted from these subsections or, additionally, from the requirements of subsections (c)(4); (e)(2), (3), (5), (8), (12); and (g) of the Privacy Act consistent with any exemptions claimed under 5 U.S.C. 552a(j) or (k) by the originator of the record, provided the reason for the exemption remains valid and necessary.

[FR Doc. 2010–7535 Filed 4–1–10; 8:45 am]

BILLING CODE P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2010–0119]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to the Office of Management and Budget (OMB) and solicitation of public comment.

SUMMARY: The NRC invites public comment about our intention to request the OMB's approval for renewal of an existing information collection that is summarized below. We are required to publish this notice in the **Federal Register** under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* "NRC Forms 366, 366A, 366B, 'Licensee Event Report' ".

2. *Current OMB approval number:* 3150–0104.

3. *How often the collection is required:* On occasion, as defined reactor events are reportable as they occur.

4. *Who is required or asked to report:* Holders of operating licenses for commercial nuclear power plants.

5. *The number of annual respondents:* 104.

6. *The number of hours needed annually to complete the requirement or request:* 32,000 (25,600 reporting + 6,400 recordkeeping). This is estimated to be 80 hours for each of 400 reports annually.

7. *Abstract:* With NRC Forms 366, 366A, and 366B, the NRC collects reports of the types of reactor events and problems that are believed to be significant and useful to the NRC in its efforts to identify and resolve possible threats to the public health and safety, or to the environment. The information reported on NRC Forms 366, 366A, and 366B is used by the NRC to confirm licensing bases, study potentially generic safety problems, assess trends and patterns of operating experience, monitor performance, identify precursors of more significant events, and provide operating experience feedback to the industry. These forms are designed to provide the information necessary for engineering studies of operational anomalies and trends and patterns analysis of abnormal occurrences. The same information is used for other analytic procedures that aid in identifying accident precursors.

Submit, by June 1, 2010, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC World Wide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html*. The document will be available on the NRC home page site for 60 days after the signature date of this notice. Comments submitted in writing or in electronic form will be made available for public inspection. 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. Comments submitted should reference Docket No. NRC–2010–0119. You may submit your comments by any of the following methods. *Electronic comments:* Go to *http://www.regulations.gov* and search for Docket No. NRC–2010–0119. Mail comments to NRC Clearance Officer, Tremaine U. Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Questions about the information collection requirements may be directed to the NRC Clearance Officer, Tremaine U. Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–6258, or by e-mail to *INFOCOLLECTS.Resource@NRC.GOV.*

Dated at Rockville, Maryland, this 25th day of March 2010.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2010–7476 Filed 4–1–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2010–0139]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to the Office of Management and Budget (OMB) and solicitation of public comment.

SUMMARY: The NRC invites public comment about our intention to request the OMB's approval for renewal of an existing information collection that is summarized below. We are required to publish this notice in the **Federal Register** under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR Part 11, Criteria and Procedures for Determining Eligibility for Access to, or Control Over, Special Nuclear Material.

2. *Current OMB approval number:* 3150–0062.

3. *How often the collection is required:* On occasion. New

applications, certifications, and amendments may be submitted at any time. Applications for renewal are submitted every 5 years.

4. *Who is required or asked to report:* Employees (including applicants for employment), contractors and consultants of NRC licensees and contractors whose activities involve access to, or control over, special nuclear material at either fixed sites or for transportation activities.

5. *The number of annual respondents:* 5 NRC licensees.

6. *The number of hours needed annually to complete the requirement or request:* 1.25 hours (approximately 0.25 hours annually per response).

7. *Abstract:* NRC regulations in 10 CFR Part 11 establish requirements for access to special nuclear material, and the criteria and procedures for resolving questions concerning the eligibility of individuals to receive special nuclear material access authorization. Personal history information which is submitted on applicants for relevant jobs is provided to the Office of Personnel Management (OPM), which conducts investigations. NRC reviews the results of these investigations and makes determinations of the eligibility of the applicants for access authorization.

Submit, by June 1, 2010, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice. Comments submitted in writing or in electronic form will be made available for public inspection. 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. Comments submitted should reference Docket No. NRC–2010–0139. You may submit your comments by any of the following methods. Electronic comments: Go to *http://www.regulations.gov* and search for Docket No. NRC–2010–0139. Mail comments to NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Questions about the information collection requirements may be directed to the NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–6258, or by e-mail to *INFOCOLLECTS.Resource@NRC.GOV.*

Dated at Rockville, Maryland, this 26th day of March 2010.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2010–7478 Filed 4–1–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–7015–ML; ASLBP No. 10–899–02–ML–BD01]

Areva Enrichment Services, LLC; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28,710 (1972), and the Commission's regulations, *see* 10 CFR 2.104, 2.105, 2.300, 2.309, 2.313, 2.318, and 2.321, notice is hereby given that an Atomic Safety and Licensing Board (Board) is being established to preside over the following proceeding:

Areva Enrichment Services, LLC

(Eagle Rock Enrichment Facility)

This Board is being established pursuant to a Notice of Hearing and Commission Order regarding the application of Areva Enrichment Services, LLC for a license to possess and use source, byproduct, and special nuclear material and to enrich natural uranium to a maximum of 5 percent by the gas centrifuge process at a proposed plant to be known as the Eagle Rock Enrichment Facility that would be located in Bonneville County, Idaho. *See* 74 FR 38,052 (July 30, 2009). No request for hearing or petition to intervention has been received in response to the notice in the **Federal Register**. Because Areva is seeking authorization to construct a uranium enrichment facility, a mandatory hearing is required.

The Board is comprised of the following administrative judges:

Alex S. Karlin, Chair, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001;

Kaye D. Lathrop, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001;

Craig M. White, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

All correspondence, documents, and other materials shall be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August 2007 (72 FR 49,139).

Issued at Rockville, Maryland, this 26th day of March 2010.

E. Roy Hawkens,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 2010–7457 Filed 4–1–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–255; NRC–2010–0127]

Entergy Nuclear Operations, LLC; Palisades Nuclear Plant; Exemption

1.0 Background

Entergy Nuclear Operations, LLC (ENO) (the licensee) is the holder of Facility Operating License No. DPR–20, which authorizes operation of Palisades Nuclear Plant (PNP). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of one pressurized-water reactor located in Van Buren County, Michigan.

2.0 Request/Action

Title 10 of the *Code of Federal Regulations* (10 CFR) part 73, "Physical protection of plants and materials," section 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage," published March 27, 2009, effective May 26, 2009, with a full implementation date of March 31, 2010, requires licensees to protect, with high assurance, against radiological sabotage by designing and implementing comprehensive site security programs. The amendments to

10 CFR 73.55 published on March 27, 2009, establish and update generically applicable security requirements similar to those previously imposed by Commission orders issued after the terrorist attacks of September 11, 2001, and implemented by licensees. In addition, the amendments to 10 CFR 73.55 include additional requirements to further enhance site security based upon insights gained from implementation of the post-September 11, 2001, security orders. It is from three of these new requirements that ENO now seeks an exemption from the March 31, 2010, implementation date. All other physical security requirements established by this recent rulemaking have already been or will be implemented by the licensee by March 31, 2010.

By letter dated January 14, 2010, (inadvertently dated January 14, 2009), as supplemented by letter dated February 16, 2010, the licensee requested an exemption in accordance with 10 CFR 73.5, "Specific exemptions." The licensee's January 14, 2010, and February 16, 2010, letters, have certain portions which contain security-related information and, accordingly, are not available to the public. The licensee has requested an exemption from the March 31, 2010, compliance date stating that it must complete a number of significant modifications to the current site security configuration before all requirements can be met. Specifically, the request is to extend the compliance date for three requirements that would be in place by August 31, 2010, versus the March 31, 2010, deadline. Being granted this exemption for the three requirements would allow the licensee to complete the modifications designed to update aging equipment and incorporate state-of-the-art technology to meet or exceed the noted regulatory requirements.

3.0 Discussion of Part 73 Schedule Exemptions From the March 31, 2010, Full Implementation Date

Pursuant to 10 CFR 73.55(a)(1), "By March 31, 2010, each nuclear power reactor licensee, licensed under 10 CFR part 50, shall implement the requirements of this section through its Commission-approved Physical Security Plan, Training and Qualification Plan, Safeguards Contingency Plan, and Cyber Security Plan referred to collectively hereafter as 'security plans.' " Pursuant to 10 CFR 73.5, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 73 when the exemptions are authorized by law, and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

NRC approval of this exemption request, as noted above, would allow an extension from March 31, 2010, to August 31, 2010, for the implementation date for three specified areas of the new rule. The NRC staff has determined that granting of the licensee's proposed exemption would not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

In the draft final power reactor security rule provided to the Commission, the NRC staff proposed that the requirements of the new regulation be met within 180 days. The Commission directed a change from 180 days to approximately 1 year for licensees to fully implement the new requirements. This change was incorporated into the final rule. From this, it is clear that the Commission wanted to provide a reasonable timeframe for licensees to achieve full compliance.

As noted in the final rule, the Commission also anticipated that licensees would have to conduct site-specific analyses to determine what changes were necessary to implement the rule's requirements, and that any such changes could be accomplished through a variety of licensing mechanisms, including exemptions. Since issuance of the final rule, the Commission has rejected a generic industry request to extend the rule's compliance date for all operating nuclear power plants, but noted that the Commission's regulations provide mechanisms for individual licensees, with good cause, to apply for relief from the compliance date (Reference: June 4, 2009, letter, from R. W. Borchardt, NRC, to M. S. Fertel, Nuclear Energy Institute). The licensee's request for an exemption is therefore consistent with the approach set forth by the Commission and discussed in the June 4, 2009, letter.

ENO Schedule Exemption Request

The licensee provided detailed information in Attachments 1, 2, and 3 of its supplemental submittal to its January 14, 2010, letter, requesting an exemption. It describes a comprehensive plan which provides a timeline for achieving full compliance with the new regulation. Attachments 1, 2, and 3 contain security-related information regarding the site security plan, details of the specific requirements of the regulation for which the site cannot be in compliance by the March 31, 2010, deadline and why, the required changes to the site's security configuration, and a timeline with "critical path" activities that would enable the licensee to achieve full compliance by August 31, 2010. The timeline provides dates indicating when (1) construction will begin on various phases of the project (*i.e.,* new buildings and fences), and (2) critical equipment will be installed, tested and become operational.

Notwithstanding the schedule exemptions of these limited requirements, the licensee indicated that it will continue to be in compliance with all other applicable physical security requirements as described in 10 CFR 73.55 and reflected in its current NRC-approved physical security program. By August 31, 2010, the licensee also stated that PNP will be in full compliance with the regulatory requirements of 10 CFR 73.55, as issued on March 27, 2009.

4.0 Conclusion for Part 73 Schedule Exemption Request

The NRC staff has reviewed the licensee's submittals and concludes that the ENO has provided adequate justification for its request for an extension of the compliance date to August 31, 2010, with regard to three specified requirements of 10 CFR 73.55.

Accordingly, the Commission has determined that pursuant to 10 CFR 73.5, "Specific exemptions," an exemption from the March 31, 2010, compliance date is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants the requested exemption.

The NRC staff has determined that the long-term benefits that will be realized when the PNP modifications are completed justifies exceeding the full compliance date in the case of this particular licensee. The security measures PNP needs additional time to implement are new requirements imposed by March 27, 2009, amendments to 10 CFR 73.55, and are in addition to those currently required by the security orders issued in response to the events of September 11, 2001. Therefore, the NRC concludes that the licensee's actions are in the best interest of protecting the public health and safety through the security changes that will result from granting this exemption.

As per the licensee's request and the NRC's regulatory authority to grant an exemption from the March 31, 2010, deadline for the three requirements specified in Attachments 1, 2, and 3 of

the ENO letter dated January 14, 2010, supplemented by letter dated February 16, 2010, the licensee is required to be in full compliance by August 31, 2010. In achieving compliance, the licensee is reminded that it is responsible for determining the appropriate licensing mechanism (*i.e.,* 10 CFR 50.54(p) or 10 CFR 50.90) for incorporation of all necessary changes to its security plans.

Pursuant to 10 CFR 51.32, "Finding of no significant impact," the Commission has previously determined that the granting of this exemption will not have a significant effect on the quality of the human environment [75 FR 14473; dated March 25, 2010].

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 25th day of March 2010.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–7449 Filed 4–1–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–325 and 50–324; NRC–2010–0066]

Carolina Power & Light Company, Brunswick Steam Electric Plant, Units 1 and 2; Exemption

1.0 Background

Carolina Power & Light Company (CP&L, the licensee) is the holder of Facility Operating Renewed License Nos. DPR–71 and DPR–62, which authorize operation of the Brunswick Steam Electric Plant (BSEP), Units 1 and 2. The licenses provide, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of two boiling water reactors located in Brunswick County, North Carolina.

2.0 Request/Action

Title 10 of the *Code of Federal Regulations* (10 CFR) Part 73, "Physical protection of plants and materials," Section 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage," published March 27, 2009, effective May 26, 2009, with a full implementation date of March 31, 2010, requires licensees to protect, with high assurance, against radiological sabotage by designing and implementing comprehensive site security plans. The amendments to 10 CFR 73.55 published on March 27, 2009, establish and update generically applicable security requirements similar to those previously imposed by Commission orders issued after the terrorist attacks of September 11, 2001, and implemented by licensees. In addition, the amendments to 10 CFR 73.55 include additional requirements to further enhance site security based upon insights gained from implementation of the post-September 11, 2001, security orders. It is from two of these new requirements that BSEP now seeks an exemption from the March 31, 2010, implementation date. All other physical security requirements established by this recent rulemaking have already been or will be implemented by the licensee by March 31, 2010.

By letter dated November 30, 2009 (Agencywide Documents Access and Management System Accession No. ML093370132), the licensee requested exemptions in accordance with 10 CFR 73.5, "Specific exemptions." Attachment 1 to the licensee's November 30, 2009, letter contains security-related information and, accordingly is not available to the public. The licensee has requested exemptions from the March 31, 2010, compliance date stating that it must complete a number of significant modifications to the current site security configuration before all requirements can be met. Specifically, the request is to extend the compliance date for two specific requirements of the new rule from the current March 31, 2010, deadline to December 20, 2010. Being granted this exemption for the two items would allow the licensee to complete changes to the BSEP security systems that include infrastructure upgrades, modification and installation of the security system equipment, and construction of new facilities to support the new physical protection program requirements.

3.0 Discussion of Part 73 Schedule Exemptions From the March 31, 2010, Full Implementation Date

Pursuant to 10 CFR 73.55(a)(1), "By March 31, 2010, each nuclear power reactor licensee, licensed under 10 CFR Part 50, shall implement the requirements of this section through its Commission-approved Physical Security Plan, Training and Qualification Plan, Safeguards Contingency Plan, and Cyber Security Plan referred to collectively hereafter as 'security plans.'" Pursuant to 10 CFR 73.5, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 73 when the exemptions are authorized by law, and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

NRC approval of these exemptions would, as noted above, allow an extension from March 31, 2010, until December 20, 2010, for compliance with the new rule in two specific areas. As stated above, 10 CFR 73.5 allows the NRC to grant exemptions from the requirements of 10 CFR 73. The NRC staff has determined that granting of the licensee's proposed exemptions would not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemptions are authorized by law.

In the draft final power reactor security rule provided to the Commission, the NRC staff proposed that the requirements of the new regulation be met within 180 days. The Commission directed a change from 180 days to approximately 1 year for licensees to fully implement the new requirements. This change was incorporated into the final rule. From this, it is clear that the Commission wanted to provide a reasonable timeframe for licensees to achieve full compliance.

As noted in the final rule, the Commission also anticipated that licensees would have to conduct site-specific analyses to determine what changes were necessary to implement the rule's requirements, and that changes could be accomplished through a variety of licensing mechanisms, including exemptions. Since issuance of the final rule, the Commission has rejected an industry generic request to extend the rule's compliance date for all operating nuclear power plants, but noted that the Commission's regulations provide mechanisms for individual licensees, with good cause, to apply for relief from the compliance date (Reference: June 4, 2009, letter from R. W. Borchardt, NRC, to M. S. Fertel, Nuclear Energy Institute). The licensee's request for exemptions is therefore consistent with the approach set forth by the Commission and discussed in the June 4, 2009, letter.

Brunswick Schedule Exemption Request

The licensee provided detailed information in Attachment 1 of the CP&L letter dated November 30, 2009, requesting exemptions. It describes a comprehensive plan for upgrade and installation of equipment, infrastructure upgrades, and construction of new facilities to support the physical

protection program and provides a timeline for achieving full compliance with the new regulation. These plant modifications are significant in scope involving the construction of new facilities, extensive design and procurement efforts, and work with high voltage cabling and the personnel safety risk associated with such work. These modifications warrant a thorough review of the safety-security interface and must be coordinated with BSEP Unit 1 refueling outage in spring 2010. All of these efforts require careful design, planning, procurement, and implementation efforts. Attachment 1 of the November 30, 2009, letter contains security-related information regarding the site security plan, details of specific portions of the regulation of which the site will not be in compliance by the March 31, 2010, deadline, changes to the site's security configuration to meet the new requirements, and a timeline (Project Schedule Milestones) with critical path activities for the licensee to achieve full compliance by December 20, 2010. The timeline provides dates indicating when (1) design activities are completed and approved, (2) the outage is scheduled for BSEP Unit 1, (3) construction of a new Security Electrical Equipment Building begins and is completed, and (4) the new and relocated equipment is installed and tested.

The licensee has provided an adequate basis for the exemption request. CP&L identified the physical protection program components for which modifications are needed, the types of modifications and upgrades needed, as well as construction, engineering, safety, and infrastructure considerations which impact the final compliance date requested. The required modifications must be completed in sequence to support all program upgrades being performed. The schedule provided by the licensee in this request outlines the specific tasks required at BSEP and shows the sequential order in which work must proceed with associated dates that support the requested new compliance date.

The site-specific information provided within the BSEP exemption request is relative to the requirements from which the licensee requested exemption and demonstrates the need for modification to meet the two specific requirements of 10 CFR 73.55. The proposed implementation schedule depicts the critical activity milestones of the security system upgrades; is consistent with the licensee's solution for meeting the requirements; is consistent with the scope of the modifications and the issues and challenges identified and; is consistent with the licensee's requested compliance date.

Notwithstanding the schedule exemptions for these limited requirements, the licensee will continue to be in compliance with all other applicable physical security requirements as described in 10 CFR 73.55 and reflected in its current NRC-approved physical security program. By December 20, 2010, BSEP Units 1 and 2 will be in full compliance with all the regulatory requirements of 10 CFR 73.55, as issued on March 27, 2009.

4.0 Conclusion for Part 73 Schedule Exemption Request

The NRC staff has reviewed the licensee's submittals and concludes that the licensee has provided adequate justification for its request for an extension of the compliance date with regard to two specified requirements of 10 CFR 73.55 until December 20, 2010.

Accordingly, the Commission has determined that pursuant to 10 CFR 73.5, exemption from the March 31, 2010, compliance date is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants the requested exemptions.

The long-term benefits that will be realized when these projects are complete justify extending the March 31, 2010, full compliance date with regard to the specific requirements of 10 CFR 73.55 for this particular licensee. The security measures that BSEP needs additional time to implement are new requirements imposed by March 27, 2009, amendments to 10 CFR 73.55, and are in addition to those required by the security orders issued in response to the events of September 11, 2001. Therefore, it is concluded that the licensee's actions are in the best interest of protecting the public health and safety through the security changes that will result from granting this exemption.

As per the licensee's request and the NRC's regulatory authority to grant exemptions to the March 31, 2010, deadline for the two items specified in Attachment 1 of CP&L letter dated November 30, 2009, the licensee is required to be in full compliance with 10 CFR 73.55 by December 20, 2010. In achieving compliance, the licensee is reminded that it is responsible for determining the appropriate licensing mechanism (*i.e.,* 10 CFR 50.54(p) or 10 CFR 50.90) for incorporation of all necessary changes to its security plans.

Pursuant to 10 CFR 51.32, "Finding of no significant impact," the Commission has previously determined that the granting of this exemption will not have a significant effect on the quality of the human environment (75 FR 8753, February 25, 2010).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 25th day of March 2010.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–7470 Filed 4–1–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–003, 50–247 and 50–286; NRC–2010–0137]

Indian Point Nuclear Generating Unit Nos. 1, 2, and 3; Exemption

1.0 Background

Entergy Nuclear Operations, Inc. (the licensee) is the holder of Facility Operating License Nos. DPR–5, DPR–26, and DPR–64, which authorize operation of the Indian Point Nuclear Generating Unit Nos. 1, 2, and 3 (IP1, IP2, and IP3). The licenses provide, among other things, that the facilities are subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facilities consist of one permanently shut down reactor and two operating pressurized-water reactors located in Westchester County in New York State.

2.0 Request/Action

Title 10 of the *Code of Federal Regulations* (10 CFR) Part 73, "PHYSICAL PROTECTION OF PLANTS AND MATERIALS," Section 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage," published March 27, 2009, effective May 26, 2009, with a full implementation date of March 31, 2010, requires licensees to protect, with high assurance, against radiological sabotage by designing and implementing comprehensive site security programs. The amendments to 10 CFR 73.55 published on March 27, 2009, establish and update generically applicable security requirements similar to those previously imposed by Commission Orders issued after the terrorist attacks of September 11, 2001, and implemented by licensees. In addition,

the amendments to 10 CFR 73.55 include additional requirements to further enhance site security based upon insights gained from implementation of the post-September 11, 2001, security Orders. It is from four of these new requirements that IP1, IP2, and IP3 now seek an exemption from the March 31, 2010, implementation date. All other physical security requirements established by this recent rulemaking have already been or will be implemented by the licensee by March 31, 2010.

By letter dated January 28, 2010, as supplemented by letter dated March 8, 2010, the licensee requested an exemption in accordance with 10 CFR 73.5, "Specific exemptions." Portions of the licensee's letter dated January 28, 2010, contain security-related information and, accordingly, are withheld from public disclosure in accordance with 10 CFR 2.390(d)(1). The licensee's supplemental letter dated March 8, 2010, is withheld in its entirety as security-related information in accordance with 10 CFR 2.390(d)(1). The licensee has requested an exemption from the March 31, 2010, compliance date stating that due to design, procurement, and installation activities, and in consideration of impediments to construction such as winter weather conditions and equipment delivery schedules, completion of some of the activities to facilitate compliance with 10 CFR 73.55 will require additional time beyond March 31, 2010, before all requirements can be met. Specifically, the request is to extend the compliance date for four specific requirements from the current March 31, 2010, deadline to February 17, 2011. Being granted this exemption for the four items would allow the licensee to complete the modifications designed to meet the new regulatory requirements.

3.0 Discussion of Part 73 Schedule Exemptions From the March 31, 2010, Full Implementation Date

Pursuant to 10 CFR 73.55(a)(1), "By March 31, 2010, each nuclear power reactor licensee, licensed under 10 CFR Part 50, shall implement the requirements of this section through its Commission-approved Physical Security Plan, Training and Qualification Plan, Safeguards Contingency Plan, and Cyber Security Plan referred to collectively hereafter as security plans." Pursuant to 10 CFR 73.5, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 73 when the exemptions are authorized by law, and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

This exemption would, as noted above, allow an extension of compliance with the new rule from March 31, 2010, until February 17, 2011, in four specific areas. As stated above, 10 CFR 73.5 allows the NRC to grant exemptions from the requirements of 10 CFR Part 73. The NRC staff has determined that granting the licensee's proposed exemption would not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

In the draft final power reactor security rule provided to the Commission, the NRC staff proposed that the requirements of the new regulation be met within 180 days. The Commission directed a change from 180 days to approximately 1 year for licensees to fully implement the new requirements. This change was incorporated into the final rule. From this, it is clear that the Commission wanted to provide a reasonable timeframe for licensees to reach full compliance.

As noted in the final rule, the Commission also anticipated that licensees would have to conduct site-specific analyses to determine what changes were necessary to implement the requirements of the rule, and that changes could be accomplished through a variety of licensing mechanisms, including exemptions. Since issuance of the final rule, the Commission has rejected a request to generically extend the rule's compliance date for all operating nuclear power plants, but noted that the Commission's regulations provide mechanisms for individual licensees, with good cause, to apply for relief from the compliance date (*Reference:* June 4, 2009, letter from R. W. Borchardt, NRC, to M. S. Fertel, Nuclear Energy Institute). The licensee's request for an exemption is, therefore, consistent with the approach set forth by the Commission and discussed in the June 4, 2009, letter.

IP1, IP2, and IP3 Schedule Exemption Request

The licensee provided detailed information in a letter dated January 28, 2010, requesting an exemption, as supplemented by letter dated March 8, 2010. It describes a comprehensive plan to improve certain physical security measures, and provides a timeline for achieving full compliance with the new regulation. The licensee's letter dated January 28, 2010, as supplemented by letter dated March 8, 2010, contains (1) security-related information regarding the site security plan, (2) details of specific portions of the regulation for which the site cannot be in compliance by the March 31, 2010, deadline and the reasons therefore, (3) the required changes to the site's security configuration, and (4) a timeline with critical path activities that would enable the licensee to achieve full compliance by February 17, 2011. The timeline provides dates indicating when construction will begin on various phases of the project and when critical equipment will be ordered, installed, tested and become operational.

Notwithstanding the scheduler exemptions for these limited requirements, the licensee will continue to be in compliance with all other applicable physical security requirements as described in 10 CFR 73.55 and reflected in its current NRC-approved physical security program. By February 17, 2011, IP1, IP2, and IP3 will be in full compliance with all the regulatory requirements of 10 CFR 73.55, as issued on March 27, 2009.

4.0 Conclusion for Part 73 Schedule Exemption Request

The NRC staff reviewed the licensee's submittals and concludes that the licensee has justified its request for an extension of the compliance date with regard to four specific requirements of 10 CFR 73.55 until February 17, 2011.

Accordingly, the Commission has determined that pursuant to 10 CFR 73.5, "Specific exemptions," an exemption from the March 31, 2010, compliance date is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants the requested exemption.

The NRC staff has determined that the long-term benefits that will be realized when the design, procurement, and installation activities are complete, justifies extending the full compliance date in the case of this particular licensee. The security measures IP1, IP2, and IP3 need additional time to implement are new requirements imposed by March 27, 2009, amendments to 10 CFR 73.55, and are in addition to those required by the security Orders issued in response to the events of September 11, 2001. Therefore, the NRC concludes that the licensee's actions are in the best interest of protecting the public health and safety through the security changes that will result from granting this exemption.

As per the licensee's request and the NRC's regulatory authority to grant an exemption to the March 31, 2010,

deadline for the four items specified in the licensee's letter dated January 28, 2010, as supplemented by letter dated March 8, 2010, the licensee is required to be in full compliance by February 17, 2011. In achieving compliance, the licensee is reminded that it is responsible for determining the appropriate licensing mechanism (*i.e.,* 10 CFR 50.54(p) or 10 CFR 50.90) for incorporation of all necessary changes to its security plans.

Pursuant to 10 CFR 51.32, "Finding of no significant impact," the Commission has previously determined that the granting of this exemption will not have a significant effect on the quality of the human environment (75 FR 14639; dated March 26, 2010).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 26th day of March 2010.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–7466 Filed 4–1–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Radiation Protection and Nuclear Materials; Notice of Meeting

The ACRS Subcommittee on Radiation Protection and Nuclear Materials will hold a meeting on April 21, 2010, Room T2–B3, at 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, April 21, 2010–8:30 a.m.–5 p.m.

The Subcommittee will review changes to NUREG–1536, "Standard Review Plan for Spent Fuel Storage Systems at a General License Facility." The Subcommittee will hear presentations by and hold discussions with NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Christopher L. Brown (telephone: 301–415–7111, e-mail: *Christopher.Brown@nrc.gov*), five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least 30 minutes before the meeting. Electronic recordings will be permitted. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 14, 2009, (74 FR 52829–52830).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the website cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in major inconvenience.

Dated: March 29, 2010.

Antonio F. Dias,

Branch Chief, Reactor Safety Branch B, Advisory Committee on Reactor Safeguards.

[FR Doc. 2010–7455 Filed 4–1–10; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Market Test of "Samples Co-Op Box" Experimental Product

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of a market test of an experimental product in accordance with statutory requirements.

DATES: April 2, 2010.

FOR FURTHER INFORMATION CONTACT: Nabeel Cheema, 202–268–7178.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice pursuant to 39 U.S.C. 3641(c)(1) that it will begin a market test of its "Samples Co-Op Box" experimental product on May 1, 2010. The Postal Service has filed with the Postal Regulatory Commission a notice setting out the basis for the Postal Service's determination that the market test is covered by 39 U.S.C. 3641 and describing the nature and scope of the market test. Documents are available at *http://www.prc.gov,* Docket No. MT2010–1.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 2010–7507 Filed 4–1–10; 8:45 am]

BILLING CODE 7710–12–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

1. *Title and purpose of information collection:*

RUIA Investigations and Continuing Entitlement; OMB 3220–0025.

Under Section 1(k) of the Railroad Unemployment Insurance Act (RUIA), unemployment and sickness benefits are not payable for any day with respect to which remuneration is payable or accrues to the claimant. Also Section 4(a–1) of the RUIA provides that unemployment or sickness benefits are not payable for any day the claimant receives the same benefits under any law other than the RUIA. Under Railroad Retirement Board (RRB) regulations, 20 CFR 322.4(a), a claimant's certification or statement on an RRB provided claim form that he or she did not work on any day claimed and did not receive income such as vacation pay or pay for time lost shall constitute sufficient evidence unless there is conflicting evidence. Further,

under 20 CFR 322.4(b), when there is question raised as to whether or not remuneration is payable or has accrued to a claimant with respect to a claimed day or days, investigation shall be made with a view to obtaining information sufficient for a finding. The RRB utilizes the following four forms to obtain information from railroad employers, nonrailroad employers and claimants, that are needed to determine whether a claimed days or days of unemployment or sickness were improperly or fraudulently claimed: Form ID–5I, Letter to Non-Railroad Employers on Employment and Earnings of a Claimant; Form ID–5R(SUP), Report of Employees Paid RUIA Benefits for Every Day in Month Reported as Month of Creditable Service; Form ID–49R, Letter to Railroad Employer for Payroll Information; and Form UI–48, Claimant's Statement Regarding Benefit Claim for Days of Employment. Completion is voluntary. One response is requested of each respondent.

To qualify for unemployment or sickness benefits payable under Section 2 of the Railroad Unemployment Insurance Act (RUIA), a railroad employee must have certain qualifying earnings in the applicable base year. In addition, to qualify for *extended* or *accelerated* benefits under Section 2 of the RUIA, a railroad employee who has exhausted his or her rights to normal benefits must have at least 10 years of railroad service (under certain conditions, military service may be credited as months of railroad service). Accelerated benefits are unemployment or sickness benefits that are payable to a railroad employee before the regular July 1 beginning date of a benefit year if an employee has 10 or more years of service and is *not* qualified for benefits in the current benefit year.

During the RUIA claims review process, the RRB may determine that unemployment or sickness benefits cannot be awarded because RRB records show insufficient qualifying service and/or compensation. When this occurs, the RRB allows the claimant the opportunity to provide additional information if they believe that the RRB service and compensation records are incorrect.

Depending on the circumstances, the RRB provides the following form(s) to obtain information needed to determine if a claimant has sufficient service or compensation to qualify for unemployment or sickness benefits. Form UI–9, Applicant's Statement of Employment and Wages, Form UI–23, Claimant's Statement of Service for Railroad Unemployment Insurance Benefits, Form UI–44, Claim for Credit for Military Service (RUIA), Form ID–4F, Advising of Ineligibility for RUIA Benefits, Form ID–4U, Advising of Service/Earnings Requirements for RUIA Benefits, Form ID–4X, Advising of Service/Earnings Requirements for Sickness Benefits, Form ID–4Y, Advising of Ineligibility for Sickness Benefits, Form ID–20–1, Advising that Normal Unemployment Benefits Are About to Be Exhausted, Form ID–20–2, Advising the Normal Sickness Benefits Are About to Be Exhausted, and Form ID–20–4, Advising That Normal Sickness Benefits Are About to Be Exhausted/Non-Entitlement. Completion of these forms is required to obtain or retain a benefit. One response is required of each respondent.

The RRB proposes no changes to any of the forms in the information collection.

The burden associated with the information collection is estimated as follows:

Form No.	Annual responses	Completion time (Minutes)	Burden hours
ID–5I	9,100	15	2,275
ID–5R(SUP)	1,200	10	200
ID–49R	5	15	3
UI–48	5	12	1
UI–9	100	10	8
UI–23	5	5	50
UI–44	5	5	1
ID–4F	25	5	2
ID–4U	30	5	3
ID–4X	25	5	2
ID–4Y	5	5	1
ID–20–1	90	5	8
ID–20–2	100	5	8
ID–20–4	5	5	1
Total	10,700	.....	2,512

2. *Title and purpose of information collection:*

Application to Act as Representative Payee; OMB 3220–0052.

Under Section 12 of the Railroad Retirement Act, the Railroad Retirement Board (RRB) may pay benefits to a representative payee when an employee, spouse or survivor annuitant is incompetent or is a minor. A representative payee may be a court-appointed guardian, a statutory conservator or an individual selected by the RRB. The procedures pertaining to the appointment and responsibilities of a representative payee are prescribed in 20 CFR part 266.

The forms furnished by the RRB to apply for representative payee status, and for securing the information needed to support the application follow. RRB Form AA–5, *Application for Substitution of Payee,* obtains information needed to determine the selection of a representative payee who will serve in the best interest of the beneficiary. RRB Form G–478, *Statement Regarding Patient's Capability to Manage Payments,* obtains information about an annuitant's capability to manage payments. The form is completed by the annuitant's personal physician or by a medical officer, if the annuitant is in an institution. It is not required when a court has appointed an individual or institution to manage the annuitant's funds or, in the absence of such appointment, when the annuitant is a minor. The RRB also provides representative payees with a booklet at the time of their appointment. The booklet, RRB Form RB–5, *Your Duties as Representative Payee-Representative Payee's Record,* advises representative

payees of their responsibilities under 20 CFR 266.9 and provides a means for the representative payee to maintain records pertaining to the receipt and use of RRB benefits. The booklet is provided for the representative payee's convenience. The RRB also accepts records that were kept by representative payee's as part of a common business practice.

Completion is voluntary. One response is requested of each respondent. The RRB is proposing non-burden impacting editorial changes to Forms AA–5 and G–478. No changes are proposed for the Booklet RB–5. The estimated completion time(s) is estimated at 17 minutes for Form AA–5, 6 minutes for Form G–478 and 60 minutes for Booklet RB–5. The RRB estimates that approximately 3,000 Form AA–5's, 2,000 Form G–478's and 15,300 RB–5's are completed annually.

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363 or send an e-mail request to *Charles.Mierzwa@RRB.GOV.* Comments regarding the information collection should be addressed to Patricia A. Henaghan, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or send an e-mail to *Patricia.Henaghan@RRB.GOV.* Written comments should be received within 60 days of this notice.

Charles Mierzwa,

RRB Clearance Officer.

[FR Doc. 2010–7468 Filed 4–1–10; 8:45 am]

BILLING CODE 7905–01–P

RAILROAD RETIREMENT BOARD

Proposed Data Collection Available for Public Comment and Recommendations.

SUMMARY: In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Self-Employment/Corporate Officer Work and Earnings Monitoring; OMB 3220–XXXX(New).

Section 2 of the Railroad Retirement Act (RRA) provides for the payment of disability annuities to qualified employees. Section 2 also provides that if the Railroad Retirement Board (RRB) receives a report of an annuitant working for a railroad or earning more than prescribed dollar amounts from either nonrailroad employment or self-employment, the annuity is no longer payable, or can be reduced, for the months worked. The regulations related to the nonpayment or reduction of the annuity by reason of work are prescribed in 20 CFR 220.160–164.

Some activities claimed by the applicant as "self-employment" may actually be employment for someone else (*e.g.* training officer, consultant, salesman). 20 CFR 216.229(c) states, for example, that an applicant is considered an employee, and not self-employed, when acting as a corporate officer, since the corporation is the applicant's employer. Whether the RRB classifies a particular activity, as self-employment or as work for an employer depends upon the circumstances in each case. The circumstances are prescribed in 20 CFR 216.21–216.23.

Certain types of work may actually indicate an annuitant's recovery from disability. Regulations related to an annuitant's recovery from disability of work are prescribed in 20 CFR 220.17–220.20.

In addition, the RRB conducts continuing disability reviews, (also known as a CDR) to determine whether the annuitant continues to meet the disability requirements of the law. Payment of disability benefits and/or a beneficiary's period of disability will end if medical evidence or other information shows that an annuitant is not disabled under the standards prescribed in Section 2 of the RRA. Continuing disability reviews are generally conducted if one or more of the following conditions are met: (1) The annuitant is scheduled for a routine periodic review, (2) the annuitant returns to work and successfully completes a trial work period, (3) substantial earnings are posted to the annuitant's wage record, or (4) information is received from the annuitant or a reliable source that the annuitant has recovered or returned to work. Provisions relating to when and how often the RRB conducts disability reviews are prescribed in 20 CFR 220.186.

To enhance program integrity activities, the RRB proposes the implementation of Form G–252, Self-Employment/Corporate Officer Work and Earnings Monitoring. Form G–252 will obtain information from a disability annuitant who claims to be self-employed or a corporate officer or who the RRB determines to be self-employed or a corporate officer after a continuing disability review. The continuing disability review may be prompted by a report of work, return to railroad service, an allegation of a medical improvement or a routine disability review call-up. The information gathered will be used to determine entitlement and/or continued entitlement to, and the amount of, the disability annuity, as prescribed in 20 CFR 220.176. Completion will be required to retain benefits. One response will be required of each respondent.

The estimated annual respondent burden is as follows:

ESTIMATE OF ANNUAL RESPONDENT BURDEN

Form #(s)	Annual responses	Time (min)	Burden (hrs)
G–252	100	20	33
Total	100		33

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363 or

send an e-mail request to *Charles.Mierzwa@RRB.GOV*. Comments regarding the information collection should be addressed to Patricia A. Henaghan, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or send an e-mail to *Patricia.Henaghan@RRB.GOV*. Written comments should be received within 60 days of this notice.

Charles Mierzwa,

RRB Clearance Officer.

[FR Doc. 2010–7475 Filed 4–1–10; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold an Open Meeting on Wednesday, April 7, 2010 at 10 a.m., in the Auditorium, Room L–002.

The subject matter of the Open Meeting will be:

Item 1: The Commission will consider whether to propose revisions to Regulation AB and other rules regarding the offering process, disclosure and reporting for asset-backed securities. The proposed amendments would revise the shelf offering process and eligibility criteria for asset-backed securities and require asset-backed issuers to provide enhanced disclosures including information regarding each asset in the underlying pool in a standardized, tagged format. The Commission will also consider proposed revisions to Securities Act Rule 144A and other rules for privately-placed asset-backed securities.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: March 31, 2010.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–7628 Filed 3–31–10; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61789; File No. SR–NASDAQ–2010–037]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Nasdaq's Rules To Eliminate an Outdated Reference

March 26, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 15, 2010, 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 below, which Items have been prepared by Nasdaq. Nasdaq has designated the proposed rule change as effecting a change described under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to modify Rule 5605(c), which contains the audit committee charter requirements, to eliminate an outdated reference to Independence Standards Board Standard 1.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.[4]

* * * * *

5605. Board of Directors and Committees

(a)–(b) No change.

(c) Audit Committee Requirements

(1) Audit Committee Charter

Each Company must certify that it has adopted a formal written audit committee charter and that the audit committee has reviewed and reassessed the adequacy of the formal written charter on an annual basis. The charter must specify:

(A) No change.

(B) The audit committee's responsibility for ensuring its receipt from the outside auditors of a formal written statement delineating all relationships between the auditor and the Company, [consistent with Independence Standards Board Standard 1, and the audit committee's responsibility for] actively engaging in a dialogue with the auditor with respect to any disclosed relationships or services that may impact the objectivity and independence of the auditor and for taking, or recommending that the full board take, appropriate action to oversee the independence of the outside auditor; and

(C)–(D) No change.

IM–5605–3. No change.

(2)–(5) No change.

(d)–(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 Rule 5605(c)(1) describes the provisions that are required to be included in the audit committee charter of each Nasdaq-listed company. Among those provisions, Rule 5605(c)(1)(B) requires that the charter specify the audit committee's responsibility for "ensuring its receipt from the outside auditors of a formal written statement delineating all relationships between the auditor and the Company, consistent with Independence Standards Board Standard 1. * * *"

The Independence Standards Board ("ISB"), which was created in 1997 through an agreement between the SEC and the AICPA ceased operations in 2001.[5] In 2002, Congress adopted Section 103(b) of the Sarbanes-Oxley Act,[6] directing the Public Company Accounting Oversight Board (the "PCAOB") to establish rules on auditor independence for public companies. Pursuant to that authority, the PCAOB adopted Rule 3526, Communication with Audit Committees Concerning Independence.[7] This rule was designed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at *http://nasdaqomx.cchwallstreet.com.*

[5] SEC Press Release 2001–72, available at *http://www.sec.gov/news/press/2001-72.txt.*

[6] 15 U.S.C. 7213.

[7] Exchange Act Release No. 58415 (August 22, 2008), 73 FR 50843 (August 28, 2008) (File No.

Continued

to build on ISB Standard 1, and superseded that standard and two related interpretations.

Nasdaq proposes to remove the reference in its rules to the superseded ISB Standard. This proposed change will not change the substantive requirements that must be contained in the audit committee charter.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[8] in general, and Section 6(b)(5) of the Act,[9] in particular, 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. The proposed rule change is designed to update Nasdaq's requirements concerning auditor independence by eliminating an outdated, redundant reference.

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

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, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6)(iii) thereunder.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2010–037 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2010–037. 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 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2010–037 and should be submitted on or before April 23, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–7430 Filed 4–1–10; 8:45 am]

BILLING CODE 8011–01–P

PCAOB–2008–003). This rule requires auditor's [sic] to deliver certain information concerning their independence to the audit committee and to discuss that information with the committee.

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to 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, or such shorter time as designated by the Commission. The Commission notes that Nasdaq satisfied the five-day pre-filing notice requirement.

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61793; File No. SR–MSRB–2010–02]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change to MSRB Rule G–34, CUSIP Numbers and New Issue Requirements, To Enhance the Interest Rate and Descriptive Information Currently Collected and Made Transparent by the MSRB on Municipal Auction Rate Securities and Variable Rate Demand Obligations

March 26, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 10, 2010, the Municipal Securities Rulemaking Board ("MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB is filing with the Commission a proposed rule change to enhance the interest rate and descriptive information currently collected and made transparent by the MSRB on

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

municipal Auction Rate Securities ("ARS") and Variable Rate Demand Obligations ("VRDOs"). The proposed rule change would: (i) Amend Rules G–8, books and records, and G–34(c), variable rate security market information, to require brokers, dealers and municipal securities dealers (collectively "dealers") to submit to the MSRB (a) documents that define auction procedures and interest rate setting mechanisms for ARS and liquidity facilities for VRDOs ("short-term obligation document disclosure rule change"); (b) ARS bidding information ("ARS bidding information rule change"); and (c) additional VRDO information ("VRDO information rule change") (collectively, the "rule change proposal"); (ii) amend the MSRB Short-term Obligation Rate Transparency ("SHORT") System Facility to collect and disseminate information identified in the ARS bidding information rule change and the VRDO information rule change and documents identified in the short-term obligation document disclosure rule change (the "SHORT System Facility amendment proposal"); and (iii) amend the MSRB EMMA Short-term Obligation Rate Transparency Service to make the documents collected in the SHORT System Facility amendment proposal available on the MSRB's Electronic Municipal Market Access (EMMA) Web site (the "EMMA Short-term Obligation Rate Transparency Service amendment").

The MSRB has requested that the proposed rule change, which may be implemented in phases, be made effective on such date or dates as would be announced by the MSRB in notices published on the MSRB Web site, which dates would be no later than nine months after Commission approval of the proposed rule change and would be announced no later than sixty (60) days prior to the effective dates.

The text of the proposed rule change is available on the MSRB's Web site (*http://www.msrb.org*), at the MSRB's principal office, and at the Commission's Public Reference Room. If approved, the rule text for the Short-term Obligation Rate Transparency System, as well as for the EMMA Short-Term Obligation Rate Transparency Service, would be available on the MSRB Web site at *http://www.msrb.org/msrb1/rulesandforms* under the heading Information Facilities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change would enhance the interest rate and descriptive information currently collected and made transparent by the MSRB on municipal Auction Rate Securities ("ARS") and Variable Rate Demand Obligations ("VRDOs"). The proposed rule change would: (i) Amend MSRB Rules G–8, books and records, and G–34(c), variable rate security market information, to require brokers, dealers and municipal securities dealers (collectively "dealers") to submit to the MSRB (a) documents that define auction procedures and interest rate setting mechanisms for ARS and liquidity facilities for VRDOs; (b) ARS bidding information; and (c) additional VRDO information (collectively "rule change proposal"); (ii) amend the MSRB Short-term Obligation Rate Transparency ("SHORT") System Facility to collect and disseminate the documents identified in the rule change proposal ("SHORT System Facility amendment proposal"); and (iii) amend the MSRB EMMA Short-term Obligation Rate Transparency Service to make the documents collected in the SHORT System Facility amendment proposal available on the MSRB's Electronic Municipal Market Access (EMMA) Web site (the "EMMA Short-term Obligation Rate Transparency Service amendment").

SHORT and EMMA are components of an integrated suite of programs, services and systems ("MSRB market information programs") for the collection of municipal securities market data and documents from dealers and other market participants and the dissemination of such data and documents to the public. The MSRB market information programs leverage the components of the various individual programs, services and systems to enhance the overall efficiency and effectiveness of the MSRB market information programs. In particular, processes, software, hardware or other components initially placed into service for a particular program, service or system may be utilized by other programs, services and systems within the MSRB market information programs to optimize the effectiveness of the MSRB market information programs and the individual components thereof.[3]

Background

Since January 30, 2009 for ARS and April 1, 2009 for VRDOs, MSRB Rule G–34(c), on variable rate security market information, has required dealers that act as Program Dealers[4] for ARS or Remarketing Agents for VRDOs to report (either directly or through an agent) certain information following an ARS auction or VRDO interest rate reset to the SHORT System.[5] Information generally is required to be reported to the SHORT System by no later than 6:30 p.m. Eastern Time on the day that an ARS auction or VRDO interest rate reset occurs and all collected information is made available to market participants for free in real-time on the MSRB's Electronic Municipal Market Access ("EMMA") Web site.[6] The specific items of interest rate and descriptive information about ARS and VRDOs currently required to be reported to the SHORT System are listed below.

The following is a list of the information currently required to be reported to the SHORT System by an ARS Program Dealer following an ARS auction:

- CUSIP number;
- Interest rate for the next reset period;
- Identity of Program Dealer(s);
- Number of days of the reset period;
- Minimum denomination;
- Date and time of the auction;
- Date and time of posting of auction results by an Auction Agent;
- Indication of whether the interest rate represents a "maximum rate," an "all hold rate," or a rate that was "set by auction;"

[3] For example, certain elements of the SHORT System Facility amendment proposal would rely on components previously placed into service pursuant to the EMMA primary market or continuing disclosure services for purposes of processing submissions made to the MSRB.

[4] An ARS Program Dealer is defined in Rule G–34(c) as a dealer that submits an order directly to an Auction Agent for its own account or on behalf of another account to buy, hold or sell ARS through the auction process.

[5] *See* Securities Exchange Act Release No. 34–59212, January 7, 2009 (File No. SR–MSRB–2008–07).

[6] The 6:30 p.m. Eastern Time deadline only applies to those ARS auctions and VRDO interest rate resets that occur during an "RTRS Business Day," as defined in Rule G–14(d)(ii). Information about ARS auctions and VRDO interest rate resets that occur outside of the hours of an "RTRS Business Day" is required to be submitted to the SHORT System by no later than 6:30 p.m. Eastern Time on the next "RTRS Business Day."

• Minimum and maximum rates, if any, applicable at the time of the auction or, if not calculable as of the time of auction, indication that such rate or rates are not calculable; [7] and

• Par amount auctioned, not including hold orders effective at any rate.

The following is a list of the information currently required to be reported to the SHORT System by a VRDO Remarketing Agent following a VRDO interest rate reset:

• CUSIP number;

• Interest rate for the next reset period;

• Identity of Remarketing Agent;

• Date of interest rate reset;

• Length of the interest rate reset period;

• Length of Notification Period;

• Indication of whether interest rate is "set by formula," "set by Remarketing Agent" or a "maximum rate;"

• Minimum and maximum rates, if any, applicable at the time of the interest rate reset or, if not calculable as of the time of the interest rate reset, indication that such rate or rates are not calculable; [8]

• Minimum denomination;

• Type of liquidity facility(ies); [9] and

• Expiration date of each liquidity facility.

Description of the Rule Change Proposal

The proposed rule change would enhance the interest rate and descriptive information currently made available to market participants about ARS and VRDOs. The proposed rule change would require dealers to report to the MSRB documents that set forth auction procedures and interest rate setting mechanisms for ARS and liquidity facilities for VRDOs, as well as ARS bidding information and additional VRDO information. All collected documents and information would be made available in real-time on EMMA.[10] The documents and information about ARS and VRDOs that would be required to be provided to the MSRB under the proposed rule change are described below.

ARS Bidding Information

The proposed rule change would require each ARS Program Dealer to report to the SHORT System an electronic document containing "ARS bidding information," which would include information about all orders placed by an ARS Program Dealer with an ARS Auction Agent for inclusion in an auction. This information would augment the interest rate and descriptive information currently provided to market participants by also providing information that would show, for example, how the interest rate was determined for a successful auction. The specific items of ARS bidding information an ARS Program Dealer would be required to report to the SHORT System are listed below. All items would be required to be reported within the same timeframe as the ARS interest rate and descriptive information currently required to be reported under Rule G–34(c). The ARS bidding information document would be required to be submitted to the SHORT System as a word-searchable portable document format ("PDF") file.

• Interest rate(s) and aggregate par amount(s) of orders to sell at a specific interest rate and aggregate par amount of such orders that were executed;

• Aggregate par amount of orders to sell at any interest rate and aggregate par amount of such orders that were executed;

• Interest rate(s) and aggregate par amount(s) of orders to hold at a specific interest rate and aggregate par amount of such orders that were successfully held;

• Interest rate(s) and aggregate par amount(s) of orders to buy and aggregate par amount of such orders that were executed;

• Interest rate(s), aggregate par amount(s), and type of order—either buy, sell or hold—by a Program Dealer for its own account and aggregate par amounts of such orders, by type, that were executed; and

• Interest rate(s), aggregate par amount(s), and type of order—either buy, sell or hold—by an issuer or conduit borrower for such Auction Rate Security and aggregate par amounts of such orders, by type, that were executed.

Additional VRDO Information

The proposed rule change would require VRDO Remarketing Agents to submit additional items of VRDO information to the SHORT System in conjunction with the VRDO interest rate and descriptive information currently required to be reported under Rule G–34(c). This information would provide additional details concerning the interest rate set for a VRDO, such as the effective date of the interest rate, and would facilitate the tendering of a position in a VRDO by investors by requiring VRDO Remarketing Agents to report the identity of the agent of the issuer of the VRDOs to which a holder may tender their security ("Tender Agent").

The additional VRDO information would also provide transparency related to the current holders of the VRDO. Information about current holders of a VRDO would indicate, for example, that interest rate set represents an interest rate paid to holders of the VRDO instead of instances when the VRDO is held entirely by a liquidity provider (as a "Bank Bond") and that the interest rate set is therefore not set by market demand. A complete list of the specific items of additional VRDO information a VRDO Remarketing Agent would be required to report to the SHORT System under the proposed rule change are listed below.

• Effective date that the interest rate reset is applicable;

• Identity of the Tender Agent;

• Identity of the liquidity provider(s) including a indication of those VRDOs for which an issuer provides "self liquidity" and the identity of the party providing such self-liquidity; [11]

• Information available to the VRDO Remarketing Agent as of the time of the interest rate reset of the par amount of the VRDO, if any, held as a Bank Bond; and

• Information available to the VRDO Remarketing Agent as of the time of the interest rate reset of the aggregate par amount of the VRDO, if any, held by parties other than a liquidity provider, which includes the par amounts held by a VRDO Remarketing Agent and by investors.

ARS and VRDO Documents

The proposed rule change would require ARS Program Dealers and VRDO Remarketing Agents to submit certain documents to the SHORT System to

[7] Some ARS and VRDOs have minimum and maximum rates that are set pursuant to formulas that are unable to be calculated at the time a submission to the SHORT System is required. In these cases, a value of "NC" is required to be included in a submission to the SHORT System to show that the minimum and maximum rates are "not calculable." This exception does not apply to minimum and maximum rates that are linked to an index or bank lending rate, such as LIBOR. Such rates are required to be computed and the resulting values included on a submission to the SHORT System.

[8] *Id.*

[9] Dealers are required to submit to the SHORT System whether each applicable liquidity facility is a letter of credit or standby bond purchase agreement.

[10] In the future, the MSRB also plans to make all information collected under the rule change proposal available on a subscription basis.

[11] Some VRDOs have liquidity provisions under which the liquidity is provided by the issuer, conduit borrower or affiliate instead of by a third-party. Rule G–34(c) currently requires Remarketing Agents to report the type of liquidity facility applicable to a VRDO. Currently, SHORT System specifications only provide two options for this data element—letter of credit and standby bond purchase agreement—and in conjunction with proposed rule change the MSRB would revise the specifications to also capture VRDOs that have "self liquidity."

ensure that market participants have centralized access to critical documents about ARS programs and VRDO issues. For existing ARS programs, dealers would be required to submit the current versions of ARS documents defining current auction procedures and interest rate setting mechanisms to the SHORT System within ninety days after the effective date of the proposed rule change. For existing VRDO issues, dealers would be required to undertake and document [12] best efforts to obtain current versions of VRDO liquidity facility documents, including Letters of Credit, Stand-by Bond Purchase Agreements and any other document that establishes an obligation to provide liquidity, and submit such documents to the SHORT System within ninety days after the effective date of the proposed rule change. On an ongoing basis, dealers would be required to submit any new or amended versions of these documents within one business day of receipt.

The MSRB recognizes that for some ARS programs, documents defining current auction procedures and interest rate setting mechanisms may already be available in the SHORT System. This may occur in the case of an ARS with multiple Program Dealers in which one Program Dealer has already submitted to the SHORT System the required document. In these cases, in lieu of submitting duplicate documents, dealers would be provided the capability to signify that a document required to be submitted has already been submitted to the SHORT System by identifying the relevant document.

Since January 1, 2010, all documents submitted to EMMA have been required to be word-searchable PDF files. While this same requirement would apply to the submission of ARS and VRDO documents to the SHORT System, MSRB acknowledges that some of these documents for outstanding ARS and VRDOs are likely to be older documents that may not be available in electronic format or a format that would easily permit a dealer to produce a word-searchable PDF file of the document. Accordingly, the proposed rule change would only require ARS and VRDO documents submitted to EMMA to be word-searchable for new or amended versions of documents produced after the effective date of the proposed rule change.

[12] The proposed rule change would require dealers to keep records for a period of three years of all best efforts undertaken to obtain documents for existing VRDO issues. Such records of best efforts would include, for example, all written requests for documents to and any responses from an issuer or liquidity provider.

Description of the Short System Facility Amendment Proposal

The SHORT System is an MSRB Facility for the collection and public dissemination of information about ARS and VRDO. The amendment to this facility would provide for the collection and public dissemination of documents identified in the rule change proposal.

Submissions to the SHORT System

The SHORT System receives submissions of information and documents about securities bearing interest at short-term rates under MSRB Rule G–34, on CUSIP numbers, new issue and market information requirements.

Information and Documents to be Submitted. The basic items of information and documents that would be required to be submitted to the SHORT System are the same as those required to be submitted to the MSRB under MSRB Rule G–34(c). Submitters of documents would be required to provide to the SHORT System related indexing information with respect to each document submitted, including an indication of the document type, date such document became available to the dealer, and CUSIP number(s) of the municipal securities to which such document relates. A submitter required to submit a document that is already available in its entirety in the SHORT System would be permitted to, in lieu of submitting a duplicate document, identify the document already submitted and provide such items of related indexing information as are required by MSRB rules or the SHORT System input specifications and system procedures. A submitter required to submit a document that is not able to be obtained through best efforts as provided in the proposed rule change would be required to provide an affirmative indication that a document required to be submitted is not available for submission notwithstanding the submitter's best efforts to obtain such document. The complete list of data elements that would be required on a submission to the SHORT System would be available in input specifications and system procedures made available on *http://www.msrb.org.* Submitters would be responsible for the accuracy and completeness of all information submitted to the SHORT System.

Submitters. Submissions to the SHORT System may be made solely by authorized submitters using password-protected accounts in the MSRB's user authentication system, MSRB Gateway. MSRB Gateway is designed to be a single, secure access point for all MSRB applications. Submitters of information to the SHORT System are required to obtain an account in MSRB Gateway in order to submit information to the SHORT System. Through MSRB Gateway, submitters also have the ability to designate third-party agents to submit information to the SHORT System on the submitter's behalf.

Submissions may be made by the following classes of submitters:

- ARS Program Dealer;
- VRDO Remarketing Agent;
- ARS Auction Agent; and
- Designated Agent, which may submit any information otherwise permitted to be submitted by another class of submitter which has designated such agent, as provided below.

All ARS Auction Agents are allowed to submit information about an auction to the SHORT System without prior designation by an ARS Program Dealer. Dealers optionally may designate agents to submit information on their behalf, and may revoke the designation of any such agents, through MSRB Gateway. All actions taken by a Designated Agent on behalf of a dealer that has designated such agent shall be the responsibility of the dealer.

Timing of Submissions. Submitters are required to make submissions to the SHORT System within the timeframes set forth in MSRB Rule G–34(c) and related MSRB procedures. Submissions of information to the SHORT System may be made throughout any RTRS Business Day, as defined in Rule G–14 RTRS Procedures, from at least the hours of 6 a.m. to 9 p.m. Eastern Time, subject to the right of the MSRB to make such processes unavailable at times as needed to ensure the integrity of the SHORT System and any related systems. Submissions of documents would be able to be made throughout any day, subject to the right of the MSRB to make such processes unavailable between the hours of 3 a.m. and 6 a.m. each day, Eastern Time, for required maintenance, upgrades or other purposes, or at other times as needed to ensure the integrity of MSRB systems. The MSRB provides advance notice of any planned periods of unavailability and shall endeavor to provide information to submitters as to the status of the submission interface during unanticipated periods of unavailability, to the extent technically feasible.

Method of Submission. Information and documents may be submitted to the SHORT System through a secure, password-protected, Web-based electronic submitter interface or through a secure, authenticated computer-to-computer data connection, at the

election of the submitter. When making submissions using the Web-based interface, related information is entered manually into an on-line form and documents would be required to be uploaded as portable document format (PDF) files. Computer-to-computer submissions utilize XML files for data and PDF files for documents. Appropriate schemas and procedures for Web-based and computer-to-computer submissions would be available in input specifications and system procedures made available on *http://www.msrb.org.*

Designated Electronic Format for Documents. All documents submitted to the SHORT System would be required to be in portable document format (PDF), configured to permit documents to be saved, viewed, printed and retransmitted by electronic means. If the submitted file is a reproduction of the original document, the submitted file must maintain the graphical and textual integrity of the original document. Documents submitted to the SHORT System created on or after the effective date of the proposed rule change would be required to be word-searchable (without regard to diagrams, images and other non-textual elements).

SHORT System Processing

The SHORT System provides a single portal for the submission of information and documents. The SHORT System, as well as other MSRB systems and services, performs various data checks to ensure that information and documents are submitted in the correct format. In addition, data checks are performed to monitor dealer compliance with MSRB Rule G–34(c) as well as to identify information submitted in correct formats that may contain errors due to information not falling within reasonable ranges of expected values for a given item of information. All submissions generate an acknowledgement or error message, and all dealers that have information or documents submitted on their behalf by either an ARS Auction Agent or a Designated Agent are able to monitor such submissions.

SHORT System Information and Document Dissemination

Information and documents submitted to the SHORT System that pass the format and data checks described above are processed and disseminated on a real-time basis. Any changes to submissions also are processed upon receipt and updated information and documents are disseminated in real-time. Information submitted to the SHORT System is, in general, disseminated to the EMMA short-term obligation rate transparency service within 15 minutes of acceptance, although during peak traffic periods dissemination may occur within one hour of acceptance. Submissions of documents to the SHORT System accepted during the hours of 8:30 a.m. to 6 p.m. Eastern Time on an MSRB business day would generally be disseminated to the EMMA short-term obligation transparency service within 15 minutes of acceptance, although during peak traffic periods posting may occur within one hour of acceptance. Submissions outside of such hours often would be posted within 15 minutes although some submissions outside of the MSRB's normal business hours may not be processed until the next business day. SHORT System information and documents, along with related indexing information, would be made available to the public through the EMMA portal for the life of the related securities.

The MSRB plans to offer subscriptions to the information and documents submitted to the SHORT System in the future.

Description of the EMMA Short-Term Obligation Rate Transparency Service Amendment Proposal

The EMMA short-term obligation rate transparency service currently makes the information collected by the SHORT System available to the public, at no charge, on the EMMA portal. The amendment to this service would add the documents identified in the rule change proposal to this service so that such documents would also be available to the public, at no charge, on the EMMA portal.

2. Statutory Basis

The MSRB has adopted the proposed rule change pursuant to Section 15B(b)(2)(C) of the Act,[13] which provides that the MSRB's rules shall:

> be 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 municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The MSRB believes that the proposed rule change is consistent with the Act. The proposed rule change would serve as an additional mechanism by which the MSRB works toward removing impediments to and helping to perfect the mechanisms of a free and open market in municipal securities by providing a centralized venue for free public access to information about and documents relating to ARS and VRDO. The proposed rule change would provide greater access to information about and documents relating to ARS and VRDO to all participants in the municipal securities market on an equal basis thereby removing potential barriers to obtaining such information. These factors serve to promote the statutory mandate of the MSRB to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, since it would apply equally to dealers in municipal securities.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

On March 17, 2008, the MSRB requested comment on a proposed plan for increasing the information available for ARS ("March 2008 ARS Notice"),[14] on May 23, 2008, the MSRB requested comment on a proposed plan for increasing the information available for VRDOs ("May 2008 VRDO Notice"),[15] and on July 14, 2009 the MSRB requested comment on the draft amendments to Rule G–34(c) ("July 2009 Notice").[16] These notices, the comments received, and the MSRB's responses are discussed below.

March 2008 ARS Notice

The March 2008 ARS Notice proposed a plan to create a centralized system for the collection and dissemination of critical market information about ARS. The March 2008 ARS Notice proposed the collection and dissemination of the current interest rate and certain descriptive information for ARS programs, bidding information detailing the orders placed by an ARS Program Dealer with an ARS Auction Agent for inclusion in an auction ("ARS bidding information") and documents concerning ARS that were not required to be filed with the MSRB under former Rule G–36, on delivery of official statements, advance refunding

[13] 15 U.S.C. 78o–4(b)(2)(C).

[14] *See* MSRB Notice 2008–15 (March 17, 2008).

[15] *See* MSRB Notice 2008–24 (May 23, 2008).

[16] *See* MSRB Notice 2009–43 (July 14, 2009).

documents and Forms G–36(OS) and G–36(ARD).

May 2008 VRDO Notice

The May 2008 VRDO Notice proposed a plan to collect and disseminate critical market information about VRDOs using the same system proposed in the March 2008 ARS Notice for ARS. The May 2008 VRDO Notice proposed collecting and disseminating the current interest rate and certain descriptive information for VRDOs and documents concerning VRDOs that were not required to be filed with the MSRB under former Rule G–36, such as the letter of credit or standby bond purchase agreement.

July 2009 Notice

The July 2009 Notice requested comment on draft amendments to Rule G–34(c). The draft amendments would require ARS Program Dealers to report ARS bidding information and VRDO Remarketing Agents to report additional descriptive information about VRDOs to the MSRB Short-term Obligation Rate Transparency ("SHORT") System. The draft amendments also would require ARS Program Dealers and VRDO Remarketing Agents to submit ARS documents defining current auction procedures and interest rate setting mechanisms and VRDO liquidity facility documents, including current Letters of Credit and Stand-by Bond Purchase Agreements (collectively "short-term obligation documents"). For existing ARS and VRDOs, the draft amendments would require dealers to provide the current versions of documents to the MSRB within thirty days after the effective date of the draft amendments and on an ongoing basis dealers would be required to provide any new or amended versions of these documents within one business day of receipt.

Discussion of Comments

The MSRB received comments on the March 2008 ARS Notice from seven commentators,[17] on the May 2008 VRDO Notice from nine commentators,[18] and on the July 2009 Notice from five commentators.[19] After reviewing the comments on the March 2008 ARS Notice and May 2008 VRDO Notice, the MSRB approved a phased-in approach to the collection and dissemination of ARS and VRDO information and documents. The first phase of this approach included changes to MSRB Rule G–34 to require dealers to report ARS and VRDO interest rate and descriptive information to the MSRB and implementation of the SHORT System, which became effective on January 30, 2009 for ARS and April 1, 2009 for VRDOs.[20] The principal comments of the March 2008 ARS Notice, May 2008 VRDO Notice and July 2009 Notice concerning the collection of ARS bidding information, additional VRDO descriptive information and short-term obligation disclosure documents are discussed below.

Additional VRDO Data

The draft amendments in the July 2009 Notice identified items of information that a VRDO Remarketing Agent would be required to report to the SHORT System in conjunction with the VRDO interest rate and descriptive information currently required to be reported on the day that an interest rate reset occurs. The specific items of information proposed included:

- Effective date that the interest rate reset is applicable;
- Identity of the Tender Agent;
- Identity of the liquidity provider;
- Par amount, if any, held by VRDO Remarketing Agent, at time of interest rate reset;
- Par amount, if any, held by a liquidity facility ("Bank Bond") at time of interest rate reset and interest rate paid to the liquidity provider; and
- Par amount, if any, held by a party other than the Remarketing Agent or as a Bank Bond.

In response to July 2009 Notice, First Southwest and SIFMA stated concerns relating to the draft amendment's requirement to report the additional VRDO information to the SHORT System, which are primarily focused on whether a VRDO Remarketing Agent would be able to obtain and report accurate information for several of the additional items of VRDO information. For example, with respect to reporting the identity of the Tender Agent and liquidity provider, First Southwest stated that it would be "difficult and burdensome to be required to be continually updating [this] information, which can and does change frequently, between two parties where [the VRDO Remarketing Agent] has no legal standing and should be the responsibility of the bank or tender agent that is party to those transactions." However, RBDA generally supported the additional items of VRDO information and stated that "the information proposed to be disclosed for VRDOs is material to evaluating VRDO investments" but acknowledged that "Remarketing Agents may not have ready access to all of the information * * * proposed to be submitted * * * [and] would support other reasonable initiatives to achieve the ends outlined in the [July 2009 Notice] * * *."

The MSRB believes that information concerning the identity of the Tender Agent and liquidity provider is material to market participants and, in particular, investors of VRDOs. With respect to Tender Agents, the July 2009 Notice also solicited comment on whether a VRDO Remarketing Agent could also provide the contact information for the Tender Agent and the MSRB believes some of the concerns stated by SIFMA about providing the identity of the Tender Agent were focused on challenges in obtaining and keeping current contact information for the Tender Agent. MSRB acknowledges that it may be difficult to obtain and keep current contact information for a Tender Agent, particularly for smaller Tender Agents that use the name and contact information for an individual instead of

[17] *See* letters from Paula Stuart, Chief Executive Officer, Digital Assurance Certification, LLC ("DAC") to Justin Pica, dated April 21, 2008; Jack B. McPherson to Mr. Pica, dated March 27, 2008; *Mikag@cox.net* to Mr. Pica, e-mail dated April 23, 2008; Michael Decker, Co-Chief Executive Officer, and Mike Nicholas, Co-Chief Executive Officer, Regional Bond Dealers Association ("RBDA") to Mr. Pica, dated April 21, 2008; Joseph S. Fichera, Senior Managing Director and CEO, Saber Partners, LLC ("Saber Partners") to Mr. Pica, dated July 9, 2008; Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association ("SIFMA") to Mr. Pica, dated April 21, 2008; and, Jeff Yankauer to Mr. Pica, e-mail dated April 17, 2008.

[18] *See* letters from Paula Stuart, Chief Executive Officer, Digital Assurance Certification LLC ("DAC") to Mr. Pica, dated July 1, 2008; Daniel Thieke, Vice President, Depository Trust and Clearing Corporation ("DTCC") to Mr. Pica, dated June 26, 2008; Christine Walsh, Managing Director, Merrill Lynch to Mr. Pica, dated June 26, 2008; S. Lauren Heyne, Chief Compliance Officer, RW Smith and Associates, Inc. ("RW Smith") to Mr. Pica, dated June 30, 2008; Joseph S. Fichera, Senior Managing Director and CEO, Saber Partners to Mr. Pica, dated July 9, 2008; Leslie M. Norwood, Managing Director and Associate General Counsel, SIFMA to Mr. Pica, dated June 30, 2008; Dara L. Smith, Managing Director, SunTrust Robinson Humphrey ("SunTrust") to Mr. Pica, dated June 27, 2008; Joseph A. Whitehead, Thornton Farish Inc. ("Thornton Farish") to Mr. Pica, dated June 30, 2008; and, Belle Walker, Senior Vice President, W.R. Taylor and Company, LLC ("W.R. Taylor") to Mr. Pica, dated August 7, 2008.

[19] *See* letters from Patricia W. Wilson, Senior Managing Director Global Alternatives, Allstate Investments, LLC ("Allstate") to Mr. Pica, dated September 1, 2009; Robert J. Stracks, Counsel, BMO Capital Markets GKST Inc. to Mr. Pica, dated September 1, 2009; Carl Giles, Managing Director Capital Markets, First Southwest Company ("First Southwest") to Mr. Pica, dated August 31, 2009; Michael Decker, Co-Chief Executive Officer, and Mike Nicholas, Co-Chief Executive Officer, RBDA to Mr. Pica, dated September 1, 2009; and Leslie M. Norwood, Managing Director and Associate General Counsel, SIFMA to Mr. Pica, dated September 1, 2009.

[20] *See* Securities Exchange Act Release No. 59212, January 7, 2009 (File No. SR–MSRB–2008–07). The principal comments of the March ARS Notice and May VRDO Notice concerning the collection of ARS and VRDO interest rate and descriptive information as well as the implementation of the SHORT System were discussed in File No. SR–MSRB–2008–07.

a division within a company for submitting tender requests, but the MSRB believes that a basic requirement to provide the identity of the Tender Agent is reasonable and that it is important that investors be able to have access to the identity of the Tender Agent to facilitate an investor tendering its position in VRDOs.

In response to the July 2009 Notice proposal to require reporting of the par amounts of a VRDO held as a Bank Bond, by the VRDO Remarketing Agent and by investors at the time of the interest rate reset, SIFMA stated that making such information transparent "would be detrimental to the municipal securities market by giving competitors a trading advantage against one another." MSRB is sensitive to SIFMA's concerns related to reporting and making transparent the individual par amounts of the VRDO held as a Bank Bond,[21] by the VRDO Remarketing Agent and by investors. One of the purposes of requiring this information to be reported is to provide market participants with an indication that the interest rate set by the VRDO Remarketing Agent represents an interest rate paid to holders of the VRDO instead of instances when the VRDO is held entirely as a Bank Bond and that the interest rate set is therefore not set by market demand.[22] As an alternative to the requirement in the July 2009 Notice, the proposed rule change includes a requirement for a VRDO Remarketing Agent to report the "par amount remarketed," which would be the aggregate of VRDOs held by the VRDO Remarketing Agent and investors, but not Bank Bonds, and separately report the par amount held as Bank Bonds. This should provide a sufficient indication that the interest rate set reflects a market interest rate paid to holders of the VRDO while preventing individual par amounts held by VRDO Remarketing Agents from being disclosed to the public.

ARS Bidding Information

The July 2009 Notice identified ARS Bidding Information that an ARS Program Dealer would be required to submit to the SHORT System as individual data elements in connection with a report of the ARS interest rate and descriptive information currently required to be reported following an auction. In response to the July 2009 Notice, First Southwest and SIFMA both noted that reporting ARS Bidding Information to the SHORT System as individual data elements would be costly and time consuming, particularly, as SIFMA noted, "for a product that is winding down." SIFMA further noted that "there have not been any new ARS issues in over a year and a half, and none are expected." Instead of submitting information as individual data elements, SIFMA suggested that "the disclosure of this information to [the MSRB] by way of document, instead of breaking out each data element, would help minimize the burden."

The MSRB acknowledges that reporting ARS Bidding Information to the SHORT System as individual data elements would result in ARS Program Dealers incurring programming expenses as well as increasing the ongoing cost of compliance with reporting information to the SHORT System. Further, current interest rate information from the SHORT System indicates that approximately 80% of all ARS continue to experience failed auctions,[23] so one of the purposes of having ARS Bidding Information as individual data elements, to compute a "bid-to-cover ratio"[24] that would show the demand for the ARS, may not at this time justify the expense incurred by ARS Program Dealers to report such information as individual data elements to the SHORT System. Nonetheless, the MSRB believes that having a centralized source of ARS Bidding Information, even if such information is only available as a document, would be of benefit to market participants as it would further the MSRB's investor protection mission. This document-based approach would provide for indexing of each such submission to the appropriate security so that the information would be easy to find, even if the information contained within such documents could not easily be exported to a data file or otherwise manipulated.

In response to specific items of ARS Bidding information identified in the July 2009 Notice, SIFMA noted that when an ARS Program Dealer receives orders to buy from other dealers for submission to an ARS auction, such orders may be aggregated by the other dealer making it impossible for the ARS Program Dealer to provide accurate information on the number of unique bidders other than the Program Dealer bidding for its own account. MSRB acknowledges that orders submitted to an ARS Program Dealer may be aggregated by the submitting party and believes that disclosing such aggregated orders may be misleading to market participants. Thus, the MSRB has not included this requirement in the proposed rule change. SIFMA also noted that separately requiring an ARS Program Dealer to report bidding information for orders submitted by an issuer or conduit borrower would be unnecessary since issuers and ARS Program Dealers have made such information available on public Web sites. The MSRB notes that while the EMMA Continuing Disclosure Service provides a document category for issuers to voluntarily disclose an intent to bid on its ARS, this does not provide for a centralized source of all orders submitted by an issuer or conduit borrower, which would be provided by the proposed rule change.[25]

Short-term Obligation Documents

The draft amendments in the July 2009 Notice proposed requiring ARS Program Dealers and VRDO Remarketing Agents to submit to the MSRB current and any new or amended versions of the following documents:

- ARS documents defining auction procedures and interest rate setting mechanisms;
- VRDO documents consisting of liquidity facilities, including Letter of Credit Agreements and Stand-by Bond Purchase Agreements.

In response to the July 2009 Notice First Southwest and SIFMA both stated

[21] The July 2009 Notice also proposed collecting the interest rate paid to a liquidity provider for VRDOs held as a Bank Bond. SIFMA noted that many VRDO Remarketing Agents are not made aware of the interest rate paid on Bank Bonds. The MSRB acknowledges that this requirement may present significant compliance challenges for dealers and has accordingly decided not to proceed with it at this time.

[22] This information also is intended to provide a centralized source of information about holdings of VRDOs. SIFMA notes that information collected by the SEC in its Financial and Operational Combined Uniform Single ("FOCUS") Reports, while not an identical requirement, provides such a centralized source of information about the holdings of VRDOs by Remarketing Agents.

[23] In light of the high number of failed auctions, Allstate suggests requiring ARS Program Dealers to provide the formula used to compute the maximum rate, including the "net loan rate." MSRB does not believe that this information is readily available to ARS Program Dealers but notes that a separate requirement for certain ARS documents to be submitted to the MSRB and made available publicly should aide in determining how maximum rates are set.

[24] In response to the April 2008 ARS Notice, Saber Partners identified this statistic as one that "can give great insight into the liquidity of an auction."

[25] MSRB notes that issuers or conduit borrowers may instruct a third party, such as an investment adviser, to submit orders to an ARS Program Dealer on their behalf. In these cases, MSRB acknowledges that the ARS Program Dealer would not know that such orders are on behalf of issuers or conduit borrowers and would not be able to include this fact when making submissions of ARS Bidding Information to the SHORT System.

concerns with the requirement to submit ARS and VRDO documents for outstanding issues to the MSRB. First Southwest noted that to obtain some of these documents, dealers "would need to go back to the creators of those documents to comply with the rule" but nevertheless noted that "in general, the requested documents are available." [26] SIFMA also stated a concern that some documents for outstanding VRDOs may contain information that was not intended to be made public. In response to the May 2008 VRDO Notice DAC also noted that dealers "may not always be a party to or have control over all of the documents." MSRB recognizes that dealers' ability to comply with the requirement proposed in the July 2009 Notice for VRDOs would, in some cases, be subject to the ability of the dealer to obtain a document from a third party. Therefore, MSRB has incorporated into the proposed rule change a "best efforts" provision coupled with a recordkeeping requirement that would require dealers to make and document all efforts to obtain a VRDO document for which the dealer does not already have access.

First Southwest and SIFMA also stated concerns with the timeframes proposed for submitting ARS and VRDO documents to the MSRB due to the high number of ARS and VRDO issues, which SIFMA states is approximately 16,500 VRDOs and 1,750 ARS, and the fact that dealers may not have such documents in a format that would allow for easy electronic submission of the document to the MSRB. Given the high numbers of these securities, First Southwest and SIFMA both stated that 180 days, instead of the 30 days proposed in the July 2009 Notice, would be a more appropriate amount of time to submit the documents to the MSRB. MSRB recognizes that there are a large number of documents that would need to be obtained, converted into an electronic format and submitted to the MSRB. However, MSRB believes that it is important for investors and other market participants to have centralized access to these documents. Acknowledging the large number of documents and the fact that, for outstanding issues, dealers may need time to request documents from third parties, MSRB has provided 90 days from the date of effectiveness of a rule in the proposed rule change for dealers to submit outstanding ARS and VRDO documents to the MSRB. However, MSRB notes that dealers should not wait until a rule is in effect to begin the process of requesting documents and converting them into the appropriate electronic format.[27]

In response to the July 2009 Notice proposal that any new or amended versions of documents be submitted to the MSRB within one day of receipt, SIFMA suggested that dealers be required to submit a document within 5-days of receipt so that the deadline would be consistent with the deadline for submitting advance refunding documents to the MSRB. MSRB believes that it is important that market participants have access to documents that are current and therefore has retained in the proposed rule change the timeframe for an ARS Program Dealer or VRDO Remarketing Agent to provide such new or amended versions of documents to the MSRB no later than one business day after receipt by the dealer.[28]

Public Availability of Collected Information and Documents

In response to the April 2008 ARS Notice, Mr. Yankauer recommended that the MSRB make information collected about ARS available "to the general public without any fee to view the information." MSRB agrees with Mr. Yankauer's recommendation and notes that the interest rate and descriptive information currently collected by the SHORT System is available at no charge on the EMMA Web site. MSRB also notes that it plans to make all information and documents collected under the proposed rule change available at no charge on the EMMA Web site.

[26] Both First Southwest and SIFMA also noted that Official Statements typically contain summaries of the information contained in the documents identified in the draft amendments and note that if an investor wanted to obtain the actual document, they could request the documents identified in the draft amendments from either the issuer or a dealer. In particular, SIFMA noted in response to the April 2008 ARS Notice that ARS Official Statements generally already contain much of the information. MSRB notes that the proposed rule change would permit dealers to reference documents already submitted in lieu of submitting duplicate documents.

[27] As previously described, the MSRB has requested flexibility with respect to the setting of effective dates for the proposed rule change. The MSRB notes that it would be prudent for dealers to use the time between the approval date of the proposed rule change and the effective date to begin collecting such required documents and converting them into electronic format.

[28] RBDA also suggested that MSRB look into utilizing optical character recognition technology to facilitate performing word searches on EMMA of documents that are scanned and not "native" PDFs. MSRB notes that all documents submitted to EMMA since January 1, 2010 are required to be word-searchable and that the proposed rule change would require documents created after the effective date of the proposed rule change to also be word-searchable.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–MSRB–2010–02 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–MSRB–2010–02. 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 MSRB. 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–MSRB–2010–02 and should be submitted on or before April 23, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–7463 Filed 4–1–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61798; File No. SR–NSCC–2010–04]

Self-Regulatory Organizations; The National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Set the Effective Date for the Elimination of the Guaranty of Payment With Respect to Its Envelope Settlement Service

March 29, 2010.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on March 8, 2010, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by NSCC. NSCC filed the proposal pursuant to section 19(b)(3)(A)(i) of the Act[2] and Rule 19b–4(f)(1)[3] thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will set the effective date for the elimination of a guarantee of payment (and associated rule changes) with respect to NSCC's Envelope Settlement Service ("ESS") as of April 1, 2010.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On March 1, 2010, the Commission approved rule filing SR–NSCC–2010–01 ("Approved Filing") relating to NSCC's elimination of the guarantee of payment in connection with ESS.[5] Specifically, the approval will give effect to specified changes to Rule 9, Addendum D, Addendum K, and Procedure XV of NSCC's rules and procedures as set forth in Exhibit 5 of the Approved Filing, to: (1) Eliminate NSCC's guaranty of the payment to the receiving NSCC member in an ESS delivery, (2) provide that the credits and debits of the payment amount of an envelope may be reversed, and (3) eliminate clearing fund deposits allocated to ESS. In order to afford members a transitional period to prepare for these changes, NSCC is proposing to implement the changes on April 1, 2010.

The proposed rule change is consistent with Section 17A of the Act,[6] as amended, and the rules and regulations thereunder applicable to NSCC. The proposed rule change will protect NSCC's net settlement process while continuing to provide a central delivery point for physical deliveries of envelopes with constrained payment processing. The changes will reduce NSCC's exposure to potential losses from member defaults, insolvencies, mistakes, and fraud and will appropriately shift the risk outside NSCC to the contracting members in an ESS transaction. The interim period for implementation will permit members to adjust their processes and systems as necessary to accommodate the changes.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change were not and are not intended to be solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(i) of the Act[7] and Rule 19b–4(f)(1)[8] thereunder because the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration or enforcement of an existing rule. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NSCC–2010–04 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–NSCC–2010–04. This file

[29] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)(3)(A)(i).

[3] 17 CFR 240.19b–4(f)(1).

[4] The Commission has modified the text of the summaries prepared by NSCC.

[5] See Securities Exchange Act Release No. 61618 (March 1, 2010), 75 FR 10542 (March 8, 2010) (SR–NSCC–2010–01).

[6] 15 U.S.C. 78q–1.

[7] 15 U.S.C. 78s(b)(3)(A)(i).

[8] 17 CFR 240.19b–4(f)(1).

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 filings also will be available for inspection and copying at the principal office of NSCC and on NSCC's Web site at *http://www.dtcc.com/downloads/legal/rule_filings/2010/nscc/2010-04.pdf.* 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–NSCC–2010–04 and should be submitted on or before April 23, 2010.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–7465 Filed 4–1–10; 8:45 am]

BILLING CODE 8011–01–P

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61796; File No. SR–Phlx–2010–20]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Order Granting Approval of Proposed Rule Change To Expand the Number of Components in the PHLX Semiconductor Sector℠ Known as SOX℠, on Which Options are Listed and Traded

March 29, 2010.

On February 2, 2010, NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 [2] thereunder to expand the number of components in the PHLX Semiconductor Sector℠ known as SOX℠, on which options are listed and traded.[3] The proposed rule change was published for comment in the **Federal Register** on February 25, 2010 for a 21-day comment period.[4] The Commission received no comment letters regarding the proposal. This order approves the proposed rule change.

SOX is a modified market capitalization-weighted index composed of twenty-one companies primarily involved in the design, distribution, manufacture, and sale of semiconductors, and is one of several narrow-based sector indexes on which options are listed and traded on the Exchange. Options on the SOX index are currently listed pursuant to "generic" initial listing and maintenance standards in Phlx Rule 1009A for narrow-based indexes.[5] The Exchange proposes to expand the number of components in the SOX index to thirty. The Exchange represents that the expanded SOX index would continue to meet all the index maintenance requirements in subsection (c) of Rule 1009A applicable to options on narrow-based indexes, except subsection (c)(2), which indicates that the total number of component securities in the index may not increase or decrease by more than 33⅓% from the total number of securities in the index at the time of its initial listing.

After careful consideration, 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 [6] and, in particular, the requirements of Section 6 of the Act.[7] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[8] 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 foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] PHLX Semiconductor Sector℠ may also be known as PHLX Semiconductor Index or PHLX Semiconductor Sector℠ Index.

[4] *See* Securities Exchange Act Release No. 61539 (February 18, 2010), 75 FR 8765 ("Notice").

[5] A narrow-based index or industry index is defined as: An index designed to be representative of a particular industry or a group of related industries. The term "narrow-based index" includes indices the constituents of which are all headquartered within a single country. *See* Phlx Rule 1000A(b)(12).

[6] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f.

Listing and Trading of Options on the SOX Index

As set out more fully in the Notice, Phlx has represented that options on an expanded thirty-component SOX index would continue to meet all of the initial and maintenance generic index listing standards contained in Sections (b) and (c) of Phlx Rule 1009A except subsection (c)(2) of Phlx Rule 1009A. Subsection (c)(2) of Phlx Rule 1009A only permits a maximum increase of 33⅓% from the total number of securities in the index at the time of its initial listing, *i.e.,* an increase to 28 components, whereas Phlx proposes an increase to 30 components. Additionally, the Exchange has represented that no other changes are being made to the SOX index as it currently exists. Based on these representations, the Commission believes that the proposed expansion to the SOX index is appropriate and that Phlx should continue to be able to list and trade options on the SOX index.

Surveillance

The Commission notes that the Exchange has represented that it has an adequate surveillance program in place for options traded on the proposed expanded SOX index and intends to apply those same program procedures that it applies to the Exchange's current SOX options and other index options. Additionally, the Exchange is a member of the Intermarket Surveillance Group ("ISG") under the Intermarket Surveillance Group Agreement, dated June 20, 1994.[9] In addition, the major futures exchanges are affiliated members of the ISG, which allows for the sharing of surveillance information for potential intermarket trading abuses. The Exchange also represented that it has the necessary systems capacity to continue to support listing and trading

[8] 15 U.S.C. 78f(b)(5).

[9] A list of the current members and affiliate members of ISG can be found at *http://www.isgportal.com.*

SOX options. This order is based on these representations.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–Phlx–2010–20) is hereby approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–7464 Filed 4–1–10; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61785; File No. SR–CBOE–2010–021]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Proposed Rule Change Relating to Correlated Instrument Delta Hedge Exemption

March 25, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 19, 2010, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The 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

CBOE proposes to (i) expand the delta hedging exemption available for equity options position limits, (ii) amend the reporting requirements applicable to members relying on the delta hedging exemption, and (iii) adopt a delta hedging exemption from certain index options position limits. The text of the rule proposal is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary and at the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

I. Expansion of Delta-Based Equity Hedge Exemption

On December 14, 2007,[3] the Commission approved a proposed rule change establishing an exemption from equity options position and exercise limits for positions held by CBOE members, and certain of their affiliates, that are "delta neutral" [4] under a "permitted pricing model" [5], subject to certain conditions ("Exemption").

The "options contract equivalent of the net delta" of a hedged equity option position is subject to the position limits under Rule 4.11, subject to the availability of other exemptions.[6] Currently, the Exemption only is available for securities that directly underlie the applicable option position. This means that with respect to options on exchange-traded funds ("ETF options"), index options overlying the same index on which the ETF is based currently cannot be combined with the ETF options to calculate a net delta for purposes of the Exemption.

Many ETF options overlie exchange-traded funds that track the performance of an index. For example, options on Standard & Poor's Depositary Receipts ("SPY") track the performance of the S&P 500 index. Market participants often hedge SPY options with options on the S&P 500 Index ("SPX options") or with other financial instruments based on the S&P 500 Index for risk management purposes. The Exchange believes that in order for eligible market participants to more fully benefit from the Exemption as it relates to ETF options, securities and other instruments that are based on the same underlying ETF or the same index on which the ETF is based should also be included in any determination of an ETF option position's net delta or whether the options position is hedged delta neutral.[7]

Accordingly, the Exchange proposes to expand the Exemption by amending Rule 4.11.04(c)(A) to permit equity option positions for which the underlying security is an ETF that is based on the same index as an index option to be combined with an index option position for calculation of the delta-based equity hedge exemption. The proposed rule would allow financial products such as securities index options, index futures, and options on index futures to be included along with the ETF in an equity option's net delta calculation. So for example, the proposed rule would allow SPY options to be hedged not only with SPY shares, but with S&P 500 options, S&P 500 futures, options on S&P 500 futures or any other instrument that tracks the performance of or is based on the S&P 500 index. This would be accomplished by including such positions with a related index option position in accordance with the Delta-Based Index Hedge Exemption rule proposed below.

Index options and equity options (*i.e.,* ETF options) that are eligible to be combined for computing a delta-based hedge exemption, along with all securities and/or other instruments that are based on or track the performance of the same underlying security or index, will be grouped and the net delta and options contract equivalent of the net delta will be calculated for each respective option class based on offsets realized from the grouping as a whole.

[3] *See* Securities Exchange Act Release No. 56970 (December 14, 2007), 72 FR 72428 (December 20, 2007). The exemption was extended to certain customers whose accounts are carried by a member. *See* Securities Exchange Act Release No. 60555 (August 21, 2009), 74 FR 43741 (August 27, 2009).

[4] The term "delta neutral" is defined in Rule 4.11.04(c)(A) as referring to an equity option position that is hedged, in accordance with a permitted pricing model, by a position in the underlying security or one or more instruments relating to the underlying security, for the purpose of offsetting the risk that the value of the option position will change with incremental changes in the price of the security underlying the option position.

[5] Permitted pricing model is defined in Rule 4.11.04(c)(C).

[6] The term "options contract equivalent of the net delta" is defined in Rule 4.11.04(c)(B) as the net delta divided by the number of shares underlying the option contract. The term "net delta" is defined in the same rule to mean, at any time, the number of shares (either long or short) required to offset the risk that the value of an equity option position will change with incremental changes in the price of the security underlying the option position, as determined in accordance with a permitted pricing model.

[7] However, this would not include baskets of securities for purposes of the Exemption.

The Exchange proposes to amend the definition of "net delta" in Rule 4.11.04(c)(B) to mean, at any time, the number of shares and/or other units of trade[8] (either long or short) required to offset the risk that the value of an equity option position will change with incremental changes in the price of the security underlying the option position, as determined in accordance with a permitted pricing model. The Exchange proposes to amend the definition of the "option contract equivalent of the net delta" to mean the net delta divided by the number of shares that equate to one option contract on a delta basis.[9]

II. Reporting Requirement

Rule 4.11.04(c)(F) sets forth the reporting requirements applicable to CBOE members who rely on the Exemption. The Exchange proposes to amend Rule 4.11.04(c)(F) to exempt from the reporting requirements Exchange Market-Makers and Designated Primary Market-Makers ("DPMs") relying on the Exemption who use the Options Clearing Corporation ("OCC") pricing model, because Market-Maker and DPM position and delta information can be accessed through the Exchange's market surveillance systems. This proposed exemption is consistent with similar exemptions from the reporting requirements under Rule 4.13 and those applicable to broad-based index options and FLEX options.[10]

III. Delta-Based Index Hedge Exemption

Most index options traded on the Exchange are subject to position and exercise limits, as provided under CBOE Rules 24.4, 24.4A and 24.4B.[11] Certain broad-based index options are not subject to position and exercise limits.[12] Position limits are imposed, generally, to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the holder of the options position.

Index options are often used by market participants such as institutional investors to hedge large portfolios. Exchange rules include hedge exemptions to allow certain positions in index options in excess of the applicable standard position limit if hedged with an Exchange-approved qualified portfolio.[13] Under Rule 24.4.01(c) (broad-based index hedge exemption), a qualified portfolio may consist of common stocks or securities readily convertible to common stock, and/or index futures contracts, options on index futures contracts, or long or short positions in index options or index warrants that meet certain standards. Under Rule 24.4A.01(a) (industry index hedge exemption), a qualified portfolio may consist only of underlying component stocks or in securities readily convertible to such component stocks. In the case of both hedge exemptions, the maximum size of the exempt position is set at a specified maximum number of contracts.

The Exchange believes that any limit on the ability of market participants to use index options to hedge their portfolios exposes market participants to unnecessary risk on the unhedged portion of their portfolios. The Exchange proposes to adopt a delta-based exemption from index option position and exercise limits that is substantially similar to the delta-based equity hedge exemption under Rule 4.11.04(c). A delta-based index hedge exemption would provide market participants the ability to accumulate an unlimited number of index options contracts provided that such contracts are properly delta hedged in accordance with the requirements of the exemption.

Proposed Exemption. The Exchange proposes to adopt an exemption from index options position and exercise limits[14] for positions held by CBOE members and certain of their affiliates, and customers that are "delta neutral" (as defined below) under a "permitted pricing model" (as defined below), subject to certain conditions ("Index Exemption"). The Index Exemption under proposed Rule 24.4.05 would also apply to industry index options under proposed Rule 24.4A.03.

The term "delta neutral" is defined in proposed Rule 24.4.05(A) as referring to an index option position that is hedged, in accordance with a permitted pricing model, by a position in one or more correlated instruments for the purpose of offsetting the risk that the value of the option position will change with incremental changes in the value of the underlying index. Correlated instruments would be defined to mean securities and/or other instruments that track the performance of or are based on the same underlying index as the index underlying the option position. These definitions would allow financial products such as ETF options, index futures, options on index futures and ETFs that track the performance of or are based on the same underlying index to be included in an index option's net delta calculation.[15]

Any index option position that is not delta neutral would be subject to position and exercise limits, subject to the availability of other exemptions. Only the "options contract equivalent of the net delta" of such position would be subject to the appropriate position limit.[16]

In addition, members could not use the same positions in correlated instruments in connection with more than one hedge exemption. Therefore, a position in correlated instruments used as part of a delta hedging strategy could not also serve as the basis for any other index hedge exemption.

Permitted Pricing Model. Under the proposed rule, the calculation of the delta for any index option position, and the determination of whether a particular index option position is hedged delta neutral, must be made using a permitted pricing model. A "permitted pricing model" is defined in proposed Rule 24.4.05(C) to have the same meaning as defined in Rule 4.11.04(c)(C), namely, the pricing model maintained and operated by OCC and the pricing models used by (i) a member or its affiliate subject to consolidated supervision by the SEC or pursuant to Appendix E of SEC Rule 15c3–1; (ii) a financial holding company ("FHC") or a company treated as an FHC under the

[8] "Other units of trade" would include, for example, options or futures contracts hedging the relevant option position. When determining whether an ETF option hedged with other instruments such as ETF or index options is delta neutral, the relative size of the ETF option when compared to the other product is taken into consideration. For example, SPX options are ten (10) times larger than SPY options thus 1 SPX delta is equivalent to .10 SPY deltas.

[9] The Exchange also proposes to amend Rule 4.11.04(c)(C)(2) to clarify that there is no longer a consolidated supervision program by the SEC pursuant to Appendix E of Rule 15c3–1 of the Act.

[10] *See* Rules 4.13(b), 24.4.03 and 24A.7(b) and (c).

[11] Rules 24.4, 24.4A and 24.4B provide position limits for broad-based index options, industry index options and micro narrow-based index options, respectively.

[12] Broad-based index options not subject to position and exercise limits are DJX, OEX, XEO, NDX, RUT, VIX, VXN, VXD and SPX. *See* CBOE Rules 24.4(a) and 24.5.

[13] *See* Interpretation and Policy .01 to Rule 24.4 (broad-based index hedge exemption) and Interpretation and Policy .01 to Rule 24.4A (industry index hedge exemption).

[14] Exchange Rule 24.5 establishes exercise limits for an index option at the same level as the index option's position limit under index options position limit rules, therefore no changes are proposed to Rule 24.5.

[15] *See* Supra footnote 5 (sic).

[16] Under proposed Rule 24.4.05(B), the term "options contract equivalent of the net delta" is defined as the net delta divided by units of trade that equate to one option contract on a delta basis, and the term "net delta" is defined as, at any time, the number of shares and/or other units of trade (either long or short) required to offset the risk that the value of an index option position will change with incremental changes in the value of the underlying index, as determined in accordance with a permitted pricing model.

Bank Holding Company Act of 1956, or its affiliate subject to consolidated holding company group supervision; [17] (iii) an SEC registered OTC derivatives dealer; [18] and (iv) a national bank.[19] Customers seeking to use the delta-based index hedge exemption could only hedge their position in accordance with the OCC model.

Aggregation of Accounts. Members, non-member affiliates and customers relying on the Index Exemption would be required to ensure that the permitted pricing model is applied to all positions in correlated instruments hedging the relevant option position that are owned or controlled by the member, or its affiliates.

However, the net delta of an index option position held by an entity entitled to rely on the Index Exemption, or by a separate and distinct trading unit of such entity, may be calculated without regard to positions in correlated instruments held by an affiliated entity or by another trading unit within the same entity, provided that: (i) The entity demonstrates to the Exchange's satisfaction that no control relationship, as defined in Rule 4.11.03, exists between such affiliates or trading units, and (ii) the entity has provided the Exchange written notice in advance that it intends to be considered separate and distinct from any affiliate, or, as applicable, which trading units within the entity are to be considered separate and distinct from each other for purposes of the Index Exemption.[20] The Exchange has set forth in Regulatory Circular RG08–12 the conditions under which it will deem no control relationship to exist between affiliated broker-dealers and between separate and distinct trading units within the same broker-dealer.

Any member, non-member affiliate or customer relying on the Index Exemption must designate, by prior written notice to the Exchange, each trading unit or entity whose options positions are required by Exchange rules to be aggregated with the options positions of such member, non-member affiliate or customer relying on the Index Exemption for purposes of compliance with Exchange position or exercise limits.[21]

Obligations of Members and Affiliates. Any member relying on the Index Exemption would be required to provide a written certification to the Exchange that it is using a permitted pricing model as defined in the rule for purposes of the Index Exemption. In addition, by such reliance, such member would authorize any other person carrying for such member an account including, or with whom such member has entered into, a position in a correlated instrument hedging the relevant option position to provide to the Exchange or OCC such information regarding such account or position as the Exchange or OCC may request as part of the Exchange's confirmation or verification of the accuracy of any net delta calculation under this exemption.[22]

The index option positions of a non-member affiliate relying on the Index Exemption must be carried by a member with which it is affiliated. A member carrying an account that includes an index option position for a non-member affiliate that intends to rely on the Index Exemption would be required to obtain from such non-member affiliate a written certification that it is using a permitted pricing model as defined in the rule for purposes of the Index Exemption.[23]

A member carrying an account that includes an index option position for a customer that intends to rely on the Index Exemption would be required to obtain from such customer and provide to the Exchange a written certification that the customer is using the OCC Model as defined in the rule for purposes of the Index Exemption.[24]

Reporting. Under proposed Rule 24.4.05(F), each member (other than an Exchange Market-Maker, DPM or LMM using the OCC Model) relying on the Index Exemption would be required to report, in accordance with Rule 4.13,[25] (i) all index option positions (including those that are delta neutral) that are reportable thereunder, and (ii) on its own behalf or on behalf of a designated aggregation unit pursuant to Rule 24.4.05(D), for each such account that holds an index option position subject to the Index Exemption in excess of the levels specified in Rule 24.4 (and Rule 24.4A, in the case of industry index options) the net delta and the options contract equivalent of the net delta of such position.

Records. Under proposed Rule 24.4.05(G), each member relying on the Index Exemption would be required to (i) retain, and would be required to undertake reasonable efforts to ensure that any non-member affiliate of the

[17] The pricing model of an FHC or of an affiliate of an FHC would have to be consistent with: (i) The requirements of the Board of Governors of the Federal Reserve System ("Fed"), as amended from time to time, in connection with the calculation of risk-based adjustments to capital for market risk under capital requirements of the Fed, provided that the member or affiliate of a member relying on this exemption in connection with the use of such model is an entity that is part of such company's consolidated supervised holding company group; or (ii) the standards published by the Basel Committee on Banking Supervision, as amended from time to time and as implemented by such company's principal regulator, in connection with the calculation of risk-based deductions or adjustments to or allowances for the market risk capital requirements of such principal regulator applicable to such company—where "principal regulator" means a member of the Basel Committee on Banking Supervision that is the home country consolidated supervisor of such company—provided that the member or affiliate of a member relying on this exemption in connection with the use of such model is an entity that is part of such company's consolidated supervised holding company group. *See* subparagraph (C) of proposed Rule 24.4.05, which incorporates Rule 4.11.04(c)(C).

[18] The pricing model of an SEC registered OTC derivatives dealer would have to be consistent with the requirements of Appendix F to SEC Rule 15c3–1 and SEC Rule 15c3–4 under the Act, as amended from time to time, in connection with the calculation of risk-based deductions from capital for market risk thereunder. Only an OTC derivatives dealer and no other affiliated entity (including a member) would be able to rely on this part of the Exemption. *See* subparagraph (C) of proposed Rule 24.4.05, which incorporates Rule 4.11.04(c)(C).

[19] The pricing model of a national bank would have to be consistent with the requirements of the Office of the Comptroller of the Currency, as amended from time to time, in connection with the calculation of risk-based adjustments to capital for market risk under capital requirements of the Office of the Comptroller of the Currency. Only a national bank and no other affiliated entity (including a member) would be able to rely on this part of the Exemption. *See* subparagraph (C) of proposed Rule 24.4.05, which incorporates Rule 4.11.04(c)(C).

[20] *See* subparagraph (D) of proposed Rule 24.4.05.

[21] *See* proposed Rule 24.4.05(D)(3).

[22] *See* subparagraph (E) of proposed Rule 24.4.05.

[23] In addition, the member would be required to obtain from such non-member affiliate a written statement confirming that such non-member affiliate: (a) Is relying on the Index Exemption; (b) will use only a permitted pricing model for purposes of calculating the net delta of its option positions for purposes of the Index Exemption; (c) will promptly notify the member if it ceases to rely on the Index Exemption; (d) authorizes the member to provide to the Exchange or the OCC such information regarding positions of the non-member affiliate as the Exchange or OCC may request as part of the Exchange's confirmation or verification of the accuracy of any net delta calculation under the Index Exemption; and (e) if the non-member affiliate is using the OCC Model, has duly executed and delivered to the Exchange such documents as the Exchange may require to be executed and delivered to the Exchange as a condition to reliance on the Exemption. *See* subparagraph (E)(3) of proposed Rule 24.4.05.

[24] In addition, the member would be required to obtain from such customer a written statement confirming that such customer: (a) Is relying on this exemption; (b) will use only the OCC Model for purposes of calculating the net delta of the customer's option positions for purposes of this exemption; (c) will promptly notify the member if the customer ceases to rely on this exemption; (d) in connection with using the OCC Model, has duly executed and delivered to the member such documents as the Exchange may require to be executed and delivered to the Exchange as a condition to reliance on this exemption.

[25] Exchange Rule 4.13 requires, among other things, that members report to the Exchange aggregate long or short positions on the same side of the market of 200 or more contracts of any single class of options contracts dealt in on the Exchange.

member or customer relying on the Index Exemption retains, a list of the options, securities and other instruments underlying each options position net delta calculation reported to the Exchange hereunder, and (ii) produce such information to the Exchange upon request.[26]

Reliance on Federal Oversight. As provided under proposed Rule 24.4.05(C), a permitted pricing model includes proprietary pricing models used by members and affiliates that have been approved by the SEC, the Fed or another Federal financial regulator. In adopting the proposed Index Exemption the Exchange would be relying upon the rigorous approval processes and ongoing oversight of a Federal financial regulator. The Exchange notes that it would not be under any obligation to verify whether a member's or its affiliate's use of a proprietary pricing model is appropriate or yielding accurate results.

The Exchange will announce the effective date of the proposed rule change in a regulatory circular to be published no later than 60 days after Commission approval. The effective date shall be no later than 30 days after publication of the regulatory circular.

2. Statutory Basis

The Exchange believes that this proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 ("Act") [27], in general, and furthers the objectives of Section 6(b)(5) of the Act [28] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that allowing correlated instruments to be included in the calculation of an equity option's net delta would enable eligible market participants to more fully realize the benefit of the delta based equity hedge exemption. The proposed delta-based index hedge exemption would be substantially similar to the delta-based equity hedge exemption under Rule 4.11.04. Also, the Commission has previously stated its support for recognizing options positions hedged on a delta neutral basis as properly exempted from position limits.[29]

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition 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

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2010–021 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2010–021. 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,[30] 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, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2010–021 and should be submitted on or before April 23, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–7462 Filed 4–1–10; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61797; File No. SR–BX–2010–009]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Order Approving Proposed Rule Change, as Modified by Amendments No. 1 and 3 Thereto, Relating to the Directed Order Process on the Boston Options Exchange Facility

March 29, 2010.

I. Introduction

On January 25, 2010, NASDAQ OMX BX, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act

[26] A member would be authorized to report position information of its non-member affiliate pursuant to the written statement required under proposed Rule 24.4.05(E)(3)(ii)(d).

[27] 15 U.S.C. 78f(b).

[28] 15 U.S.C. 78f(b)(5).

[29] *See* Securities Exchange Act Release No. 40594 (October 23, 1998), 63 FR 59362, 59380 (November 3, 1998) (adopting rules relating to OTC Derivatives Dealers).

[30] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov/rules/sro.shtml.*

[31] 17 CFR 200.30–3(a)(12).

of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change amending the rules of the Boston Options Exchange Group, LLC ("BOX") to modify the Directed Order process on BOX. The Exchange filed Amendment No 1. to the proposed rule change on February 10, 2010. The proposed rule change, as modified by Amendment No. 1, was published in the **Federal Register** on February 24, 2010.[3] On March 22, 2010, the Exchange filed Partial Amendment No. 2 ("Amendment No. 2") to the proposed rule change, and on March 24, 2010, the Exchange filed Partial Amendment No. 3 ("Amendment No. 3") to the proposed rule change.[4] The Commission received no comments on the proposal. This order approves the proposed rule change, as modified by Amendments No. 1 and 3.

II. Description of the Proposal

The Exchange is proposing modifications to the Directed Order process on BOX.[5] Specifically, the Exchange is proposing to automate the creation of the Guaranteed Directed Order ("GDO") and the manner in which the quote of an Executing Participant ("EP")[6] is handled during the Directed Order process.

A. Quote Shelving and GDO

Currently, upon receipt of a Directed Order an EP must either submit the Directed Order to the PIP[7] or send the Directed Order to the BOX Book. When the EP sends the Directed Order to the BOX Book and the EP's quotation on the opposite side of the market from the Directed Order is equal to the National Best Bid or Offer ("NBBO") and the Directed Order is also executable against the NBBO, the EP must guarantee execution of the Directed Order at the current NBBO for at least the size of his quote. This guarantee is called the GDO. Under the current rule, the EP must immediately send the Directed Order with the GDO to the Trading Host. Sending the GDO to the Trading Host enables it to simultaneously take down or "shelve" the EP's quote and any pending quote updates while the Directed Order is being exposed on the BOX Book.

Under the proposal, if the Directed Order is executable against the current NBBO and the EP is also quoting at such NBBO on the opposite side of the Directed Order, the GDO will be automatically created by the Trading Host and the EP's quote will be automatically shelved. In addition, the GDO creation and the quote shelving will be moved to an earlier point in the Directed Order process. Where presently they occur only when the Directed Order is sent to the BOX Book by the EP, they will now take place immediately upon the Trading Host's receipt of the Directed Order from the submitting order flow provider ("OFP").[8]

Once the GDO has been generated by the Trading Host, the EP will systemically be prohibited from posting a quotation. The EP's pending quote that was taken down by the Trading Host will not be released until: (i) The Directed Order is modified by the submitting OFP; (ii) the EP sends the Directed Order to the PIP; or (iii) the EP submits the Directed Order to the BOX Book, and either one of the following occurs: (a) the Directed Order trades in full; (b) the Directed Order exposition ends; or (c) the Directed Order is modified or cancelled by the submitting OFP during such exposition.

Under the proposal, if the Directed Order is modified by the submitting OFP once the Trading Host has automatically established the GDO, then the modified Directed Order shall no longer be considered a Directed Order and shall be immediately released to the BOX Book and treated as a regular order.[9] If no GDO had been established, then the modified Directed Order shall be resubmitted to the EP. The proposal provides that it shall be considered by the Exchange to be conduct inconsistent with just and equitable principles of trade for any Options Participant or person to communicate with an EP about the terms or conditions of a Directed Order prior to its outcome in the BOX Trading Host (*e.g.* execution, cancellation).

Under the proposal, the EP's obligations when using the PIP remain the same as under the current rule, however in some instances the obligation will be met automatically by the Trading Host. For example, if a GDO has been automatically generated, then the Trading Host will prohibit the EP from adjusting his quotation prior to submitting the Directed Order to the PIP process. Moreover, upon submission of the Directed Order to the PIP, the Trading Host will only accept a Primary Improvement Order priced at or better than (i) the GDO or (ii) the NBBO at the time the EP sent the Directed Order to the PIP, whichever is better for the Directed/PIP Order.

The Exchange proposes to add certain details and clarifications to the rule regarding the treatment of Directed Orders that have been released to the BOX Book for exposure when a GDO has been automatically generated. The proposal clarifies that when the EP does not PIP the Directed Order and releases it to the BOX Book, if a GDO has been automatically generated and the Directed Order is not executable against the current NBBO, then the Trading Host will expose the order at the better GDO price for three (3) seconds.[10] Under the proposal, if a GDO has been automatically generated and the Directed Order is executable against the current NBBO, the Directed Order will immediately execute against the BOX Book if the BOX Best Bid or Offer is equal to or better than the NBBO and GDO. Any remaining quantity not executed will immediately be exposed to BOX Participants at the better of the NBBO or GDO price. As is the case under the current rule, this exposure period will last three (3) seconds, during which time any Options Participant,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 61531 (February 17, 2010), 75 FR 8416 (hereinafter referred to as "Notice").

[4] Amendment No. 3 replaced and superseded Amendment No. 2 in its entirety. In Amendment No. 3, the Exchange made conforming changes to its rule text to reflect a recently approved proposed rule change. *See* Securities Exchange Act Release No. 61577 (February 24, 2010), 75 FR 9496 (March 2, 2010) (SR–BX–2010–017). This technical amendment does not require notice and comment as it did not materially affect the substance of the rule filing.

[5] *See* Chapter VI, Section 5(c). A Directed Order is any Customer Order to buy or sell which has been directed to a particular Market Maker by an OFP. *See* Chapter I, Section 1(a)(21) of the BOX Rules. Terms not otherwise defined herein shall have the meaning assigned to them in the BOX Rules.

[6] When a BOX Market Maker indicates its interest in receiving Directed Orders, the receiving Market Maker is referred to as the EP.

[7] *See* Chapter V, Section 18 of the BOX Rules.

[8] The proposal clarifies that if a GDO has been automatically generated and is pending, then upon receipt by the Trading Host of a subsequent Directed Order for the same EP for the same series and side of the market, such subsequent order will not be considered a Directed Order but will be treated as a regular order. The Trading Host will not send the order to the EP, but will immediately release it to the BOX Book as a regular order. If no GDO has been automatically generated, then such subsequent order will be sent to the EP and treated as a new Directed Order. *See* electronic mail from Wayne Pestone, Chief Legal Officer, BOX, to Heather Seidel, Terri Evans and Sarah Schandler, Division of Trading and Markets, Commission, dated February 3, 2010 (confirming that the Directed Order process currently functions in this manner on BOX).

[9] Upon modification or cancellation of the Directed Order, the Trading Host will immediately reestablish the EP's quote, including any of the EP's pending quote modifications, with a new time priority; or in the case of a pending quote cancellation, the EP's quote will be cancelled.

[10] *See* electronic mail from Wayne Pestone, Chief Legal Officer, BOX, to Heather Seidel, Terri Evans and Sarah Schandler, Division of Trading and Markets, Commission, dated February 3, 2010 (confirming that the Directed Order process currently functions in this manner on BOX).

except for the EP, may submit an order to the BOX Book in response, and any orders submitted to the BOX Book during this period will execute immediately against any remaining quantity of the Directed Order, in time priority. Also as is the case under the current rule, after exposure of the Directed Order for three (3) seconds, the Trading Host will release the GDO, where it will be able to execute against any remaining quantity of the Directed Order.

During the exposure period, the EP may not decrement the size, worsen the price of his GDO or submit a contra order. Because the Trading Host will now automatically create the GDO and shelve the EP's quote, it will not process such changes to the GDO or pending quote, except a decrementation of the GDO size down to the size of the remaining Directed Order after execution with the BOX Book. The EP may increase the size of his GDO, the same as today. Under the proposal the EP also may better the price of his GDO or modify his pending quote to be reestablished, but the Trading Host will not apply such modification until the quote is reestablished. Following execution of the Directed Order, the Trading Host will reestablish the quote of the EP with a new time priority, decremented by any executed portion of the GDO or as modified by the EP.

The Exchange also proposes to make several additional changes to the text of Chapter VI, Section 5(c). The Exchange proposes to change several references to "Market Maker" to "EP" to more closely align the rule text with the terminology used to describe the Directed Order process. In addition, the Exchange proposes to add the word "current" before certain instances of the term "NBBO" in order to clarify which NBBO is being referenced at a particular stage in the Directed Order process. The Exchange also is proposing to remove from Section 5(c)(iii)(1) certain language about the function of the NBBO filter process pursuant to Chapter V, Section 16(b), which the Exchange views as unnecessary and duplicative.

B. Market Maker Quoting Obligations

The Exchange proposes to add new Supplementary Material .02 to Chapter VI, Section 5(c)(ii). The proposed Supplementary Material .02 states that when a Market Maker's quote is shelved while acting as EP, such time without posting a quote will not count towards fulfilling his obligations for purposes of the Market Maker's quoting obligations under Chapter VI, Section 6(d) of the BOX Rules.

C. Implementation

The Exchange has represented that after Commission approval and at least one week prior to implementation of the rule change, Boston Options Exchange Regulation LLC will issue a regulatory circular to all Participants that will inform Participants of the implementation date and will give Participants an opportunity to make any necessary modifications to coincide with the implementation date.

III. Discussion and Commission's Findings

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. Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[11] which requires, among other things, that the rules of an exchange are 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.[12]

As noted above, BOX Rules currently provide that if an EP is at the NBBO and the Directed Order is marketable, the EP must guarantee execution of that order at the NBBO for at least the size of his quote. Under the current rule, the EP is responsible for submitting a GDO to the Trading Host. Pursuant to the proposed rule change, the Exchange is proposing to automate the GDO process. The Commission believes that automating the GDO process, including "shelving" the EP's quote, should help ensure that GDOs are generated in compliance with BOX rules. Further, the Commission believes that automating the creation of the GDO by the Trading Host will aid Market Makers in complying with the BOX rules regarding Directed Orders.

The Exchange has proposed the addition of language to the rule text to describe the treatment of a Directed Order when the Directed Order is subsequently modified or cancelled, depending upon whether a GDO has been automatically generated. The Commission believes that the Exchange's proposed treatment of modified or cancelled Directed Orders is consistent with the Act. As discussed above, the Exchange has proposed that it would be conduct inconsistent with just and equitable principles of trade for any Options Participant or person to communicate with an EP about the terms or conditions of a Directed Order prior to its outcome in the BOX Trading Host. Moreover, when a Directed Order is modified or cancelled after a GDO has been automatically generated, the EP's quote will be reestablished with a new time priority. The Commission believes that these provisions should ensure that Directed Orders are not modified or cancelled in a manner that would be inconsistent with the Act.

As set forth above, the Exchange has proposed the addition of language to the rule text to describe what occurs on BOX when a GDO has been automatically generated and is pending and the Trading Host receives a subsequent Directed Order for the same EP. The Exchange has also proposed the addition of language to the rule text to clarify the treatment of Directed Orders that have been released to the Box Book for exposure after a GDO has been automatically generated. The Exchange has represented that the processes described by this additional and clarifying language are currently a part of the Directed Order process on BOX although not specifically set forth in the current rule text. The Exchange also proposes to make several non-substantive changes in the text of Chapter VI, Section 5(c) to more closely align the rule text with the terminology used to describe the Directed Order process and to remove duplicative language. The Commission believes that these changes and additions, which will provide greater clarity throughout the Directed Order process for Market Makers, OFPs and other Participants on BOX and will more closely align the rule text with the Directed Order process as it occurs on BOX, are consistent with the Act.

The Commission also believes that the Exchange's proposed addition of Supplementary Material .02, clarifying that the time that a Market Maker's quote is shelved does not count towards fulfilling his quoting obligations under Chapter VI, Section 6(d) of the BOX Rules, is appropriate and consistent with the Act. The Commission notes that Market Makers are subject to quoting requirements under Chapter VI, Section 6(d). Specifically, Market Makers are required on a daily basis to post quotes at least 80 percent of the

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78f(b)(4). In approving the 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).

time an options class is open for trading in 90 percent of their appointed classes. Furthermore, Market Makers must post valid quotations at least 60 percent of the time in each of their appointed classes during the time that the class is open for trading. Accordingly, the Commission believes that it is appropriate for the Exchange to exclude the time a Market Maker's quote is shelved under the Directed Order process in determining whether a Market Maker has satisfied his quoting obligations as no quote will be posted by the Market Maker during such time the quote is shelved.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–BX–2010–009), as modified by Amendments No. 1 and 3 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–7431 Filed 4–1–10; 8:45 am]

BILLING CODE 8011–01–P

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 6910]

Advisory Committee on International Economic Policy; Notice of Open Meeting

The Advisory Committee on International Economic Policy (ACIEP) will meet from 2 p.m. to 4 p.m. on Thursday, April 15, 2010, at the U.S. Department of State, 2201 C Street, NW., Room 1107, Washington, DC. The meeting will be hosted by the Assistant Secretary of State for Economic, Energy, and Business Affairs Jose W. Fernandez and Committee Chair Ted Kassinger. The ACIEP serves the U.S. Government in a solely advisory capacity, and provides advice concerning issues and challenges in international economic policy. The meeting will focus on key economic and commercial priorities for the Department. Subcommittee reports and discussions will be led by the Economic Empowerment in Strategic Regions Subcommittee, the Economic Sanctions Subcommittee, and the Investment Subcommittee.

This meeting is open to public participation, though seating is limited. Entry to the building is controlled; to obtain pre-clearance for entry, members of the public planning to attend should provide, by Monday, April 12, their name, professional affiliation, valid government-issued ID number (*i.e.,* U.S. Government ID [agency], U.S. military ID [branch], passport [country], or drivers license [state]), date of birth, and citizenship to Sherry Booth by fax (202) 647–5936, e-mail (*Boothsl@state.gov*), or telephone (202) 647–0847. One of the following forms of valid photo identification will be required for admission to the State Department building: U.S. driver's license, U. S. Government identification card, or any valid passport. Enter the Department of State from the C Street lobby. In view of escorting requirements, non-Government attendees should plan to arrive 15 minutes before the meeting begins. Requests for reasonable accommodation should be made to Sherry Booth prior to Thursday, April 8th. Requests made after that date will be considered, but might not be possible to fulfill.

For additional information, contact Senior Coordinator Nancy Smith-Nissley, Office of Economic Policy Analysis and Public Diplomacy, Bureau of Economic, Energy and Business Affairs, at (202) 647–1682 or *Smith-NissleyN@state.gov.*

Dated: March 29, 2010.

Sandra E. Clark,

Office Director, Office of Economic Policy Analysis and Public Diplomacy, U.S. Department of State.

[FR Doc. 2010–7477 Filed 4–1–10; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

Establishment of the Future of Aviation Advisory Committee

AGENCY: U.S. Department of Transportation, Office of the Secretary of Transportation.

ACTION: Notice of Intent to Establish the Future of Aviation Advisory Committee.

SUMMARY: On March 24, 2010, the Secretary of Transportation authorized the establishment of a Federal Advisory Committee to address aviation issues. The Future of Aviation Advisory Committee (FAAC) will present information, advice, and recommendations to the Secretary of Transportation on ensuring the competitiveness of the U.S. aviation industry and its capability to address the evolving transportation needs, challenges, and opportunities of the global economy. The committee will consist of approximately 19 voting members. The committee will provide its recommendations to the Secretary of Transportation and will make them available to the public. The membership of the FAAC will be representative of the various stakeholders in the aviation industry.

DATES: This charter will be effective 15 days after the posting of this notice.

FOR FURTHER INFORMATION CONTACT: Christa Fornarotto, Deputy Assistant Secretary of Transportation Office of Aviation and International Affairs, 202–366–4551 or *Aloha.Ley@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

On November 12, 2009, the Secretary of Transportation convened a meeting of the aviation industry stakeholders. The Secretary solicited input from the attendees about identifying the most important issues currently facing the aviation industry.

In accordance with the requirements of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. 2, the Department is publishing this notice to announce the Secretary's intent to establish an advisory committee. The advisory committee's objective will be to provide advice and recommendations to the Secretary regarding the aviation issues identified in its charter.

The advisory committee is expected to meet at least four times during this year to carry out its duties. Meetings of subcommittees or work groups may occur more frequently. Members of the public may review the draft charter for FAAC at *http://www.regulations.gov* in docket number DOT–OST–2010–0074.

Issued the 26th day of March, 2010, in Washington, DC.

Ray LaHood,

Secretary of Transportation.

[FR Doc. 2010–7440 Filed 4–1–10; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 558 (Sub-No. 13)]

Railroad Cost of Capital—2009

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of decision instituting a proceeding to determine the railroad industry's 2009 cost of capital.

SUMMARY: The Board is instituting a proceeding to determine the railroad

industry's cost of capital for 2009. The decision solicits comments on the following narrow issues: (1) The railroads' 2009 current cost of debt capital; (2) the railroads' 2009 current cost of preferred equity capital (if any); (3) the railroads' 2009 cost of common equity capital; (4) how the change in BNSF Railway Company's (BNSF's) share prices from November 2009 through December 2009, following the announcement of BNSF's acquisition by Berkshire Hathaway Inc., should be considered in calculating the 2009 cost of common equity capital; and (5) the 2009 capital structure mix of the railroad industry on a market value basis. Comments should focus on the various cost of capital components listed above using the same methodology followed in *Railroad Cost of Capital—2008,* Ex Parte No. 558 (Sub-No. 12) (STB served Sept. 25, 2009).

DATES: Notices of intent to participate are due by April 16, 2010. Statements of the railroads are due by May 17, 2010. Statements of other interested persons are due by June 15, 2010. Rebuttal statements by the railroads are due by July 15, 2010.

ADDRESSES: Comments may be submitted either via the Board's e-filing system or in the traditional paper format. Any person using e-filing should comply with the instructions at the E–FILING link on the Board's Web site, at *http://www.stb.dot.gov.* Any person submitting a filing in the traditional paper format should send an original and 10 copies to: Surface Transportation Board, Attn: STB Ex Parte No. 558 (Sub-No. 13), 395 E Street, SW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Pedro Ramirez at (202) 245–0333. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: The Board's decision is posted on the Board's Web site, *http://www.stb.dot.gov.* Copies of the decision may be purchased by contacting the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0235. Assistance for the hearing impaired is available through FIRS at 1–800–877–8339.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Authority: 49 U.S.C. 10704(a).

Decided: March 29, 2010.

By the Board, Chairman Elliott, Vice Chairman Mulvey, and Commissioner Nottingham.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. 2010–7411 Filed 4–1–10; 8:45 am]

BILLING CODE 4915–01–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, Department of Transportation (NHTSA).

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 below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and the expected burden. The **Federal Register** notice with a 60-day comment period was published on June 22, 2009. This is a request for a new collection.

DATES: Comments must be submitted on or before May 3, 2010.

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.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Versailles, Office of Rulemaking, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. *Telephone:* (202) 366–0846.

For legal issues: Ms. Sarah Alves, Office of the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

Telephone: (202) 366–2992.

SUPPLEMENTARY INFORMATION:

Under the procedures established by the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. The final rule establishes a new consumer information program at 49 CFR Part 575.106, *Tire fuel efficiency consumer information program.* Tire manufacturers would provide data to NHTSA under a reporting requirement. For this new regulation, NHTSA is submitting to OMB a request for approval of the following collection of information.

In compliance with the PRA, this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to OMB for review and comment. The ICR describes the nature of the information collections and their expected burden. This is a request for a new collection.

Agency: National Highway Traffic Safety Administration (NHTSA).

Title: 49 CFR Part 575.106, Tire fuel efficiency consumer information program.

Type of Request: New collection.

OMB Clearance Number: Not assigned.

Form Number: The collection of this information will not use any standard forms.

Requested Expiration Date of Approval: Three years from the date of approval.

Summary of the Collection of Information

NHTSA is adding a new requirement in Part 575 which would require tire manufacturers and tire brand name owners to rate all replacement passenger car tires for fuel efficiency *(i.e.,* rolling resistance), safety (*i.e.,* wet traction), and durability (*i.e.,* treadwear), and submit reports to NHTSA regarding the ratings. The ratings for safety and durability are based on test procedures specified under the UTQGS traction and treadwear ratings requirements. This information would be used by consumers of replacement passenger car tires to compare tire fuel efficiency across different tires and examine any tradeoffs between fuel efficiency (*i.e.,* rolling resistance), safety (*i.e.,* wet traction), and durability (*i.e.,* treadwear) in making their purchase decisions.

Description of the Need for the Information and Use of the Information

NHTSA needs the information to provide consumers information to allow them to compare tire fuel efficiency across different tires and examine any tradeoffs between fuel efficiency (*i.e.,* rolling resistance), safety (*i.e.,* wet traction), and durability (*i.e.,* treadwear) in making their purchase decisions.

Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information)

There are approximately 28 manufacturers of replacement tires sold in the United States who would be required to report annually.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting from the Collection of Information

NHTSA estimates that there are 28 tire manufacturers that will be required to report. Each of these will need to set up the software in a computer program to combine the testing information, organize it for NHTSA's use, etc. We estimate this cost to be a one-time charge of about $10,000 per company. Based on the costs used in the Early Warning Reporting Regulation analysis,[1] we estimate the annual cost per report per tire manufacturer to be $287. There are also computer maintenance costs of keeping the data up to date, etc. as tests come in throughout the year. In the EWR analysis, we estimated costs of $3,755 per year per company. Thus, the total annual cost is estimated to be $4,042 per company. Thus the total costs would be $280,000 + $113,176 = $393,176 for the first year and $113,176 as an annual cost for the 28 tire manufacturers.

The largest portion of the cost burden imposed by the tire fuel efficiency program arises from the testing necessary to determine the ratings that should be assigned to the tires. As detailed in our reponse to question #8, our revised per-SKU costs to test for rolling resistance, traction, and treadwear amount to $2,040 (i.e. $540 + $500 + $1,000). This would result in testing costs of $38,760,000 in the first year (19,000 SKUs) and $6,573,000 in subsequent years (3,222 new SKUs annually).

The estimated annual cost to the Federal government is $1.28 million. This cost includes $730,000 for enforcement testing, and about $550,000 annually to set up and keep up to date a website that includes the information reported to NHTSA.

Comments are invited on:

- Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility.
- Whether the Department's estimate for the burden of the information collection is accurate.
- 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.

[1] Preliminary Regulatory Evaluation, Tread Act Amendments to Early Warning Reporting Regulation Part 579 and Defect and Noncompliance Part 573, August 2008 (Docket No. 2008–0169–0007.1).

Issued on: March 29, 2010.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 2010–7396 Filed 4–1–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA 2010–0005–N–7]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than June 1, 2010.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 17, Washington, DC 20590, or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, "Comments on OMB control number _____." Alternatively, comments may be transmitted via facsimile to (202) 493–6216 or (202) 493–6497, or via e-mail to Mr. Brogan at *robert.brogan@dot.gov,* or to Ms. Toone at *kim.toone@dot.gov.* Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292) or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6132). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(i)–(iv); 5 CFR 1320.8(d)(1)(i)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a "user friendly" format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below are brief summaries of eight currently approved information collection activities that FRA will submit for clearance by OMB as required under the PRA:

Title: Grade Crossing Signal System Safety Regulations.

OMB Control Number: 2130–0534.

Status: Regular Review.

Type of Request: Extension without change of a previously approved collection.

Abstract: FRA believes that highway-rail grade crossing (grade crossing) accidents resulting from warning system failures can be reduced. Motorists lose faith in warning systems that constantly warn of an oncoming train when none is present. Therefore, the fail-safe feature of a warning system loses its effectiveness if the system is not repaired within a reasonable period of time. A greater risk of an accident is present when a warning system fails to activate as a train approaches a grade crossing. FRA's regulations require railroads to take specific responses in the event of an activation failure. FRA uses the information to develop better solutions to the problems of grade crossing device malfunctions. With this information, FRA is able to correlate accident data and equipment malfunctions with the types of circuits and age of equipment. FRA can then identify the causes of grade crossing system failures and investigate them to determine whether periodic maintenance, inspection, and testing standards are effective. FRA also uses the information collected to alert railroad employees and appropriate highway traffic authorities of warning system malfunctions so that they can take the necessary measures to protect motorists and railroad workers at the grade crossing until repairs have been made.

Form Number(s): FRA F 6180.83.

Affected Public: Businesses.

Frequency of Submission: On occasion; recordkeeping.

CFR section	Respondent universe	Total annual responses	Average time per response (minutes)	Total annual burden hours
234.7—Telephone Notification	728 railroads	8 phone calls	15	2
234.9—Grade crossing signal system failure rpts	728 railroads	600 reports	15	150
234.105–107—Notification to crew and Proper Law Enforcement Authority.	728 railroads	24,000 notifications	15	6,000
234.109—Record Keeping	728 railroads	12,000 records	10	2,000

Total Estimated Responses: 36,608.

Total Estimated Annual Burden: 8,152 hours.

Title: Bridge Worker Safety Rules.

OMB Control Number: 2130–0535.

Status: Regular Review.

Type of Request: Extension without change of a previously approved collection.

Abstract: Section 20139 of Title 49 of the United States Code required FRA to issue rules, regulations, orders, and standards for the safety of maintenance-of-way employees on railroad bridges, including for "bridge safety equipment" such as nets, walkways, handrails, and safety lines, and requirements for the use of vessels when work is performed on bridges located over bodies of water. FRA has added 49 CFR Part 214 to establish minimum workplace safety standards for railroad employees as they apply to railroad bridges. Specifically, section 214.15(c) establishes standards and practices for safety net systems. Safety nets and net installations are to be drop-tested at the job site after initial installation and before being used as a fall-protection system; after major repairs; and at six-month intervals if left at one site. If a drop-test is not feasible and is not performed, then a written certification must be made by the railroad or railroad contractor, or a designated certified person, that the net does comply with the safety standards of this section. FRA and State inspectors use the information to enforce Federal regulations. The information that is maintained at the job site promotes safe bridge worker practices.

Form Number(s): N/A.

Affected Public: Businesses.

Frequency of Submission: On occasion.

Total Estimated Responses: 6.

Total Estimated Annual Burden: 1 hour.

Title: Railroad Police Officers.

OMB Control Number: 2130–0537.

Status: Regular Review.

Type of Request: Extension without change of a previously approved collection.

Abstract: Under 49 CFR Part 207, railroads are required to notify states of all designated police officers who are discharging their duties outside of their respective jurisdictions. This requirement is necessary to verify proper police authority.

Affected Public: Railroads and States.

Frequency of Submission: On occasion.

Form(s): None.

Total Estimated Responses: 35.

Total Annual Estimated Burden Hours: 175 hours.

Title: Stenciling Reporting Mark on Freight Cars.

OMB Control Number: 2130–0520.

Status: Regular Review.

Type of Request: Extension without change of a previously approved collection.

Abstract: Title 49, Section 215.301 of the Code of Federal Regulations, sets forth certain requirements that must be followed by railroad carriers and private car owners relative to identification marks on railroad equipment. FRA, railroads, and the public refer to the stencilling to identify freight cars.

Form Number(s): N/A.

Affected Public: Businesses.

Frequency of Submission: On occasion.

Respondent Universe: 728 railroads.

Total Estimated Responses: 25,000 cars stenciled.

Total Estimated Annual Burden: 18,750 hours.

Title: Rear-End Marking Devices.

OMB Control Number: 2130–0523.

Status: Regular Review.

Type of Request: Extension without change of a previously approved collection.

Abstract: The collection of information is set forth under 49 CFR Part 221 which requires railroads to furnish a detailed description of the type of marking device to be used for the trailing end of rear cars in order to ensure rear cars meet minimum standards for visibility and display. Railroads are required to furnish a certification that the device has been tested in accordance with current "Guidelines for Testing of Rear End Marking Devices." Additionally, railroads are required to furnish detailed test records which include the testing organizations, description of tests, number of samples tested, and the test results in order to demonstrate compliance with the performance standard.

Form Number(s): N/A.

Affected Public: Businesses.

Respondent Universe: 728 railroads.

Frequency of Submission: On occasion.

Total Estimated Responses: 2.

Total Estimated Annual Burden: 38 hours.

Title: Locomotive Certification (Noise Compliance Regulations).

OMB Control Number: 2130–0527.

Status: Regular Review.

Type of Request: Extension without change of a previously approved collection.

Abstract: Part 210 of title 49 of the United States Code of Federal Regulations (CFR) pertains to FRA's noise enforcement procedures which encompass rail yard noise source standards published by the Environmental Protection Agency (EPA). EPA has the authority to set these standards under the Noise Control Act of 1972. The information collected by FRA under Part 210 is necessary to ensure compliance with EPA noise standards for new locomotives.

Form Number(s): N/A.

Affected Public: Businesses.

Respondent Universe: 2 Locomotive Manufacturers.

Frequency of Submission: On occasion.

REPORTING BURDEN

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
210.27:				
New Loco. Certification—Requests for Information	Locomotive Manuf	4 requests	30 minutes	2
Identification of Locomotives	4 Locomotive Manuf.	790 badges/plates	30 minutes	395
210.31—Operation Standards—Measurement of Loco. Noise Emissions.	4 Locomotive Manuf.	790 recorded measurements.	3 hours	2,370

Total Estimated Responses: 1,620.

Total Estimated Annual Burden: 2,785 hours.

Title: Remotely Controlled Switch Operations.

OMB Control Number: 2130–0516.

Status: Regular Review.

Type of Request: Extension without change of a previously approved collection.

Abstract: Title 49, Section 218.30 of the Code of Federal Regulations (CFR), ensures that remotely controlled switches are lined to protect workers who are vulnerable to being struck by moving cars as they inspect or service equipment on a particular track or, alternatively, occupy camp cars. FRA believes that production of notification requests promotes safety by minimizing mental lapses of workers who are simultaneously handling several tasks. Sections 218.30 and 218.67 require the operator of remotely controlled switches to maintain a record of each notification requesting blue signal protection for 15 days. Operators of remotely controlled switches use the information as a record documenting blue signal protection of workers or camp cars. This record also serves as a valuable resource for railroad supervisors and FRA inspectors monitoring regulatory compliance.

Form Number(s): N/A.

Affected Public: Businesses.

Respondent Universe: 718 railroads.

Frequency of Submission: On occasion.

REPORTING BURDEN

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
218.30—Blue Signal Protection of Workmen; Remotely Controlled Switches.	70 railroads	3,600,000 notifications.	1 minute	60,000
218.77—Protection of occupied camp cars; Remotely Controlled Switches.	4 railroads	2,300 notifications	1 minute	38

Total Estimated Responses: 3,602,300.

Total Estimated Annual Burden: 120,153 hours.

Title: Bad Order and Home Shop Card.

OMB Control Number: 2130–0519.

Status: Regular Review.

Type of Request: Extension without change of a previously approved collection.

Abstract: Under 49 CFR Part 215, each railroad is required to inspect freight cars placed in service and take the necessary remedial action when defects are identified. Part 215 defects are specific in nature and relate to items that have or could have caused accidents or incidents. Section 215.9 sets forth specific procedures that railroads must follow when it is necessary to move defective cars for repair purposes. For example, railroads must affix a "bad order" tag describing each defect to each side of the freight car. It is imperative that a defective freight car be tagged "bad order" so that it may be readily identified and moved to another location for repair purposes only. At the repair point, the "bad order" tag serves as a repair record. Railroads must retain each tag for 90 days to verify that proper repairs were made at the designated location. FRA and State inspectors review all pertinent records to determine whether defective cars presenting an immediate hazard are being moved in transportation.

Form Number(s): N/A.

Affected Public: Businesses.

Respondent Universe: 718 railroads.

Frequency of Submission: On occasion.

REPORTING BURDEN

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
215.9:				
Movement of Defective Cars for Repair	728 railroads	150,000 tags	5 minutes	12,500

REPORTING BURDEN—Continued

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
Notifications of Removal of Defective Car Tags	728 railroads	75,000 notifications	2 minutes	2,500
215.11—Designated Inspectors—Records	728 railroads	45,000 records	1 minute	750

Total Estimated Responses: 225,000.

Total Estimated Annual Burden: 12,750 hours.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on March 30, 2010.

Kimberly Coronel,

Director, Office of Financial Management, Federal Railroad Administration.

[FR Doc. 2010–7595 Filed 4–1–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for a Change in Use of Aeronautical Property at Houlton International Airport, Houlton, ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for Public Comments.

SUMMARY: The FAA is requesting public comment on the Town of Houlton's request to change a portion (4.68 acres) of Airport property from aeronautical use to nonaeronautical use. The property address is 84 Aviation Drive, Houlton, Maine 04730. Upon disposition, the property will be used as a wood pellet production plant. The Town acquired the property by Surplus Property Deed dated July 14, 1947.

Section 125 of The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21) requires the FAA to provide an opportunity for public notice and comment to the "waiver" or "modification" of a sponsor's Federal obligation to use certain airport property for aeronautical purposes.

The disposition of proceeds from the disposal of airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

DATES: Comments must be received on or before May 3, 2010.

ADDRESSES: Documents are available for review by appointment by contacting Mr. Doug Hazlett, Town Manager at 21 Water Street, Houlton, Maine, Telephone (207) 532–7111 or by contacting Donna R. Witte, Federal Aviation Administration, 16 New England Executive Park, Burlington, Massachusetts, Telephone 781–238–7624.

FOR FURTHER INFORMATION CONTACT: Donna R. Witte at the Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, Telephone 781–238–7624.

SUPPLEMENTARY INFORMATION: The following is a legal description of the property located in the Town of Houlton, County of Aroostook, State of Maine as shown on a plan prepared by Stantec Consulting Services, Inc., dated February 8, 2010, entitled "Houlton International Airport, Proposed FAA Property Release, Mess Hall Property": A roughly triangular parcel of land as shown on a Plan prepared by Stantec Consulting Services Inc., William A. Gerrish PLS #2023, dated February 8, 2010, entitled "Houlton International Airport, Proposed FAA Property Release, Mess Hall Property"; on the referenced Plan the parcel is enclosed by "Range Drive" on the east, "Airport Drive" on the northwest, and "Aviation Drive" on the south.

Said parcel is more particularly described as follows: Commencing at a concrete monument at the most easterly corner of Lot 20 as shown on said Plan, said monument also marking the intersection of the southerly limit of the right-of-way of Wesson Drive with the westerly limit of the right-of-way of Airport Drive, thence crossing said Airport Drive on a Maine State Grid bearing of South 16°31′58″ East, a distance of 90.23 feet, more or less, to the intersection of the easterly limit of the right-of-way of Airport Drive with the westerly limit of the right-of-way of Range Drive, said intersection being the Point of Beginning; Thence, following the westerly limit of the right-of-way of Range Drive: South 2°46′31″ W, a distance of 923.82 feet, more or less, to the intersection of the westerly limit of the right-of-way of Range Drive with the northerly limit of the right-of-way of Aviation Drive; Thence following the northerly limit of the right-of-way of Aviation Drive: North 88°58′52″ West, a distance of 84.45 feet, more or less, to an angle point in the road;

Thence, continuing along the northerly limit of the right-of-way of aforementioned Aviation Drive: North 70°37′46″ West, a distance of 362.69 feet, more or less, to the intersection of the northerly limit of the right-of-way of Aviation Drive with the easterly limit of the right-of-way of Airport Drive; Thence, following the easterly limit of the right-of-way of Airport Drive: North 30°28′32″ East, a distance of 929.33 feet, more or less, to the Point of Beginning.

The above described parcel contains 4.69 acres, more or less.

Issued in Burlington, Massachusetts on March 10, 2010.

LaVerne F. Reid,

Manager, Airports Division, New England Region.

[FR Doc. 2010–7077 Filed 4–1–10; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Prepare an Environmental Assessment and Request for Public Scoping Comments for the Air Tour Management Plan Program at Mount Rainier National Park

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to prepare an environmental assessment and to request public scoping comments.

SUMMARY: The FAA, with National Park Service (NPS) as a cooperating agency, has initiated development of an Air Tour Management Plan (ATMP) for Mount Rainier National Park (MORA), pursuant to the National Parks Air Tour Management Act of 2000 (Pub. L. 106–181) and its implementing regulations (14 CFR part 136, subpart B, National Parks Air Tour Management). The objective of the ATMP is to develop acceptable and effective measures to mitigate or prevent the significant adverse impacts, if any, of commercial air tour operations upon the natural resources, cultural resources, and visitor

experiences of a national park unit and any tribal lands within or abutting the park. It should be noted that the ATMP has no authorization over other non-air-tour operations such as military and general aviation operations. In compliance with the National Environmental Policy Act of 1969 (NEPA) and FAA Order 1050.1E, CHG 1, an Environmental Assessment is being prepared.

In October 2009, the NPS and FAA held a two-day kickoff meeting at MORA; minutes may be found at: *http://www.faa.gov/about/office_org/headquarters_offices/arc/programs/air_tour_management_plan/park_specific_plans/mountrainier.cfm.*

The purpose of the kickoff meeting was for the FAA and NPS to have the opportunity to share information regarding environmental and other issues to consider in the development of an ATMP. Materials presented at the meeting included information on: park resources; the acoustical environment at MORA; current and historical air tour operations; and representative air tour flight paths. In addition, MORA staff provided information regarding sensitive park resources, tribal concerns, and tourism patterns. Based on input received at the meeting, the FAA and NPS have decided to proceed with developing the ATMP at MORA with an Environmental Assessment (EA).

The FAA and NPS are now inviting the public, agencies, tribes, and other interested parties to provide comments, suggestions, and input on the scope of issues to be addressed in the environmental process.

DATES: By this notice, the FAA is requesting comments on the scope of the environmental assessment for the ATMP at Mount Rainier National Park. Comments must be submitted by May 3, 2010.

FOR MORE INFORMATION CONTACT: Keith Lusk—Mailing address: P.O. Box 92007, Los Angeles, California 90009–2007. Telephone: (310) 725–3808. Street address: 15000 Aviation Boulevard, Lawndale, California 90261. E-mail: *Keith.Lusk@faa.gov.*

Written comments on the scope of the Environmental Assessment should be submitted electronically via the electronic public comment form on the NPS Planning, Environment and Public Comment System at: *http://parkplanning.nps.gov/projectHome.cfm?parkId=323&projectId=29122,* or sent to the mailing address or e-mail address above.

SUPPLEMENTARY INFORMATION: A public scoping packet that describes the project in greater detail is available at:

- *http://www.faa.gov/about/office_org/headquarters_offices/arc/programs/air_tour_management_plan/park_specific_plans/mountrainier.cfm.*
- Longmire Museum, Mount Rainier National Park.
- Henry M Jackson Memorial Visitor Center at Paradise, Mount Rainier National Park.
- Ohanapecosh Visitor Center, Mount Rainier National Park.
- Sunrise Visitor Center, Mount Rainier National Park.
- Eatonville Library.
- Puyallop Library.
- Enumclaw City Library.
- Buckley Library.
- Tacoma Public Library.
- Yakima Valley Regional Library.
- Environmental Ctr. Resource Library, Huxley College of Environmental Studies, Western Washington University.
- *http://parkplanning.nps.gov/projectHome.cfm?parkId=323&projectId=29122.*

Notice Regarding FOIA: Individuals may request that their name and/or address be withheld from public disclosure. If you wish to do this, you must state this prominently at the beginning of your comment. Commentators using the website can make such a request by checking the box "keep my contact information private." Such requests will be honored to the extent allowable by law, but you should be aware that pursuant to the Freedom of Information Act, your name and address may be disclosed. We will make all submissions from organizations, businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses available for public inspection in their entirety.

Issued in Hawthorne, CA on March 28, 2010.

Keith Lusk,

Program Manager, Special Programs Staff, Western-Pacific Region.

[FR Doc. 2010–7548 Filed 4–1–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at the Cincinnati/Northern Kentucky International Airport, Hebron, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for Public Comment.

SUMMARY: The Federal Aviation Administration is requesting public comment on the release of land at the Cincinnati/Northern Kentucky International Airport in the city of Hebron, Kentucky. This property, approximately 75.88 acres of fee simple release, and approximately 28.48 acres of requested easement, will change to a non-aeronautical use. This action is taken under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before May 3, 2010.

ADDRESSES: Documents are available for review at the Cincinnati/Northern Kentucky International Airport, 2939 Terminal Drive, 2nd Floor Administration, Hebron, KY 41048 and the FAA Airports District Office, 2862 Business Park Drive, Building G, Memphis, TN 38118. Written comments on the Sponsor's request must be delivered or mailed to: Mr. Phillip J. Braden, Manager, Memphis Airports District Office, 2862 Business Park Drive, Building G, Memphis, TN 38118.

In addition, a copy of any comments submitted to the FAA must be mailed or delivered to Ms. Barbara Schempf, Government Affairs/Noise Abatement Officer, P. O. Box 752000, Cincinnati, OH 45275.

FOR FURTHER INFORMATION CONTACT: Mr. Tommy L. Dupree, Team lead/Civil Engineer, Federal Aviation Administration, Memphis Airports District Office, 2862 Business Park Drive, Building G, Memphis, TN 38118. The application may be reviewed in person at this same location, by appointment.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the request to release property at the Cincinnati/Northern Kentucky International Airport, Hebron, KY. Under the provisions of AIR 21(49 U.S.C. 47107(h)(2)).

On March 25, 2010, the FAA determined that the request to release property at Cincinnati/Northern Kentucky International Airport meets the procedural requirements of the Federal Aviation Administration. The FAA may approve the request, in whole or in part, no later than *May 3, 2010.*

The following is a brief overview of the request:

The Cincinnati/Northern Kentucky International Airport is proposing the release of approximately 75.88 acres of fee simple release, and approximately 28.48 acres of requested easement to accommodate the construction of a new by-pass road connector by the Boone County, KY government.

Any person may inspect, by appointment, the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon appointment and request, inspect the request, notice and other documents germane to the request in person at the Tennessee Department of Transportation, Division of Aeronautics.

Issued in Memphis, TN on March 25, 2010.

Phillip J. Braden,

Manager, Memphis Airports District Office, Southern Region.

[FR Doc. 2010–7416 Filed 4–1–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Commercial Space Transportation Advisory Committee—Open Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Commercial Space Transportation Advisory Committee Open meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 2), notice is hereby given of the meetings of the Commercial Space Transportation Advisory Committee (COMSTAC). The meetings will take place on Tuesday and Wednesday, May 18 and 19, 2010, starting at 8 a.m. at the National Housing Center, 1201 15th Street NW., Washington, DC 20005.

The proposed agenda for these meetings will feature discussions on:

—The impact of the President's proposed budget on commercial space transportation;

—The issues the working groups propose to address; and

—The proposed by-laws for the COMSTAC.

There will also be briefings on the 2010 Commercial Space Transportation Market Forecasts and discussions and activity reports by the chairpersons of the COMSTAC working groups.

Interested members of the public may submit relevant written statements for the COMSTAC members to consider under the advisory process. Statements may concern the issues and agenda items mentioned above or additional issues that may be relevant for the U.S. commercial space transportation industry. Interested parties wishing to submit written statements should contact Susan Lender, DFO, (the Contact Person listed below) in writing (mail or e-mail) by April 30,2010, so that the information can be made available to COMSTAC members for their review and consideration prior to the May 18 and 19, 2010, meetings. Written statements should be supplied in the following formats: One hard copy with original signature or one electronic copy via e-mail.

Subject to approval, a portion of the May 19th meeting will be closed to the public (starting at 3:45 p.m.).

An agenda will be posted on the FAA Web site at *http://www.faa.gov/go/ast*. For specific information concerning the times and locations of the COMSTAC working group meetings, contact the Contact Person listed below.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the Contact Person listed below in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Susan Lender (AST–100), Office of Commercial Space Transportation (AST), 800 Independence Avenue, SW., Room 331, Washington, DC 20591, telephone (202) 267–8029; E-mail *susan.lender@faa.gov*. Complete information regarding COMSTAC is available on the FAA website at: *http://www.faa.gov/about/office_org/headquarters_offices/ast/advisory_committee/*.

Issued in Washington, DC, March 25, 2010.

George C. Nield,

Associate Administrator for Commercial Space Transportation.

[FR Doc. 2010–7399 Filed 4–1–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Thirteenth Meeting: EUROCAE WG–72: RTCA Special Committee 216: Aeronautical Systems Security (Joint Meeting)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of EUROCAE WG–72: RTCA Special Committee 216: Aeronautical Systems Security (Joint Meeting).

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of EUROCAE WG–72: RTCA Special Committee 216: Aeronautical Systems Security (Joint Meeting).

DATES: The meeting will be held April 20–23, 2010 starting at 9 a.m. on the first day and ending by 13:00 on the last day.

ADDRESSES: The meeting will be held at Malakoff (France), 102 rue Etienne Dolet—92240 Malakoff (4th Floor), hosted by EUROCAE.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org*.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a EUROCAE WG–72: RTCA Special Committee 216: Aeronautical Systems Security (Joint Meeting) meeting. The meeting is expected to start at 9 on the first day and to finish by 17:00 each day. It will finish at the latest by 13:00 on the last day.

The main purpose of the meeting is to determine potential joint Subgroup work based on the new SC–216 TOR, develop agreement between both groups on the roadmap to potentially jointly publish documents, continue the specification work and strengthening of links to the Civil Aviation Authorities.

Please inform *jean-paul.moreaux@airbus.com* and *samira.bezza@eurocae.net* of your intention to attend the meeting.

The agenda will include:

Day 1

- *09h00 to 09h20:* Introduction/review of the previous MoM/Report about publications/Approval of the meeting agenda.
- *09h20 to 09h40:* WG72 and Group (ED20x) activities status discussion of implications on joint work.
- *09h40 to 10h00:* SC–216 and Subgroup activities status and discussion of implications on joint work.
- *10h00 to 10h45:* Mapping of SC216 SG's to WG72 ED 20x Documents:
- Discuss joint SG work plan and schedule based on document(s) chart.
- *10h45 to 11h00:* Break.
- *11h00 to 11h45:* Develop agreement on:
- Either continuing as per previous mode of cooperation.
- Or create a firm joint work plan for mutual document development.
- Publication Plan: Roadmap and Document layout, discuss implications.
- *11h45 to 12h00:* Discussion options to strengthen ties with CAA's (EASA and others).
- Discuss Response to White Paper: Vision to Lawmakers.
- *12h00 to 13h15:* Lunch Break.
- *13h15 to 14h30:* Status of ED201, ED202/ED203, ED204 or equivalent documents.

- *14h15 to 17h00:* Split-up sessions.
- *ED201:* Include transversal topics extracted from other parts; coordinate details with other parts.
- *ED202/203–SG2:* Discussion of differences with SC216/SG2; identify specific terms and glossary concerns; establish common basis for collaboration or joint work.
- *ED204–SG4:* Review the SOW of both groups, determine if full or partly joint work with one resulting document is possible, identify parts, that can't be joint.

Days 2 and 3

- *09h00 to 17h00:* Split-up sessions.
- Continuation of work for all documents.

Day 4

- *09h00 to 13h00:* Plenary Session:
- *09:00 to 09:20:* Review Status of ED201 session work—What has been added/modified? Which elements will be dealt with in 2010, which in a later issue? What is the status of the EFB analysis?
- *09:20 to 10:00:* Review Status of ED202/ED203–SG2 session work—What is the status of the documents? Is it reasonable to expect termination of ED202/DO–TBD work in 2010?
- *10:00 to 10:30:* Review Status of ED204–SG4 session work—Is the target audience clear and limited, for which the document is to be established? Are the expectations of the audience well understood? How will the work progress, fully joint, partly joint, coordinated w/two separate documents?
- *10:30 to 11:00:* Discussion of Glossary: Content and Publication (separate in ED210 or integrated).
- *11:00 to 11:15:* Break.
- *11:15 to 11:30:* Discuss collaboration and associated topics with other organisations (Arinc, DSWG, ICAO, *etc.*).
- *11:30 to 12:00:* Summarize the official Eurocae and RTCA release/review processes in relation to the planned releases for this year/early next—verify publication schedule.
- *12:00 to 12:30:* Future meeting dates and locations; Expertise to be included; Action Item review.
- *12:30 to 12:45:* Wrap-up of Meeting, Agreement on Conclusions and Main Events, Main messages to be disseminated.

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC on March 29, 2010.

Meredith Gibbs,

RTCA Advisory Committee.

[FR Doc. 2010–7546 Filed 4–1–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Transport Airplane and Engine Issue Area—New Task

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of new task assignment for the Aviation Rulemaking Advisory Committee (ARAC).

SUMMARY: The FAA assigned the Aviation Rulemaking Advisory Committee (ARAC) a new task to identify and develop recommendations on additional requirements for low speed alerting in new transport category airplanes. This task is the first phase of an overall effort to examine new standards, as well as possible retrofit standards. This notice is to inform the public of this ARAC activity.

FOR FURTHER INFORMATION CONTACT: Joe Jacobsen, Airplane & Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Federal Aviation Administration, 1601 Lind Ave SW, Renton, Washington, 98057; telephone (425) 227–2011, facsimile (425) 227–1149; e-mail *joe.jacobsen@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA established ARAC to provide advice and recommendations to the FAA Administrator on the FAA's rulemaking activities with respect to aviation-related issues. With respect to low speed alerting, the FAA previously revised regulations in the area of flight guidance (autopilot) and performance and handling qualities in icing conditions to improve transport airplane standards for low speed protection (in the case of icing, stall warning standards were enhanced). However, as a result of several recent loss-of-control accidents and incidents, the FAA has identified a need for additional low speed safeguards, in addition to the regulatory actions that have already been taken. The committee will address the first task under the Transport Airplane and Engine Issues, under the existing Avionics Systems Harmonization Working Group.

The Task

ARAC is initially tasked with providing information that will be used to develop standards and guidance material for low speed alerting systems. This information may result in standards that complement existing stall warning requirements. The working group will be expected to provide a report that addresses the following low speed alerting technical questions, relative to new aircraft designs (Phase 1 task—new Part 25 standards), and provides the rationale for their responses. If there is disagreement within the working group, those items should be documented, including the rationale from each party and the reasons for the disagreement.

- How much time is needed to alert the crew in order to avoid stall warning or excessive deviation below the intended operating speed?
- What would make the alerting instantly recognizable, clear, and unambiguous to the flightcrew?
- How could nuisance alerts be minimized?
- Could the alerting operate under all operating conditions, configurations, and phases of flight, including icing conditions?
- Could the alerting operate during manual and autoflight?
- Could the system reliability be made consistent with existing regulations and guidance for stall warning systems?
- Are there any regulations or guidance material that might conflict with new standards?
- What recommended guidance material is needed?
- After reviewing airworthiness, safety, cost, and other relevant factors, including recent certification and fleet experience, are there any additional considerations that should be taken into account?
- Is coordination necessary with other harmonization working groups (*e.g.,* Human Factors)? (if yes, coordinate and report on that coordination)

The working group will be also be expected to provide a report that addresses the following low speed alerting technical questions, relative to existing aircraft designs (as a lead-in to the Phase 2 task—retrofit standards), and provides the rationale for their responses. If there is disagreement within the working group, those items should be documented, including the rationale from each party and the reasons for the disagreement.

• How timely is the airplane in alerting the crew of flight below the intended operating speed? How timely relative to stall warning?

• Is alerting instantly recognizable, clear, and unambiguous to the flightcrew?

• How are nuisance alerts minimized?

• Does the alerting operate under all operating conditions, configurations, and phases of flight, including icing conditions?

• Does the alerting operate during manual and autoflight?

• After reviewing airworthiness, safety, cost, and other relevant factors, including recent certification and fleet experience, are there any additional considerations that should be taken into account?

• Is coordination necessary with other harmonization working groups (*e.g.,* Human Factors)?

• If improvements are needed for low speed alerting in the existing fleet, should the FAA adopt a design approval holder (part 26) requirement to mandate development of design changes, or would an operational rule be sufficient? In responding, the working group should address the factors set forth in "FAA Policy Statement: Safety—A Shared Responsibility—New Direction for Addressing Airworthiness Issues for Transport Airplanes" (70 FR 40166, July 12, 2005).

The ARAC working group should provide information that could lead to standards for low speed alerting that can be satisfied with practical design approaches.

Schedule

The required completion date is 9 months after the FAA publishes the task in the **Federal Register.**

ARAC Acceptance of Task

ARAC accepted the task and assigned it to the existing Avionics Systems Harmonization Working Group in the Transport Airplane and Engine Issue Area. The working group serves as staff to ARAC and assists in the analysis of assigned tasks. ARAC must review and approve the working group's recommendations. If ARAC accepts the working group's recommendations, it will forward them to the FAA.

Working Group Activity

The Avionics Systems Harmonization Working Group must comply with the procedures adopted by ARAC. As part of the procedures, the working group must:

1. Recommend a work plan for completion of the task, including the rationale supporting such a plan for consideration at the next meeting of the ARAC on Transport Airplane and Engine Issues held following publication of this notice.

2. Give a detailed conceptual presentation of the proposed recommendations prior to proceeding with the work stated in item 3 below.

3. Draft the appropriate documents and required analyses and/or any other related materials or documents.

4. Provide a status report at each meeting of the ARAC held to consider Transport Airplane and Engine Issues.

Participation in the Working Group

The Avionics Systems Harmonization Working Group is composed of technical experts having an interest in the assigned task. A working group member need not be a representative or a member of the full committee.

If you have expertise in the subject matter and wish to become a member of the working group, write to the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire. Describe your interest in the task and state the expertise you would bring to the working group. We must receive all requests by May 3, 2010. The assistant chair, the assistant executive director, and the working group co-chairs will review the requests and advise you whether or not your request is approved.

If you are chosen for membership on the working group, you must represent your aviation community segment and actively participate in the working group by attending all meetings and providing written comments when requested to do so. You must devote the resources necessary to support the working group in meeting any assigned deadlines. You must keep your management chain and those you may represent advised of working group activities and decisions to ensure that the proposed technical solutions do not conflict with your sponsoring organization's position when the subject being negotiated is presented to ARAC for approval. Once the working group has begun deliberations, members will not be added or substituted without the approval of the assistant chair, the assistant executive director, and the working group co-chairs.

The Secretary of Transportation determined that the formation and use of the ARAC is necessary and in the public interest in connection with the performance of duties imposed on the FAA by law.

Meetings of the ARAC are open to the public. Meetings of the Avionics Systems Harmonization Working Group will not be open to the public, except to the extent individuals with an interest and expertise are selected to participate. The FAA will make no public announcement of working group meetings.

Issued in Washington, DC, on March 29, 2010.

Pamela Hamilton-Powell,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 2010–7402 Filed 4–1–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance Dayton-Wright Brothers Airport; Dayton, OH

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to change a portion of the airport from aeronautical use to non-aeronautical use and to authorize the release of 10.829 acres of airport property for permanent public roadway use. The land consists of portions of 4 original airport acquired parcels. These parcels were acquired under grants 5–39–0030–01, 5–39–0030–02, 5–39–0030–03, 5–39–0030–04, 5–39–0030–05, and 3–39–0030–01. There are no impacts to the airport by allowing the City of Dayton to sell the property. The land is not needed for aeronautical use. Approval does not constitute a commitment by the FAA to financially assist in the sale of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA. The disposition of proceeds from the sale of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999. In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

DATES: Comments must be received on or before May 3, 2010.

ADDRESSES: Written comments on the Sponsor's request must be delivered or mailed to: Irene R. Porter, Program Manager, Detroit Airports District

Office, 11677 South Wayne Road, Suite 107, Romulus, MI 48174.

FOR FURTHER INFORMATION CONTACT: Irene R. Porter, Program Manager, Federal Aviation Administration, Great Lakes Region, Detroit Airports District Office, DET ADO–607, 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174. Telephone Number (734–229–2915)/FAX Number (734–229–2950).

Documents reflecting this FAA action may be reviewed at this same location or at Dayton Wright Brothers Airport, Dayton, Ohio.

SUPPLEMENTARY INFORMATION:

Parcel 6–SH1

Situated in the Township of Miami, County of Montgomery, State of Ohio and being a part of a 57.720 acre tract of land as conveyed to The City of Dayton, Ohio, and described in Deed M.F. 74–023D06 and lying in Section 10, Township 2, Range 5, M.Rs., and being a parcel of land lying on the Right side of the Centerline of Construction of Austin Boulevard, as shown on Plat Book 212, Pages 34 and 34A as surveyed by Burgess & Niple for the Montgomery County Engineer's Office and being more particularly described as follows:

Beginning for reference at a brass disk found in a highway monument box stamped "Montgomery County Engineer's Dayton", located in the existing centerline of Right-of-Way of Austin Pike at the southeast corner of the Villages of Miami-South, Section Seven, as shown in Plat Book 192, Page 33. Said disk being located 15.31 left of Austin Boulevard Centerline of Construction Station 225+55.84;

Thence the following seven (7) courses and distances along said existing centerline of Right-of-Way of Austin Pike:

1. S 83°01′58″ W, a distance of 670.76 feet and along the south line of said Villages of Miami-South, Section Seven, to an angle point being located 15.93 feet left of Austin Boulevard Centerline of Construction Station 218+85.08;

2. S 83°46′58″ W, a distance of 160.64 feet, and along said south line of the Villages of Miami-South, Section Seven, to an angle point at the common corner of said Villages of Miami-South, Section Seven, and the 68.065 acre tract of land conveyed to the Board of Trustees Miami Township, Montgomery County, Ohio in Deed M.F. 95–248D05. Said point being located 18.18 feet left of Austin Boulevard Centerline of Construction Station 217+24.46;

3. S 83°46′26″ W, a distance of 373.41 feet, and along the south line of said 68.065 acre tract, to an angle point being located 21.45 feet left of Austin Boulevard Centerline of Construction Station 213+50.09;

4. S 83°49′00″ W, a distance of 722.77 feet, and along said south line of the 68.065 acre tract, to a point at the common corner of said 68.065 acre tract and the 23.744 acre tract of land conveyed to The City of Dayton, Ohio in Deed M.F. 83–011B03. Said point being located 76.02 feet right of Austin Boulevard Centerline of Construction Station 206+30.88;

5. Continue S 83°49′00″ W, a distance of 22.67 feet, and along the south line of said 23.744 acre tract, to a point at the northeast corner of the aforesaid Grantor's 57.720 acre tract. Said point being located 78.95 feet right of Austin Boulevard Centerline of Construction Station 206+08.10;

6. S 89°17′39″ W, a distance of 673.03 feet, and along the south line of said 23.744 acre tract and north line said Grantor's 57.720 acre tract, to a railroad spike found at the common corner of said 23.744 acre tract and the aforesaid 68.065 (Total) acre tract, said point being located 60.27 feet right of Austin Boulevard Centerline of Construction Station 199+26.65;

7. S 89°16′51″ W, a distance of 141.77 feet, and along the south line of said 68.065 (Total) acre tract and north line said Grantor's 57.720 acre tract, to a point at the northeast corner of Parcel 126–WDV of proposed Right-of-Way to be acquired by ODOT Project MOT–750.75, Phase Three, PID 77246, as shown upon the Right-of-Way plans thereof. Said point being located 46.21 feet right of Austin Boulevard Centerline of Construction Station 197+84.25;

Thence the following three (3) courses and distances along said Parcel 126–WDV:

1. S 00°43′10″ E, a distance of 24.12 feet, to a point being located 70.18 feet right of Austin Boulevard Centerline of Construction Station 197+81.53;

2. S 55°11′45″ W, a distance of 72.45 feet, to a point being located 103.43 feet right of Austin Boulevard Centerline of Construction Station 197+16.18;

3. S 84°57′40″ W, a distance of 273.40 feet, to an iron pin set. Said iron pin being the point of true beginning and located 83.63 feet right of Austin Boulevard Centerline of Construction Station 194+38.94;

Thence S 80°59′47″ W, a distance of 411.13 feet along the proposed south right-of-way across aforesaid Grantor's 57.720 acre tract, to an iron pin set in the aforesaid south line of Parcel 126–WDV. Said iron pin being located 95.76 feet right of Austin Boulevard Centerline of Construction Station 190+41.43;

Thence the following two (2) courses and distances along said south lines of Parcel 126–WDV:

1. N 76°48′01″ E, a distance of 200.25 feet, to a point. Said point being located 66.00 feet right of Austin Boulevard Centerline of Construction Station 192+31.49;

2. N 84°57′40″ E, a distance of 211.92 feet, to the point of true beginning.

The above described area contains a total of 0.069 acres, within the Montgomery County Auditor's Parcel Number K45 02602 0015, which includes 0.000 acres in the present road occupied.

Parcel 6–SH2

Situated in the Township of Miami, County of Montgomery, State of Ohio and being a part of a 57.720 acre tract of land as conveyed to The City of Dayton, Ohio, and described in Deed M.F. 74–023D06 and lying in Section 10, Township 2, Range 5, M.Rs., and being a parcel of land lying on the Right side of the Centerline of Construction, Austin Boulevard, as shown on Plat Book 212, Pages 34 and 34A as surveyed by Burgess & Niple for the Montgomery County Engineer's Office and being more particularly described as follows:

Beginning for reference at a brass disk found in a highway monument box stamped "Montgomery County Engineer's Dayton", located in the existing centerline of Right-of-Way of Austin Pike at the southeast corner of the Villages of Miami-South, Section Seven, as shown in Plat Book 192, Page 33. Said disk being located 15.31 left of Austin Boulevard Centerline of Construction Station 225+55.84;

Thence the following five (5) courses and distances along said existing centerline of Right-of-Way of Austin Pike:

1. S 83°01′58″ W, a distance of 670.76 feet, and along the south line of said Villages of Miami-South, Section Seven, to an angle point being located 15.93 feet left of Austin Boulevard Centerline of Construction Station 218+85.08;

2. S 83°46′58″ W, a distance of 160.64 feet, and along said south line of the Villages of Miami-South, Section Seven, to an angle point at the common corner of said Villages of Miami-South, Section Seven, and the 68.065 acre tract of land conveyed to the Board of Trustees Miami Township, Montgomery County, Ohio, by deed of record in Deed M.F. 95–248D05. Said point being located 18.18 feet left of Austin Boulevard Centerline of Construction Station 217+24.46;

3. S 83°46′26″ W, a distance of 373.41 feet, and along the south line of said 68.065 acre tract, to an angle point being located 21.45 feet left of Austin Boulevard Centerline of Construction Station 213+50.09;

4. S 83°49′00″ W, a distance of 722.77 feet, and along said south line of the 68.065 acre tract, to a point at the common corner of said 68.065 acre tract and the 23.744 acre tract of land conveyed to The City of Dayton, Ohio by deed of record in Deed M.F. 83–011B03. Said point being located 76.02 feet right of Austin Boulevard Centerline of Construction Station 206+30.88;

5. Continue S 83°49′00″ W, a distance of 22.67 feet, and along the south line of said 23.744 acre tract, to a point at the northeast corner of the aforesaid Grantor's 57.720 acre tract. Said point being the point of true beginning and located 78.95 feet right of Austin Boulevard Centerline of Construction Station 206+08.10;

Thence S 05°07′29″ W, a distance of 24.88 feet along the east line of said Grantor's 57.720 acre tract, to an iron pin set in the existing southerly Right-of-Way line of Austin Pike. Said iron pin being located 103.76 feet right of Austin Boulevard Centerline of Construction Station 206+06.33;

Thence S 89°17′39″ W, a distance of 670.50 feet along said existing southerly Right-of-Way line of Austin Pike, to an iron pin set. Said iron pin being located 84.93 feet right of Austin Boulevard Centerline of Construction Station 199+24.46;

Thence S 85°14′06″ W, a distance of 159.75 feet, along the proposed south right-of-way across said Grantor's 57.720 acre tract, to an iron pin set in the easterly line of Parcel 126–WDV, as delineated on ODOT Project MOT–75–0.75, Phase Three, PID 77246, Right-of-Way plans. Said iron pin being located 80.00 feet right of Austin Boulevard Centerline of Construction Station 197+62.45;

Thence the following two (2) courses and distances along the easterly lines of said Parcel 126–WDV:

1. N 55°11′45″ E, a distance of 21.23 feet, to an angle point. Said point being located 70.18 feet right of Austin Boulevard Centerline of Construction Station 197+81.53;

2. N 00°43′10″ W, a distance of 24.12 feet, to a point in the aforesaid existing centerline of Right-of-Way of Austin Pike and north line of Grantor's 57.720 acre tract. Said point being located 46.21 feet right of Austin Boulevard Centerline of Construction Station 197+84.25;

Thence the following two (2) courses and distances along said existing centerline of Right-of-Way of Austin Pike and north line of Grantor's 57.720 acre tract:

1. N 89°16′51″ E, a distance of 141.77 feet, to a railroad spike found. Said spike being located 60.27 feet right of Austin Boulevard Centerline of Construction Station 199+26.65;

2. N 89°17′39″ E, a distance of 673.03 feet, to the point of true beginning.

The above described area contains a total of 0.481 acres within the Montgomery County Auditor's Parcel Number K45 02602 0015, of which 0.461 acres are in the present road occupied.

Parcel 6–SH3

Situated in the Township of Miami, County of Montgomery, State of Ohio and being a part of the 23.744 acre tract of land as conveyed to The City of Dayton, Ohio and described in Deed M.F. 83–011B03, and lying in Section 10, Township 2, Range 5, M.Rs., and being a parcel of land lying on the Left and Right sides of the Centerline of Construction, Austin Boulevard, as shown on Plat Book 212, Pages 34 and 34A as surveyed by Burgess & Niple for the Montgomery County Engineer's Office and being more particularly described as follows:

Beginning for reference at a brass disk found in a highway monument box stamped "Montgomery County Engineer's Dayton", located in the existing centerline of Right-of-Way of Austin Pike at the southeast corner of the Villages of Miami-South Section Seven as shown in Plat Book 192, Page 33. Said disk being located 15.31 left of Austin Boulevard Centerline of Construction Station 225+55.84;

Thence the following four (4) courses and distances along said existing centerline of Right-of-Way of Austin Pike:

1. S 83°01′58″ W, a distance of 670.76 feet, and along the south line of said Villages of Miami-South, Section Seven, to an angle point being located 15.93 feet left of Austin Boulevard Centerline of Construction Station 218+85.08;

2. S 83°46′58″ W, a distance of 160.64 feet, and along said south line of the Villages of Miami-South, Section Seven, to an angle point at the common corner of said Villages of Miami-South, Section Seven, and the 68.065 acre tract of land conveyed to the Board Of Trustees Miami Township, Montgomery County, Ohio, by deed of record in Deed M.F. 95–248D05. Said point being located 18.18 feet left of Austin Boulevard Centerline of Construction Station 217+24.46;

3. S 83°46′26″ W, a distance of 373.41 feet, and along the south line of said 68.065 acre tract, to an angle point being located 21.45 feet left of Austin Boulevard Centerline of Construction Station 213+50.09;

4. S 83°49′00″ W, a distance of 722.77 feet, and along said south line of the 68.065 acre tract, to a point at the common corner of said 68.065 acre tract and aforesaid Grantor's 23.744 acre tract. Said point being the point of true beginning and located 76.02 feet right of Austin Boulevard Centerline of Construction Station 206+30.88;

Thence continue S 83°49′00″ W, a distance of 22.67 feet, and along the south line of said Grantor's 23.744 acre tract, to a point at the northeast corner of the 57.720 acre tract conveyed to THE CITY OF DAYTON, OHIO, and described in Deed M.F. 74–023D06. Said point being located 78.95 feet right of Austin Boulevard Centerline of Construction Station 206+08.10;

Thence S 89°17′39″ W, a distance of 673.03 feet, and along the south line of said Grantor's 23.744 acre tract and north line of said 57.720 acre tract to a railroad spike found at the common corner of said Grantor's 23.744 acre tract and the aforesaid 68.065 (Total) acre tract conveyed to Board Of Trustees of Miami Township, Montgomery County, Ohio, said spike being located 60.27 feet right of Austin Boulevard Centerline of Construction Station 199+26.65;

Thence N 14°46′48″ E, a distance of 160.12 feet, along the line common to said Grantor's 23.744 acre tract and said 68.065 (Total) acre tract, to an iron pin set in the proposed north Right-of-Way. Said iron pin being located 90.00 feet left of Austin Boulevard Centerline of Construction Station 199+81.81;

Thence the following three (3) courses and distances along the proposed north Right-of-way across said Grantor's 23.744 acre tract:

1. Easterly along arc of said curve to the right (and non tangent to the previous course), having a radius of 5819.58 feet, a central angle of 04°10′55″, and a chord bearing N 86°56′32″ E, a chord distance of 424.67 feet, for an arc distance of 424.76 feet, to an iron pin set. Said iron pin being located 90.00 feet left of Austin Boulevard Centerline of Construction Station 204+00.00;

2. S 82°03′20″ E (and non tangent to the previous course), a distance of 102.54 feet, to an iron pin set. Said iron pin being located 75.00 feet left of Austin Boulevard Centerline of construction Station 205+00.00;

3. Easterly along arc of said curve to the right (and non tangent to the previous course), having a radius of

5804.58 feet, a central angle of 02°10′52″, and a chord bearing S 88°52′34″ E, a chord distance of 220.96 feet, for an arc distance of 220.97 feet, to an iron pin set in the line common to said Grantor's 23.744 acre tract and the aforesaid 68.065 (Total) acre tract. Said iron pin being located 75.00 feet left of Austin Boulevard Centerline of Construction Station 207+18.12;

Thence S 31°47′17″ W, a distance of 174.40 feet, along the line common to said Grantor's 23.744 acre tract and aforesaid 68.065 (Total) acre tract, to the point of true beginning.

The above described area contains a total of 2.685 acres, within the Montgomery County Auditor's Parcel Number K45 02602 0058, which includes 0.398 acres in the present road occupied.

Parcel 6–SH4

Situated in the Township of Miami, County of Montgomery, State of Ohio and being a part of the 16.700 acre tract of land as conveyed to The City of Dayton, Ohio and described in Deed M.F. 74–023D06 and lying in Section 10, Township 2, Range 5, M.Rs., and being a parcel of land lying on the Left and Right sides of the Centerline of Construction, Austin Boulevard, as shown on Plat Book 212, Pages 34 and 34A as surveyed by Burgess & Niple for the Montgomery County Engineer's Office and being more particularly described as follows:

Beginning for reference at a brass disk found in a highway monument box stamped "Montgomery County Engineer's Dayton", located in the existing centerline of Right-of-Way of Austin Pike at the southeast corner of the Villages of Miami-South, Section Seven, as shown in Plat Book 192, Page 33. Said disk being located 15.31 left of Austin Boulevard Centerline of Construction Station 225+55.84;

Thence the following three (3) courses and distances along said existing centerline of Right-of-way of Austin Pike:

1. S 83°01′58″ W, a distance of 670.76 feet, and along the south line of said Villages of Miami-South, Section Seven, to an angle point being located 15.93 feet left of Austin Boulevard Centerline of Construction Station 218+85.08;

2. S 83°46′58″ W, a distance of 160.64 feet, and along said south line of the Villages of Miami-South, Section Seven, to an angle point at the common corner of said Villages of Miami-South, Section Seven, and the 68.065 acre tract of land conveyed to the Board Of Trustees Miami Township, Montgomery County, Ohio, by deed of record in Deed M.F. 95–248D05. Said point being located 18.18 feet left of Austin Boulevard Centerline of Construction Station 217+24.46;

3. S 83°46′26″ W, a distance of 373.41 feet, and along the south line of said 68.065 acre tract, to an angle point at the common corner of the 54.423 acre tract conveyed to The City of Dayton, Ohio and described in Deed M.F. 86–547C10 and the aforesaid Grantor's 16.700 acre tract. Said point being the TRUE POINT OF BEGINNING and located 21.45 feet left of Austin Boulevard Centerline of Construction Station 213+50.09;

Thence S 05°08′40″ W, a distance of 103.51 feet, along the line common to said 54.423 acre tract and Grantor's 16.700 acre tract, to an iron pin set. Said iron pin being located 80.69 feet right of Austin Boulevard Centerline of Construction Station 213+33.55;

Thence the following two (2) courses and distances along the proposed south Right-of-Way across said Grantor's 16.700 acre tract:

1. S 82°58′46″ W, a distance of 71.69 feet, to an iron pin set. Said iron pin being located 85.82 feet right of Austin Boulevard Centerline of Construction Station 212+65.03;

2. N 89°24′50″ W, a distance of 662.93 feet, to an iron pin set in the line common to said Grantor's 16.700 acre tract and the 57.720 acre tract conveyed to The City of Dayton, Ohio, and described in Deed M.F. 74–023D06. Said iron pin being located 103.76 feet right of Austin Boulevard Centerline of Construction Station 206+06.33;

Thence N 05°07′29″ E, a distance of 24.88 feet, along the line common to said Grantor's 16.700 acre tract and said 57.720 acre tract, to a point in the aforesaid centerline of Austin Pike. Said point being located 78.95 feet right of Austin Boulevard Centerline of Construction Station 206+08.10;

Thence N 83°49′00″ E, a distance of 745.44 feet, along said centerline of Austin Pike and north line of Grantor's 16.700 acre tract, to the TRUE POINT OF BEGINNING.

The above described area contains a total of 1.149 acres, within the Montgomery County Auditor's Parcel Number K45 02602 0023, which includes 0.424 acres in the present road occupied.

Parcel 6–SH5

Situated in the Township of Miami, County of Montgomery, State of Ohio and being a part of the 54.423 acre tract of land as conveyed to The City of Dayton, Ohio and described in Deed M.F. 86–547C10 and lying in Section 10, Township 2, Range 5, M.Rs., and being a parcel of land lying on the Left and Right sides of the Centerline of Construction, Austin Boulevard, as shown on Plat Book 212, Pages 34 and 34A as surveyed by Burgess & Niple for the Montgomery County Engineer's Office and being more particularly described as follows:

BEGINNING at a brass disk found in a highway monument box stamped "Montgomery County Engineer's Dayton", located in the existing centerline of Right-of-Way of Austin Pike and north line of said Grantor's 54.423 acre tract, at the southeast corner of the Villages of Miami-South, Section Seven, as shown in Plat Book 192, Page 33. Said disk being located 15.31 left of Austin Boulevard Centerline of Construction Station 225+55.84;

Thence N 82°58′02″ E, a distance of 697.56 feet, along said existing centerline of Right-of-Way of Austin Pike and north line of Grantor's 54.423 acre tract, to a PK Nail set at the common corner of said Grantor's 54.423 acre tract and the 118.930 acre tract conveyed to The City of Dayton, Ohio and described in Deed M.F. 86–547C12. Said PK Nail being located 64.72 feet left of Austin Boulevard Centerline of Construction Station 232+44.54;

Thence S 05°35′05″ W, a distance of 201.00 feet, along the line common to said Grantor's 54.423 acre tract and said 118.930 acre tract to an iron pin set, said point being located 136.13 feet right of Austin Boulevard Centerline of Construction Station 232+36.87;

Thence the following six (6) courses and distances along the proposed south Right-of-way across said Grantor's 54.423 acre tract:

1. N 80°26′56″ W, a distance of 11.54 feet, to an iron pin set. Said iron pin being located 134.86 feet right of Austin Boulevard Centerline of Construction Station 232+24.83;

2. N 31°28′27″ W a distance of 42.22 feet, to an iron pin set. Said iron pin being located 100.00 feet right of Austin Boulevard Centerline of Construction Station 232+00.00;

3. N 74°27′32″ W, a distance of 50.56 feet, to an iron pin set. Said iron pin being located 88.25 feet right of Austin Boulevard Centerline of Construction Station 231+49.15;

4. N 85°46′45″ W, a distance of 145.19 feet, to an iron pin set, said iron pin being located 77.82 feet right of Austin Boulevard Centerline of Construction Station 230+00.00;

5. Westerly along arc of said curve to the left having a radius of 2786.97 feet, a central angle of 05°37′56″, and a chord bearing S 85°47′44″ W, a chord distance of 273.85 feet, for an arc distance of 273.96 feet, to an iron pin set at the point of tangency. Said iron pin being located 77.82 feet right of Austin

Boulevard Centerline of Construction Station 227+18.39;

6. S 82°58′46″ W, a distance of 1389.12 feet, to an iron pin set in the line common to said Grantor's 54.423 acre tract and the 16.700 acre tract conveyed to The City of Dayton, Ohio and described in Deed M.F. 74–023D06. Said iron pin being located 80.69 feet right of Austin Boulevard Centerline of Construction Station 213+33.55;

Thence N 05°08′40″ E, a distance of 103.51 feet, along the line common to said Grantor's 54.423 acre tract and said 16.700 acre tract, to a point in the aforesaid existing centerline of Right-of-way of Austin Pike at the common corner of said Grantor's 54.423 acre tract and said 16.700 acre tract. Said point being located 21.45 feet left of Austin Boulevard Centerline of Construction Station 213+50.09;

Thence the following three (3) courses and distances along said existing centerline of Right-of Way of Austin Pike and north line of said Grantor's 54.423 acre tract:

1. N 83°46′26″ E, a distance of 373.41 feet, to a point at the southwest corner of aforesaid Villages of Miami South, Section Seven. Said point being located 18.18 feet left of Austin Boulevard Centerline of Construction Station 217+24.46;

2. N 83°46′58″ E, a distance of 160.64 feet, and along the south line of said Villages of Miami-South, Section Seven, to a point. Said point being located 15.93 feet left of Austin Boulevard Centerline of Construction Station 218+85.08;

3. N 83°01′58″ E, a distance of 670.76 feet, and along the south line of said Villages of Miami-South, Section Seven, to the POINT OF BEGINNING.

The above described area contains a total of 4.388 acres, within the Montgomery County Auditor's Parcel Number K45 02602 0059, which includes 1.357 acres in the present road occupied.

Parcel 6–SH6

Situated in the Township of Miami, County of Montgomery, State of Ohio and being a part of a 118.930 acre tract of land as conveyed to The City of Dayton, Ohio and described in Deed M.F. 86–547C12 and lying in Section 10, Township 2, Range 5, M.Rs., and being a parcel of land lying on the Left and Right sides of the centerline of right of way and construction Austin Boulevard, as shown on Plat Book 212, Pages 34 and 34A as surveyed by Burgess & Niple for the Montgomery County Engineer's Office and being more particularly described as follows:

Beginning at a brass disk found in a highway monument box stamped "Montgomery County Engineer's Dayton", located at the intersection of the existing centerline of Right-of-Way of Austin Pike, and the line common to Miami Township Section 10, Township 2, Range 5, and Washington Township Section 4, Township 2, Range 5 of the M.Rs. Said disk being the northeast corner of said Grantor's 118.930 acre tract and located 85.17 feet left of Austin Boulevard Centerline of Construction Station 233+42.34;

Thence S 05°35′01″ W, a distance of 230.30 feet, along said line common to Miami Township and Washington Township, and east line of Grantor's 118.930 acre tract, to an iron pin set. Said iron pin being located 145.13 feet right of Austin Boulevard Centerline of Construction Station 233+41.81;

Thence N 80°26′56″ W, a distance of 100.19 feet along the proposed south Right-of-Way across said Grantor's 118.930 acre tract, to an iron pin set in the line common to said Grantor's 118.930 acre tract, and the 54.423 acre tract conveyed to The City of Dayton, Ohio and described in Deed M.F. 86–547C10. Said point being located 136.13 feet right of Austin Boulevard Centerline of Construction Station 232+36.87;

Thence N 05°35′05″ E, a distance of 201.00 feet, along said line common to said Grantor's 118.930 acre tract and said 54.423 acre tract, to a PK Nail Set in the aforesaid existing centerline of Right-of-way of Austin Pike, at the northwesterly corner of said Grantor's 118.930 acre tract. Said PK nail being located 64.72 feet left of Austin Boulevard Centerline of Construction Station 232+44.54;

Thence N 82°58′02″ E a distance of 102.42 feet along said existing centerline of Right-of-way of Austin Pike and northerly line of said Grantor's 118.930 acre tract, to the true point of beginning.

The above described area contains a total of 0.495 acres, within the Montgomery County Auditor's Parcel Number K45 02602 0011, which includes 0.140 acres in the present road occupied.

Parcel 6–SH7

Situated in the State of Ohio, County of Montgomery, Township of Miami, Section 10, Township 2, Range 5, M.Rs., and being a part of a 57.720 acre tract of land as conveyed to The City of Dayton, Ohio, and described in Deed M.F. 74–023D06 and being more particularly described as follows:

Being a parcel lying on the right side of the Centerline of Construction of Austin Boulevard as shown on Plat Book 212, Pages 34 and 34A of the Plat records of Montgomery County and being located within the following described points in the boundary thereof:

Commencing at a brass disk found within a highway monument box stamped "Montgomery County Engineer's Dayton" located on the existing centerline of Right-of-Way of Austin Pike at the southeast corner of the Villages of Miami-South, Section Seven, as shown on Plat Book 192, Page 33 of the Plat records of Montgomery County, said brass disk found being 15.31 feet left of Austin Boulevard Centerline of Construction station 225+55.84;

Thence on the existing centerline of right of way of Austin Pike, South 83 degrees 01 minutes 58 seconds West, 670.76 feet to an angle point, said angle point being 15.93 feet left of Austin Boulevard Centerline of Construction station 218+85.08;

Thence continuing on the existing centerline of right of way of Austin Pike, South 83 degrees 46 minutes 58 seconds West, 160.64 feet to an angle point, said angle point being 18.18 feet left of Austin Boulevard Centerline of Construction station 217+24.46;

Thence continuing on the existing centerline of right of way of Austin Pike, South 83 degrees 46 minutes 26 seconds West, 373.41 feet to an angle point, said angle point being 21.45 feet left of Austin Boulevard Centerline of Construction station 213+50.09;

Thence continuing on the existing centerline of right of way of Austin Pike, South 83 degrees 49 minutes 00 seconds West, 745.44 feet to an angle point, said angle point being 78.95 feet right of Austin Boulevard Centerline of Construction station 206+08.10. Said angle point also being the northeast corner of the aforesaid grantor's 57.720 acre tract;

Thence South 05 degrees 07 minutes 29 seconds West, 34.93 feet on the grantor's east line to an iron pin set on the south line of an existing 10 foot DP&L easement as recorded in Deed MF 98–0489B07 & Deed MF 00–0735B01, said iron pin being 113.79 feet right of Austin Boulevard Centerline of Construction station 206+05.61 and also being the true point of beginning for the parcel of land herein described;

Thence South 05 degrees 07 minutes 29 seconds West, 20.10 feet continuing on the grantor's east line to an iron pin set on the proposed standard highway easement line, said iron pin being 133.84 feet right of Austin Boulevard Centerline of Construction station 206+04.16;

Thence South 89 degrees 17 minutes 39 seconds West, 666.38 feet on the proposed standard highway easement line to an iron pin set, said iron pin being 114.91 feet right of Austin Boulevard Centerline of Construction station 199+22.87;

Thence South 85 degrees 14 minutes 06 seconds West, 150.64 feet continuing on the proposed standard highway easement line to an iron pin set, said iron pin being 110.33 feet right of Austin Boulevard Centerline of Construction station 197+69.28;

Thence South 55 degrees 11 minutes 45 seconds West, 51.14 feet continuing on the proposed standard highway easement line to an iron pin set, said iron pin being 133.78 feet right of Austin Boulevard Centerline of Construction station 197+22.85;

Thence South 84 degrees 57 minutes 40 seconds West, 280.33 feet continuing on the proposed standard highway easement line to an iron pin set, said iron pin being 113.59 feet right of Austin Boulevard Centerline of Construction station 194+37.08;

Thence South 80 degrees 59 minutes 47 seconds West, 412.84 feet continuing on the proposed standard highway easement line to an iron pin set, said iron pin being 125.87 feet right of Austin Boulevard Centerline of Construction station 190+42.38;

Thence North 88 degrees 30 minutes 19 seconds West, 497.87 feet continuing on the proposed standard highway easement line to an iron pin set, said iron pin being 122.42 feet right of Austin Boulevard Centerline of Construction station 185+51.78;

Thence South 84 degrees 42 minutes 42 seconds West, 198.53 feet continuing on the proposed standard highway easement line to an iron pin set, said iron pin being 145.87 feet right of Austin Boulevard Centerline of Construction station 183+54.64;

Thence North 01 degrees 29 minutes 41 seconds East, 20.14 feet continuing on the proposed standard highway easement line to an iron pin set on the relocated 10 foot easement as recorded in Deed MF 98–0489B07 & Deed MF 00–0735B01, said iron pin being 125.73 feet right of Austin Boulevard Centerline of Construction station 183+54.64;

Thence North 84 degrees 42 minutes 42 seconds East, 197.34 feet on said relocated 10 foot easement to an iron pin set, said iron pin being 102.42 feet right of Austin Boulevard Centerline of Construction station 185+50.59;

Thence South 88 degrees 30 minutes 19 seconds East, 497.21 feet continuing on said relocated 10 foot easement to an iron pin set, said iron pin being 105.80 feet right of Austin Boulevard Centerline of Construction station 190+41.75;

Thence North 80 degrees 59 minutes 47 seconds East, 411.70 feet continuing on said relocated 10 foot easement to an iron pin set, said iron pin being 93.62 feet right of Austin Boulevard Centerline of Construction station 194+38.32;

Thence North 84 degrees 57 minutes 40 seconds East, 275.71 feet continuing on said relocated 10 foot easement to an iron pin set, said iron pin being 113.55 feet right of Austin Boulevard Centerline of Construction station 197+18.39;

Thence North 55 degrees 11 minutes 45 seconds East, 51.19 feet continuing on said relocated 10 foot easement to an iron pin set, said iron pin being 90.11 feet right of Austin Boulevard Centerline of Construction station 197+64.72;

Thence North 85 degrees 14 minutes 06 seconds East, 156.71 feet continuing on said relocated 10 foot easement to an iron pin set on the south line of an existing 10 foot DP&L easement as recorded in Deed MF 98–0489307 & Deed MF 00–0735301, said iron pin being 94.92 feet right of Austin Boulevard Centerline of Construction station 199+23.93;

Thence North 89 degrees 17 minutes 39 seconds East, 669.13 feet on the south line of said existing 10 foot DP&L easement to the true point of beginning and containing 1.037 acres, of which 0.000 acres is PRO (Present Road Occupied), leaving a net take of 1.037 acres, more or less, subject to legal highways and other easements of record.

Parcel 6–SH8

Situated in the State of Ohio, County of Montgomery, Township of Miami, Section 10, Township 2, Range 5, M.Rs., and being a part of a 16.700 acre tract of land as conveyed to The City of Dayton, Ohio, and described in Deed M.F. 74–023D06 and being more particularly described as follows:

Being a parcel lying on the right side of the Centerline of Construction of Austin Boulevard as shown on Plat Book 212, Pages 34 and 34A of the Plat records of Montgomery County and being located within the following described points in the boundary thereof:

Commencing at a brass disk found within a highway monument box stamped "Montgomery County Engineer's Dayton" located on the existing centerline of Right-of-Way of Austin Pike at the southeast corner of the Villages of Miami-South, Section Seven, as shown on Plat Book 192, Page 33 of the Plat records of Montgomery County, said brass disk found being 15.31 feet left of Austin Boulevard Centerline of Construction station 225+55.84;

Thence on the existing centerline of right of way of Austin Pike, South 83 degrees 01 minutes 58 seconds West, 670.76 feet to an angle point, said angle point being 15.93 feet left of Austin Boulevard Centerline of Construction station 218+85.08;

Thence continuing on the existing centerline of right of way of Austin Pike, South 83 degrees 46 minutes 58 seconds West, 160.64 feet to an angle point, said angle point being 18.18 feet left of Austin Boulevard Centerline of Construction station 217+24.46;

Thence continuing on the existing centerline of right of way of Austin Pike, South 83 degrees 46 minutes 26 seconds West, 373.41 feet to an angle point, said angle point being 21.45 feet left of Austin Boulevard Centerline of Construction station 213+50.09;

Thence South 05 degrees 08 minutes 40 seconds West, 113.74 feet on the grantor's east line to an iron pin set on the relocated 10 foot easement as recorded in Deed MF 98–0489B07 & Deed MF 00–0735B01, said iron pin being 90.79 feet right of Austin Boulevard Centerline of Construction station 213+32.01 and also being the true point of beginning for the parcel of land herein described;

Thence South 05 degrees 08 minutes 40 seconds West, 20.46 feet continuing on the grantor's east line to an iron pin set on the proposed standard highway easement line, said iron pin being 111.00 feet right of Austin Boulevard Centerline of Construction station 213+28.97;

Thence South 82 degrees 58 minutes 46 seconds West, 67.21 feet on the proposed standard highway easement line to an iron pin set, said iron pin being 115.88 feet right of Austin Boulevard Centerline of Construction station 212+65.69;

Thence North 89 degrees 24 minutes 50 seconds West, 664.58 feet continuing on the proposed standard highway easement line to an iron pin set, said iron pin being 133.76 feet right of Austin Boulevard Centerline of Construction station 206+06.95;

Thence South 89 degrees 17 minutes 39 seconds West, 2.73 feet continuing on the proposed standard highway easement line to an iron pin set on the grantor's west line, said iron pin being 133.84 feet right of Austin Boulevard Centerline of Construction station 206+04.16;

Thence North 05 degrees 07 minutes 29 seconds East, 20.10 feet on the

grantor's west line to an iron pin set on the south line of an existing 10 foot DP&L easement as recorded in Deed MF 98–0489B07 & Deed MF 00–0735B01, said iron pin being 113.79 feet right of Austin Boulevard Centerline of Construction station 206+05.61;

Thence North 89 degrees 17 minutes 39 seconds East, 0.91 feet on the south line of said existing 10 foot DP&L easement to an iron pin set on the relocated 10 foot easement as recorded in Deed MF 98–0489B07 & Deed MF 00–0735B01, said iron pin being 113.76 feet right of Austin Boulevard Centerline of Construction station 206+06.53;

Thence South 89 degrees 24 minutes 50 seconds East, 663.48 feet on said relocated 10 foot easement to an iron pin set, said iron pin being 95.84 feet right of Austin Boulevard Centerline of Construction station 212+65.25;

Thence North 82 degrees 58 minutes 46 seconds East, 70.20 feet on said relocated 10 foot easement to the true point of beginning and containing 0.337 acres, of which 0.000 acres is PRO (Present Road Occupied), leaving a net take of 0.337 acres, more or less, subject to legal highways and other easements of record.

Parcel 6–SH9

Situated in the State of Ohio, County of Montgomery, Township of Miami, Section 10, Township 2, Range 5, M.Rs., and being a part of a 54.423 acre tract of land as conveyed to The City of Dayton, Ohio, and described in Deed M.F. 86–547C10 and being more particularly described as follows:

Being a parcel lying on the right side of the Centerline of Construction of Austin Boulevard as shown on Plat Book 212, Pages 34 and 34A of the Plat records of Montgomery County and being located within the following described points in the boundary thereof:

Commencing at a brass disk found within a highway monument box stamped "Montgomery County Engineer's Dayton" located on the existing centerline of Right-of-Way of Austin Pike at the southeast corner of the Villages of Miami-South, Section Seven, as shown on Plat Book 192, Page 33 of the Plat records of Montgomery County, said brass disk found being 15.31 feet left of Austin Boulevard Centerline of Construction station 225+55.84;

Thence on the existing centerline of right of way of Austin Pike, South 83 degrees 01 minutes 58 seconds West, 670.76 feet to an angle point, said angle point being 15.93 feet left of Austin Boulevard Centerline of Construction station 218+85.08;

Thence continuing on the existing centerline of right of way of Austin Pike, South 83 degrees 46 minutes 58 seconds West, 160.64 feet to an angle point, said angle point being 18.18 feet left of Austin Boulevard Centerline of Construction station 217+24.46;

Thence South 06 degrees 58 minutes 02 seconds East, 96.00 feet on a line to an iron pin set on the proposed right of way line of Parcel 6–SH5 to be acquired by ODOT Project MOTCR 166–6.00, PID 78696, as shown on the Right-of-Way plans thereof, said iron pin being 77.82 feet right of Austin Boulevard Centerline of Construction station 217+24.37 and also being the true point of beginning for the parcel of land herein described;

Thence South 06 degrees 58 minutes 02 seconds East, 30.00 feet on the proposed standard highway easement line to an iron pin set, said iron pin being 107.82 feet right of Austin Boulevard Centerline of Construction station 217+24.34;

Thence South 82 degrees 58 minutes 46 seconds West, 401.54 feet on the proposed standard highway easement line to an iron pin set on the grantor's west line, said iron pin being 111.00 feet right of Austin Boulevard Centerline of Construction station 213+28.97;

Thence North 05 degrees 08 minutes 40 seconds East, 20.46 feet on the grantor's west line to an iron pin set on the relocated 10 foot easement as recorded in Deed MF 98–0489B07 & Deed MF 00–0735B01, said iron pin being 90.79 feet right of Austin Boulevard Centerline of Construction station 213+32.01;

Thence North 82 degrees 58 minutes 46 seconds East, 377.24 feet on said relocated 10 foot easement to an iron pin set on the proposed standard highway easement line, said iron pin being 87.82 feet right of Austin Boulevard Centerline of Construction station 217+04.36;

Thence North 06 degrees 58 minutes 02 seconds West, 10.00 feet on the proposed standard highway easement line to an iron pin set on said Parcel 6–SH5, said iron pin being 77.82 feet right of Austin Boulevard Centerline of Construction station 217+04.37;

Thence North 82. degrees 58 minutes 46 seconds East, 20.00 feet on the proposed right of way line of said Parcel 6–SH5 to the true point of beginning and containing 0.188 acres, of which 0.000 acres is PRO (Present Road Occupied), leaving a net take of 0.188 acres, more or less, subject to legal highways and other easements of record.

Issued in Romulus, Michigan, on March 5, 2010.

Original signed by:

Joe Hebert,

Acting Manager, Detroit Airports District Office, FAA, Great Lakes Region.

[FR Doc. 2010–7079 Filed 4–1–10; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Designation of One Individual Pursuant to Executive Order 13224

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control ("OFAC") is publishing the names of one newly-designated individual whose property and interests in property are blocked pursuant to Executive Order 13224 of September 23, 2001, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism."

DATES: The designation by the Director of OFAC of the individual identified in this notice, pursuant to Executive Order 13224, is effective on March 25, 2010.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

Background

On September 23, 2001, the President issued Executive Order 13224 (the "Order") pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701–1706, and the United Nations Participation Act of 1945, 22 U.S.C. 287c. In the Order, the President declared a national emergency to address grave acts of terrorism and threats of terrorism committed by foreign terrorists, including the September 11, 2001, terrorist attacks in New York, Pennsylvania, and at the Pentagon. The Order imposes economic sanctions on persons who have committed, pose a significant risk of committing, or support acts of terrorism. The President identified in the Annex to the Order, as amended by Executive

Order 13268 of July 2, 2002, 13 individuals and 16 entities as subject to the economic sanctions. The Order was further amended by Executive Order 13284 of January 23, 2003, to reflect the creation of the Department of Homeland Security.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in or hereafter come within the United States or the possession or control of United States persons, of: (1) Foreign persons listed in the Annex to the Order; (2) foreign persons determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, to have committed, or to pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States; (3) persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to be owned or controlled by, or to act for or on behalf of those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order; and (4) except as provided in section 5 of the Order and after such consultation, if any, with foreign authorities as the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, deems appropriate in the exercise of his discretion, persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of, such acts of terrorism or those persons listed in the Annex to the Order or determined to be subject to the Order or to be otherwise associated with those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order.

On March 25, 2010 the Director of OFAC, in consultation with the Departments of State, Homeland Security, Justice and other relevant agencies, designated, pursuant to one or more of the criteria set forth in subsections 1(b), 1(c) or 1(d) of the Order, one individual whose property and interests in property are blocked pursuant to Executive Order 13224.

The designee is as follows:

AL–DARI, Muthanna Harith (a.k.a. AL DARI AL–ZAWBA', Doctor Muthanna Harith Sulayman; a.k.a. AL DARI, Dr. Muthanna; a.k.a. AL DARI, Muthana Harith; a.k.a. AL–DARI AL–ZAWBA'I, Muthanna Harith Sulayman; a.k.a. AL–DARI AL–ZOBAI, Muthanna Harith Sulayman; a.k.a. AL–DARI, Muthanna Harith Sulayman; a.k.a. AL–DHARI, Muthana Haris; a.k.a. AL–DHARI, Muthanna Hareth; a.k.a. AL–DHARI, Muthanna Harith Sulayman), Egypt; Amman, Jordan; Khan Dari, Iraq; Asas Village, Abu Ghurayb, Iraq; DOB 16 Jun 1969; citizen Iraq; nationality Iraq (individual) [SDGT].

Dated: March 25, 2010.

Barbara C. Hammerle,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2010–7423 Filed 4–1–10; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Information Reporting Program Advisory Committee (IRPAC); Nominations

AGENCY: Internal Revenue Service, Department of Treasury.

ACTION: Request for nominations.

SUMMARY: The Internal Revenue Service (IRS) requests nominations of individuals for selection to the Information Reporting Program Advisory Committee (IRPAC). Nominations should describe and document the proposed member's qualifications for IRPAC membership, including the applicant's past or current affiliations and dealings with the particular tax segment or segments of the community that he or she wishes to represent on the committee. In addition to individual nominations, the IRS is soliciting nominations from professional and public interest groups that wish to have representatives on the IRPAC. The IRPAC is comprised of no more than 35 members. There are ten positions open for calendar year 2011. It is important that IRPAC continue to represent a diverse taxpayer and stakeholder base. Accordingly, to maintain membership diversity, selection is based on the applicant's qualifications as well as the taxpayer or stakeholder base he/she represents.

The IRPAC advises the IRS on information reporting issues of mutual concern to the private sector and the federal government. The committee works with the IRS Commissioner and other IRS leadership to provide recommendations on a wide range of information reporting administration issues. Membership is balanced to include representation from the tax professional community, businesses, banks, insurance companies, state tax administration, colleges and universities, securities, payroll, foreign financial institutions and other industries.

DATES: Written nominations must be received on or before May 28, 2010.

ADDRESSES: Nominations should be sent to: Ms. Caryl Grant, National Public Liaison, CL:NPL:SRM, Room 7559 IR, 1111 Constitution Avenue, NW., Washington, DC 20224, *Attn:* IRPAC Nominations. Applications may also be submitted via fax to 202–622–8345. Application packages are available on the Tax Professional's Page of the IRS Web site at *http://www.irs.gov/taxpros/index.html*. Application packages may also be requested by telephone from National Public Liaison, 202–927–3641 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Ms. Caryl Grant at 202–927–3641 (not a toll-free number) or **Public_Liaison@irs.gov.*

SUPPLEMENTARY INFORMATION: Established in 1991 in response to an administrative recommendation in the final Conference Report of the Omnibus Budget Reconciliation Act of 1989, the IRPAC works closely with the IRS to provide recommendations on a wide range of issues intended to improve the information reporting program and achieve fairness to taxpayers. Conveying the public's perception of IRS activities to the Commissioner, the IRPAC is comprised of individuals who bring substantial, disparate experience and diverse backgrounds to the Committee's activities.

The IRPAC members are nominated by the Commissioner with the concurrence of the Secretary of Treasury to serve a three-year term. Working groups address policies and administration issues specific to information reporting. Members are not paid for their services. However, travel expenses for working sessions, public meetings and orientation sessions, such as airfare, per diem, and transportation are reimbursed within prescribed federal travel limitations.

Receipt of applications will be acknowledged, and all individuals will be notified when selections have been made. In accordance with Department of Treasury Directive 21–03, a clearance process including, fingerprints, annual tax checks, a Federal Bureau of Investigation criminal check, and a practitioner check with the Office of Professional Responsibility will be

conducted. Federally registered lobbyists cannot be members of the IRPAC.

Equal opportunity practices will be followed for all appointments to the IRPAC in accordance with the Department of Treasury and IRS policies. To ensure that the IRPAC recommendations take into account the needs of the diverse groups served by the IRS, membership shall include, to the extent practicable, individuals who demonstrate the ability to represent minorities, women, and persons with disabilities.

Dated: March 24, 2010.

Mark Kirbabas,

Designated Federal Official, National Public Liaison.

[FR Doc. 2010–7422 Filed 4–1–10; 8:45 am]

BILLING CODE 4830–01–P

U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

Notice of Open Public Hearing

AGENCY: U.S.-China Economic and Security Review Commission.

ACTION: Notice of open public hearing—April 8, 2010, Washington, DC.

SUMMARY: Notice is hereby given of the following hearing of the U.S.-China Economic and Security Review Commission. This is the correct version of the hearing notice originally published in 75 FR 15493.

Name: Daniel M. Slane, Chairman of the U.S.-China Economic and Security Review Commission.

The Commission is mandated by Congress to investigate, assess, and report to Congress annually on "the national security implications of the economic relationship between the United States and the People's Republic of China."

Pursuant to this mandate, the Commission will hold a public hearing in Washington, DC on April 8, 2010, to address "China's Green Energy and Environmental Policies."

Background

This is the fourth public hearing the Commission will hold during its 2010 report cycle to collect input from leading academic, industry, and government experts on national security implications of the U.S. bilateral trade and economic relationship with China. The April 8 hearing will examine China's domestic and international clean energy policies and the potential for cooperation between the United States and China on climate change and clean energy technologies. The April 8 hearing will be Co-chaired by Commissioners William A. Reinsch and Dennis C. Shea.

Any interested party may file a written statement by April 8, 2010, by mailing to the contact below. On April 8, the hearing will be held in two sessions, one in the morning and one in the afternoon. A portion of each panel will include a question and answer period between the Commissioners and the witnesses.

Transcripts of past Commission public hearings may be obtained from the USCC Web Site *http://www.uscc.gov.*

Date and Time: Thursday, April 8, 2010, 8:55 a.m. to 2:25 p.m. Eastern Daylight Time. A detailed agenda for the hearing will be posted to the Commission's Web site at *http://www.uscc.gov* as soon as available.

ADDRESSES: The hearing will be held on Capitol Hill in Room 562 of the Dirksen Senate Office Building located at First Street and Constitution Avenue, NE., Washington, DC 20510. Public seating is limited to about 50 people on a first come, first served basis. Advance reservations are not required.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning the hearing should contact Kathy Michels, Associate Director for the U.S.-China Economic and Security Review Commission, 444 North Capitol Street, NW., Suite 602, Washington DC 20001; phone: 202–624–1409, or via e-mail at *kmichels@uscc.gov.*

Authority: Congress created the U.S.-China Economic and Security Review Commission in 2000 in the National Defense Authorization Act (Pub. L. 106–398), as amended by Division P of the Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7), as amended by Public Law 109–108 (November 22, 2005).

Dated: March 30, 2010.

Kathleen J. Michels,

Associate Director, U.S.-China Economic and Security Review Commission.

[FR Doc. 2010–7433 Filed 4–1–10; 8:45 am]

BILLING CODE 1137–00–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0325]

Proposed Information Collection (Certificate of Delivery of Advance Payment and Enrollment) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to authorize advance payment of educational assistance benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 1, 2010.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *nancy.kessinger@va.gov.* Please refer to "OMB Control No. 2900–0325" in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Certificate of Delivery of Advance Payment and Enrollment, VA Form 22–1999V.

OMB Control Number: 2900–0325.

Type of Review: Extension of a currently approved collection.

Abstract: VA will make payments of educational assistance in advance when the veteran, servivcemember, reservist, or eligible person has specifically requested such payment. The school in which a student is accepted or enrolled delivers the advance payment to the student and is required to certify the deliveries to VA. VA Form 22–1999V serves as the certificate of delivery of advance payment and to report any changes in a student's training status. Schools are required to report when a student fails to enroll; has an interruption or termination of attendance; or unsatisfactory attendance, conduct or progress to VA.

Affected Public: State, Local or Tribal Government.

Estimated Annual Burden: 35 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 64.

Estimated Total Number of Responses: 425.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–7472 Filed 4–1–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (VA Form 10–0503)]

Proposed Information Collection (Dental Patient Satisfaction Survey) Activity: Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to measure patients' satisfaction with VA's dental services.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 1, 2010.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov*; or to Mary Stout, Veterans Health Administration (193E1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *mary.stout@va.gov.* Please refer to "OMB Control No. 2900–New (VA Form 10–0503)" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Mary Stout at (202) 461–5867 or FAX (202) 273–9381.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Survey of Healthcare Experiences, Dental Patient Satisfaction Survey, VA Form 10–0503.

OMB Control Number: 2900–New (VA Form 10–0503).

Type of Review: New collection.

Abstract: VA Form 10–0503 will be used to obtain information needed to identify problem areas in dental health care services.

Affected Public: Individuals or households.

Estimated Annual Burden: 36,585.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 9,146.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–7473 Filed 4–1–10; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Friday,
April 2, 2010

Part II

Department of Energy

Federal Energy Regulatory Commission

18 CFR Part 40

Transmission Relay Loadability Reliability Standard; Final Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM08–13–000; Order No. 733]

Transmission Relay Loadability Reliability Standard

March 18, 2010.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: Pursuant to section 215 of the Federal Power Act, the Federal Energy Regulatory Commission approves the Transmission Relay Loadability Reliability Standard (PRC–023–1), developed by the North American Electric Reliability Corporation (NERC). Reliability Standard PRC–023–1 requires transmission owners, generator owners, and distribution providers to set load-responsive phase protection relays according to specific criteria in order to ensure that the relays reliably detect and protect the electric network from all fault conditions, but do not limit transmission loadability or interfere with system operators' ability to protect system reliability. In addition, pursuant to section 215(d)(5) of the Federal Power Act, the Commission directs NERC to develop modifications to the Reliability Standard to address specific concerns identified by the Commission.

DATES: *Effective Date:* This rule will become effective May 17, 2010.

FOR FURTHER INFORMATION CONTACT:

Cynthia Pointer (Technical Information), Office of Electric Reliability, Division of Reliability Standards, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 502–6069.

Joshua Konecni (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 502–6291.

SUPPLEMENTARY INFORMATION:

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Before Commissioners: Jon Wellinghoff, Chairman; Marc Spitzer, Philip D. Moeller, and John R. Norris.

1. Pursuant to section 215 of the Federal Power Act (FPA),[1] the Commission approves the Transmission Relay Loadability Reliability Standard (PRC–023–1), developed by the North American Electric Reliability Corporation (NERC) in its capacity as the Electric Reliability Organization

[1] 16 U.S.C. 824o. The Commission is not adding any new or modified text to its regulations.

(ERO).[2] Reliability Standard PRC–023–1 requires transmission owners, generator owners, and distribution providers to set load-responsive phase protection relays according to specific criteria in order to ensure that the relays reliably detect and protect the electric network from all fault conditions, but do not limit transmission loadability or interfere with system operators' ability to protect system reliability.[3] In addition, pursuant to section 215(d)(5) of the FPA,[4] the Commission directs the ERO to develop modifications to PRC–023–1 to address specific concerns identified by the Commission and sets specific deadlines for these modifications.

I. Background

2. Protective relays are devices that detect and initiate the removal of faults on an electric system.[5] They are designed to read electrical measurements, such as current, voltage, and frequency, and can be set to recognize certain measurements as indicating a fault. When a protective relay detects a fault on an element of the system under its protection, it sends a signal to an interrupting device(s) (such as a circuit breaker) to disconnect the element from the rest of the system.[6] Impedance relays (also known as distance relays) are the most common type of load-responsive phase protection relays used to protect transmission lines. Impedance relays can also provide backup protection and protection against remote circuit breaker failure.

3. Following the August 2003 blackout that affected parts of the Midwest and Northeast United States, and Ontario, Canada, NERC and the U.S.-Canada Power System Outage Task Force (Task Force) concluded that a substantial number of transmission lines disconnected during the blackout when load-responsive phase-protection backup distance and phase relays operated unnecessarily, *i.e.* under non-fault conditions. Although these relays operated according to their settings, the Task Force determined that the operation of these relays for non-fault conditions contributed to cascading outages at the start of the blackout and accelerated the geographic spread of the cascade.[7]

4. Seeking to prevent or minimize the scope of future blackouts, both NERC and the Task Force made recommendations to ensure that these types of protective relays do not contribute to future blackouts. Recommendation 8A of the NERC Report addresses the need to evaluate load-responsive protection zone 3 relays[8] to determine whether they will operate under extreme emergency conditions:

> All transmission owners shall, no later than September 30, 2004, evaluate the zone 3 relay settings on all transmission lines operating at 230 kV and above for the purpose of verifying that each zone 3 relay is not set to trip on load under extreme emergency conditions[ ]. In each case that a zone 3 relay is set so as to trip on load under extreme conditions, the transmission operator shall reset, upgrade, replace, or otherwise mitigate the overreach of those relays as soon as possible and on a priority basis, but no later than December 31, 2005. Upon completing analysis of its application of zone 3 relays, each transmission owner may no later than December 31, 2004 submit justification to NERC for applying zone 3 relays outside of these recommended parameters. The Planning Committee shall review such exceptions to ensure they do not increase the risk of widening a cascading failure of the power system.[9]

Recommendation No. 21A of the Task Force Final Blackout Report (Final Blackout Report) urges NERC to expand the scope of its review to include certain operationally significant facilities:

> NERC [should] broaden the review [described in Recommendation 8A of the NERC Report] to include operationally significant 115 kV and 138 kV lines, *e.g.,* lines that are part of monitored flowgates or interfaces. Transmission owners should also look for zone 2 relays set to operate like zone 3 [relays].[10]

In its petition, NERC states that PRC–023–1 is intended to specifically address these recommendations.

II. Reliability Standard PRC–023–1

5. Reliability Standard PRC–023–1 requires transmission owners, generator owners, and distribution providers to set load-responsive phase protection relays according to specific criteria in order to ensure that the relays reliably detect and protect the electric network from all fault conditions, but do not operate during non-fault load conditions.

A. Applicability

6. As proposed by NERC, the Reliability Standard applies to relay settings on: (1) All transmission lines and transformers with low-voltage terminals operated or connected at or above 200 kV;[11] and (2) those transmission lines and transformers with low-voltage terminals operated or connected between 100 kV and 200 kV[12] that are designated by planning coordinators as critical to the reliability of the bulk electric system.[13]

[2] Section 215(e)(3) of the FPA directs the Commission to certify an ERO to develop mandatory and enforceable Reliability Standards, subject to Commission review and approval. 16 U.S.C. 824o(e)(3). Following a selection process, the Commission selected and certified NERC as the ERO. *North American Electric Reliability Corp.,* 116 FERC ¶ 61,062 (ERO Certification Order), *order on reh'g & compliance,* 117 FERC ¶ 61,126 (ERO Rehearing Order) (2006), *aff'd sub nom. Alcoa, Inc.* v. *FERC,* 564 F.3d 1342 (DC Cir. 2009).

[3] Loadability refers to the ability of protective relays to refrain from operating under load conditions.

[4] 16 U.S.C. 824o(d)(5).

[5] Protective relays are one type of equipment used in protection systems. The NERC definition of protection systems also includes communication systems associated with protective relays, voltage and current sensing devices, station batteries, and DC control circuitry. *See* NERC Glossary of Terms Used in Reliability Standards at 14.

[6] Coordination of protection through distance settings and time delays ensures that the relay closest to a fault operates before a relay farther away from the fault, thereby ensuring that the more distant relay does not disconnect both the transmission equipment necessary to remove the fault and "healthy" equipment that should remain in service.

[7] U.S.-Canada Power System Outage Task Force, Final Report on the August 14, 2003 Blackout in the United States and Canada: Causes and Recommendations, at 80 (2004) (Final Blackout Report).

[8] Multiple impedance relays are installed at each end of a transmission line, with each used to protect a certain percentage, or zone, of the local transmission line and remote lines. Zone 3 relays and zone 2 relays set to operate like zone 3 relays (zone 3/zone 2 relays) are typically set to reach 100 percent of the protected transmission line and more than 100 percent of the longest line (including any series elements such as transformers) that emanates from the remote buses.

[9] August 14, 2003 Blackout: NERC Actions to Prevent and Mitigate the Impacts of Future Cascading Blackouts, at 13 (2004) (NERC Report).

[10] Final Blackout Report at 158.

[11] NERC explains in general that it decided to make PRC–023–1 voltage-level-specific because the definition of what is included in the "bulk electric system" varies throughout the eight Regional Entities and because the effects of PRC–023–1 are not constrained to regional boundaries. For example, if one Region has purely performance-based criteria and an adjoining Region has voltage-based criteria, these criteria may not permit consideration of the effects of protective relay operation in one Region upon the behavior of facilities in the adjoining Region. NERC Petition at 18–19, 39–41.

[12] In this Final Rule, we occasionally use the shorthand "100 kV–200 kV facilities" to refer to transmission lines and transformers with low-voltage terminals operated or connected between 100 kV and 200 kV.

[13] In this Final Rule, we use the terms "bulk electric system" and "Bulk-Power System." "Bulk electric system" is defined in the NERC Glossary of Terms Used in Reliability Standards, and generally includes facilities operated at voltages at and above 100 kV. *See* NERC Glossary of Terms Used in Reliability Standards at 2. "Bulk-Power System" is defined in section 215 of the FPA, and does not include a voltage threshold. *See* 16 U.S.C. 824o(a)(1). In Order No. 693, the Commission explained that while it would rely on the NERC definition of bulk electric system during the start-up phase of the mandatory Reliability Standard regime, the statutory Bulk-Power System encompasses more facilities than are included in

Continued

7. Attachment A to the Reliability Standard specifies which protection systems are subject to and excluded from the Standard's Requirements. Section 1 of Attachment A provides that the Reliability Standard applies to any protective functions that can operate with or without time delay, on load current, including but not limited to: (1) Phase distance; (2) out-of-step tripping; (3) switch-on-to-fault; (4) overcurrent relays; and (5) communication-aided protection applications.[14] Section 2 states that the Reliability Standard requires evaluation of out-of-step blocking schemes [15] to ensure that they do not operate for faults during the loading conditions defined in the Standard's Requirements. Finally, section 3 expressly excludes from the Reliability Standard's Requirements: (1) Relay elements enabled only when other relays or associated systems fail (*e.g.,* overcurrent elements enabled only during abnormal system conditions or a loss of communications); (2) protection relay systems intended for the detection of ground fault conditions or for protection during stable power swings; (3) generator protection relays susceptible to load; (4) relay elements used only for special protection systems applied and approved in accordance with Reliability Standards PRC–012 through PRC–017; [16] (5) protection relay systems designed to respond only in time periods that allow operators 15 minutes or longer to respond to overload conditions; (6) thermal emulation relays used in conjunction with dynamic facility ratings; (7) relay elements associated with DC line; and (8) relay elements associated with DC converter transformers.

B. Requirements

8. Reliability Standard PRC–023–1 consists of three Requirements. Requirement R1 directs entities to set their relays according to one of the options set forth in sub-requirements R1.1 through R1.13. Requirement R2 contains directives for entities that set their relays according to sub-requirements R1.6 through R1.9, R1.12, or R1.13. Requirement R3 directs planning coordinators to designate which facilities operated between 100 kV and 200 kV are critical to the reliability of the bulk electric system and therefore must have their relays set according to one of the options in Requirement R1.

1. Requirement R1

9. Requirement R1 directs entities to set their relays according to one of thirteen specific settings (sub-requirements R1.1 through R1.13) intended to maximize loadability while maintaining Reliable Operation of the bulk electric system for all fault conditions. Entities must evaluate relay loadability at 0.85 per unit voltage and a power factor angle of 30 degrees and set their transmission line relays so that they do not operate:

R1.1. [A]t or below 150 [percent] of the highest seasonal [f]acility [r]ating of a circuit, for the available defined loading duration nearest 4 hours (expressed in amperes)[;]

R1.2. [A]t or below 115 [percent] of the highest seasonal 15-minute [f]acility [r]atingof a circuit (expressed in amperes)[;] [17]

R1.3. [A]t or below 115 [percent] of the maximum theoretical power transfer capability (using a 90-degree angle between the sending-end and receiving-end voltages and either reactance or complex impedance) of the circuit (expressed in amperes) using one of the following to perform the power transfer calculation:

R1.3.1. An infinite source (zero source impedance) with a 1.00 per unit bus voltage at each end of the line[;] [or]

R1.3.2. An impedance at each end of the line, which reflects the actual system source impedance with a 1.05 per unit voltage behind each source impedance[;]

R1.4. [O]n series compensated transmission lines[,] * * * at or below the maximum power transfer capability of the line, determined as the greater of:

[a.] 115 [percent] of the highest emergency rating of the series capacitor[;] [or]

[b.] 115 [percent] of the maximum power transfer capability of the circuit (expressed in amperes), calculated in accordance with R1.3, using the full line inductive reactance[;]

R1.5. [O]n weak source systems[,] * * * at or below 170 [percent] of the maximum end-of-line three-phase fault magnitude (expressed in amperes)[;]

R1.6. [On] transmission line relays applied on transmission lines connected to generation stations remote to load[,] * * * at or below 230 [percent] of the aggregated generation nameplate capability[;]

R1.7. [On] transmission line relays applied at the load center terminal, remote from generation stations, * * * at or below 115 [percent] of the maximum current flow from the load to the generation source under any system configuration[;]

R1.8. [On] transmission line relays applied on the bulk system-end of transmission lines that serve load remote to the system[,] * * * at or below 115 [percent] of the maximum current flow from the system to the load under any system configuration[;]

R1.9. [On] transmission line relays applied on the load-end of transmission lines that serve load remote to the bulk system[,] * * * at or below 115 [percent] of the maximum current flow from the load to the system under any system configuration[;]

R1.10. [On] transformer fault protection relays and transmission line relays on transmission lines terminated only with a transformer[,] * * * at or below the greater of:

[a.] 150 [percent] of the applicable maximum transformer nameplate rating (expressed in amperes), including the forced cooled ratings corresponding to all installed supplemental cooling equipment[;] [or]

[b.] 115 [percent] of the highest operator established emergency transformer rating[;]

R1.11. For transformer overload protection relays that do not comply with R1.10[,] [the entity must either]. * * *

[a.] Set the relays to allow the transformer to be operated at an overload level of at least 150 [percent] of the maximum applicable nameplate rating, or 115 [percent] of the highest operator established emergency transformer rating, whichever is greater. The protection must allow this overload for at least 15 minutes to allow for the operator to take controlled action to relieve the overload[;] [or]

[b.] Install supervision for the relays using either a top oil or simulated winding hot spot temperature element. The setting should be no less than 100° C for the top oil or 140° C for the winding hot spot temperature[;] [18]

R1.12. When the desired transmission line capability is limited by the requirement to adequately protect the transmission line, set the transmission line distance relays to a maximum of 125 [percent] of the apparent impedance (at the impedance angle of the transmission line) subject to the following constraints:

R1.12.1. Set the maximum torque angle (MTA) to 90 degrees or the highest supported by the manufacturer[;]

R1.12.2. Evaluate the relay loadability in amperes at the relay trip point at 0.85 per unit voltage and a power factor angle of 30 degrees[;] [and]

R1.12.3. Include a relay setting component of 87 [percent] of the current calculated in R1.12.2 in the [f]acility [r]ating determination for the circuit[;]

R1.13. [Finally,] [w]here other situations present practical limitations on circuit capability, [entities can] set the phase

NERC's definition of the bulk electric system. *Mandatory Reliability Standards for the Bulk-Power System,* Order No. 693, FERC Stats. & Regs. ¶ 31,242, at P 75–76; *order on reh'g,* Order No. 693–A, 120 FERC ¶ 61,053 (2007).

[14] Section 1.5 specifies that the communications aided applications subject to the Reliability Standard include, but are not limited to: (1) Permissive overreach transfer trip; (2) permissive under-reach transfer trip; (3) directional comparison blocking; and (4) directional comparison unblocking.

[15] "Out-of-step blocking" refers to a protection system that is capable distinguishing between a fault and a power swing. If a power swing is detected, the protection system, "blocks," or prevents the tripping of its associated transmission facilities.

[16] The Commission has not yet acted on PRC–012–0, PRC–013–0, or PRC–014–0 because it is awaiting further information from the ERO.

[17] NERC includes a footnote that states "[w]hen a 15-minute rating has been calculated and published for use in real-time operations, the 15-minute rating can be used to establish the loadability requirement for the protective relays."

[18] NERC includes a footnote that states: "IEEE [S]tandard C57.115, Table 3, specifies that transformers are to be designed to withstand a winding hot spot temperature of 180 degrees C, and cautions that bubble formation may occur above 140 degrees C."

protection relays so they do not operate at or below 115 [percent] of such limitations.

2. Requirement R2

10. Requirement R2 provides that entities that set their relays according to sub-requirements R1.6 through R1.9, R1.12, or R1.13 must use the calculated circuit capability as the circuit's facility rating and must obtain the agreement of the planning coordinator, transmission operator, and reliability coordinator with authority over the facility as to the calculated circuit capability.

3. Requirement R3

11. Requirement R3 directs planning coordinators to designate which facilities operated between 100 kV and 200 kV are critical to the reliability of the bulk electric system and therefore must have their relays set according to one of the options in Requirement R1. Sub-requirement R3.1 requires planning coordinators to have a process to identify critical facilities. Sub-requirement R3.1.1 specifies that the process must consider input from adjoining planning coordinators and affected reliability coordinators. Sub-requirements R3.2 and R3.3 require planning coordinators to maintain a list of critical facilities and provide it to reliability coordinators, transmission owners, generator owners, and distribution providers within 30 days of initially establishing it, and 30 days of any subsequent change.

III. Discussion

A. Overview

12. The Commission approves PRC–023–1, finding that it is just and reasonable, not unduly discriminatory or preferential and in the public interest. The Commission also directs the ERO to develop modifications to PRC–023–1 through its Reliability Standards development process to address specific concerns identified by the Commission and sets specific deadlines for these modifications. Similar to our approach in Order No. 693,[19] we view such directives as separate from approval, consistent with our authority under section 215(d)(5) of the FPA to direct the ERO to develop a modification to a Reliability Standard.

B. Approval of PRC–023–1

1. NOPR Proposal

13. On May 21, 2009, the Commission issued a Notice of Proposed Rulemaking (NOPR) proposing to approve PRC–023–1 as mandatory and enforceable.[20] As a separate action, pursuant to section 215(d)(5) of the FPA, the Commission proposed to direct certain modifications to the Reliability Standard.

2. Comments

14. While commenters universally support the Commission's proposal to approve PRC–023–1,[21] most commenters oppose the majority of the Commission's proposed modifications. Some commenters argue that the Commission's proposed modifications violate Order No. 693 because they prescribe specific changes that would dictate the content of the modified Reliability Standard.

3. Commission Determination

15. Pursuant to section 215(d)(2) of the FPA,[22] the Commission approves PRC–023–1 as just, reasonable, not unduly discriminatory or preferential, and in the public interest. The Commission finds that PRC–023–1 is a significant step toward improving the reliability of the Bulk-Power System in North America because it requires load-responsive phase protection relay settings to provide essential facility protection for faults, while allowing the Bulk-Power System to be operated in accordance with established facility ratings.

16. Also, pursuant to section 215(d)(5) of the FPA, the Commission adopts some of the proposed modifications in the NOPR and thus directs certain modifications to the Reliability Standard. Unless stated otherwise, the Commission directs the ERO to submit these modifications no later than one year from the date of this Final Rule. We will address each proposal and the specific comments received on each proposal in the remainder of this Final Rule.

17. With regard to the concerns raised by some commenters about the prescriptive nature of the Commission's proposed modifications, we agree that, consistent with Order No. 693, a direction for modification should not be so overly prescriptive as to preclude the consideration of viable alternatives in the ERO's Reliability Standards development process. However, some guidance is necessary, as the Commission explained in Order No. 693:

> [I]n identifying a specific matter to be addressed in a modification * * * it is important that the Commission provide sufficient guidance so that the ERO has an understanding of the Commission's concerns and an appropriate, but not necessarily exclusive, outcome to address those concerns. Without such direction and guidance, a Commission proposal to modify a Reliability Standard might be so vague that the ERO would not know how to adequately respond.[23]

18. Thus, in some instances, while we provide specific details regarding the Commission's expectations, we intend by doing so to provide useful guidance to assist in the Reliability Standards development process, not to impede it. As we explained in Order No. 693, we find that this is consistent with statutory language that authorizes the Commission to order the ERO to submit a modification "that addresses a specific matter" if the Commission considers it appropriate to carry out section 215 of the FPA.[24] In this Final Rule, we have considered commenters' concerns and, where a directive for modification appears to be determinative of the outcome, the Commission provides flexibility by directing the ERO to address the underlying issue through the Reliability Standards development process without mandating a specific change to PRC–023–1.[25] Consequently, consistent with Order No. 693, we clarify that where the Final Rule identifies a concern and offers a specific approach to address that concern, we will consider an equivalent alternative approach provided that the ERO demonstrates that the alternative will adequately address the Commission's underlying concern or goal as efficiently and effectively as the Commission's proposal.[26]

19. Consistent with section 215 of the FPA, our regulations, and Order No. 693, any modification to a Reliability Standard, including a modification that addresses a Commission directive, must be developed and fully vetted through NERC's Reliability Standards development process.[27]

C. Applicability

20. As proposed by NERC, PRC–023–1 does not apply to any facility operated or connected between 100 kV and 200 kV unless the relevant planning coordinator designates the facility as "critical" to the reliability of the bulk electric system. In the NOPR, the

[19] *See supra* n.13.

[20] *Transmission Relay Loadability Reliability Standard,* Notice of Proposed Rulemaking, 74 FR 35830 (Jul. 21, 2009), FERC Stats. & Regs. ¶ 32,642 (2009) (NOPR).

[21] *See, e.g.,* NERC Comments, EEI, TAPS, APPA, NARUC, EPSA, Exelon.

[22] 16 U.S.C. 824o(d)(2).

[23] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 185.

[24] *Id.* P 186.

[25] *Id.*

[26] *Id.*

[27] *Id.* P 187.

Commission described this as an "add in" approach to applicability.[28]

21. Requirement R3 of PRC–023–1 directs planning coordinators to determine which 100 kV–200 kV facilities are critical to the reliability of the bulk electric system, and therefore subject to the Reliability Standard; it does not, however, define "critical to the reliability of the bulk electric system" or provide planning coordinators with a test to identify critical facilities.

1. NOPR Proposal

22. In the NOPR, the Commission stated that it expects planning coordinators to use a process to carry out Requirement R3 that is consistent across regions and robust enough to identify all facilities that should be subject to PRC–023–1. The Commission expressed concern that, based on the information in NERC's petition, the "add in" approach proposed by NERC would fail to meet these expectations.

23. The Commission explained that since approximately 85 percent of circuit miles of electric transmission are operated at or below 253 kV, the "add in" approach could, at the outset, effectively exempt from the Reliability Standard's requirements a large percentage of facilities that should otherwise be subject to the Standard. The Commission also cited a letter from NERC to industry stakeholders discussing the results of an "add in" approach in the context of industry's self-identification of Critical Cyber Assets. According to the Commission, the letter was an acknowledgement from NERC that the "add in" approach failed to produce a comprehensive list of Critical Cyber Assets.[29] The Commission further observed that NERC failed to provide a technical basis for the "add in" approach, and did not support its claim that expanded application of PRC–023–1 would double implementation costs and distract industry resources from more important areas. The Commission added that PRC–023–1 was developed to prevent cascading outages, and that no area has a greater impact on the reliability of the bulk electric system than the prevention of cascading outages.

24. The Commission emphasized that PRC–023–1 must apply to relay settings on all critical facilities for it to achieve its intended reliability objective.[30] In order to meet this goal, the Commission stated that the process for identifying critical 100 kV–200 kV facilities must include the same system simulations and assessments as the Transmission Planning (TPL) Reliability Standards for reliable operation for all categories of contingencies used in transmission planning for all operating conditions. The Commission also stated that it expects a comprehensive review to identify nearly every 100 kV–200 kV facility as a critical facility. In light of this expectation, and coupled with its concern about the "add in" approach, the Commission proposed to direct the ERO to adopt a "rule out" approach to applicability; that is, to modify PRC–023–1 so that it applies to relay settings on all 100 kV–200 kV facilities, with the possibility of case-by-case exceptions for facilities that are not critical to the reliability of the bulk electric system and demonstrably would not result in cascading outages, instability, uncontrolled separation, violation of facility ratings, or interruption of firm transmission service.[31]

25. Finally, the Commission proposed to direct the ERO to adopt an "add in" approach to sub-100 kV facilities that Regional Entities have identified as critical to the reliability of the bulk electric system.[32] The Commission explained that owners and operators of such facilities are defined as transmission owners/operators for the purposes of NERC's Compliance Registry,[33] and that sub-100 kV facilities can be included in regional definitions of the bulk electric system.[34] The Commission also stated that NERC failed to provide a sufficient technical record to justify excluding such facilities from the scope of the Reliability Standard.

2. Comments

26. In response to the NOPR, the Commission received comments addressing its remarks about the test that planning coordinators must use to implement Requirement R3 and its proposals to direct the ERO to adopt the "rule out" approach for 100 kV–200 kV facilities and the "add in" approach for sub-100 kV facilities.

a. Comments on the Test That Planning Coordinators Must Use To Implement Requirement R3

27. Commenters generally agree with the Commission that the process for identifying critical facilities pursuant to Requirement R3 should include the same simulation and assessments required by the TPL Reliability Standards for all operating conditions. However, commenters disagree with the Commission's expectation that planning coordinators will identify nearly every 100 kV–200 kV facility as a critical facility. For example, Duke reports that it has applied the existing TPL standards to its Midwest and Carolina systems and has not identified any sub-200 kV facility as a critical facility (*i.e.,* there have been no showings that the loss of any such facilities could result in cascading outages, instability, or uncontrolled separation). Other commenters maintain that the Commission's expectation is not supported by any technical evidence and depends on a circular definition between "above 100 kV" and "critical to the reliability of the bulk electric system."[35]

28. NERC recognizes the need for consistent criteria across North America for identifying critical 100 kV–200 kV facilities and proposes to work through industry to develop it.[36] Although NERC did not propose a test in PRC–023–1, in its comments it did provide the suggestions for identifying operationally significant 100 kV–200 kV facilities that the NERC System Protection and Control Task Force provided to Regional Entities in 2004 and 2005 during the voluntary Beyond Zone 3 relay review and mitigation program.[37] During that program, NERC suggested that Regional Entities identify:

All circuits that are elements of flowgates[38] in the Eastern Interconnection,

[28] NOPR, FERC Stats. & Regs. ¶ 32,642 at P 40.

[29] *Id.*

[30] *Id.* P 42.

[31] *Id.* P 43.

[32] *Id.* P 45.

[33] NERC's Compliance Registry is a listing of organizations subject to compliance with mandatory Reliability Standards. *See* NERC Rules of Procedure, Section 500. NERC's Statement of Compliance Registry Criteria, which sets forth thresholds for registration, defines "transmission owner/operator" as:

III.d.1 An entity that owns or operates an integrated transmission element associated with the bulk power system 100 kV and above, or lower voltage as defined by the Regional Entity necessary to provide for the reliable operation of the interconnected transmission grid; or

III.d.2 An entity that owns/operates a transmission element below 100 kV associated with a facility that is included on a critical facilities list defined by the Regional Entity.

See NERC Statement of Compliance Registry Criteria at 9.

[34] NERC defines the bulk electric system as follows:

As defined by the Regional Reliability Organization, the electrical generation resources, transmission lines, interconnections with neighboring systems, and associated equipment, generally operated at voltages of 100 kV or higher. Radial transmission facilities serving only load with one transmission source are generally not included in this definition.

See NERC Glossary of Terms Used in Reliability Standards at 2.

[35] *See, e.g.,* Basin, Exelon, and WECC.

[36] NERC Comments at 12.

[37] For a discussion of the Beyond Zone 3 relay review and mitigation program, *see infra* P 34.

[38] A "flowgate" is a single or group of transmission elements intended to model MW flow

Commercially Significant Constraints in the Texas Interconnection, or Rated Paths in the Western Interconnection. This includes both the monitored and outage element for OTDF [Outage Transfer Distribution Factor] sets.[39]

All circuits that are elements of system operating limits (SOLs) and interconnection reliability operating limits (IROLs), including both monitored and outage elements.

All circuits that are directly related to off-site power supply to nuclear plants. Any circuit whose outage causes unacceptable voltages on the off-site power bus at a nuclear plant must be included, regardless of its proximity to the plant.

All circuits of the first 5 limiting elements (monitored and outaged elements) for transfer interfaces[40] determined by regional and interregional transmission reliability studies. If fewer than 5 limiting elements are found before reaching studied transfers, all should be listed.

Other circuits determined and agreed to by the reliability authority/coordinator and the Regional Reliability Organizations.

29. In its comments, APPA proposes that the Commission direct NERC to develop a process whereby each region can develop a specific methodology to ensure consistent, verifiable identification of critical facilities.

b. Comments on the "Rule Out" Approach

30. Commenters unanimously oppose the "rule out" approach. In general, they argue that it is unnecessary, extremely costly, and potentially detrimental to reliability.

31. NERC, EEI, and WECC argue that the cascade of 138 kV lines that occurred during the August 2003 blackout would not have occurred if the 345 kV lines in their vicinity had not tripped, and that the 345 kV lines would not have tripped if PRC–023–1 had been in effect prior to the blackout.[41] EEI, PG&E, and SRP add that whenever a facility between 100 kV and 200 kV trips on load, it is almost always because of preceding faults at higher voltages.

32. Some commenters argue that the majority of facilities between 100 kV and 200 kV are not critical to the reliability of the bulk electric system and are unlikely to contribute to cascading outages at higher voltages. APPA, EEI, and WECC state that most wide-area bulk power transfers flow on high voltage facilities, while most sub-200 kV facilities support local distribution service.[42] SRP asserts that a malfunction on a 100 kV–200 kV line typically causes an outage only for the load connected to the faulted part of the line, leaving the rest of the line unaffected; PG&E makes the related claim that the tripping of a 100 kV–200 kV facility generally has a low impact on the reliability of higher voltage systems, even when the two systems run in parallel. APPA argues that cascading outages at higher voltages are unlikely to be arrested by relay action at lower voltages. EEI adds that many 100 kV–200 kV facilities are designed to support local distribution service and their related protection systems are set to ensure separation, including load shedding, if disturbances or system events take place. EEI asserts that these systems ensure "controlled separation" that, by definition, does not involve the Bulk-Power System.

33. Commenters also argue that the "rule out" approach is a costly and inefficient use of limited industry resources that will place an unreasonable burden on small entities and require utilities to incur unnecessary upfront costs, forego other important initiatives, and direct money and personnel away from the work necessary to ensure the day-to-day reliability of the bulk electric system.

34. NERC states that it modeled PRC–023–1 on two post-blackout relay review and mitigation programs (the Zone 3 Review and Beyond Zone 3 Review) that focused primarily on facilities operated at or above 200 kV, and that these programs give it a basis for concluding that the costs of the "rule out" approach are extremely high.[43] NERC reports that these programs took over three years to complete, required close to 150,000 hours of labor, cost almost $18 million, and resulted in mitigation costs (equipment change-outs or additions) of approximately $65 million, or $111,500 per terminal. Based on a survey of industry conducted after the NOPR, NERC estimates that a review and mitigation program for all facilities between 100 kV and 200 kV would far exceed these costs in time and money. NERC estimates that such a program would entail review of approximately 53,000 terminals, require close to 340,000 hours of labor, and cost almost $41 million.[44] Based on the results of the previous review programs, NERC estimates that at least 11,400 terminals could be out-of-compliance and that mitigation could take between 5 and 10 years and cost approximately $590 million.[45] In contrast, NERC estimates that the "add in" approach would entail review of only 2,400 terminals and require mitigation for approximately 500, roughly 240 of which would require equipment replacement.[46]

35. Some commenters argue that the "rule out" approach may adversely affect reliability. Exelon is concerned that the "rule out" approach may unintentionally result in the over-inclusion of facilities subject to PRC–023–1. Exelon believes that such over-inclusion will take a known and successful backup protection scheme and make it less effective. Exelon explains that over-inclusion will increase the risk of certain instances of backup relaying not tripping when it should, thus allowing what would otherwise be a minor disturbance to expand unnecessarily.[47] Consumers Energy and Entergy argue that the "rule out" approach will require entities to divert scarce resources from other duties that are essential to reliability, thereby adversely affecting reliability. Basin argues that the complexity of integrating PRC–023–1 with other Reliability Standards for lower voltage lines will divert personnel from more important aspects of the Reliability Standards and adversely affect reliability.

36. In addition to these arguments, commenters oppose the "rule out" approach on the grounds that it: (1) Fails to give due weight to the technical expertise of the ERO, as required by section 215(d)(2) of the FPA; (2) violates Order No. 693 because it prescribes a specific change that will dictate the content of the modified Reliability

impact relating to transmission limitations and transmission service outage. *See* Final Black Report at 214. Flowgates are operationally significant for the purpose of ensuring desirable system performance because an actual outage would present the modeled physical limitations on the bulk electric system.

[39] In the post-contingency configuration of a system under study, Outage Transfer Distribution Factor refers to the measure of the responsiveness or change (expressed in percent) in electrical loadings on transmission system facilities due to a change in electric power transfer from one area to another with one or more system facilities removed from service.

[40] An "interface" is the specific set of transmission elements between two areas or between two areas comprising one or more electrical systems. *See* Final Blackout Report at 215. An interface is operationally significant for the purpose of ensuring desirable system performance because an outage of an interface would affect IROLs.

[41] *See, e.g.,* NERC Comments at 10, 16.

[42] SRP and Y–WEA emphasize that this is especially true in the western interconnection, where sub-200 kV facilities are generally used as localized means for distributing electricity to moderately sized and geographically distant load centers. *See also* ElectriCities and NWCP.

[43] The Zone 3 Review examined 10,914 terminals operating at or above 200 kV. The Beyond Zone 3 Review examined 12,273 terminals operating at or above 200 kV and operationally significant terminals operating between 100 kV and 200 kV. NERC Comments at 9–16.

[44] *Id.* at 13–14. NERC adds that 114 transmission owners operating 100 kV–200 kV lines responded to the survey.

[45] *Id.* at 14.

[46] *Id.* at 15.

[47] *See also* Ameren at 8.

Standard;[48] (3) is inconsistent with the Commission's statements in Order No. 672 about the cost of Reliability Standards;[49] (4) rests on the unsupported assumption that planning coordinators will fail to produce a comprehensive list of critical facilities; and (5) mischaracterizes NERC's letter expressing concern about the use of an "add in" approach in the Critical Cyber Assets survey.[50]

37. In the event that the Commission adopts the "rule out" approach, commenters argue that the Commission should immediately confirm the following exclusions: (1) Facilities that are not part of a defined and routinely monitored flowgate; (2) radial transmission lines, because they are specifically excluded from the bulk electric system and are not critical to the reliability of the bulk electric system;[51] and (3) Category D Contingencies, because they involve the loss of multiple transmission facilities caused by the outage of transmission facilities other than those relevant to the Reliability Standard.

38. Commenters also disagree with what they describe as the Commission's 5-part test for case-by-case exceptions from the "rule out" approach, that is, its proposal to permit exceptions for facilities that demonstrably would not result in: (1) Cascading outages; (2) instability; (3) uncontrolled separation; (4) violation of facility ratings; or (5) interruption of firm transmission service.

39. At the outset, commenters assert that they do not understand the relationship between the 5-part test for exceptions from the "rule out" approach and the Commission's insistence that the "add in" process must include the same simulations and assessments as the TPL Reliability Standards. Commenters are unsure whether the 5-part test is in addition to, or in lieu of, the TPL assessments.

40. Commenters also challenge the substance of the 5-part test, generally arguing that it requires more than a showing that a facility is unlikely to contribute to cascading thermal outages and introduces more rigorous requirements than those in the TPL Reliability Standards. Specifically, APPA, Duke, Exelon, and TAPS argue that interruption of firm transmission service and violation of facility ratings do not belong as elements of the test because: (1) They do not result in instability, uncontrolled separation, or cascading failures, and are absent from the definition of "Reliable Operation" in section 215 of the FPA;[52] (2) avoiding an interruption of firm transmission service is a business issue; (3) a requirement specifying that the loss of a 138 kV line cannot result in interruption of local load goes beyond the requirements of existing Reliability Standards; (4) the loss of a 138 kV line does not show a loss of bulk electric system reliability; and (5) "violation of facility ratings" is unduly vague and over-broad because it is not restricted to bulk electric system facilities other than the facility in question and is not focused on violation of emergency ratings caused by an outage of the facility in question.

41. Commenters also argue that NERC should develop the test for exclusions and that there should be some mechanism for entities to challenge criticality determinations. For example, APPA argues that the Regional Entity should establish a process for entities to challenge criticality determinations.

c. *Comments on Proposal To Include Sub-100 kV Facilities*

42. Commenters also address the Commission's proposal to direct the ERO to adopt an "add in" approach to sub-100 kV facilities, with most objecting to what they perceive as the Commission's view of the Compliance Registry.[53] NERC argues that the Commission mischaracterized the nature and purpose of the Compliance Registry by suggesting that entities on the Registry must comply with all Reliability Standards for all of their facilities.[54] NERC explains that the Compliance Registry does not specify which entities must comply with any particular Reliability Standard, but that each individual Standard specifies the entities and the facilities that are subject to it. TAPS and APPA assert that a facility may be "critical" for the purpose of inclusion on the Compliance Registry, but not "operationally significant" for the purpose of avoiding cascading thermal outages. For example, TAPS states that a sub-100 kV line that connects to a black start unit and is designated as part of a transmission operator's restoration plan would be deemed critical for Compliance Registry purposes, but may not be operationally significant for purposes of thermal cascading outages.[55]

43. Several commenters request that the Commission confirm their understanding of what is required if the Commission adopts its proposal. ERCOT and TAPS request confirmation that the Reliability Standard will apply only to those sub-100 kV facilities that are already in the Compliance Registry, and that future registration will be subject to a case-by-case demonstration of criticality. Likewise, SWTDUG is concerned that the Commission's proposal will require non-registered public power entities with sub-100 kV facilities to become Registered Entities. ERCOT also requests confirmation that the only required revision to the Reliability Standard would be the addition of sub-100 kV facilities to the applicability section. ISO New England requests confirmation that the Commission does not intend to create an enforceable obligation against Regional Entities by directing them to undertake—solely for the purpose of compliance with PRC–023–1—a process to determine which sub-100 kV facilities are critical to the reliability of the bulk electric system. ISO New England asserts that NERC has already delegated to Regional Entities the role of designating critical sub-100 kV facilities as part of the Compliance Registry process.[56] ISO New England seeks clarification that the Commission's proposal merely requires the addition of a cross-reference to previous designations of criticality made pursuant to the Compliance Registry process.

44. ITC, IRC, and IESO/Hydro One support the Commission's proposal. These commenters argue that a proactive approach should be used to identify any facilities critical to the reliability of the bulk electric system.

45. NERC and EEI oppose the Commission's proposal; however, both

[48] *See e.g.,* TAPS, APPA, EEI, Ameren, Manitoba Hydro, Georgia Transmission, Tri-State, CRC, EEI, APPA, Ameren, TANC, Fayetteville Public Works Commission, and LES.

[49] In Order No. 672, the Commission stated that "[a] proposed Reliability Standard does not necessarily have to reflect the optimal method, or 'best practice,' for achieving its reliability goal without regard to implementation cost. * * * [but] should[,] however[,] achieve its reliability goal effectively and efficiently;" *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards,* Order No. 672, FERC Stats. & Regs. ¶ 31,204, at P 328, *order on reh'g,* Order No. 672–A, FERC Stats. & Regs. ¶ 31,212 (2006).

[50] *See e.g.,* Exelon, PG&E, EEI, Basin, and TAPS.

[51] *See e.g.,* ElectriCities, NWCP, Palo Alto, PSEG Companies, Pacific Northwest State Commissions, Y–WEA, and Filing Cooperatives.

[52] Section 215 defines "Reliable Operation" as "operating the elements of the bulk-power system within equipment and electric system thermal, voltage, and stability limits so that instability, uncontrolled separation, or cascading failures of such system will not occur as a result of a sudden disturbance, including a cybersecurity incident, or unanticipated failure of system elements." 16 U.S.C. 824o(a)(4).

[53] *See e.g.,* NERC, EEI, TAPS, TANC, Ontario Generation, SWTDUG, and APPA.

[54] *See also* TANC and Ontario Generation.

[55] TAPS at 16; *see also* APPA at 28.

[56] ISO New England at 3.

concede that it may have merit and should be studied through the Reliability Standards development process.[57] SWTDUG and TAPS oppose the Commission's proposal and argue that the Final Blackout Report does not support extending the Reliability Standard to relay settings on sub-100 kV facilities. TAPS maintains that the Commission must give "due weight" to NERC's exclusion of sub-100 kV facilities.

46. EPSA argues that the Commission's proposal lacks technical support and fails to identify a specific reliability gap. EPSA contends that the Commission should use "Reliability Engineering" to determine if its project has a technical basis. EEI argues that few sub-100 kV facilities are critical to the reliability of the bulk electric system. EEI states that because it usually requires multiple 69 kV lines to replace one 138 kV line, it is highly unlikely that sub-100 kV facilities will cause a major cascade. EEI asserts that it is much more likely that sub-100 kV facilities will trip to end a cascade, as occurred during the August 2003 blackout.

3. Commission Determination

47. As discussed more fully below, we decline to direct the ERO to adopt the "rule out" approach for 100 kV–200 kV facilities. However, we adopt the NOPR proposal and direct the ERO to modify PRC–023–1 to apply an "add in" approach to certain sub-100 kV facilities that Regional Entities have already identified or will identify in the future as critical facilities for the purposes the Compliance Registry.[58] Finally, we direct the ERO to modify Requirement R3 of the Reliability Standard to include the test that planning coordinators must use to identify sub-200 kV facilities that are critical to the reliability of the bulk electric system.

a. "Rule Out" Approach

48. We will not direct the ERO to adopt the "rule out" approach. After further consideration, we conclude that our concerns about the "add in" approach can be addressed by directing the ERO to modify Requirement R3 of the Reliability Standard to specify a comprehensive and rigorous test that all planning coordinators must use to identify all critical facilities.

49. In the NOPR, the Commission explained that PRC–023–1 must apply to relay settings on all critical facilities between 100 kV and 200 kV for it to achieve its intended reliability objective. The Commission also stated that planning coordinators must use a process to carry out Requirement R3 that is consistent across regions and robust enough to identify all facilities that should be subject to the Reliability Standard. The Commission expressed concern, however, that NERC's "add in" approach could effectively exempt from the Reliability Standard's Requirements a large percentage of facilities that should otherwise be subject to the Standard. Since NERC did not propose any test for the Commission to consider, the Commission proposed the "rule out" approach to ensure that planning coordinators identify all critical facilities between 100 kV and 200 kV.

50. After reflecting on the rationale behind the "rule out" approach—namely, the goal of ensuring that planning coordinators identify all critical facilities between 100 kV and 200 kV—and considering the comments, we conclude that, from a reliability standpoint, it should not matter whether PRC–023–1 employs an "add in" approach or a "rule out" approach because both approaches should ultimately result in the same list of critical facilities. In other words, given a uniform and robust test, the facilities that would be "added in" under an "add in" approach should be the same as the facilities that would remain subject to the Reliability Standard after non-critical facilities are ruled out under the "rule out" approach. Instead of concerning ourselves with the merits of an "add in" or "rule out" approach, the Commission will focus on the test methodology that a planning coordinator uses to either "add in" or "rule out" a facility. If that test is lacking, PRC–023–1's reliability objective will not be achieved regardless of whether an "add in" approach or a "rule out" approach is adopted. Consequently, we decline to adopt the NOPR proposal and will not require the ERO to adopt the "rule out" approach. Instead, as discussed below, we direct the ERO to modify Requirement R3 of the Reliability Standard to specify the test that planning coordinators must use to identify all critical facilities.

51. In light of our decision, we do not need to address commenters' objections to the "rule out" approach or speculation about the number of 100 kV–200 kV facilities that are critical to the reliability of the Bulk-Power System. Nevertheless, we do not accept the claim that if PRC–023–1 had been in effect at the time of the August 2003 blackout, it would have prevented the 345 kV lines from tripping and therefore prevented the 100 kV–200 kV lines from tripping. We also disagree with commenters' claim that the majority of facilities between 100 kV and 200 kV are unlikely to contribute to cascading outages at higher voltages.

52. We disagree with commenters' assertion that if PRC–023–1 had been in effect at the time of the August 2003 blackout, it would have prevented the 345 kV lines from tripping and therefore prevented the 100 kV–200 kV lines from tripping. On the day of the blackout, the Harding-Chamberlin, Hanna-Juniper, and Star-South Canton 345 kV lines all tripped in a span of less than 45 minutes. Each of these lines tripped and locked out because of contact with an overgrown tree.[59] As each line failed, its outage increased the load on the remaining 138 kV and 345 kV lines, including the 345 kV Sammis-Star line,[60] and shifted power flows to other transmission paths. Starting at 15:39 EDT, the first of an eventual sixteen 138 kV lines began to fail. The tripping of these 138 kV lines occurred because the loss of the combination of the Hardin-Chamberlin, Hanna-Juniper, and Star-South Canton 345 kV lines overloaded the 138 kV system with electricity flowing toward the Akron and Cleveland loads.[61] In other words, the cascade of 138 kV lines was precipitated by faults caused by tree contact, not protective relays, and would not have been prevented if PRC–023–1 had been in effect before the blackout.

53. As the 138 kV lines opened, they blacked out customers in Akron and in the area west and south of Akron, ultimately dropping about 600 MW of load.[62] Even this load shedding was not enough to offset the cumulative effect of the 138 kV line outages on the increased loadings of the 345 kV Sammis-Star line. The Sammis-Star line tripped at 16:05:57 EDT and triggered a cascade of interruptions on the high voltage system, causing electrical fluctuations and facility trips such that within seven minutes the blackout rippled from the Cleveland-Akron area across much of the northeast United States.[63]

54. Unlike the Hardin-Chamberlin, Hanna-Juniper, and Star-South Canton lines, which tripped because of tree contact, the Sammis-Star line tripped due to protective zone 3 relay action that measured low apparent impedance (depressed voltage divided by

[57] NERC Comments at 18–19; EEI at 17–18.

[58] Examples of such facilities include black start generation and the "cranking path" from the generators to the bulk electric system.

[59] Final Blackout Report at 57–61; 63–64.

[60] *Id.* at 70.

[61] *Id.* at 69–70.

[62] *Id.* at 68.

[63] *Id.* at 74.

abnormally high line current).[64] There was no fault and no major power swing at the time of the trip; rather, high flows above the line's emergency rating together with depressed voltage caused the overload to appear to the protective relays as a remote fault on the system.[65] In effect, the relay could no longer differentiate between a remote three-phase fault and an exceptionally high loading condition. The relay operated as it was designed to do.[66]

55. To the extent that commenters' argument is that PRC–023–1 would have prevented the loss of the Sammis-Star line, and therefore the subsequent spread of the blackout, we do not think that it is possible to definitively reach these conclusions on the present record.

56. Requirement R1 of PRC–023–1 directs entities to evaluate relay loadability at 0.85 per unit voltage and a power factor angle of 30 degrees. Figure 6.4 of the Final Blackout Report indicates that the power factor angle recorded at the time the Sammis-Star line tripped was about 27 degrees. Although the system was in a marginally stable operating stage, it would not require major changes to effect a further change on the loading or further increasing the power factor angle on this line to beyond 30 degrees. In other words, purely from the power factor angle viewpoint, the Sammis-Star line trip may still have occurred even if the relay loadability evaluation requirement of 30 degrees was met. In fact, in a white paper explaining the engineering assumptions and rationales behind the Requirements in PRC–023–1, the NERC System Protection and Control Task Force specifically stated that:

> [T]he most important point to understand [about the relay loadability evaluation requirement in Requirement R1] is that the loadability recommendations are not absolute system conditions. They represent a typical system operation point during an extreme system condition. The voltage at the relay may be below the 0.85 per unit voltage and the power factor angle may be greater than 30 degrees. It is up to the relay settings engineer to provide the necessary margin as is done in all relay settings.[67]

We agree with the NERC System Protection and Control Task Force, and caution that setting relays pursuant to PRC–023–1 simply based on a static and typical system operation point, without validating the relay settings based on system conditions that the relays could experience, and without acceptable margins applied to the minimum voltages and power factor angles, may not achieve the reliability goals intended by PRC–023–1.

57. Consequently, we believe that it is not possible to conclude whether the Sammis-Star line would have tripped on loadability if PRC–023–1 had been in effect without first setting its zone 3 relay pursuant to PRC–023–1 and then validating the setting against the voltages, currents, and power factor angles that were recorded during the August 2003 Blackout. In fact, it is our view that a similar process should be followed for the 345 kV lines in Michigan that tripped following the loss of Sammis-Star line to determine whether PRC–023–1 would have prevented the blackout.

58. We also disagree with commenters' assertion that that majority of facilities between 100 kV and 200 kV are unlikely to contribute to cascading outages at higher voltages. Prior to the dynamic cascading stage that began with the loss of the 345 kV Sammis-Star line, when the system was still in a marginally stable operating state (albeit not within IROLs, as shown in Figure 5.12 in the Final Blackout Report), it was the loss of several 138 kV facilities that contributed to the subsequent increased loading on the 345 kV Sammis-Star line and resulted in its tripping.[68] A more recent example of a cascade initiating at the 138 kV voltage level and spreading to higher voltages is the Florida Power and Light 2008 blackout event. This event started at the 138 kV level and cascaded into additional 138 kV, 230 kV, and 500 kV facilities. Because the operation of the protective relay is dependent on the apparent impedance, *i.e.* voltage and current quantities as measured by the relay irrespective of voltage class, application of PRC–023–1 at only the higher voltage would not have prevented these events. We believe that only a valid assessment with an acceptable set of test criteria could determine whether 100 kV–200 kV facilities are critical facilities, and therefore whether they need to be set pursuant to PRC–023–1 to prevent such undesirable system performance.

59. Finally we agree with APPA that cascading outages at higher voltages are unlikely to be arrested by relay action at lower voltages. Reliability Standard PRC–023–1 is for preventing inadvertent tripping of Bulk-Power System facilities which could then initiate cascading outages at any voltage level, and not for arresting cascading outages.

b. "Add in" Approach to Sub-100 kV Facilities

60. With respect to sub-100 kV facilities, we adopt the NOPR proposal and direct the ERO to modify PRC–023–1 to apply an "add in" approach to sub-100 kV facilities that are owned or operated by currently-Registered Entities or entities that become Registered Entities in the future, and are associated with a facility that is included on a critical facilities list defined by the Regional Entity.[69] We also direct that additions to the Regional Entities' critical facility list be tested for their applicability to PRC–023–1 and made subject to the Reliability Standard as appropriate.

61. Most of the comments opposing the Commission's proposal regarding sub-100 kV facilities relate to what commenters perceive to be the Commission's view of the relationship between individual Reliability Standards and the Compliance Registry. For example, NERC argues that the Commission mischaracterized the nature and purpose of the Compliance Registry by suggesting that entities on the Registry must comply with all Reliability Standards for all of their facilities without regard to the applicability provisions of individual Standards. We did not intend to create this impression. We agree with NERC that the Compliance Registry does not specify which entities must comply with any particular Reliability Standard. Rather, the applicability provision of each individual Standard specifies the categories of entities, *i.e.,* functions, and at times the categories of facilities that are subject to it.

62. We also agree with TAPS and APPA that it is possible, at least in theory, that a sub-100 kV facility that has been identified by a Regional Entity as critical for the purposes of the Compliance Registry might not be "critical" with respect to PRC–023–1. Thus, we clarify that we do not require the modified Reliability Standard to apply to all sub-100 kV facilities that have been identified by Regional Entities as critical facilities, but only to those that have been identified by Regional Entities as critical facilities and are also identified by planning coordinators, pursuant to the test

[64] *Id.* at 77–78. *See* Figure 6.4.

[65] *Id.* at 77.

[66] *Id.*

[67] NERC Planning Committee, System Protection and Control Task Force, "Increase Line Loadability by Enabling Load Encroachment Functions of Digital Relays," December 7, 2005 at A–1.

[68] Final Blackout Report at 64.

[69] As mentioned above, section III.d.2 of the Statement of Compliance Registry Criteria defines "transmission owner/operator" as: "[a]n entity that owns/operates a transmission element below 100 kV associated with a facility that is included on a critical facilities list defined by the Regional Entity."

directed to be developed herein, as critical to the reliability of the Bulk-Power System. In other words, the modification that we direct in this Final Rule extends the scope of the Reliability Standard to include any sub-100 kV facility that is: (1) Owned or operated by a currently-Registered Entity or an entity that becomes a Registered Entity in the future; (2) associated with a facility that is included on a critical facilities list defined by the Regional Entity; (3) employing load-responsive phase protection relays in its protection system(s); and (4) identified by the test directed to be developed herein.[70]

63. Along these same lines, ERCOT, SWTDUG, and TAPS are concerned that the Commission's proposal will require non-registered public power entities with sub-100 kV facilities to become Registered Entities. As we have said, our directive applies only to sub-100 kV facilities that are owned or operated by currently-Registered Entities or entities that become Registered Entities in the future, and are associated with a facility that is included on a critical facilities list defined by the Regional Entity; it is not intended to supplant the process that Regional Entities use to determine if a sub-100 kV facility should be identified as a critical facility or if an entity should be a Registered Entity. Similarly, our purpose is not to extend the definition or the scope of the bulk electric system *sub rosa;* it is to ensure that PRC–023–1 applies to all critical facilities as identified in the applicability section so that the Reliability Standard can achieve its reliability objective. Consequently, we do not intend to require any non-Registered Entity to register on account of PRC–023–1. Nevertheless, there might be sub-100 kV facilities that are owned or operated by non-Registered Entities that are identified by planning coordinators, pursuant to the test directed to be developed herein, as critical facilities. While we do not require that these entities become Registered Entities solely due to PRC–023–1, if a planning coordinator applying the test directed to be developed herein identifies a sub-100 kV facility that belongs to a non-Registered Entity as a critical facility, we expect that the planning coordinator will inform the Regional Entity and that the Regional Entity will consider this information in light of its existing registration guidelines and procedures.[71] Similarly, we expect that Regional Entities will consider this information when determining whether a sub-100 kV facility should be included in a regional definition of the bulk electric system.[72]

64. With respect to ISO New England's request for confirmation that the Commission does not intend to create an enforceable obligation against Regional Entities by directing them to undertake—solely for the purpose of compliance with PRC–023–1—a process to determine which sub-100 kV facilities are critical to the reliability of the Bulk-Power System, it should be clear from what we have already said that we do not intend to create such an obligation. As we have explained, our directive requires planning coordinators, not Regional Entities, to determine which sub-100 kV facilities should be subject to the Reliability Standard. Moreover, we agree with ISO New England's assertion that Regional Entities have already been delegated by NERC the role of designating critical sub-100 kV facilities as part of the Compliance Registry process.[73]

65. Some commenters question the technical basis for extending PRC–023–1 to sub-100 kV facilities. For example, EEI argues that because it usually requires multiple 69 kV lines to replace one 138 kV line, it is highly unlikely that sub-100 kV facilities will cause a major cascade and much more likely that sub-100 kV facilities will trip to end a cascade, as occurred during the August 2003 blackout. EPSA argues that the Commission should apply "Reliability Engineering" to determine whether there is a technical basis for its proposal. SWTDUG and TAPS argue that the Final Blackout Report does not support extending the Reliability Standard to relay settings on sub-100 kV facilities.

66. We will not follow EPSA's suggestion to use Reliability Engineering to identify critical facilities. In our view, it is more appropriate to identify critical sub-100 kV facilities (and, for that matter, critical 100 kV–200 kV facilities) by using established criteria specific to the electric industry.[74] The TPL Reliability Standards establish desired system performance requirements specific to a set of contingencies under a set of base cases that cover critical system conditions of the Bulk-Power System, while Reliability Engineering, as described by EPSA, is primarily used in reliability-centered maintenance to assess the optimum intervals and practices for facility maintenance. We strongly believe that, for the purposes of PRC–023–1, it is appropriate to use requirements that are specific to the electric industry and that are supported by decades of foundational planning and operating principles and experiences and that are embedded in the TPL Reliability Standards rather than criteria that may be more appropriate to maintenance practices.

67. We also reject EEI's claim that there is no technical basis for extending PRC–023–1 to sub-100 kV facilities. Relay settings on such facilities should be subject to PRC–023–1 because their loss can also affect the reliability of the Bulk-Power System. We also reject TAPS's assertion that the Commission must exclude sub-100 kV facilities since the Commission is required under section 215(d)(2) of the FPA to give "due weight" to the technical expertise of the ERO. NERC has not provided a sufficient technical justification to support the exclusion of sub-100 kV facilities. In its comments, NERC states that extending PRC–023–1 to sub-100 kV facilities "may have merit" and "would require further study,"[75] indicating that it did not affirmatively consider subjecting certain sub-100 kV facilities to the Reliability Standard and then reject the idea on the basis of its technical expertise. Moreover, NERC has not offered a technical basis for opposing the Commission's proposal. NERC's comments on the Commission's proposal pertain exclusively to the relationship between the Compliance Registry and entities' obligations to comply with Reliability Standards. Contrary to TAPS's assertion, NERC does not offer a technical argument against including certain sub-100 kV facilities in PRC–023–1.

68. Similarly, with respect to EEI's and NERC's claim that any expansion of the Reliability Standard must be developed through the Reliability Standards development process, we clarify that, as with our other directives in this Final Rule, we do not prescribe this specific change as an exclusive

[70] Consistent with Order No. 716, we expect that sub-100 kV facilities that are needed to supply the auxiliary power system of a Nuclear Power plant will be included in both determinations. *See Mandatory Reliability Standard for Nuclear Plant Interface Coordination,* Order No. 716, 125 FERC ¶ 61,065 (2008), at P 51–53, *order on reh'g,* Order No. 716–A, 126 FERC ¶ 61,122 (2009).

[71] In general, we expect that the results of the planning coordinator analysis and the processes used by the Regional Entities to identify critical facilities would have similar outcomes.

[72] We note that the definition of the bulk electric system is subject to change. *See* Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 77.

[73] ISO New England at 3. *See also* Order No. 693, FERC Stats. & Regs. ¶ 31,242, at P 101.

[74] EPSA states that "Reliability Engineering" is currently used to develop modeling and maintenance strategies for complex systems, including multiple failure testing, which has been applied to systems such as oil pipelines and civil infrastructures. EPSA at 6.

[75] NERC Comments at 18.

solution to our reliability concerns regarding sub-100 kV facilities. As we have stated, the ERO can propose an alternative solution that it believes is an equally effective and efficient approach to addressing the Commission's reliability concerns about the absence of sub-100 kV facilities from PRC–023–1. Moreover, while we expect planning coordinators to use the same test to identify critical sub-100 kV facilities as they use to identify critical 100 kV–200 kV facilities, the ERO is free, pursuant to Order No. 693, to propose a modified Reliability Standard that contains a different test for sub-100 kV facilities, provided that the test represents an "equivalent alternative approach."

c. Test for Identifying Sub-200 kV Facilities

i. Overview

69. Finally, pursuant to section 215(d)(5) of the FPA, we direct the ERO to modify Requirement R3 of the Reliability Standard to specify the test that planning coordinators must use to determine whether a sub-200 kV facility is critical to the reliability of the Bulk-Power System. We direct the ERO to file its test, and the results of applying the test to a representative sample of utilities from each of the three Interconnections, for Commission approval no later than one year from the date of this Final Rule.[76]

70. As we explained above, the Commission proposed to direct the ERO to adopt the "rule out" approach for 100 kV–200 kV facilities because it was concerned that NERC's "add in" approach would effectively exempt a large percentage of facilities that should otherwise be subject to the Reliability Standard. Contrary to the suggestion of some commenters, the Commission's concern was not based on a latent distrust of planning coordinators, but on the absence of a mandatory test in the Reliability Standard for planning coordinators to use to identify critical facilities.[77] Without such a test, the Commission has no way of determining whether the "add in" approach will result in a comprehensive list of critical facilities. As we also explained above, because the "rule out" approach and the "add in" approach should ultimately result in the same list of critical facilities, the choice between them is less important, from a reliability standpoint, than the test that planning coordinators must use to determine whether a facility is a critical facility. We conclude, therefore, that the lack of such a mandatory test is a matter that must be addressed by the ERO to ensure that the Reliability Standard meets its reliability objective. Otherwise, there is no guarantee that all planning coordinators will use comprehensive and rigorous criteria that is consistent across regions to identify all critical sub-200 kV facilities, leaving the Bulk-Power System vulnerable to similar problems that resulted in the cascade during the August 2003 blackout.

71. Consistent with Order No. 693, we provide "sufficient guidance so that the ERO has an understanding of the Commission's concerns and an appropriate, but not necessarily exclusive, outcome to address those concerns."[78] In this way, we ensure that the Commission's directive is not "so vague that the ERO would not know how to adequately respond."[79] Thus, below we provide guidance for the development of a test to determine critical facilities.[80]

72. We first observe that PRC–023–1 directs planning coordinators to identify facilities that are "critical to the reliability of the bulk electric system." In contrast, Recommendation 21A of the Final Blackout Report refers to "operationally significant" facilities. APPA, Exelon, and TAPS argue that, in the context of the Reliability Standard, "critical to the reliability of the bulk electric system" and "operationally significant" carry the same meaning and describe the same facilities. Exelon adds that drafting history confirms that the Reliability Standard drafting team intended this interpretation.

73. We agree. In our view, "critical to the reliability of the bulk electric system" in PRC–023–1 and "operationally significant" in Recommendation 21A are intended to have the same meaning because PRC–023–1 was developed to implement Recommendation 21A. This conclusion sheds some light on what facilities should be identified as "critical to the reliability of the bulk electric system" because, in Recommendation 21A, the Task Force listed lines that are part of monitored flowgates and interfaces as examples of "operationally significant" facilities. Importantly, the Task Force did not recommend that NERC limit its extended review only to monitored flowgates and interfaces; it merely cited monitored flowgates and interfaces as *examples* of "operationally significant" facilities. If a facility trips on relay loadability following an initiating event and contributes to undesirable system performance similar to what occurred during the August 2003 blackout (*e.g.,* cascading outages and loss of load) in the same way that the loss of monitored flowgates and interfaces contributed to the August 2003 blackout, the facility is operationally significant for the purposes of Recommendation 21A, and therefore critical to the reliability of the bulk electric system for the purposes of PRC–023–1. For example, the 138 kV lines shown in Figure 5.12 of the Final Blackout Report were not part of the monitored flowgate of the 345 kV Sammis-Star line or any other flowgate in FirstEnergy, but the loss of these 138 kV facilities affected loading on Sammis-Star, and the loss of Sammis-Star was the point at which the blackout went into its dynamic cascading phase. Thus, we reject assertions, made in the context of comments on the "rule out" approach, that facilities that are not part of a defined and routinely monitored flowgate should automatically be excluded from the Reliability Standard's scope.

ii. Guidance on the Test

74. Neither the Final Blackout Report nor the Reliability Standard establishes a mandatory test for planning coordinators to use to determine if a facility is "operationally significant" or "critical to the reliability of the bulk electric system" with respect to relay settings and the prevention of cascading outages. However, in its comments on the NOPR, NERC includes the guidance for identifying operationally significant 100 kV–200 kV facilities that the NERC System Protection and Control Task Force supplied to Regional Entities during the voluntary Beyond Zone 3 relay review and mitigation program. This guidance advised Regional Entities to identify:

All circuits that are elements of flowgates in the Eastern Interconnection, Commercially Significant Constraints in the Texas Interconnection, or Rated Paths in the Western Interconnection. This includes both the monitored and outage element for OTDF sets.

All circuits that are elements of system operating limits (SOLs) and interconnection reliability operating limits (IROLs), including both monitored and outage elements.

[76] We expect that the representative samples will include large and small, rural and metropolitan entities reflecting various topologies.

[77] NERC agrees that there must be consistent criteria for determining which 100 kV-200 kV facilities are critical facilities. *Id.* at 12.

[78] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 185.

[79] *Id.*

[80] While the ERO is free to submit a modified Reliability Standard that adopts the guidance set forth below as the mandatory test, we will also consider "an equivalent alternative approach provided that the ERO demonstrates that the alternative will adequately address the Commission's underlying concern or goal as efficiently and effectively as the Commission's proposal" and is consistent with our guidance. *Id.* P 186.

All circuits that are directly related to off-site power supply to nuclear plants. Any circuit whose outage causes unacceptable voltages on the off-site power bus at a nuclear plant must be included, regardless of its proximity to the plant.

All circuits of the first 5 limiting elements (monitored and outaged elements) for transfer interfaces determined by regional and interregional transmission reliability studies. If fewer than 5 limiting elements are found before reaching studied transfers, all should be listed.

Other circuits determined and agreed to by the reliability authority/coordinator and the Regional Reliability Organizations.

75. After careful review, we conclude that the guidance provided by the NERC System Protection and Control Task Force, if applied appropriately, would identify some, but likely not all, critical sub-200 kV facilities. There are some critical facilities that the guidance would not identify and would need to identify in order for it to be a fully acceptable test and meet the reliability objectives of PRC–023–1.

76. In the Commission's view, the NERC System Protection and Control Task Force guidance focuses primarily on identifying facilities that are "operationally significant" between regions (*e.g.,* between ECAR and SERC) or between sub-regions (*e.g.,* between Southern and Entergy) and would not necessarily identify operationally significant facilities within a sub-region or a company.[81] In order to achieve its objective, however, PRC–023–1 must apply to relay settings on all operationally significant sub-200 kV facilities that could trip on relay loadability and contribute to cascading outages and the loss of load, including those within a sub-region or a company. The ERO could refine the NERC System Protection and Control Task Force's guidance into an acceptable mandatory test by, among other things, revising it to include the assessment and identification of facilities within a region, sub-region, or company, whose inadvertent outage due to relay loadability could result in undesirable system performance.[82]

77. The test for identifying operationally significant/critical sub-200 kV facilities should identify facilities that must have their relays set in accordance with PRC–023–1 to avoid the undesirable system performance that Recommendation 21A was intended to prevent. It should also describe the steady state and dynamic base cases that planning coordinators must use in their assessment.

78. Recommendation 21A of the Final Blackout Report was developed to prevent undesirable system performance like the undesirable performance that occurred during the August 2003 blackout. During the blackout, the inadvertent tripping of facilities due to loadability resulted in undesirable system performance in the form of cascading outages and the loss of load. Since PRC–023–1 implements Final Blackout Recommendation No. 21A, it too must prevent the undesirable system performance that would include, among other performance factors, cascading outages and the loss of load.

79. To achieve this goal, the test to determine which sub-200 kV facilities are subject to PRC–023–1 must include or be consistent with the system simulations and assessments that are required by the TPL Reliability Standards and meet the system performance levels for all Category of Contingencies used in transmission planning. As discussed in the NOPR, the Commission expects that the base cases used to determine the facilities subject to PRC–023–1 will include various generation dispatches, topologies, and maintenance outages assumed in the planning time frame, and will consider the effect of redundant and backup protection systems.[83] As such, the base cases shall bracket all stable operating conditions.

80. Thus, the ERO must develop a test that: (a) Defines expectations of desirable system performance; and (b) describes the steady state and dynamic base cases that the planning coordinator must use in its assessments to carry out Requirement R3. The goal of the test must be consistent with the general reliability principles embedded in the existing series of TPL, Transmission Operations (TOP), Reliability Coordination (IRO), and Protection and Control (PRC) Reliability Standards. This is, in fact, good utility practice worldwide in that, if an initiating event[84] results in inadvertent outage[85] or the tripping of other non-faulted facilities that would result in cascading outages or loss of load, or violation of any of the applicable criteria, these facilities must be identified for remedial actions (such as equipment modifications, or a reduction in IROLs or SOLs) to ensure Reliable Operation. We provide guidance on both features of the test below.

iii. Desirable System Performance

81. During the August 2003 blackout, facilities (regardless of the voltage class and whether or not they were part of monitored flowgates) inadvertently tripped due to loadability conditions, resulting in undesirable system performance under the TPL Reliability Standards in the form of exceeding SOL and IROL limits, cascading outages, and the loss of load. Consequently, consistent with the TPL Reliability Standards, the first component of desirable system performance that the test must seek to maintain is the continuity of all firm load supply except for supply directly served by the faulted facility. In other words, it is the Commission's view that the test must identify facilities necessary to achieve the reliability performance for Category B and Category C contingencies—which would include no non-consequential load loss (for Category B) and no cascading outages (for Category B and Category C) for all stable operating conditions.[86]

82. The TPL Reliability Standards address, among other things, the type of simulations and assessments that must be performed to ensure that reliable systems are developed to meet present and future systems needs.[87] Table 1 of the TPL Reliability Standards establishes the desired system performance requirements for a range of contingencies grouped according to the number of elements forced out of service as a result of the contingency.

[81] We understand that some interregional studies include only a portion of all the lines with the remaining modeled as equivalents. Such an analysis could not possibly address the operational significance of the lines that were modeled only as equivalents.

[82] The ERO is not limited to proposing a revised version of the NERC System Protection and Control Task Force's guidance as the mandatory test. It can also develop a new test to identify critical sub-200 kV facilities or refine other aspects of the System Protection and Control Task Force test. Any test that the ERO submits, including one based on the NERC System Protection and Control Task Force's guidance, must be consistent with the general guidelines set forth in this Final Rule.

[83] NOPR, FERC Stats. & Regs. ¶ 32,642 at P 43, n.71. A "base case" refers to the transmission system model used for performing planning studies.

[84] In power systems, an "initiating event" generally refers to any event on the electric system that begins a series of actions. For transmission planning purposes, an initiating event is usually modeled as a type of fault. A "fault" is defined in the NERC Glossary of Terms used in Reliability Standards as "[a]n event occurring on an electric system such as a short circuit, a broken wire, or an intermittent connection." *See* NERC Glossary of Terms used in Reliability Standards at 7.

[85] An "inadvertent outage" generally refers to an unplanned outage of a facility. For the purposes of PRC–023–1, an inadvertent outage is the tripping of a facility due to loadability conditions.

[86] In Order No. 693, the Commission explained that the term "consequential load loss" refers to "load that is directly served by the elements that are removed from service as a result of the contingency." Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 1794, n.461.

[87] *Id.* at P 1683.

Consistent with Table 1 of the TPL Reliability Standards, with the exception of extreme contingency events, the system should always be stable and within both thermal and voltage limits for Reliable Operation.[88] This is the second component of desirable system performance that the test must seek to determine.

83. Finally, while the curtailment of firm transfers is permitted to prepare for the next contingency, it is generally not the desired system performance for single contingencies required by Table 1 of the TPL Reliability Standards. Thus, continuity of all firm transfers is the third component of desirable system performance.[89]

84. In sum, because the Bulk-Power System is planned and operated as a minimum criterion to maintain Reliable Operation for the single contingency loss of any transmission facility,[90] for Category B contingencies, desirable system performance includes: (1) Continuity of all firm load supply except for supply directly served by the faulted facility and no cascading outages; (2) the maintenance of all facilities within their applicable thermal, voltage, or stability ratings (short time ratings are applicable); and (3) the continuance of all firm transfers.[91] For Category C contingencies, desirable system performance includes: (1) Continuity of all firm load supply except for planned interruptions and no cascading outages; (2) the maintenance of all facilities within their applicable thermal, voltage, or stability ratings (short time ratings are applicable); and (3) the continuance of all firm transfers that are not part of planned interruptions.[92]

iv. Steady State and Dynamic Base Cases

85. With respect to the steady state and dynamic base cases that planning coordinators must use as part of their assessments, the Commission stated in the NOPR that it expects planning coordinators to use base cases that include various generation dispatches, topologies, and maintenance outages, and that consider the effect of redundant and backup protection systems. The Commission also stated that the process for identifying critical facilities must include the same system simulations and assessments as the TPL Reliability Standards for all stable operating conditions. The TPL Reliability Standards establish the types of simulations and assessments that must be performed to ensure that reliable systems are developed to meet present and future system needs. It is through these simulations and assessments that the planning authority and transmission planner demonstrate that their portion of the interconnected transmission system is planned for Reliable Operation under contingency conditions. In order to produce a "valid" assessment, the planning authority or transmission planner must demonstrate that its network can be operated to supply projected customer demands and projected firm transmission service, at all demand levels, over the range of forecast system demands, and under the contingency conditions defined in Table 1.[93] The Commission understands that Category B contingencies would cover most of the primary relay applications and Category C contingencies would cover most of the backup and remote circuit breaker failure relay applications. However, if a portion of a system is expected to be operated differently than the minimal TPL base cases, additional base cases should be included to include all stable operating conditions.

86. In addition to the TPL Reliability Standards, the TOP Reliability Standards are relevant to the steady state and dynamic base cases that reliability entities must use as part of their assessments. The TOP Reliability Standards establish, among other things, the responsibilities and decision-making authority for Reliable Operation in real-time. Reliability Standard TOP–002–0 establishes requirements for operation plans and procedures essential for Reliable Operation, including development of SOLs and IROLs that will result in acceptable system responses for unplanned events.

87. At a minimum, the Bulk-Power System is planned and operated to maintain Reliable Operation for the single contingency loss of any transmission facility.[94] Consequently, the base cases that planning coordinators must use in their assessments for PRC–023–1 applicability should represent, at a minimum, the fundamental base case categories to plan for Reliable Operation and the real-time response for Reliable Operation. Fundamental base case categories may be more extensive than those that are central to meeting the performance requirements established in TPL–002–0, Requirement R1 if they do not include all reliable operating conditions. We believe that initiating events that represent all feasible types and locations of faults, including evolving faults, must be simulated in each of the fundamental base case categories to determine the performance of the system. This is necessary for PRC–023–1 applicability because any of these initiating events can occur and must be included in determining performance. It is also consistent with the development of valid transmission assessments required by the TPL Reliability Standards.[95] Under this approach, a facility would be identified as a critical facility if, during a simulation starting with the base cases, its removal from service following an initiating event would prevent desirable system performance, as we have defined it here.

88. With this in mind, base case categories in the application of a test to identify critical facilities must:

(1) Represent the full range of demand and transfer levels. This is consistent with TPL–002–0, Requirement R1.3.5 (which requires that all projected firm transfers be modeled) and TPL–002–1, Requirement R1.3.6 (which requires that all studies and simulations be performed and evaluated for selected demand levels over the range of forecast system demands);

(2) Include all stable operating conditions and allowable topologies,

[88] Extreme contingency events are the loss of two or more (multiple) elements (Category D).

[89] *See* Reliability Standard TPL–002–0. Footnote b of Table 1 allows for the interruption of firm load for consequential load loss. This footnote is currently the subject of an order setting a deadline for required revisions in RM06–16–009.

[90] Reliability Standard TOP–002–0, Normal Operations Planning, Requirement R6 establishes that each balancing authority and transmission operator shall plan to meet unscheduled changes in syst em configuration and generation dispatch (at a minimum N–1 Contingency Planning) in accordance with NERC, Regional Reliability Organization, sub-regional, and local reliability requirements.

[91] *See* Reliability Standard TPL–002–0. Footnote b of Table 1 allows for the interruption of firm load for consequential load loss.

[92] *See* Reliability Standard TPL–003–0. Footnote c of Table 1 allows for the controlled interruption of electric supply to customers (load shedding), the planned removal from service of certain generators, and/or the curtailment of contracted Firm (non-recallable reserved) electric power transfers necessary to maintain the overall reliability of the interconnected transmission systems.

[93] In order for a planning authority and transmission provider to produce a "valid" assessment, the assessment must be demonstrated as satisfying each of the criteria established in TPL–002–0 through TPL–004–0, Requirement R1.

[94] *See* Reliability Standard TPL–002–0, System Performance Following Loss of a Single BES Element. *See also* Reliability Standard TOP–002–0, Normal Operations Planning, Requirement R6 that establishes that each balancing authority and transmission operator shall plan to meet unscheduled changes in system configuration and generation dispatch (at a minimum N–1 Contingency Planning) in accordance with NERC, Regional Reliability Organization, sub-regional, and local reliability requirements.

[95] *See* Order No. 693, FERC Stats. & Regs. ¶ 32,642 at P 1683.

such as all allowable planned outages. This is consistent with TPL–002–0, Requirement R1.3.12 (which requires that the planned (including maintenance) outage of any bulk electric equipment (including protection systems or their components) be included at those demand levels for which planned (including maintenance) outages are performed); and TOP–004 Requirement R4 (which requires operating the actual system in a known operating state);

(3) Include the effects of the protection system design and settings of the as designed protection systems with identification of those that are not within the Requirements of PRC–023–1. This is consistent with TPL–002–0, Requirement R1.3.8 with regard to existing and planned protection systems;

(4) Include the effects of the failure of a single component within the as designed Protection Systems, consistent with TPL–002–0 Requirement R1.3.10, but with regard to backup and redundant protection systems; and

(5) Include various generation dispatch patterns. This is consistent with TOP–002–0 Requirement R6 (which requires that each balancing authority and transmission operator plan to meet unscheduled changes in system configuration and generation dispatch (at a minimum N–1 contingency planning) in accordance with NERC, Regional Reliability Organization, sub-regional and local reliability requirements).

89. Our guidance above for developing a test to determine operationally significant facilities that should be subject to PRC–023–1 is consistent with Recommendation No. 21A of the Final Blackout Report and with planning and operating practices for Reliable Operation of the Bulk-Power System. Using a flowgate as an example, to derive the IROL of a given flowgate under a given range of system conditions, the TOP operations planner, in carrying out day-ahead reliability assessments, would simulate contingencies on critical facilities at a given loading on the flowgate, proceeding through the list of all critical and operationally significant facilities that form the monitored flowgates or other facilities as determined to be applicable, either by actual simulation tests or engineering judgment, to eliminate the less critical facilities that are not binding to the IROL and facilities that are not part of that flowgate. The derived IROLs would be valid only if none of the remaining flowgate facilities inadvertently trip with the binding facility or facilities on which the contingency is applied. Similarly, for the purposes of the test described above, the facilities that are not "operationally significant," and therefore can be excluded from PRC–023–1, would be those that trip due to loadability conditions at the same time as an initiating event involving a critical or operationally significant facility but do not impede desirable system performance.

90. For the particular flowgate under analysis by the TOP operations planner, the limiting facilities are those that result in the lowest IROL, and thus are commonly referred to as critical facilities. All the remaining flowgate facilities and other facilities that are not part of the flowgate under analysis are operationally significant for two main conditions: (i) Following a contingency on a binding or critical facility, they will not trip inadvertently and result in an increase in the loadings on other facilities and/or stable power swings that could result in additional trips, thereby invalidating the derived IROL; [96] and (ii) the outage of these operationally significant facilities would reduce the IROL since the flowgate would have one less element before a contingency on the critical facility is applied. Similar analysis would be conducted for other facilities that are not part of a flowgate.

v. Response to Relevant Comments

91. The Commission received comments pertaining to its statements about the process for identifying critical 100 kV–200 kV facilities and its proposal to permit case-by-case exceptions for the limited number of facilities that are not critical to the reliability of the bulk electric system and that would not result in cascading outages, instability, uncontrolled separation, violation of facility ratings, or interruption of firm transmission service.[97] While some comments are no longer relevant given the Commission's decision not to adopt the "rule out" approach, others bear on how to understand the designation "critical to the reliability of the bulk electric system" in the context of Requirement R3.

92. For example, APPA argues that the Commission should allow some diversity in regional definitions of critical facilities to account for physical differences in network topology, design, and performance. To this end, APPA proposes that the Commission direct NERC to develop a process whereby each region can develop a common region-wide approach to identifying critical facilities.[98] We believe that the test set forth above is best implemented uniformly across all regions. We direct a uniform approach rather than the one suggested by APPA because, as NERC comments in its petition, the effects of PRC–023–1 are not constrained to regional boundaries.[99] Any test to identify critical facilities must be consistent across regions so that the effects of protective relay operation are consistent across regions.

93. Duke comments that application of the existing TPL standards to its Midwest and Carolina systems has not identified any sub-200 kV facilities as critical (*i.e.,* there have been no showings that the loss of any such facilities could result in cascading outages, instability, or uncontrolled separation).[100] As we have explained, however, the test that would be developed by the ERO and that would adhere to the guidance we provide in this Final Rule would take into consideration both the desired system performance that PRC–023–1 was developed to achieve and the desired system performance required by the TPL Reliability Standards for Reliable Operation.

94. We also note that some commenters argue that the Reliability Standard should not apply to radial transmission lines and Category D Contingencies. With regard to radial transmission lines, we note that the NERC definition of "bulk electric system" does not include radial transmission facilities serving load with only one transmission source. We reiterate that we do not intend to expand the applicability of PRC–023–1 beyond NERC's Statement of Registry Criteria.

95. Additionally, we do not conclude that the applicability of PRC–023–1 should be determined based on Category D contingencies (pursuant to Table I of the TPL Reliability Standards). We understand that relay settings cannot be determined with great certainty for extreme multi-contingency conditions—the types of conditions consistent with the Category D contingencies of the TPL

[96] In Order No. 693, the Commission explained that "[i]n deriving SOLs and IROLs * * * the functions, settings, and limitations of protection systems are recognized and integrated." Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 1435.

[97] NOPR, FERC Stats. & Regs. ¶ 32,642 at P 43.

[98] APPA at 17, 26–27.

[99] NERC Petition at 18–19, 39–41.

[100] Duke adds that potential revisions to the TPL Reliability Standards appear as though they will raise the bar in clarifying the requirements for firm transmission service (*i.e.,* it appears that there will be more restrictions on loss of local load that is not connected to a faulted system element), but are unlikely to result in many facilities under 200 kV being considered critical to bulk electric system reliability.

Reliability Standards. In fact, Reliability Standard TPL–004–0 requires that the planning authority and transmission planner demonstrate through a valid assessment and documentation that their portion of the interconnected electric system is evaluated only for the risks and consequences of such events.

96. Some commenters argue that violation of facility ratings and interruption of firm transmission service should not be part of the applicability test. We are not persuaded by this argument because, as previously discussed, these are included in the three reliability components of desirable system performance.

97. Finally, commenters argue that there should be some mechanism for entities to challenge criticality determinations. We agree that such a mechanism is appropriate and direct the ERO to develop an appeals process (or point to a process in its existing procedures) and submit it to the Commission no later than one year after the date of this Final Rule.

D. Generator Step-Up and Auxiliary Transformers

1. Omission From the Reliability Standard

98. NERC stated that generator step-up transformer relay loadability was intentionally omitted from PRC–023–1 and would be addressed in a future Reliability Standard.[101]

a. NOPR Proposal

99. In the NOPR, the Commission stated that the ERO must address generator step-up and auxiliary transformer relay loadability in a timely manner and proposed directing the ERO to modify PRC–023–1 to include these issues. The Commission also requested comments suggesting a reasonable time frame for the ERO to either modify PRC–023–1 to address generator step-up and auxiliary transformer relay loadability or to develop a new Reliability Standard addressing these issues.

b. Comments

100. NERC states that within two years it expects to submit to the Commission a Reliability Standard that addresses generator relay loadability. NERC explains that a team under the NERC System Protection and Control Subcommittee is working with the Institute of Electrical and Electronics Engineers (IEEE) Power System Relay Committee on a technical reference document (*Power Plant and Transmission System Protection and Coordination*) that addresses transmission protection coordination with generation protection systems, provides technical guidance for the revision of PRC–001,[102] and includes technically based loadability requirements.[103] NERC adds that generator relay loadability is just a single facet of the total system protection coordination requirement between generators and transmission lines, and recommends that all coordination issues between generators and transmission lines, including generator step-up and auxiliary transformer relay loadability, reside in PRC–001–2.

101. Many commenters agree that generator step-up and auxiliary transformer relay loadability must be addressed in a timely manner, but in a separate Reliability Standard from PRC–023–1. In general, these commenters argue that properly addressing generator step-up and auxiliary transformer relay loadability requires in-depth technical analysis and careful consideration of related protection and coordination issues and should not be rushed to accommodate PRC–023–1.

102. Entergy argues that the NOPR appears to treat generator step-up and auxiliary transformers as transmission-related facilities, contrary to the Commission's ratemaking precedent. Entergy explains that generator step-up and auxiliary transformers are not transmission facilities, and that their function is to connect generation capacity to the transmission grid at appropriate voltage levels. Entergy adds that when generation is off-line, neither generator step-up transformers nor auxiliary transformers are required for transmission throughput.

103. The PSEG Companies argue that developing generator step-up and auxiliary transformer loadability requirements requires a significant effort by NERC and generation companies, and once developed, may require generation companies to conduct specific engineering studies for each of their generator step-up transformers. The PSEG Companies suggest that the Commission direct NERC to consider whether it can establish and determine a generic rating percentage.

c. Commission Determination

104. We decline to adopt the NOPR proposal and will not direct the ERO to modify PRC–023–1 to address generator step-up and auxiliary transformer loadability. After further consideration, we conclude that it does not matter if generator step-up and auxiliary transformer loadability is addressed in a separate Reliability Standard, so long as the ERO addresses the issue in a timely manner and in a way that is coordinated with the Requirements and expected outcomes of PRC–023–1.

105. In light of the ERO's statement that within two years it expects to submit to the Commission a proposed Reliability Standard addressing generator relay loadability, we direct the ERO to submit to the Commission an updated and specific timeline explaining when it expects to develop and submit this proposed Standard. While we recognize that generator relay loadability is a complex issue that presents different challenges than transmission relay loadability, we note that more than six years have passed since the August 2003 blackout and there is still no Reliability Standard that addresses generator relay loadability. With this in mind, the Commission will not hesitate to direct the development of a new Reliability Standard if the ERO fails to propose a Standard in a timely manner. While the ERO is developing a technical reference document to facilitate the development of a Reliability Standard for generator protection systems, only Reliability Standards create enforceable obligations under section 215 of the FPA.

106. We also expect that the ERO will develop the Reliability Standard addressing generator relay loadability as a new Standard, with its own individual timeline, and not as a revision to an existing Standard. While we agree that PRC–001–1 requires, among other things, the coordination of generator and transmission protection systems, we think that generator relay loadability, like transmission relay loadability, should be addressed in its own Reliability Standard if it is not to be addressed with transmission relay loadability.

107. Additionally, although we do not adopt the NOPR proposal, we reject Entergy's claim that including generator and transmission relay loadability in the same Reliability Standard would conflict with how the Commission treats generator step-up transformers for the purposes of ratemaking. The Commission's primary objectives in ratemaking differ from its central objectives concerning reliability

[101] The Commission notes that in its comments NERC refers to "generator relay loadability." In the context of our determination, we understand "generator step-up and auxiliary transformer loadability" and "generator relay loadability" to refer to the same thing.

[102] The purpose of PRC–001 is to ensure that system protection is coordinated among operating entities.

[103] NERC presented a draft of the technical reference document at its September 2009 meeting.

regulation. In the ratemaking context, the Commission is concerned that jurisdictional generator step-up and auxiliary transformers are classified in a way that ensures just and reasonable rates. In the reliability context, addressing transmission and generator relay loadability in the same Reliability Standard facilitates the reliability goal of ensuring coordination between transmission and generator protection systems, as required by PRC–001–1.

108. Finally, the PSEG Companies suggest that the ERO consider whether a generic rating percentage can be established for generator step-up transformers and, if so, determine that percentage. Although we do not adopt the NOPR proposal, we encourage the ERO to consider the PSEG Companies' suggestion in developing a Reliability Standard that addresses generator relay loadability.

2. Generator Step-Up Transformer Relays as Back-Up Protection

a. Commission's Statements in the NOPR

109. In describing PRC–023–1 in the NOPR, the Commission emphasized that:

> [T]he requirements of PRC–023–1 apply to all protection systems as described in Attachment A that provide protection to the facilities defined in sections 4.1.1 through 4.1.4 of PRC–023–1, *regardless of whether the protection systems provide primary or backup protection and regardless of their physical location.* * * * For example, a protective relay physically installed on the low-voltage side of a generator step-up transformer with the purpose of providing backup protection to a transmission line operated above 200 kV must be set in accordance with the requirements of PRC–023–1 because it is applied to protect a facility defined in [] PRC–023–1.[104]

b. Comments

110. EPSA and Ontario Generation disagree with the Commission's statements and argue that the Commission's example contains an error. Ontario Generation asserts that protective relaying that does not directly sense a current flow on a particular transmission circuit cannot affect its loadability. In that respect, Ontario Generation argues that the Reliability Standard's existing requirements correctly refer to protection systems at specific circuit terminals.

111. EPSA and Ontario Generation also challenge the Commission's implication that generator step-up transformer relays are subject to the Reliability Standard if their purpose is to provide backup protection to transmission lines. The commenters assert that because phase fault back-up protection on the low voltage side of a generator step-up transformer is designed to detect un-cleared faults on the system, with the primary function of protecting the generator and the transformer from supplying a prolonged fault current, the relays discussed by the Commission are set pursuant to IEEE Standard C37.102 instead of PRC–023–1.

c. Commission Determination

112. We reiterate that the requirements of PRC–023–1 apply to all protection systems as described in Attachment A that are intended to provide protection to the facilities defined in section 4.1.1 through 4.1.4 of the Reliability Standard, regardless of whether the protection systems provide primary or backup protection and regardless of their physical location. Our interpretation is based on the fact that protective relays are applied to protect specific system elements and, it is consistent with approved Reliability Standards,[105] the zones of protection principle on which relaying schemes are designed,[106] and NERC's voluntary Beyond Zone 3 Review, which examined all primary and backup protection systems.[107]

113. We also clarify that protective relays can be applied as back-up protection in two different ways: They can be physically located at the generator terminal on the low-voltage side of a generator step-up transformer and provide backup protection for a Bulk-Power System element (*i.e.,* for a transmission line outside of the generator zone of protection), as discussed in the NOPR, or provide back-up protection for the generator and the step-up transformer (*i.e.,* within the generator zone of protection), as the commenters discuss. In this Reliability Standard, the Commission is referring to the first type of relays; *i.e.,* relays that are applied to provide back-up protection to Bulk-Power System elements and that would sense increased current flow due to a fault on a Bulk-Power System transmission circuit. In the NOPR, the Commission explained that distance relays physically located at the generator terminal that are applied to protect Bulk-Power System facilities must be coordinated with primary protection systems for a transmission line and be set to see through[108] the step-up transformer, providing backup protection for un-cleared faults on the Bulk-Power System. Consequently, these relays will sense increased current flow and may trip on high load and therefore must also be set pursuant to PRC–023–1. If the primary protection system of the transmission line fails to operate, or does not operate within a certain time, the backup protection operates and trips Bulk-Power System elements that it is applied to protect.

114. Our statement that such relays are subject to the Reliability Standard is not in conflict with the use of a protection system to protect the generator/step-up transformer in the context of other industry standards, such as IEEE Standard C37.102,[109] or with the exclusion in section 3.4 of Attachment A to PRC–023–1 of generator relays that are susceptible to load. The relays that we referred to in the NOPR, while they may be physically located at the generator terminal or on the low-voltage side of the generator step-up transformer, are applied to provide backup protection for Bulk-Power System elements. This application is different from "generator relays," which are also physically located at the generator, but are applied to protect the generator.

E. Need To Address Additional Issues

115. In the NOPR, the Commission identified two additional issues that the ERO must address to ensure Reliable Operation of the Bulk-Power System: (1) Zone 3/zone 2 relays applied as remote circuit breaker failure and backup protection; and (2) protective relays operating unnecessarily due to stable power swings.

1. Zone 3/Zone 2 Relays Applied as Remote Circuit Breaker Failure and Back-Up Protection

a. NOPR Proposal

116. In the NOPR, the Commission expressed concern about the impact that

[104] NOPR, FERC Stats. & Regs. ¶ 32,642 at P 33 (emphasis added).

[105] *See, e.g.,* Reliability Standard PRC–001–1, Requirement R1 (requiring that "[e]ach Transmission Operator, Balancing Authority, and Generator Operator shall be familiar with the purpose and limitations of protection system schemes *applied* in its area" (emphasis added)).

[106] Protective relays are applied to protect specific elements within its zone of protection on the electric system. The "zone of protection" principle is used to ensure that each element on the electric system is provided, at most primary, and at least backup, protection so that there are no unprotected areas.

[107] NERC Comments at 13.

[108] To "see through" refers to a protective relay setting where, based on the apparent impedance as measured by the relay, the relay will detect faults beyond, *i.e.,* "see through," a bulk electric system element.

[109] IEEE Standard C37.102 (IEEE Guide for AC Generator Protection) provides generally accepted forms of relay protection applied to protect the synchronous generator and its excitation system.

zone 3/zone 2 relays applied as remote circuit breaker failure and backup protection can have on reliability when they operate without a time delay or for non-fault conditions. The Commission explained that if a zone 3/zone 2 relay detects a fault on an adjacent transmission line within its reach, and the relay on the faulted line fails to operate, the zone 3/zone 2 relay will operate as a backup and remove the fault; when it does, however, it will disconnect both the faulted transmission line and "healthy" facilities that should have remained in service. The Commission noted that zone 3/zone 2 relays are typically set to operate after a time delay in order to ensure coordination of protection and avoid unnecessarily disconnecting "healthy" facilities.[110]

117. The Commission also explained that the large reach of a zone 3/zone 2 relay makes it susceptible to operating for certain non-fault conditions, such as very high loading and large, but stable power swings, because the current and voltage as measured by the impedance relay may fall within the very large magnitude and phase setting of the relay.[111] The Commission cited the Task Force's finding that fourteen 345 kV and 138 kV transmission lines disconnected during the August 2003 blackout because of zone 3/zone 2 relays applied as remote circuit breaker failure and backup protection,[112] including several zone 2 relays in Michigan that overreached their protected lines by more than 200 percent and operated without a time delay.[113] The Commission noted that while these relays operated according to their settings, the Task Force concluded that they operated so quickly that they impeded the natural ability of the electric system to hold together and did not allow time for operators to try to stop the cascade.[114]

118. The Commission acknowledged NERC's claim that PRC–023–1 is silent on the application of zone 3/zone 2 relays as remote circuit breaker failure and backup protection because it establishes requirements for any load-responsive relay regardless of its protective function.[115] Nevertheless, given the Task Force's conclusions about the role of zone 3/zone 2 relays in the August 2003 blackout, the Commission proposed to direct the ERO to develop a maximum allowable reach for zone 3/zone 2 relays applied as remote circuit breaker failure and backup protection.[116]

b. Comments

119. NERC and other commenters argue that PRC–023–1 already addresses the Commission's concerns because it establishes loadability limits based on protection-zone-specific limitations, such as equipment thermal ratings and maximum power transfer capability, for all load responsive relays, independent of their application.[117]

120. EEI states that an entity will first develop protective relay settings that ensure adequate protection of its facility or facilities and then apply Requirement R1. EEI states that if the entity cannot satisfy Requirement R1, it must change its relay scheme to accommodate the need for protection and to comply with PRC–023–1.[118] EEI maintains that Requirement R1 addresses the Commission's concern in the NOPR because no exemption is given to relays that are set to cover adjacent lines in the event of breaker failure. EEI contends, therefore, that PRC–023–1 does not need to identify any maximum reach allowable outside of the impact on loadability. EEI further argues that issues of protective relay settings that over reach adjacent lines and trip with insufficient delay are coordination issues and not transmission relay loadability issues. EEI adds that, if remote back-up relays cannot provide adequate breaker failure coverage and still comply with PRC–023–1, then local breaker failure relaying must be applied.[119]

121. BPA explains that by complying with one of the sub-requirements in Requirement R1 (R1.1 through R1.13), entities' zone 3/zone 2 relay settings will be based on the real load carrying requirements of the line to which they are applied, but will not operate for allowable line loads. BPA argues that a blanket maximum reach limit would nullify the thirteen sub-requirements in Requirement R1, prevent entities from optimizing their relay settings for each situation, and unnecessarily reduce protection. Exelon states that PRC–023–1 allows entities to assess their relays' loadability based on the most severe line ratings at severely depressed voltage, and either includes a margin beyond these ratings or is based on the ability of a circuit to actually carry a load given its length and/or location within the system. Entergy asserts that maximum reaches are affected by the inherent capabilities of the relays, such as where load encroachment is present.

122. ATC argues that the Commission's proposal may put an arbitrarily low loading limit on some transmission lines. ATC explains that on a short transmission line, a relay setting of several times the line's impedance would not limit the loading of the line, whereas on a long transmission line the same impedance setting would limit loading. ATC argues that a maximum allowable reach is immaterial because the security of a relay's setting is determined by the relay's load-sensitive trip point, together with an appropriate load margin with respect to the maximum load carrying capability of the protected transmission system element.

123. WECC maintains that the appropriate use of readily available technology will completely addresses the Commission's concerns. WECC observes that the relay operations identified by the Task Force and referenced by the Commission occurred mostly with relays that used traditional mho circle characteristics.[120] WECC explains that the mho relay characteristic always includes a substantial resistive reach (in the direction of load, at least half the reactive reach) along with the necessary reactive reach (in the direction of possible faults). WECC states that in modern microprocessor-based relays, several different methods are available to limit the relays' resistive (load) reach without sacrificing the ability to detect remote faults (reactive reach), including non-circular characteristic shapes (*e.g.,* lens, rectangle), offset mho, blinders, and specific load encroachment elements.

124. Many commenters, including NERC, assert that establishing a shorter maximum reach for zone 3/zone 2 relays applied as remote circuit breaker failure and backup protection may adversely impact reliability. In general, these commenters assert that when the level of backup protection is reduced, there is an increased probability that faults will not be cleared and system stability will suffer.

125. Commenters also stress the problems associated with setting a uniform maximum reach. Southern states that it would be difficult to establish an arbitrary maximum reach that fits all system configurations because the setting for a zone 3/zone 2 relay is based on the location of the

[110] NOPR, FERC Stats. & Regs. ¶ 32,642 at P 50.

[111] *Id.* P 52.

[112] Final Blackout Report at 80.

[113] *Id.*

[114] *Id.*

[115] *See* NERC Petition at 38–39.

[116] NOPR, FERC Stats. & Regs. ¶ 32,642 at P 53.

[117] *See* Consumers Energy, Dominion, Duke, Entergy, Exelon, EEI, Oncor, PG&E, SCEG, Southern, TAPS.

[118] EEI at 19.

[119] *Id.* at 20.

[120] "Mho-circle" refers to the circular operating characteristic of a phase distance protection relay.

relevant relay and the structure of the protection scheme for the pertinent system. Duke argues that an arbitrary relay reach limit would not provide the necessary protection flexibility to align protection needs with all primary system configurations and electrical characteristics. EEI and ITC argue that it is not technically possible with current system configurations to enact the Commission's proposal and maintain reliability and ensure fault detection. EEI states that the electric industry's technically preferred approach is to set specific fault conditions.

126. The PSEG Companies speculate that the Commission's proposal will translate into a requirement to replace zone 3 relays with expensive communication-based schemes. The PSEG Companies state that such a requirement would be impractical and ineffective with respect to facilities below 200 kV. Nevertheless, the PSEG Companies support limits on the reach of zone 3/zone 2 relays for circuits that are truly critical, provided that the circuits are identified through an open process and their designation supported by a proper engineering analysis by the Regional Entity.

c. Commission Determination

127. We decline to adopt the NOPR proposal and will not direct the ERO to develop a maximum zone 3/zone 2 reach. After further consideration, we agree with commenters, especially NERC and EEI, that PRC–023–1, which interacts with existing FAC, IRO, and TOP Reliability Standards while ensuring adequate circuit breaker failure protection, sufficiently addresses the Commission's concern.

128. In its petition, NERC stated that the interactions between PRC–023–1 and existing FAC, IRO, and TOP Reliability Standards require entities and operators to establish limits for all system elements, operate interconnected systems within these limits, take immediate action to mitigate operation outside these limits, and set protective relays to refrain from operating until the observed condition on their protected element exceeds these limits.[121] EEI maintains that Requirement R1 addresses the Commission's concern because no exemption is given to relays that are set to cover adjacent lines in the event of breaker failure. EEI contends, therefore, that PRC–023–1 does not need to identify any maximum reach allowable outside of the impact on loadability. EEI adds that, if remote back-up relays cannot provide adequate breaker failure coverage and still comply with PRC–023–1, then local breaker failure relaying must be applied.

129. We agree with NERC and EEI that if an entity chooses to use remote breaker failure protection, it must comply with PRC–023–1 and its protection settings, derived pursuant to PRC–023–1, must interact with other relevant Reliability Standards to ensure Reliable Operation. EEI asserts that if remote backup relays cannot provide adequate breaker failure coverage and still comply with PRC–023–1, then local breaker failure relaying must be applied. We agree. This assertion addresses our concern that entities would continue to rely on the use of remote breaker failure protection and simply comply with PRC–023–1 without ensuring whether: (i) it provides adequate circuit breaker failure protection coverage; and (ii) that the limitation of remote circuit breaker failure protection and the settings so derived to comply with PRC–023–1 are reflected in the derivation of IROLs and SOLs that are used in real time operations.

2. Protective Relays Operating Unnecessarily Due to Stable Power Swings

130. In the NOPR, the Commission stated that the cascade during the August 2003 blackout was accelerated by zone 3/zone 2 relays that operated because they could not distinguish between a dynamic, but stable power swing and an actual fault. The Commission observed that PRC–023–1 does not address stable power swings, and pointed out that currently available protection applications and relays, such as pilot wire differential, phase comparison and blinder-blocking applications and relays, and impedance relays with non-circular operating characteristics, are demonstrably less susceptible to operating unnecessarily because of stable power swings. Given the availability of alternatives, the Commission stated that the use of protective relay systems that cannot differentiate between faults and stable power swings constitutes mis-coordination of the protection system and is inconsistent with entities' obligations under existing Reliability Standards. The Commission explained that a protective relay system that cannot refrain from operating under non-fault conditions because of a technological impediment is unable to achieve the performance required for Reliable Operation. Consequently, the Commission requested comments on whether it should direct the ERO to develop a new Reliability Standard or a modification to PRC–023–1 that requires the use of protective relay systems that can differentiate between faults and stable power swings and phases out protective relay systems that cannot meet this requirement.[122]

a. Comments

131. NERC opposes addressing stable power swings in a modification to PRC–023–1. NERC argues that while it is possible to employ protection systems that are immune from stable power swings, the Commission should not require the use of these systems at the expense of diminishing the ability of protective relays to dependably trip for faults or detect unstable power swings. According to NERC, there are two ways to prevent protective relays from operating during stable power swings: (1) Select a protection system that will differentiate between faults and stable power swings, but will not trip for any power swing, such as current differential or phase comparison; or (2) utilize an impedance-based protection system that relies on careful selection of the protective relay trip characteristic, including shape (*e.g.,* mho circle, lens) and sensitivity, to differentiate between faults, stable swings, and unstable swings. NERC adds that selection of the trip characteristic requires coordination based on fault coordination and transient stability studies between the protection system designer and the transmission planner.

132. While NERC acknowledges that PRC–023–1 is designed to address the steady-state aspects of relay loadability, it also claims that PRC–023–1 has positive effects in relation to relays and stable power swings. Specifically, the modifications required by PRC–023–1 to increase steady state loadability necessarily decrease the likelihood that relays will trip on stable power swings.

133. NERC cautions that it must carefully study and analyze the relationship between stable power swings and protective relays, and consult with IEEE and other organizations before developing a Reliability Standard addressing stable power swings. NERC requests that the Commission allow PRC–023–1 to remain focused on steady state relay loadability and leave stable power swings to be specifically addressed in a different Reliability Standard.

134. Other commenters agree with the concerns identified by the Commission. None, however, think that the Commission should direct the ERO to modify PRC–023–1 to address stable

[121] NERC Petition at 15–16.

[122] NOPR, FERC Stats. & Regs. ¶ 32,642 at P 60.

power swings.[123] Many commenters agree with NERC and urge the Commission to allow the ERO to address stable power swings in a different Reliability Standard, after the ERO has had the opportunity to further study the issue. EEI and Southern argue that PRC–023–1 addresses the steady-state aspects of relay loadability, not transient system conditions such as stable or unstable power swings. The PSEG Companies reflect the view of many commenters when they argue that issues related to stable power swings are too complex to be addressed in PRC–023–1. Dominion adds that if the Commission did direct the ERO to address stable power swings in PRC–023–1, the final implementation of the Reliability Standard would be significantly delayed. TAPS argues that the Commission should give due weight to NERC's decision not to address stable power swings in PRC–023–1. APPA asserts that the Commission can require only that the ERO examine the Commission's concerns about stable power swings and cannot direct the ERO to implement a specific solution.

135. Several commenters challenge the Commission's reasoning and assumptions in the NOPR. Exelon challenges the Commission's assertion that a protective relay system that cannot refrain from operating under non-fault conditions because of a technological impediment is unable to achieve the performance required for reliable operation, arguing that it ignores many years of reliable and stable operation of mho-circle relays. Exelon adds that it is unaware of any instance in the entire history of its ComEd or PECO operating companies when mho-type distance relays tripped because of a stable power swing, and that none of its stability studies have ever identified lines that would trip on a stable power swing.

136. ElectriCities, the MDEA Cities, and the Six California Cities challenge the Commission's assertion that the use of protective relays that cannot differentiate between faults and stable power swings is mis-coordination of the protection system and is inconsistent with an entity's obligations under existing Reliability Standards. In their view, the Commission should not use this proceeding to interpret existing Reliability Standards to require the use of specific protection technologies and proscribe the use of others; ElectriCities asserts that interpreting Reliability Standards not at issue may violate the Administrative Procedure Act.[124]

137. Consumers Energy disagrees with the Commission's assertion that stable power swings contributed to the cascade in the August 2003 blackout. Consumers Energy states that it extensively studied the events discussed in the NOPR and concluded that communications-based relay systems operated because of the extremely heavy reactive power consumption of the lines, not stable power swings. Consumers Energy states that its studies also show that relay systems designed to be less susceptible to stable power swings would still have operated under these conditions, as the extreme reactive power consumption appeared to both terminals of each line as an internal fault.

138. WECC claims that PRC–023–1 provides indirect, but highly effective protection against stable power swings. WECC asserts that the real problem that occurred during the August 2003 blackout was that zone 3/zone 2 relays operated and disconnected facilities because of high loading. WECC argues that if those zone 3/zone 2 trips had been prevented, significant system oscillations would not have occurred and "healthy" transmission lines would not have unnecessarily tripped. WECC asserts that PRC–023–1 is specifically designed to prevent zone 3/zone 2 trips due to high loading. EEI argues that PRC–023–1 is "well suited" to prevent the unnecessary operation of relays during stable power swings because as relay loadability is increased, the proper response to stable power swings is enhanced.

139. Several commenters challenge the Commission's assumption that preventing relays from operating due to stable power swings will improve reliability. TAPS explains that an important secondary function of protective relaying is protecting equipment and safety in the event of multiple or extreme contingencies. TAPS states that the power system is operated to account for single and double contingencies, but that extreme contingencies can occur and overload facilities to well beyond their emergency ratings. TAPS contends that it is impractical to rely on operators to manually operate the system beyond single and double contingencies, so automatic equipment is needed to protect the system when extreme contingencies occur. TAPS maintains that while impedance/distance relays are susceptible to operating for stable power swings, they are often the only protection for facilities loaded beyond emergency ratings. TAPS argues that the Commission's proposal would reduce reliability because it would expose the system to longer-term outages due to equipment damage. TAPS also claims that overloading due to multiple or extreme contingencies can create the same safety issues the Commission discussed in the NOPR with respect to sub-requirement R1.10.

140. E.ON argues that the Commission may have elevated the operational reliability of the bulk electric system over public safety and the transmission asset owner's interest in ensuring that its assets remain in working order and available for service. E.ON explains that relay settings must ensure the maintenance of minimum vertical safety clearances, and that modifying relaying schemes to accommodate non-fault related transient overloads might leave system elements exposed to excessive loading longer than is prudent. E.ON further explains that because transmission facilities are located in diverse environments, it is appropriate to maintain a specified vertical line clearance at the maximum conductor temperature for which the line is designed to operate. E.ON states that what the Commission described as a "technological impediment" may be a desired design feature intended to address unique equipment protection issues or public safety concerns.

141. Exelon asserts that phasing out step distance relays with mho circle operating characteristics could leave the electric system without any reliable backup for transmission lines with failed communication or other equipment failures, thereby exposing the system to faults that cannot be cleared and potentially resulting in larger outages and/or equipment damage. TAPS adds that the Commission's proposal would result in the loss of zone 3/zone 2 relays as back-up protection in the event of a stuck breaker and/or a failure of a transfer trip scheme for a stuck breaker.

142. The PSEG Companies speculate that the post-blackout relay mitigation programs conducted by NERC may have already mitigated the unexpected tripping of the transmission lines during the August 2003 blackout. The PSEG Companies add that it is possible that the only reason the blackout stopped was because these lines unexpectedly tripped. The PSEG Companies assert that the approach to stable power swings should be all encompassing and include the development and implementation of "islanding" strategies in conjunction with out-of-step blocking (or tripping) requirements.

[123] *See, e.g.,* EEI; APPA; PG&E; ATC; Ameren; BPA; Duke; Oncor; and TAPS.

[124] 5 U.S.C. 551, *et seq.*

143. Several commenters dispute the virtues of the protection schemes discussed by the Commission in the NOPR. Ameren states that, in its experience, many of the applications identified by the Commission in the NOPR are less reliable than the step distance and directional comparison methods used in distance relays. Duke casts doubt on manufacturers' claims that newer relay technology is able to differentiate between stable power swings and out-of-step conditions, pointing out that much of the newer technology is essentially the same as traditional out-of-step relay blocking schemes with variable timers. Duke also observes that some new protection systems still require relays to be set to operate on high load conditions and block tripping for a fault during a stable power swing. EEI states that the protection schemes cited by the Commission are prone to mis-operation due to loss of communication or timing differences in a transmit-and-receive communication path. EEI explains that on September 18, 2007, the protection schemes identified by the Commission actually created a major disturbance in the MRO region due to problems with communication circuits.[125]

144. EEI argues that subject matter experts in the electric industry have found that the protection schemes cited by the Commission in the NOPR are significantly more difficult to install and maintain than step distance and directional comparison schemes using distance relays. EEI states, for example, that while line differential relays have been reliable when applied over fiber communications systems, the necessary schemes are expensive to install. Ameren adds that line differential relays are not as reliable as phase distance relays, which would still need to be installed to backup the communications system. Ameren also states that installation of fiber optics on existing transmission lines would require lengthy construction delays, and therefore create a reliability risk and delay compliance with PRC–023–1.

145. EEI and Ameren also point out the limitations of out-of-step tripping and power swing blocking. They explain that in a 2005 report, the IEEE Power System Relaying Committee found that out-of-step tripping and power swing blocking cannot be set reliably under extreme multi-contingency conditions where the trajectories of power swings are unpredictable, because they must be set based on specific system contingencies and the results of stability simulations.

146. Exelon argues that the technology identified by the Commission may not be helpful in a situation like the August 2003 blackout. Exelon explains that experienced relay protection engineers can apply the technology to distinguish between stable and unstable power swings in the cases of Category A, B, C and even some Category D contingencies as detailed in the TPL Reliability Standards, but that these are discrete contingencies that can be simulated with a great deal of certainty. Exelon states that simulating the types of swings that occurred during the August 2003 blackout would involve many scenarios, occurring in different possible sequences. Exelon claims that it is virtually impossible to accurately predict the exact sequence of events for major disturbances involving extreme events, and that without accurate simulations of the "right" disturbances, replacing relays would not provide any benefit.

147. WECC and Tri-State make the related point that there were at least fourteen line outages before the stable swings began in the August 2003 blackout, and that it is unlikely that the multiple contingency scenarios that developed would ever have been studied under the current TPL Reliability Standards. WECC adds that even if the TPL Reliability Standards required prior study and relay coordination for such extensive outages, it is entirely plausible that the power swing blocking settings appropriate for a system that included 2 or 3 contingencies would not work appropriately for the same system after 14 or 40 outages.

148. Multiple commenters claim that the Commission's proposal would place an undue and unnecessary financial hardship on utilities because it would require significant expenditures and an exceptional amount of skilled labor without commensurate benefits. Exelon argues that any type of a proposed phase-out would affect a majority of the relays in North America. With respect to its PECO and ComEd operating companies, Exelon estimates that it would cost PECO approximately $45 million to comply for roughly 180 terminals between 230 kV and 500 kV ($250,000 per terminal) and 33 percent more if the phase-out applied to 138 kV lines. As for ComEd, Exelon estimates that it would cost approximately $65 million to comply for roughly 260 terminals between 345 kV and 765 kV, and three times more if the phase-out applied 138 kV lines. Portland General states that it would cost $6 million to replace its 40 relays. TAPS points out that Order No. 672 states that NERC may consider the cost of compliance when developing a Reliability Standard, provided that the Standard does not reflect the "lowest common denominator." TAPS argues that PRC–023–1 does not reflect the "lowest common denominator."

149. EEI argues that the Commission's proposal will require the unreasonable removal of a large number of electromechanical relays that effectively function, and that electric utilities should replace electromechanical relays only when necessary. Oncor argues that is unnecessary to mandate a phase out because as utilities upgrade their protection systems on a voluntary basis they will eliminate relays that cannot differentiate between faults and stable power swings. TAPS states that the Commission's proposal, in combination with its proposal to eliminate the exclusions in Attachment A of PRC–023–1 (particularly subsection (3.1)), would require redundant high speed protective systems for every transmission line, even when they are not needed for critical clearing time purposes. TAPS also argues that requiring the addition of new protective relay systems runs up against the prohibitions in sections 215 (a)(3) and (i)(2) of the FPA on Reliability Standards that require the enlargement of facilities or the addition of generation or transmission capacity.

b. Commission Determination

150. We will not direct the ERO to modify PRC–023–1 to address stable power swings. However, because both NERC and the Task Force have identified undesirable relay operation due to stable power swings as a reliability issue, we direct the ERO to develop a Reliability Standard that requires the use of protective relay systems that can differentiate between faults and stable power swings and, when necessary, phases out protective relay systems that cannot meet this requirement. We also direct the ERO to file a report no later than 120 days of this Final Rule addressing the issue of protective relay operation due to power swings. The report should include an action plan and timeline that explains how and when the ERO intends to address this issue through its Reliability Standards development process.

151. According to the NERC System Protection and Control Task Force, it is a well established principle of protection that Bulk-Power System elements, such as generators, transmission lines, transformers, and DC transmission or shunt devices, should not trip inadvertently for expected and potential non-fault loading conditions,

[125] EEI at 21–22.

including normal and emergency loading conditions and stable power swings.[126] Before Congress' directive in section 215 of the FPA to establish mandatory and enforceable Reliability Standards, this reliability principle was considered good utility practice and was documented in the voluntary NERC Planning Standards as one of the System and Protection and Control Transmission Protection Systems Guides.[127] However, the ERO has not yet proposed to translate this principle into a mandatory and enforceable directive by including it in a Reliability Standard.

152. Additionally, as we explained in the NOPR, while zone 3/zone 2 relays operated during the August 2003 blackout according to their settings and specifications, the inability of these relays to distinguish between a dynamic, but stable power swing and an actual fault contributed to the cascade.[128] The Task Force also identified dynamic power swings and the resulting system instability as the reason why the cascade spread.[129] Since PRC–023–1 does not address relays operating unnecessarily because of stable power swings, we are concerned that relays set according to PRC–023–1 remain susceptible to problems like those that occurred during the August 2003 blackout.

153. While we recognize that addressing stable power swings is a complex issue, we note that more than six years have passed since the August 2003 blackout and there is still no Reliability Standard that addresses relays tripping due to stable power swings. Additionally, NERC has long identified undesirable relay operation due to stable power swings as a reliability issue. Consequently, pursuant to section 215(d)(5) of the FPA, we find that undesirable relay operation due to stable power swings is a specific matter that the ERO must address to carry out the goals of section 215, and we direct the ERO to develop a Reliability Standard addressing undesirable relay operation due to stable power swings.

154. We note that NERC stated in its petition that PRC–023–1 interacts with several existing FAC, IRO, and TOP Reliability Standards, and that these interactions require limits to be established for all system elements, interconnected systems to be operated within these limits, operators to take immediate action to mitigate operation outside of these limits, and protective relays to refrain from operating until the observed condition on their protected element exceeds these limits.[130] We agree, and add that entities must also validate protection settings set pursuant to PRC–023–1 through: (1) Using the settings as an input into the valid assessments required for compliance with the TPL Reliability Standards for contingencies; (2) including the settings in the derivation of SOLs and IROLs; and (3) complying with the TOP, IRO, and FAC Reliability Standards for Category B contingencies, and for the subset of multiple contingencies (if any) identified in TPL–003 that result in stability limits identified by the planning authority. These steps will ensure Reliable Operation until the ERO develops the new Reliability Standard addressing unnecessary relay operation due to stable power swings.

155. Although we do not direct the ERO to modify PRC–023–1 to address stable power swings, we disagree with those commenters who suggest that relay performance during stable power swings is outside the scope of relay loadability. Reliability Standard PRC–023–1 was developed by industry experts using well thought-out guidelines based on static system conditions. These guidelines apply only to the situation in which the electric system after a disturbance has returned to a steady state condition. This means that currents and voltages on Bulk-Power System elements vary with a large degree of predictability. Under this scenario, compliance with PRC–023–1 will prevent relays from inadvertently tripping because of increases in static loadings; hence, the term "loadability."

156. However, protective relays will respond to real-time system conditions, regardless of whether they are set for static loadings (loadability) or dynamic loadings, such as stable power swings. During transient conditions, a protective relay set assuming steady-state system conditions will measure the prevailing voltage and current quantities resulting from a stable power swing, and if its trajectory falls within the relay settings (reach and time delay) so derived from PRC–023–1, it will operate and inadvertently trip the healthy Bulk-Power System element it is protecting. Consequently, the relay may operate for transient conditions, even if set pursuant to PRC–023–1. Thus, relay operation because of stable power swings is within the scope of relay loadability and must be considered when the relay is set to ensure Reliable Operation.

157. Exelon states that its stability studies for ComEd and PECO have never identified lines that would trip on stable power swings. There are two potential reasons why not: (1) Exelon's protection systems are designed so that it is unnecessary to establish longer reach settings for protective relays; or (2) its electric systems consist primarily of short transmission lines.

158. Initially, we note that ComEd and PECO may have historically adopted a good utility practice in protection that requires two groups (both of equivalent high speed) of redundant and duplicated communications-based protection systems for each high voltage line while relying on the use of local breaker failure protection.[131] If this were the case, they would not need to set their relays to overreach by large margins to provide remote circuit breaker failure and backup protection because they designed around the problem. In addition, the high voltage lines in ComEd and PECO may be relatively short. Electric systems comprised of long transmission lines are more likely to experience larger stable power swings than those comprised of short transmission lines. These two factors—relative short protection reach in their Zone 1 and Zone 2 relays due to application of more sophisticated protection systems and not relying on the use of remote breaker failure protection, as well as, smaller stable power swings due to shorter transmission lines—are likely to be the key reasons why they have never identified lines that would trip on stable power swings.

159. We find unpersuasive Consumers Energy's claim that heavy reactive power consumption, not stable power swings, contributed to the cascade during the August 2003 blackout. In the Final Blackout Report, the Task Force

[126] NERC Planning Committee, System Protection and Control Task Force, "Relay Loadability Exceptions—Determination and Application of Practical Relaying Loadability Ratings," Version 1.2, at 3 (Aug. 8, 2005).

[127] *See* NERC Planning Standards, Section III: System and Protection and Control, Part A: Transmission Protection Systems, G.12 (1997) ("Generation and transmission protection systems should avoid tripping for stable power swings on the interconnected transmission systems."). Under the voluntary planning standards and operating policies, a "Guide" described good planning practices and considerations.

[128] NOPR, FERC Stats. & Regs. ¶ 32,642 at P 58.

[129] *See* Final Blackout Report at 81–82.

[130] NERC Petition at 15–16.

[131] *See* NERC Planning Standards, Section III: System and Protection and Control, Part A: Transmission Protection Systems, G.5 (1997) ("Physical and electrical separation should be maintained between redundant protection systems, where practical, to reduce the possibility of both systems being disabled by a single event or condition."). While this is considered a good utility practice and used worldwide, it may not have necessarily been used by other entities in the past and is currently not required by any Reliability Standard.

addressed this issue and concluded that, as the cascade progressed beyond Ohio, it spread due not to insufficient reactive power and a voltage collapse, but because of dynamic power swings and the resulting system instability.[132] While extreme reactive power consumption may have resulted in the operation of some communications-based relays, the Final Blackout Report confirms that zone 3/zone 2 relays without communications or an uncoordinated time delay operated unnecessarily when they recognized dynamic, but stable, power swings as a fault. As the Task Force explained, this undesirable operation contributed to the cascade and the spread of the blackout.

160. WECC argues that PRC–023–1 provides indirect protection against stable power swings because it prevents relays from tripping due to high loading, and that this protection could have prevented the tripping of the zone 3/zone 2 relays during the blackout and prevented the oscillations that caused "healthy" transmission lines to unnecessarily trip. While we agree that increasing loadability by applying the settings set forth in PRC–023–1 decreases the likelihood of relays tripping on load, it does not necessarily decrease the likelihood of zone 3/zone 2 relays applied as remote circuit breaker failure and backup protection tripping on stable power swings and would not have prevented the trips that spread the August 2003 blackout. Zone 3/zone 2 relays applied as remote circuit breaker failure and backup protection require large protective reach settings. The protective reach setting is determined by the apparent impedance of the system as measured by the relay. When the apparent impedance as measured by the relay falls within the setting of the relay, the relay will operate after its set time delay. While a fault typically moves through the characteristic of a relay reach setting very fast, the speed at which a power swing moves through the characteristic of a relay reach setting is typically much slower. When a power swing occurs, it is the time that it takes the power swing to pass through the characteristic of the relay's protective reach setting that makes the relay susceptible to operation. As we explained in the NOPR, the Final Blackout Report found that several zone 2 relays applied as remote circuit breaker failure and backup protection were set to overreach their protected lines by more than 200 percent without any time delay.[133] When the dynamic, yet stable, power swings occurred prior to system cascade, these relays operated unnecessarily.[134]

161. The PSEG Companies suggest that NERC's post-blackout relay mitigation programs may have addressed the unexpected tripping of lines that occurred during the August 2003 blackout, and that it is possible that the only reason the blackout stopped was because these lines unexpectedly tripped. We disagree, based on two facts documented in the Final Blackout Report. First, the unexpected tripping of these lines in Ohio and Michigan accelerated the geographic spread of the cascade instead of stopping it.[135] Second, relays on long lines that are not highly integrated into the electrical network, such as the Homer City-Watercure and the Homer City-Stolle Road 345-kV lines in Pennsylvania, tripped quickly and split the grid between the sections that blacked out and those that recovered without further propagating the cascade. We also disagree with the PSEG Companies' assertion that NERC's post-blackout relay mitigation programs may have addressed the unexpected tripping of lines that occurred during the August 2003 blackout for two main reasons: (i) The programs did not include on a general basis sub-200 kV facilities that are considered as critical or operationally significant facilities;[136] and (ii) the programs did not explicitly address inadvertent tripping on non-faulted facilities due to stable power swings.

162. The PSEG Companies also assert that the Commission's approach to stable power swings should be inclusive and include "islanding" strategies in conjunction with out-of-step blocking or tripping requirements. We agree with the PSEG Companies and direct the ERO to consider "islanding" strategies that achieve the fundamental performance for all islands in developing the new Reliability Standard addressing stable power swings.

163. We also clarify that our directive does not in any way involve a tradeoff between reliability and public safety as suggested by E.ON's concerns about the maintenance of minimum vertical safety clearances and TAPS's concerns about modifying relaying schemes to accommodate non-fault-related transient overloads. First, while the maintenance of minimum vertical safety clearances for personnel safety consideration is outside of Commission jurisdiction, the development of line ratings consistent with FAC–008–1 (Facility Ratings Methodology) must include the limiting factors, such as line design, ambient conditions and system loading conditions. For these ratings to be valid there must be adequate clearances between line conductors and surrounding objects to prevent flashover in addition to maintaining adequate vertical clearance from the ground. Reliability Standard FAC–003–1 Requirement R1.2.1 also includes a provision for "worker approach distance requirements" as part of the minimum clearances which include vertical safety clearance. Therefore, we do not see how our directive would in any way involve a tradeoff between reliability and safety as these are addressed separately and interactively between the relevant Reliability Standards.

164. Second, we do not see how the Commission's goal of avoiding inadvertent tripping of non-faulted Bulk-Power System elements due to stable power swings can be interpreted as requiring modifying relaying schemes to accommodate non-fault related transient overloads, as TAPS claims. In addition to our explanation above, NERC stated in its petition, and we agree, that PRC–023–1 interacts with existing FAC, IRO, and TOP Reliability Standards; these interactions require limits to be established for all system elements, interconnected systems to be operated within these limits, operators to take immediate action to mitigate operation outside of these limits (*i.e.,* overloads), and protective relays to refrain from operating until the observed condition on their protected element exceeds these limits.[137] In addition, each planning authority and transmission planner is required to demonstrate through a valid assessment only that its portion of the interconnected electric system is evaluated for the risks and consequences of such extreme, multi-contingency events and for corrective actions. For these reasons, we also reject TAPS's comments that the NOPR proposal would create safety issues due to overloading from multiple or extreme contingencies. If protection systems already respect safety issues, they will not be affected by following the evaluation of these extreme contingencies.

165. We also disagree with commenters' claims that our directive could harm reliability. Exelon asserts that phasing out step distance relays with mho circle operating characteristics could leave the electric

[132] Final Blackout Report at 81.

[133] *Id.* at 80.

[134] *Id.* at 82.

[135] *Id.* at 80.

[136] The Beyond Zone 3 review included sub-200 kV facilities on a limited basis.

[137] NERC Petition at 15–16.

system without any reliable backup for transmission lines with failed communication or other equipment failures, thereby exposing the system to faults that cannot be cleared and potentially resulting in larger outages and/or equipment damage. TAPS adds that the Commission's proposal would result in the loss of zone 3/zone 2 relays as back-up protection in the event of a stuck breaker and/or a failure of a transfer trip scheme for a stuck breaker.

166. Exelon incorrectly interprets our statement that "a protective relay system that cannot refrain from operating under non-fault conditions because of a technological impediment is unable to achieve the performance required for reliable operation" as a proposal for "leaving the electric system without any reliable backup for transmission." TAPS' similar assertion implies the same. We disagree that the Commission's proposal would result in the loss of relays as back-up protection. Our statement merely points out the fundamentals required for Reliable Operation under currently approved Reliability Standards. As we state in the previous discussion, PRC–023–1 interacts with existing FAC, IRO, and TOP Reliability Standards to ensure Reliable Operation; these interactions require limits to be established for all system elements, interconnected systems to be operated within these limits, operators to take immediate action to mitigate operation outside of these limits, and protective relays to refrain from operating until the observed condition on their protected element exceeds these limits. Protection relays include primary and backup relays. If zone 2/zone 3 relays are used by entities as part of their protection systems designed to achieve the system performance, they can remain as backup protection as long as they do not inadvertently trip non-faulted facilities due to stable power swings.

167. Several commenters dispute the virtues of the protection schemes discussed by the Commission in the NOPR. In general, these commenters argue that the applications identified by the Commission in the NOPR are less reliable than the step distance and directional comparison methods used in distance relays. We clarify that the protection systems discussed in the NOPR are merely examples of systems that can differentiate between faults and stable power swings. We leave it to the ERO to determine the appropriate protection systems to be discussed in the new Reliability Standard through application of its technical expertise.

168. Some commenters argue that the technology identified by the Commission may not be helpful in a situation like the August 2003 blackout because that event involved so many contingencies that it would be almost impossible to simulate and thus unlikely to be studied under the TPL Reliability Standards. We realize that relays cannot be set reliably under extreme multi-contingency conditions covered by the Category D contingencies of the TPL Reliability Standards. In fact, Reliability Standard TPL–004–0 requires the planning authority and transmission planner to demonstrate through a valid assessment that its portion of the interconnected electric system is evaluated only for the risks and consequences of such events; it does not require corrective actions. We recognize that, because of the operating characteristic of the impedance relay, regardless of whether a power swing is stable or unstable, the relay may potentially operate under Category D contingencies. Thus, the NOPR proposed alternative protection applications and relays that are *less susceptible* to transient or dynamic power swings. This is consistent with Order No. 693, where the Commission stated that it is not realistic to expect the ERO to develop Reliability Standards that anticipate every conceivable critical operating condition applicable to unknown future configurations for regions with various configurations and operating characteristics.[138]

169. Some commenters oppose a new Reliability Standard because they are concerned that it would require the removal of a large number of electro-mechanical relays that are in service and functioning today. Likewise, other commenters argue that the cost of phasing out protection systems that cannot distinguish between faults and stable power swings is excessive. While we appreciate these concerns, they are not persuasive reasons to reconsider our decision to direct the ERO to develop a Reliability Standard addressing undesirable relay operation due to stable power swings. In this Final Rule, we have explained why a relay's inability to distinguish between actual faults and stable power swings is a specific matter that the ERO must address in order to carry out the goals of section 215 of the FPA, in part by showing how such relays contributed to the spread of the August 2003 blackout. The fact that many such relays are in current use does not mitigate the threat they pose to Reliable Operation or change the role they played in spreading the August 2003 blackout. Moreover, while we direct the ERO to develop a Reliability Standard that phases out such relays where necessary if they do not meet the reliability goal, the ERO is free to develop an alternative solution to our reliability concerns regarding undesirable relay operation due to stable power swings, provided that it is an equally effective and efficient approach.[139]

170. Because we direct the ERO to develop the new Reliability Standard in this Final Rule, it would be premature for the Commission to now rule on issues related to the cost of the new Standard. In the first place, the Reliability Standard is not yet written; the ERO has not yet worked out the details of a phase-out, or even decided if it will propose a phase-out or some other equally effective and efficient solution to the Commission's reliability concerns. It is impossible for the Commission to evaluate the costs of a proposal that has not yet been developed, let alone one that has not has yet been presented to the Commission. Entities will have the opportunity to raise their cost concerns throughout the Reliability Standards development process and before the Commission when NERC submits the new Reliability Standard for Commission approval. As a general matter, however, we repeat our statement in Order No. 672: Proposed Reliability Standards must not simply reflect a compromise in the ERO's Reliability Standard development process based on the least effective North American practice—the so-called "lowest-common denominator"—if such practice does not adequately protect Bulk-Power System reliability.[140] While a Reliability Standard may take into account the size of the entity that must comply and the costs of implementation, the ERO should not propose a "lowest common denominator" Reliability Standard that would achieve less than excellence in operating system reliability solely to protect against reasonable expenses for supporting vital national infrastructure.[141] The Commission has also explained that the Reliability Standard development process should consider, at a high level, the potential costs and other risks to society of a Bulk-Power System failure if action is not taken to establish and implement a new or modified Reliability Standard in response to previous blackouts and the

[138] *See* Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 1706.

[139] *Id.* P 186.

[140] Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 329.

[141] *Id.* P 330.

economic impacts associated with such blackouts.[142]

171. We also disagree with TAPS's claim that the Commission's proposal, in combination with its proposal to eliminate the exclusions in Attachment A of PRC–023–1 (particularly subsection 3.1), would require redundant high speed protective systems for every transmission line, even when they are not needed for critical clearing time purposes. As we have explained previously in this Final Rule, the TPL Reliability Standards require annual system assessments to determine if the system meets the desired system performance requirement established by the TPL Standards. This assessment includes the interaction of approved Reliability Standards such as, PRC, IRO, and TOP. If an entity is not able to achieve the desired system performance, consistent with the TPL Reliability Standards, corrective action plans must be developed and implemented. Thus, it is left to the entity to determine how best to meet desired system performance when it develops its corrective action plans; contrary to TAPS's argument, our directives in this Final Rule do not require entities to adopt redundant high speed protective systems for every transmission line as a specific corrective action plan.

172. Finally, we reject TAPS's assertion that requiring entities to use protection systems that can distinguish between faults and stable power swings violates sections 215(a)(3) and (i)(2) of the FPA, which prohibit the Commission from requiring in a Reliability Standard the enlargement of facilities or the addition of generation or transmission capacity. Replacing a protection system that does not ensure Reliable Operation in this instance is necessary to achieve the goals of the statute and does not equate to an expansion of facilities or the construction of new generation or transmission capacity.

173. In sum, we adopt the NOPR proposal and direct the ERO to develop a new Reliability Standard that prevents protective relays from operating unnecessarily due to stable power swings by requiring the use of protective relay systems that can differentiate between faults and stable power swings and, when necessary, phases-out relays that cannot meet this requirement. NERC requests that the Commission allow PRC–023–1 to remain focused on steady state relay loadability and leave stable power swings to be specifically addressed in a different Reliability Standard. We agree that this is a reasonable approach. Meanwhile, to maintain reliability, the Commission expects entities to continue to include the effects of protection settings in TPL and TOP assessments for future systems and in the determination of IROLs and SOLs.[143]

F. Requirement R1

174. Requirement R1 directs each subject entity to set its relays according to one of the criteria prescribed in sub-requirements R1.1 through R1.13. In the NOPR, the Commission expressed concerns about the implementation of three of these criteria: sub-requirements R1.2, R1.10, and R1.12. In its comments, Palo Alto raised concerns about sub-requirement R1.1.

1. Sub-Requirement R1.1

175. Sub-requirement R1.1 specifies transmission line relay settings based on the highest seasonal facility rating using the 4-hour thermal rating of a transmission line, plus a design margin of 150 percent.

a. Comments

176. Palo Alto states that, in the interest of maximum reliability, many municipal utilities install lines and transformers rated to handle the worst-case emergency load, *i.e.,* the load resulting from the failure of an adjacent line or transformer. Palo Alto explains that load-sensitive overcurrent relays are typically set between 115 and 125 percent of the highest line or equipment rating, and argues that changing these settings to comply with sub-requirement R1.1 will result in longer fault clearing times and unnecessarily compromise line and transformer protection. Palo Alto adds that longer fault clearing times could result in increased arc flash exposure. Palo Alto recommends that the Commission direct NERC to revise sub-requirement R1.1 to state that transmission relays can be set to not operate at or below 150 percent of the transmission line/transformer rating instead of the highest seasonal facility rating of a circuit, or at 120 percent of the maximum expected emergency load on the transmission line or transformer.

b. Commission Determination

177. Palo Alto identifies a technical disagreement with sub-requirement R1.1. We expect such technical disagreements to be resolved either in the Reliability Standards development process or by the disagreeing entity requesting an exception from NERC. Moreover, giving "due weight" to the technical expertise of the ERO, we find no reason to direct a change to sub-requirement R1.1.

2. Sub-Requirement R1.2

178. Sub-requirement R1.2 requires relays to be set not to operate at or below 115 percent of the highest seasonal 15-minute facility rating of a circuit. A footnote attached to sub-requirement R1.2 provides that "[w]hen a 15-minute rating has been calculated and published for use in real-time operations, the 15-minute rating can be used to establish the loadability requirement for the protective relays."

a. NOPR Proposal

179. In the NOPR, the Commission expressed concern that sub-requirement R1.2 might conflict with Requirement R4 of existing Reliability Standard TOP–004–1 (Transmission Operations), which states that "if a transmission operator enters an unknown operating state, it will be considered to be in an emergency and shall restore operations to respect proven reliability power system limits within 30 minutes."[144] The Commission explained that the transmission operator (or any other reliability entity affected by the facility) might conclude that it has 30 minutes to restore the system to normal when in fact it has only 15 minutes because the relay settings for certain transmission facilities have been set to operate at the 15-minute rating in accordance with sub-requirement R1.2. In order to avoid confusion and protect reliability, the Commission proposed to direct the ERO to revise sub-requirement R1.2 to give transmission operators the same amount of time as in Reliability Standard TOP–004–1; develop a new requirement that transmission owners, generation owners, and distribution providers give their transmission operators a list of transmission facilities that implement sub-requirement R1.2; or propose an equally effective and efficient way to avoid the potential conflict.

b. Comments

180. NERC urges the Commission to adopt sub-requirement R1.2 without directing a change. NERC states that the

[142] ERO Rehearing Order, 117 FERC ¶ 61,126 at P 97.

[143] Requirement R1.3.10 of Reliability Standard TPL–002–0 requires that a valid assessment shall include, among other things, the effects of existing and planned protection systems. Requirement R6 of Reliability Standard TOP–002–0 requires that, as a minimum criterion, the bulk electric system is planned and operated to maintain reliable operation for the single contingency loss of any transmission facility. In Order No. 693, the Commission explained that "[i]n deriving SOLs and IROLs, moreover, the functions, settings, and limitations of protection systems are recognized and integrated." Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 1435.

[144] *See* Reliability Standard TOP–004–1, Requirement R4.

purpose of the footnote is to inform the user that, if it decides to implement sub-requirement R1.2, it must have a procedure that operators implement and follow. NERC states that some system operators use a 15-minute rating during system contingencies, which is a more stringent requirement than that established in TOP–004–1. NERC also claims that use of the 15-minute rating to establish loadability reflects a commitment on the part of the entity to operate to the 15-minute rating and to respond to rating violations within the 15 minutes because the entity can use the 15-minute rating only if it has calculated and published it for use in real-time operations.[145]

181. Oncor states that the Commission's concerns seem reasonable and that a simple solution to the conflict would be to provide system operators with a copy of those lines that have a 15-minute rating along with the 30-minute rating of transmission lines as described in TOP–004–1.[146] IESO and Hydro One argue that if the Commission acts on its proposal, creating a new requirement is the preferred approach in order to avoid having a requirement specified in one Reliability Standard actually applying to another Standard.

182. Some commenters maintain that entities that use the 15-minute rating are fully capable of operating within this constraint. Duke explains that transmission operators are trained to operate the system within the ratings established and communicated to them pursuant to FAC–009–1, and adds that reliability coordinators, planning authorities, transmission planners, and transmission operators already receive these ratings pursuant to Requirements R1 and R2 of FAC–009–1. Southern states that general industry practice, which is reflected in Reliability Standard TOP–004–1, is to return the electric system to a normal and reliable state in less than 30 minutes.

183. Several commenters challenge the Commission's claim that there is a conflict between PRC–023–1 and TOP–004–1 and that transmission operators might conclude that they have 30 minutes to restore the system to normal when in fact they have only 15 minutes because the relay settings for certain transmission facilities have been set to operate at the highest seasonal 15-minute rating in accordance with sub-requirement R1.2. As an initial matter, Dominion points out that the Commission's statement mischaracterizes sub-requirement R1.2; rather than allow for relays to operate at the 15-minute rating, sub-requirement R1.2 specifies that relays must be set so that they *do not* operate at or below 115 percent of the 15- minute rating. APPA, Ameren, BPA, Dominion, EEI, and WECC further explain that sub-requirement R1.2 does not establish a time limit before relays trip; instead, it specifies the level of loading used to develop the relay's setting. In other words, according to these commenters, the 15-minute rating does not mean that the relays will trip after 15 minutes. APPA clarifies that 15 minutes is the time that the facility ratings methodology has determined the line can safely be loaded at that level. BPA, Dominion, EEI, and WECC explain that relays set according to sub-requirement R1.2 will not trip until loading exceeds 115 percent of the 15-minute rating, which will always be higher than the 30-minute rating. EEI and Ameren acknowledge that using 115 percent of the highest seasonal 15-minute rating creates more conservative relay load limits, but point out that this does not limit the operator's response time to 15 minutes.

184. TAPS and Dominion contend that the time periods identified in sub-requirement R1.2 and TOP–004–1 refer to two distinct operating situations. TAPS and Dominion state that the 15-minute rating referenced in sub-requirement R1.2 refers to the time to respond to a contingency in a known state (*i.e.,* within the emergency rating), while the 30-minute period in TOP–004–1 refers to the time to respond to an unknown state (*i.e.,* in a situation where the operating limits are unknown, typically a state that has not been studied in stability studies to identify stability limits).

185. Duke, EEI, and the PSEG Companies challenge what they perceive to be the Commission's assumption that sub-requirement R1.2 is for overload protection. They state that overcurrent relays are designed and applied for fault protection and not for overload protection. EEI adds that the Commission should recognize that sub-requirement R1.11 is the requirement addressing overload protection. The PSEG Companies assert that it is widely recognized by industry that the purpose of PRC–023–1 is to ensure that lines refrain from tripping for maximum loading conditions; once the maximum loading conditions are exceeded the relays are free to operate for a fault.

c. Commission Determination

186. We decline to adopt the NOPR proposal to require the ERO to revise sub-requirement R1.2 to mirror Reliability Standard TOP–004–1. However, we will adopt the NOPR proposal to direct the ERO to modify PRC–023–1 to require that transmission owners, generator owners, and distribution providers give their transmission operators a list of transmission facilities that implement sub-requirement R1.2. We agree with Oncor that this is a simple approach to addressing the potential for confusion identified by the Commission in the NOPR. Consistent with Order No. 693, we do not prescribe this specific change as an exclusive solution to our concerns regarding sub-requirement R1.2. As the Commission stated in Order No. 693, where, as here, "the Final Rule identifies a concern and offers a specific approach to address the concern, we will consider an equivalent alternative approach provided that the ERO demonstrates that the alternative will address the Commission's underlying concern or goal as efficiently and effectively as the Commission's proposal."[147] As discussed in the NOPR, the Commission is concerned that the transmission operator (or any other reliability entity affected by the facility) might conclude that it has 30 minutes to restore the system to normal when in fact they may have less than 30 minutes because the relay settings applied to protect certain transmission facilities may have been set to operate applying a 15-minute rating in accordance with sub-requirement R1.2.

187. Contrary to some commenters' assertions, the Commission has not misunderstood the purpose of the 15-minute rating and the relay set points in sub-requirement R1.2. We realize that the 15-minute and 4-hour ratings are the times that the entity's rating methodology has determined that a facility can safely be loaded at that level and does not correlate to the operating time of the protective relay. We also realize that the protective relays on these facilities should not operate until loading on the facility exceeds the protective relay settings, including impedance or current settings and time delays. Moreover, we understand that sub-requirement R1.2 is not for overload protection, and we agree that entities that use the 15-minute rating are expected to be capable of operating within this constraint. Our goal with directing a modification to sub-requirement R1.2 is simply to ensure that the transmission operator has full knowledge of which facilities are applying a 15-minute rating instead of a 4-hour rating so that the transmission

[145] NERC Comments at 28.

[146] Oncor at 5.

[147] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 186.

operator can factor this information into any necessary emergency actions.

188. We also agree with TAPS and Dominion that the 15 minutes referred to in sub-requirement R1.2 is for operating to a known 15-minute limit and therefore serves a purpose different from the 30 minutes allowed in TOP–004–1 for operators in an unknown operating state that must return to a known operating state. However, once the relay settings of a facility that implements sub-requirement R1.2 go above 115 percent of the facility's 15-minute rating, the facility may trip and add to the outages that the transmission operator must address. Simply put, the Commission is directing this modification so that the requirement includes what Duke and others said they expect would be necessary for the operator to have sufficient information to reliably operate the system—knowledge of which facilities implement PRC–023–1 criteria applying a 15-minute rating so that the operator can utilize the system for the 15 minutes that the rating allows. Therefore, the Commission agrees that, while the time periods identified in PRC–023–1 and TOP–004–1 are for different purposes, the operator's response time for both and the consequences of inaction are effectively the same.

189. Mandatory Reliability Standards should be clear and unambiguous regarding what is required and who is required to comply.[148] This is not the case with sub-requirement R1.2. For example, the ERO states in its comments that entities that implement sub-requirement R1.2 commit to operate to the 15-minute rating and to respond to rating violations within the 15 minutes.[149] While we agree with the ERO, EEI and Ameren do not interpret sub-requirement R1.2 to limit the operator's response time to 15 minutes. Because there are different understandings with regard to the implementation of sub-requirement R1.2, we adopt the NOPR proposal and direct the ERO to develop a new requirement that transmission owners, generator owners, and distribution providers give their transmission operators a list of transmission facilities that implement sub-requirement R1.2.

3. Sub-Requirement R1.10

190. Sub-requirement R1.10 provides criteria for transformer fault relays and transmission line relays on transmission lines that terminate in a transformer. It requires that relays be set so that the transformer fault relays and transmission line relays do not operate at or below the greater of 150 percent of the applicable maximum transformer name-plate rating (expressed in amperes), including the forced cooled ratings corresponding to all installed supplemental cooling equipment, or 115 percent of the highest owner-established emergency transformer rating.

a. NOPR Proposal

191. In the NOPR, the Commission expressed concern that overloading facilities at any time, but especially during system faults, could lower reliability and present a safety concern. The Commission explained that the application of a transmission line terminated in a transformer enables the transmission owner to avoid installing a bus and local circuit breaker on both sides of the transformer. The Commission stated that, for this topology, protective relay settings implemented according to sub-requirement R1.10 would allow the transformer to be subjected to overloads higher than its established ratings for unspecified periods of time. The Commission stated that this negatively impacts reliability and raises safety concerns because transformers that have been subjected to currents over their maximum rating have been recorded as failing violently, resulting in substantial fires. The Commission acknowledged that safety considerations are outside of its jurisdiction, but asserted that requirements in a Reliability Standard should not be interpreted as requiring unsafe actions or designs. The Commission proposed, therefore, to direct the ERO to submit a modification that requires any entity that implements sub-requirement R1.10 to either verify that the limiting piece of equipment is capable of sustaining the anticipated overload current for the longest clearing time associated with the fault from the facility owner or alter its protection system or topology.

b. Comments

192. NERC states that the primary source of technical information for sub-requirement R1.10 is IEEE Standard C37.91–2008, IEEE Guide for Protecting Power Transformers (specifically, sections 8.6 and 8.6.1 and Appendix A).[150] NERC explains that phase overcurrent devices must coordinate with duration curves, and that minimum current stated on the curves must equal two times transformer base current. NERC argues that PRC–023–1 is consistent with IEEE Standard C37.91–2008 and IEEE Standard C57.109–1993 (which is referenced in Appendix A of IEEE Standard C37.91–2008) because it requires entities that use overcurrent relays to consider loadability (a non-fault induced transformer loading), and because a setting of 150 percent of the transformer nameplate rating or 115 percent of the highest operator-established emergency rating will always be less than 200 percent of the transformer forced-cooled nameplate rating.[151]

193. TAPS describes the Commission's assertion that a "Reliability Standard should not be interpreted as requiring unsafe actions or designs" as a "jurisdictional bootstrap" that nevertheless fails to remove questions about the Commission's authority to require a modification that addresses safety concerns. TAPS explains that section 215(i)(2) of the FPA provides that states retain jurisdiction over safety concerns,

[148] Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 325.

[149] NERC Comments at 28.

[150] NERC explains that sections 8.6 and 8.6.1 of the Guide address the settings of transformer phase overcurrent protection, and Appendix A contains through-fault duration curves for various size power transformers that provide fault current durations as plotted against transformer base current. Section 8.6 states:

8.6. Protection of a transformer against damage due to the failure to clear an external fault should always be carefully considered. This damage usually manifests itself as internal, thermal, or mechanical damage caused by fault current flowing through the transformer. The curves in Annex A show through-fault-current duration curves to limit damage to the transformer. Through-faults that can cause damage to the transformer include restricted faults or those some distance away from the station. The fault current, in terms of the transformer rating, tends to be low (approximately 0.5 to 5.0 times transformer rating) and the bus voltage tends to remain at relatively high values. The fault current will be superimposed on load current, compounding the thermal load on the transformer. Several factors will influence the decision as to how much and what kind of backup is required for the transformer under consideration. Significant factors are the operating experience with regard to clearing remote faults, the cost effectiveness to provide this coverage considering the size and location of the transformer, and the general protection philosophies used by the utility.

Section 8.6.1 states

8.6.1. When overcurrent relays are used for transformer backup, their sensitivity is limited because they should be set above maximum load current. Separate ground relays may be applied with the phase relays to provide better sensitivity for some ground faults. Usual considerations for setting overcurrent relays are described in 8.3. When overcurrent relays are applied to the high-voltage side of transformers with three or more windings, they should have pickup values that will permit the transformer to carry its rated load plus margin for overload. * * * When two or more transformers are operated in parallel to share a common load, the overcurrent relay settings should consider the short-time overloads on one transformer upon loss of the other transformer. Relays on individual transformers may require pickup levels greater than twice the forced cooled rating of the transformer to avoid tripping.

[151] NERC Comments at 30.

a point that the Commission acknowledged in the NOPR.

194. Several commenters point out that protective relays are designed to protect the system from faults, not overloads.[152] Ameren, EEI, and Duke observe that other protection methods, such as temperature monitors, are typically employed for thermal protection. WECC observes that sub-requirement R1.11 addresses overload protection. EEI adds that there is no loadability issue if a remote breaker can provide adequate protection and the asset owner can still comply with PRC–023–1.

195. Consumers Energy, EEI, and NERC argue that the mitigation of thermal overloads is best left to operator response, not to automatic devices, so that the operator may take well-reasoned action that best supports the Reliable Operation of the bulk electric system while addressing the overload. Consumers Energy argues that any entity that wishes to establish automatic actions for overload conditions should apply devices designed specifically for that purpose, with response times appropriate for overload, or should develop and install a special protection system in accordance PRC–012–0 to detect and take actions to relieve the overload. EEI maintains that any transformer requiring overload protection should have it specifically applied regardless of transmission line protection, or system configuration. Ameren and EEI contend that providing adequate transformer protection is in the best interest of the asset owner. The PSEG Companies argue that the Commission's proposal is beyond the scope of PRC–023–1 because it is responsibility of the protection system designer to employ good engineering practice to ensure protection for faulted systems. Similarly, the PSEG Companies argue that system operations groups are responsible for ensuring that equipment is properly protected and loaded within limits.

196. NERC states that overcurrent relays are typically used only for backup detection of through-faults outside of the primary protective zone. NERC maintains that a transformer subjected to a through-fault for an extended period of time may compromise its design, but that if an entity wishes to provide overload protection for its transformer, such protection should be provided by devices designed for that purpose and have response times appropriate for overload protection (*e.g.,* several seconds and longer). BPA makes the similar claim that the overload current capability required by PRC–023–1 for transformers is not a safety concern for moderate time durations. BPA explains that these setting levels (or higher) have been common in the industry to prevent relay operation on load. BPA acknowledges that, over prolonged periods, these overload currents could cause overheating which could reduce the life of the transformer. BPA states, however, that protective relays are not intended to protect for these currents because ample time is available for system operators to make system changes to mitigate the transformer overload in a controlled manner, which is preferable to automatic relay operation. BPA adds that there are other protective relays to protect the transformer from internal faults or large through-currents due to faults outside of the transformer.

197. Several commenters argue that the Commission's proposal is unnecessary. EEI argues that the Commission's proposal is unnecessary because zone 2 time-delayed relays are typically set to operate in less than one second, while IEEE Standard C57.109–1993 establishes the thermal damage curve for transformers above 30 MVA and allows 25 times rated transformer current for two seconds. EEI also states that all transformers have an overload capability that has been covered by system dispatcher action regardless of its connection method. EEI points out that sub-requirement R1.10 requires load responsive transformer relays to be set to carry at least 150 percent of the transformer nameplate rating, and that system dispatcher response time is based on the degree of overload, not the connection method. EEI states that sub-requirement R1.10 allows conservative line protection, which improves the setting at which relays can be set to sense fault conditions. Duke adds that facility ratings, including transformer facility ratings, are established and communicated to reliability coordinators, planning authorities, transmission planners, and transmission operators in accordance with FAC–009–1, Requirements R1 and R2, and that each transmission operator is trained to operate the system within the ratings that are established and communicated to it pursuant to FAC–009–1.

198. Exelon claims that the Commission's description of sub-requirement R1.10 is inaccurate. Exelon maintains that sub-requirement R1.10 will not allow transformers to be subjected to overloads higher than their ratings for unspecified periods. Exelon claims that sub-requirement R1.10 addresses fault protection for lines terminated with a transformer—not transformer loading. Exelon states that the protection systems that protect against faults are different from the protection systems that protect against overloads.

199. Exelon claims, moreover, that the Commission's proposed modification is imprecise. Exelon explains that the term "the longest clearing time associated with the fault from the facility owner" leaves open the question of what assumptions should be used. For example, Exelon states that it is unclear whether the time period to be measured is based on normal backup clearing time or some other interval. Exelon contends that without such precision, compliance with any modified requirement will be impossible.

200. Basin agrees that the Commission has a valid concern when it comes to establishing overload limits without regard to whether the limiting piece of equipment is capable of sustaining the overload for the longest clearing time associated with the fault. Basin argues, however, that the Commission's mixture of terminologies in the NOPR (*e.g.,* thermal ratings, fault current, load current and faults) is misleading in terms of cause and effect and risk management. Basin requests, therefore, that the Commission direct NERC to make the change using language that is clear and consistent.

201. Basin argues, however, that the Commission should not impose any additional requirements on lines terminating in transformers. Basin explains that while this equipment is susceptible to damage from overloads, other equipment also is subject to overload-related damage and the Commission should not address this issue on a piecemeal basis. Basin contends that the safety issue related to lines terminating in transformers merits unique consideration and is outside the scope of this proceeding. Basin argues, therefore, that the Commission should not direct any specific actions with respect to such equipment in this docket.

202. Tri-State agrees with the Commission that it is prudent to ensure that relays operate before the appropriate transformer damage curve is intersected. Tri-State adds that it finds little difference in the proposed allowable current sensing settings used in sub-requirements R1.10 and R1.11 except for the use of the term "fault protection" in sub-requirement R1.10 and "overload protection" in sub-requirement R1.11.

[152] *See, e.g.,* Ameren, BPA, Duke, EEI, Exelon, NERC, and WECC.

c. Commission Determination

203. We adopt the NOPR proposal and direct the ERO to modify sub-requirement R1.10 so that it requires entities to verify that the limiting piece of equipment is capable of sustaining the anticipated overload for the longest clearing time associated with the fault.[153] As with our other directives in this Final Rule, we do not prescribe this specific change as an exclusive solution to our reliability concerns regarding sub-requirement R1.10. As we have stated, the ERO can propose an alternative solution that it believes is an equally effective and efficient approach to addressing the Commission's concern that entities respect facility limits when implementing sub-requirement R1.10.

204. At the outset, we acknowledge that section 215 of the FPA does not authorize the Commission to set and enforce compliance with standards for the safety of electric facilities or services.[154] While the NOPR identified a potential safety issue with sub-requirement R1.10, we clarify that we do not rest our decision to adopt the NOPR proposal on safety concerns and reject TAPS's contrary assertion.

205. We also clarify that the Commission's use of the term "overload" in the NOPR refers to the combination of load and fault current external to the transformer zone of protection (through-current) that can flow through the transformer. These overload currents can be higher than the transformer's established ratings, subjecting the transformer to possible thermal damage. As discussed in the NOPR, and as NERC and Basin confirm, subjecting transformers to overloads over their maximum rating compromises their design and subjects the transformer to overload-related damage. Thus, we reject Exelon's assertion that sub-requirement R1.10 will not allow transformers to be subjected to through-currents that would overload the transformer.

206. Since sub-requirement R1.10 applies to the topology where there is no breaker installed on the high-voltage side of the transformer, faults within the transformer or at the low-voltage side of the transformer are cleared by tripping the remote breaker on the transmission line and the transformer low-voltage breaker. Because faults on the low-voltage side of the transformer will generally be lower in magnitude as measured at the remote breaker due to the large impedance of the transformer, fault protection relays set at 150 percent of the transformer nameplate rating or 115 percent of the highest operator established emergency transformer rating may be set too high to operate for faults on the low-voltage side of the transformer. Consequently, delayed clearing of faults (*i.e.,* the longest clearing time associated with the faults) from the high-voltage side of the transformer may occur and subject the transformer to overloads, *i.e.,* through-currents higher than the transformer's rating. Overcurrent relays used for transformer protection have a limited ability to detect these types of faults because they are set above the maximum load current[155] for entities that set these relays following the IEEE Standards. It is for this reason that the ability of the transformer to sustain overloads, *i.e.,* through-currents, for the longest clearing time associated with the fault must be verified.

207. NERC and others state that sub-requirement R1.10 is consistent with IEEE Standards C37.91–2008 and C57.109–1993. While the Commission has approved Reliability Standards that reference other industry standards,[156] Reliability Standard PRC–023–1 does not reference either IEEE Standard. Thus, neither IEEE Standard is mandatory and enforceable under section 215 of the FPA.

208. Moreover, we have several concerns about relying on the IEEE Standards to address the reliability issue we have identified. First, an entity could provide a facility rating that was just within the voluntary requirements in the IEEE Standards, however, when setting protection relays according to sub-requirement R1.10, the transformer could be subject to currents above its capability as previously described. Second, the IEEE Standards may not apply to transformers manufactured before 1993 because the guidelines established in C57.109–1993 do not apply to transformers manufactured before 1993.

209. We are not persuaded by the ERO's statement that "a setting of 150 percent of the transformer nameplate rating or 115 percent of the highest operator established emergency rating will always be less than 200 percent of the transformer forced-cooled nameplate rating." Referring to section 8.6.1 of IEEE Standard C37.91, we point out that this statement applies only to the specific configuration where "two or more transformers are operated in parallel to share a common load," which may not be the configuration for every transformer on the Bulk-Power System. We also note that section 8.6.1 further states that "[r]elays on individual transformers may require pickup levels greater than twice the force cooled rating of the transformer to avoid tripping." Since Requirement R1.10 applies to any topology, it must be robust enough to address the reliability issues of any topology. Section 8.6.1 of IEEE Standard C37.91 applies only to two or more transformers that are operated in parallel. Consequently, we reject NERC's assertion that it is not possible to exceed the rating of a single transformer.

210. Adopting the NOPR proposal to require entities that implement sub-requirement R1.10 to verify that the limiting piece of equipment is capable of sustaining the anticipated overload current for the longest clearing time associated with the fault would address the Commission's reliability concerns. Applying protection systems that do not respect the actual or verified capability of the limiting facility will result in a degradation of system reliability. In this instance, applying sub-requirement R1.10 without regard to the topology and capability of each transformer could cause the transformer to fail. Failure of the transformer may not be limited to only the affected transformer, but may also affect other Bulk-Power Systems elements in its vicinity, further degrading the reliability of the Bulk-Power System.

211. While NERC explains that sub-requirement R1.10 is intended for specific transformer fault protection relays that are set to protect for fault conditions and not excessive load conditions, sub-requirement R1.10 does not identify that intent.[157] Additionally, sub-requirement R1.11 of PRC–023–1 establishes criteria for transformer overload protection relays that do not comply with sub-requirement R1.10. Because sub-requirement R1.11 establishes that the protection must allow an overload for 15 minutes, we disagree with WECC that sub-requirement R1.11 addresses the Commission's reliability concern with overloads.

212. We acknowledge that relays can be set to protect for faults as well as overloads and that the operation of relays for fault conditions is much faster than for overload conditions. This is because faults need to be removed

[153] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 186.

[154] 16 U.S.C. 824o(i)(2).

[155] Section 8.6.1 of IEEE Standard C37.91–2008 states that "[w]hen overcurrent relays are used for transformer backup, their sensitivity is limited because they should be set above maximum load current."

[156] *E.g.,* Reliability Standard FAC–003–1, Transmission Vegetation Management Program, Footnote 1 (reference to ANSI A300, Tree Care Operations).

[157] NERC Petition at 11.

quickly from the Bulk-Power System to limit the severity and spread of system disturbances and prevent possible damage to protected elements, while overload relays are designed to operate more slowly, and when applicable, allow time for operators to implement operator control actions to mitigate the overloaded facility. Nevertheless, both fault and overload relays are load-responsive relays. Thus, we agree with those commenters that state that manual mitigation of thermal overloads is best left to system operators, who can take appropriate actions to support Reliable Operation of the Bulk-Power System. Moreover, because both types of relays are load-responsive relays, we disagree with PSEG that the Commission's proposal is beyond the scope of PRC–023–1.

4. Sub-Requirement R1.12

213. Sub-requirement R1.12 establishes relay loadability criteria when the desired transmission line capability is limited by the requirement to adequately protect the transmission line. In these cases, the line distance relays are still required to provide adequate protection, but the implemented relay settings will limit the desired loading capability of the circuit. In its petition, NERC stated that if an essential fault protection imposes a more constraining limit on the system, the limit imposed by the fault protection is reflected within the facility rating.[158] NERC also stated that PRC–023–1 should cause no undue negative effect on competition or restrict the grid beyond what is necessary for reliability.[159]

a. NOPR Proposal

214. In the NOPR, the Commission expressed concern that sub-requirement R1.12 allows entities to technically comply with the Reliability Standard without achieving its stated purpose. The Commission explained that because entities can set their relays to limit the load carrying capability of a transmission line, any line with relays set according to sub-requirement R1.12 will not be utilized to its full potential in response to sudden increases in line loadings or power swings. The Commission stated this will make the natural response of the Bulk-Power System less robust in the case of system disturbances. The Commission added that an entity that uses a protection system that requires it to set its relays pursuant to sub-requirement R1.12 may not be able to satisfy its reliability obligations. Consequently, the Commission requested comments on whether the use of such a protection system is consistent with the Reliability Standard's objectives, and whether it should direct a modification that would require entities that employ such a protection system to use a different system.

b. Comments

215. NERC opposes the Commission's proposal and disagrees with the Commission's assertion that sub-requirement R1.12 allows entities to comply with the Reliability Standard without achieving its purpose. NERC states that the Reliability Standard's objectives include ensuring reliable detection of all network faults and preventing undesired protective relay operation that interferes with the system operator's ability to take remedial action. NERC explains that use of sub-requirement R1.12 is restricted to cases where adequate line protection cannot be achieved without restricting the loadability of the protected transmission element.

216. NERC and Consumers Energy argue that sub-requirement R1.12 could have helped mitigate the August 2003 blackout. NERC and Consumers Energy explain that many of the lines that tripped during the blackout were below their emergency rating and tripped because of loading limitations imposed by relay settings. NERC and Consumers Energy state that these lines tripped without warning to system operators, who were unaware of loading limitations imposed by relay settings. NERC and Consumers Energy note that sub-requirement R1.12 mandates that facility ratings reflect relay loadability limitations and speculate that, if this had been the case on the day of the blackout, system operators would have known that they were approaching the relay loadability limitation and could have taken mitigating action.[160]

217. Other commenters share NERC's view that sub-requirement R1.12 is consistent with the Reliability Standard's purpose.[161] Ameren argues that sub-requirement R1.12 appropriately recognizes that priority must be given to fault detection over loadability because undetected faults can result in generation and load instability, outages, and increased damage and repair time. Basin states that while sub-requirement R1.12 may lead to relay settings that limit a line's full potential in response to sudden increases in line loadings or power swings, it maximizes loadability to the extent possible without compromising the primary zone of protection.

218. Commenters also claim that sub-requirement R1.12 is intended to provide acceptable protection for uncommon configurations.[162] EEI, WECC, and Consumers Energy speculate that sub-requirement R1.12 will most commonly apply to lines with three or more terminals, which usually require larger zone 2 settings than two-terminal lines. Consumers Energy states that such configurations are actually selected for reliability, not cost, such that removal of a line will simultaneously remove other components that could not be reliably served in the absence of that line. Oncor states that the purpose of sub-requirement R1.12 is to handle those less common system configurations where operating the system at the maximum capacity of the equipment in the configuration is within the operating range of the protective relay settings to detect and clear all faults in the protected configuration.

219. Some commenters argue that utilities should have the flexibility to decide what is necessary for their systems. For example, South Carolina E&G maintains that utilities should be allowed to either restrict line loadability for protection or use a different protection system appropriate for the particular situation. TVA argues that a utility should be able to establish facility ratings based on thermal or relay limits, and that as long as facility ratings are applied in system studies correctly (and such studies show no violations), a utility should not be required to change its protective schemes to allow a higher facility rating based on thermal limits.

220. TAPS describes sub-requirement R1.12 as an example of NERC and industry experts properly exercising flexibility to balance a number of reliability factors, including cost, as the Commission recognized is appropriate in Order No. 672. TAPS reiterates that in Order No. 672 the Commission stated that a proposed Reliability Standard need not reflect the optimal method, or "best practice," for achieving its reliability goal without regard to implementation cost or historical regional infrastructure design.[163] TAPS argues that in assessing whether the Reliability Standard achieves its reliability goal efficiently and effectively, the Commission should give

[158] *Id.* at 14.

[159] *Id.* at 27.

[160] Consumers Energy at 12–13; NERC Comments at 32.

[161] *See also* Ameren, Basin, EEI, McDonald, and WECC.

[162] *See, e.g.,* Consumers Energy, EEI, and Oncor.

[163] TAPS at 26 (citing Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 328).

due weight to NERC's balancing of competing factors. TAPS also claims that the Commission's proposal to require a broad change of equipment is expensive and "run[s] afoul" of sections 215(a)(3) [164] and (i)(2) of the FPA, which limit Reliability Standards that require expansion of facilities.

221. APPA states that the Commission's proposal appears to require NERC to prohibit protection systems that would require the use of sub-requirement R1.12, effectively writing sub-requirement R1.12 out of the Reliability Standard. APPA argues that the Commission is proposing to direct NERC to adopt a specific modification that may not be the best or most efficient way to address the Commission's concerns. APPA states that it agrees with the Commission raising the issue to the extent that the Commission is concerned about the adverse impact of sub-requirement R1.12 on Available Transfer Capability. APPA contends, however, that having raised the issue, the Commission should direct NERC as the ERO to develop solutions rather than dictate a solution in the first instance.

222. The PSEG Companies argue that it is impractical to require entities to replace existing impedance relay systems without evidence that their continued use will have a negative reliability impact. The PSEG Companies contend that protection systems should be replaced only if reliability studies show that the limits imposed on the system by the use of sub-requirement R1.12 will truly impede reliability. Oncor argues that a modification that would require entities that employ impedance relays to replace them with a current differential or pilot wire relay system that is immune to load or stable power swings would eliminate the valuable backup feature of the impedance relay and actually reduce the reliability of the grid serving the atypical configuration.

223. EEI and WECC assert that sub-requirement R1.12 can reasonably be interpreted as the first step in implementing the Commission's proposal to limit the reach of zone 3/zone 2 relays.[165] EEI and WECC explain that sub-requirement R1.12 imposes a maximum reach for distance relays of 125 percent of the apparent length of the protected line, which allows relays to dependably detect faults. EEI and WECC add that use of sub-requirement R1.12 may prevent entities from using time-delayed, over reaching zone 3 relays as remote backup protection, unless they employ other load limiting relay features. EEI and WECC argue that even with this single possible limitation, this loadability method is consistent with the Reliability Standard's objectives.

c. Commission Determination

224. We decline to adopt the NOPR proposal. After further consideration, we think that it is incumbent on entities that implement sub-requirement R1.12 to ensure that they implement it in a manner that is consistent and coordinated with the Requirements of existing Reliability Standards and that achieves performance results consistent with their obligations under existing Standards. While we are not adopting the NOPR proposal, we direct the ERO to document, subject to audit by the Commission, and to make available for review to users, owners and operators of the Bulk-Power System, by request, a list of those facilities that have protective relays set pursuant to sub-requirement R1.12. We believe that this transparency will allow users, owners, and operators of the Bulk-Power System to know which facilities have protective relay settings, implementing R1.12, that limit the facility's capability.

225. We also disagree with commenters who argue that the few instances where a protection system implements sub-requirement R1.12 are not a threat to the reliability of the Bulk-Power System unless they have been declared critical circuits. Protective relays on Bulk-Power Systems elements are an integral part of Reliable Operation.[166] Any instance of a protection system that does not ensure Reliable Operation is a reliability concern, not only to prevent and limit the severity and spread of disturbances, but also to prevent possible damage to protected elements.[167]

226. We also disagree with EEI's and WECC's assertion that sub-requirement R1.12 can reasonably be interpreted as the first step in implementing the Commission's proposal to limit the reach of zone 3/zone 2 relays.[168] Sub-requirement R1.12 establishes loadability criteria for distance relays when the desired transmission line capability is limited by the requirement to protect the transmission line, and not explicitly for the application of zone 3/zone 2 distance relays applied as remote circuit breaker failure and backup protection. As discussed previously, the Commission proposed to establish a maximum allowable reach for such relays because that their large reaches make the relays susceptible to tripping from load.

G. Requirement R2

227. Requirement R2 states that entities that use a circuit with the protective relay settings determined by the practical limitations described in sub-requirements R1.6 through R1.9, R1.12, or R1.13 must use the calculated circuit capability as the circuit's facility rating. The entities also must obtain the agreement of the planning coordinator, transmission operator, and reliability coordinator as to the calculated circuit capability. The Commission did not make any proposal regarding Requirement R2.

1. Comments

228. ERCOT and IRC state that the Commission should clarify that the "agreement" contemplated in Requirement R2 only means that the entity calculating the circuit capability is required to provide the circuit capability to the relevant functional entities. ERCOT notes that because it is the planning coordinator, transmission operator and reliability coordinator in the ERCOT region, it would be responsible for reviewing and approving the calculated circuit capabilities under Requirement R2. ERCOT states that it lacks the necessary analysis tools and data (*e.g.,* conductor sag software and transmission design data to determine emergency ratings) to provide an informed opinion on the circuit capabilities calculated by transmission owners, generator owners, or distribution owners pursuant to Requirement R2. ERCOT argues that the entities that own the facilities are in the best position to establish those limits, and that planning coordinators, transmission operators, and reliability coordinators should not be required to approve them. ERCOT contends that planning coordinators, transmission operators, and reliability coordinators should merely be made aware of the limits in order to respect them while executing their duties. IRC makes the similar claim that the term "agreement" in Requirement R2 requires only a data check or confirmation, such that planning coordinators, transmission operators, and reliability coordinators must simply agree that they will use the circuit capability provided by the transmission owner, generator owner, or distribution owner. IRC argues that this interpretation is consistent with both

[164] 16 U.S.C. 824o(a)(3).

[165] EEI at 25; WECC at 5–6.

[166] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 1435.

[167] *Id.*

[168] As discussed previously, the Commission has decided not to adopt the NOPR proposal for establishing a maximum allowable reach for the application of zone 3/zone 2 relays applied as remote circuit breaker failure and backup protection upon consideration of comments.

FAC–008–1, which requires transmission and generator owners to establish facility rating methodologies for their facilities and provide them to reliability coordinators, transmission operators, transmission planners, and planning authorities, and FAC–009–0, which requires transmission and generator owners to provide the resultant facility ratings to the same entities.

2. Commission Determination

229. We do not agree with ERCOT and IRC that an entity's obligation to obtain the "agreement" of the planning coordinator, transmission operator, or reliability coordinator with the calculated circuit capability only means that the entity calculating the circuit capability is required to provide the circuit capability to the relevant functional entities. We interpret the language "shall obtain the agreement" in Requirement R2 to require that the entity calculating the circuit capability must reach an understanding with the relevant functional entity that the calculated circuit capability is capable of achieving the reliability goal of PRC–023–1. Since PRC–023–1 is intended to ensure that protective relay settings do not limit transmission loadability or interfere with system operators' ability to take remedial action to protect system reliability, and to ensure that relays reliably detect all fault conditions and protect the electrical network from these faults, we expect the agreement to center around achieving these purposes.

H. Requirement R3 and Its Sub-Requirements

230. Requirement R3 directs planning coordinators to identify which sub-200 kV facilities are critical to the reliability of the bulk electric system and therefore subject to Requirement R1.[169] Sub-requirement R3.1 directs planning coordinators to have a process to identify critical facilities. Sub-requirement R3.1.1 specifies that the process must consider input from adjoining planning coordinators and affected reliability coordinators. Sub-requirements R3.2 and R3.3 direct planning coordinators to maintain a list of critical facilities and provide it to reliability coordinators, transmission owners, generator owners, and distribution providers within 30 days of establishing it, and within 30 days of making any change to it.

1. Role of the Planning Coordinator

a. Comments

231. ERCOT argues that the Commission should follow the example of the Critical Infrastructure Protection (CIP) Reliability Standards and direct the ERO to make facility owners, rather than planning coordinators, responsible for identifying critical sub-200 kV facilities and for maintaining and distributing the critical facilities list. ERCOT contends that while planning coordinators and other functional entities must receive all relevant information about facilities in their region, facility owners have the right and obligation to make criticality determinations about their facilities. ERCOT argues that the CIP Reliability Standards support its position, as they require facility owners to identify critical assets.

232. ERCOT also requests confirmation that sub-requirement R3.1.1 does not apply to the ERCOT region because it is not synchronously interconnected with any other control area and because ERCOT is the only planning coordinator and reliability coordinator within the region.

b. Commission Determination

233. We disagree with ERCOT and will not direct the ERO to make facility owners responsible for identifying critical sub-200 kV facilities or for maintaining and distributing the critical facilities list. We also reject ERCOT's comparison between PRC–023–1 and the CIP Reliability Standards. Facility owners are responsible for maintaining only their own facilities. Planning coordinators, on the other hand, are charged with assessing the long-term reliability of their planning authority areas.[170] Consequently, planning coordinators are better prepared and equipped to make the comprehensive criticality determinations for their areas for the purposes of PRC–023–1. We thus agree with the ERO that planning coordinators are better suited to make the criticality determinations for the purposes of PRC–023–1.

234. Finally, while we acknowledge that ERCOT is not synchronously interconnected with any other control area and that it is the only planning coordinator and reliability coordinator in its region, we clarify that any request for a regional exemption from PRC–023–1 is an applicability matter that must be raised in the Reliability Standards development process and included in a modified Reliability Standard.[171] Consequently, Requirement R3 and its sub-requirements apply to ERCOT.

2. Sub-Requirement R3.3

a. NOPR Proposal

235. The Commission proposed to direct the ERO to add Regional Entities to the list of entities that receive the critical facilities list pursuant to sub-requirement R3.3.

b. Comments

236. NERC and WECC agree with the Commission that the Regional Entity should receive the critical facilities list. EEI acknowledges that the Commission's proposal may have merit, but opposes a modification. EEI explains that the Regional Entity can already request the data from planning authorities and reliability coordinators at any time, and argues that it is not necessary to formalize the process.

c. Commission Determination

237. We adopt the NOPR proposal and direct the ERO to modify the Reliability Standard to add the Regional Entity to the list of entities that receive the critical facilities list. The Regional Entity must know which facilities in its area have been identified as operationally significant and could contribute to cascading outages and the loss of load. Additionally, providing Regional Entities with the critical facilities list will aid in the overall coordination of planning and operational studies among planning coordinators, transmission owners, generator owners, distribution providers, and Regional Entities. As with our other directives in this Final Rule, we do not prescribe this specific change as an exclusive solution to our reliability concerns regarding sub-requirement R3.3. As we have stated, the ERO can propose an alternative solution that it believes is an equally effective and efficient approach to addressing the Commission's reliability concerns.[172]

I. Attachment A

238. Attachment A of the Reliability Standard contains three sections: (1) A non-exhaustive list of load-responsive relays subject to the Standard; (2) a statement that out-of-step blocking protective schemes are subject to the Standard and shall be evaluated to ensure that they do not block trip for fault during the loading conditions defined within the Standard's

[169] As proposed by NERC, Requirement R3 directs planning coordinators to identify the 100 kV–200 kV facilities that should be subject to Requirement R1. As we have explained, in this Final Rule we direct that the ERO revise Requirement R3 so that planning coordinators also identify sub-100 kV facilities that should be subject to the Reliability Standard.

[170] *See* NERC Function Model, Version 3 at 14.

[171] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 1125.

[172] *Id.* P 186.

requirements; and (3) a list of protective systems that are expressly excluded from the Standard's requirements. In the NOPR, the Commission expressed concerns about sections 2 and 3.

1. Section 2: Evaluation of Out-of-Step Blocking Schemes

239. Section 2 of Attachment A states that the "[Reliability Standard] includes out-of-step blocking schemes which shall be evaluated to ensure that they do not block trip for faults during the loading conditions defined within the requirements."

a. NOPR Proposal

240. In the NOPR, the Commission stated that since the ERO intends to require the evaluation of out-of-step blocking applications, language to this effect should be included in PRC–023–1 as a Requirement. To this end, the Commission proposed to direct the ERO to add section 2 of Attachment A to PRC–023–1 as an additional Requirement with the appropriate violation risk factor and violation severity level assignments.

b. Comments

241. NERC agrees that the proposed modification is appropriate and proposes to implement it through the full Reliability Standards development process in the next modification of PRC–023–1. In the meantime, NERC requests that the Commission approve Attachment A as currently written.[173]

242. WECC asserts that the Commission's proposal is reasonable because the obligation to evaluate out-of-step blocking schemes is part of PRC–023–1, but carries no penalty without a violation risk factor and violation severity level. WECC suggests that the Commission take the same approach with respect to out-of-step tripping (section 1.2). WECC explains that without appropriate load supervision, out-of-step tripping may subject circuit breakers to excessive over-voltages, if it occurs at all.

243. Dominion, EEI, and Oncor disagree with the Commission's proposal. Rather than make it a Requirement, Dominion argues that the statement about out-of-step blocking schemes should be removed from PRC–023–1 and included in a Reliability Standard that addresses stable power swings. EEI asserts that section 2 appropriately appears in Attachment A because Attachment A identifies the types of transmission line relays and relay schemes that are subject to the Reliability Standard, and out of step blocking relays are "transmission line relays" addressed in Requirement R1. Oncor argues that section 2 is already a requirement because it is in an attachment instead of an appendix.

c. Commission Determination

244. We adopt the NOPR proposal and direct the ERO to include section 2 of Attachment A in the modified Reliability Standard as an additional Requirement with the appropriate violation risk factor and violation severity level.

245. EEI correctly states that Attachment A is a compilation of the types of transmission line relays and relay schemes that are subject to PRC–023–1, and that section 2 specifies that out-of-step blocking schemes are subject to it. However, section 2 also creates an obligation to evaluate out-of-step blocking schemes to ensure that they do not block trip for faults during the loading conditions defined within the Reliability Standard's Requirements. This is an obligation that is not stated in, or referenced by, any Requirement in the Reliability Standard. Consequently, this obligation is not currently associated with a violation risk factor or violation severity level.

246. Although the obligation to evaluate out-of-step blocking schemes is currently not stated in a Requirement, it nevertheless remains an obligation imposed on entities by PRC–023–1 because it is a part of Attachment A and therefore a part of PRC–023–1. Consequently, we clarify that entities must comply with this obligation while the ERO modifies PRC–023–1 to include it as a Requirement.

247. We disagree with Dominion's suggestion that the Commission direct the ERO to remove section 2 from PRC–023–1 and include it in a Reliability Standard that addresses stable power swings. It is appropriate to include section 2 as a Requirement in PRC–023–1 because out-of-step blocking schemes must be allowed to trip for faults during the loading conditions defined within PRC–023–1. Otherwise, faults that occur during a power swing may result in system instability if not cleared.

248. Finally, we will not direct the ERO to make section 1.2 into a Requirement as WECC suggests. Section 1 of Attachment A is a non-exhaustive list of relays and protection systems that are subject to Attachment A; unlike section 2, section 1 does not create substantive obligations that are neither stated in nor referenced by the Requirements. Section 1.2 merely lists out-of-step tripping systems as one of the systems that are subject to the Reliability Standard and must be set pursuant to Requirement R1.

2. Section 3: Protection Systems Excluded From the Reliability Standard

249. Section 3 lists certain protection systems that are excluded from the requirements of PRC–023–1. These systems are specified in sections 3.1 through 3.9.

a. NOPR Proposal

250. In the NOPR, the Commission stated that it could not determine whether the exclusions in section 3 are justified because NERC did not provide the technical rationale behind *any* of the exclusions.[174]

251. The Commission also raised specific concerns about section 3.1, which excludes from the Reliability Standard's requirements relay elements that are enabled only when other relays or associated systems fail, such as those overcurrent elements enabled only during loss of potential conditions or elements enabled only during the loss of communications. The Commission expressed concern that section 3.1 could be interpreted to exclude certain protection systems that use communications to compare current quantities and directions at both ends of a transmission line, such as pilot wire protection or current differential protection systems supervised by fault detector relays. The Commission explained that if supervising fault detector relays are not subject to the Reliability Standard, and they are set below the rating of the protected element, the loss of communications and heavy line loading conditions that approach the line rating would cause them to operate and unnecessarily disconnect the line; adjacent transmission lines with similar protection systems and settings would also operate unnecessarily, resulting in cascading outages. The Commission requested comments, therefore, on whether the exclusions in section 3 are technically justified and whether it should direct the ERO to modify PRC–023–1 by deleting specific sections in section 3. The Commission also requested comment on whether it should direct the ERO to modify section 3.1 to clarify that it does not exclude from the requirements of PRC–023–1 pilot wire protection or current

[173] *See also* Duke and IESO/Hydro One.

[174] The exclusion of protection systems intended for the detection of ground fault conditions appears to be unnecessary because these systems are not load-responsive.

differential protection systems supervised by fault detector relays.[175]

b. Comments

252. While NERC acknowledges that specific justification should be included for those protection systems that ultimately remain excluded from the Reliability Standard's requirements, NERC opposes removing any of the exclusions.[176]

253. With respect to section 3.1, NERC does not share the Commission's concern and urges it not to direct the removal of supervising fault detector relays from the list of exclusions. NERC explains that section 3.1 excludes elements that: (1) Do not respond to load current; (2) are in use only during very short periods of time to address short-term conditions; or (3) supervise operation of relay elements that themselves are subject to the Reliability Standard. NERC explains that if the supervised relay element itself does not operate in these cases, the operation of the supervising element should have no impact on reliability. NERC asserts that if a communications system is lost, the transmission element must be protected and may need to be tripped for low magnitude faults approaching load current. NERC argues that it is preferable to trip one line for loss of communications than not trip at all, thereby causing mis-coordination and/or stability problems. NERC adds that the failure of a communications-based protection system is typically an isolated event.

254. EEI speculates that the intent behind specifically excluding overcurrent elements enabled only during loss of potential conditions and elements enabled only during a loss of communications (the specific examples listed in section 3.1) is to exclude relay system failures that, for normal utility practice, would result in either emergency call outs and repairs or next-day call outs and repairs. EEI concludes that these failures are rare enough to have a limited impact on the Bulk-Power System.

255. EEI and Ameren support section 3.1 as technically justified because it allows transmission lines to remain in-service with a level of fault protection while the failure that required activation of the section 3.1 relays is repaired, and that the alternative would be to take the lines or buses out of service.[177] Ameren cautions that this alternative would put the system in a less reliable N–1 or N-many state.

256. EEI adds that many long transmission lines proposed to support the creation of the national grid will require backup protection for the types of failures discussed in section 3.1. EEI explains that, for very long lines, the fault currents can be below rated continuous capability without the 150 percent margin, and that simple schemes are required for the small periods of time when the backup protection will be in-service following a loss of potential conditions or communications. EEI contends that these exceptions only impact one facility at a time and do not present more risk than removing the facility.

257. Exelon, Consumers Energy, and IESO/Hydro One also claim that the exclusions in section 3.1 are justified. Exelon asserts that the Reliability Standard's goal is to address protective relays that have a history of contributing to cascades, and that relays enabled only when other relays or associated systems fail are extremely unlikely to be a factor in a disturbance because they are enabled so infrequently. Consumers Energy cautions that the relays excluded in section 3.1 must be able to respond to relay failures without regard to relay loadability; otherwise, there is a risk that faults will not be cleared and there will be cascading outages. IESO/Hydro One argue that the Commission should approve section 3.1 because the relays it excludes are incapable of independently opening the circuit breaker; that is, they require the action of other relays.

258. TAPS argues that NERC should reconsider section 3.1 because the exclusion of relay elements enabled only when other relays or associated systems fail depends on the successful operation of a potential source (potential transformer or capacitor coupled voltage transformer (CCVT)) or a communication system.[178] TAPS explains that the TPL Reliability Standards require planners to plan the system as if a potential source or communication system has failed (*e.g.,* TPL–003–0). Although potential sources and communication systems fail infrequently, TAPS states that it might be consistent with the TPL Standards for NERC to reconsider the balance of these factors. TAPS argues, however, that the Commission should not require NERC to eliminate section 3.1.

259. In general, commenters contend that the rest of the exclusions in section 3 have a sound technical basis. Basin argues that the exclusions address protection systems that have no significant impact on the reliability of the bulk electric system, and suggests that the Commission consider the following criteria in determining whether a system should be subject to PRC–023–1: (1) The frequency with which that system is enabled; (2) the probability that the system will be activated when it is enabled; and (3) the effects that the protection system will have on the Bulk-Power System when it is activated.[179] Basin argues that protection systems that have a low probability of being activated when enabled should be excluded from the Reliability Standard. Likewise, those that, when activated, have an inconsequential effect on system stability should also be excluded from the Reliability Standard. The PSEG Companies argue that PRC–023–1 reasonably balances risks with the potential expenditure of substantial and costly changes to protection systems.[180]

260. Exelon and Consumers Energy argue that section 3.2, which excludes relays that are designed to detect ground fault conditions, is justified because such relays have no significant history of contributing to cascades. Consumers Energy claims that it would be a waste of resources to identify, study, and document the behavior of devices intended for the detection of ground faults, when such devices are immune to tripping for load currents.

261. Duke asserts that it is unclear whether section 3.3, which excludes protection systems intended for protection during stable power swings, is meant for tripping or to block tripping. Duke states that if the protection is to block tripping, the exclusion is in conflict with section 2 of Attachment A, as many relays use the same logic to block for out-of-step conditions and for stable power swings.

262. Exelon states that the relays identified in section 3.5, which excludes relays used for special protection systems applied and approved in accordance with Reliability Standards PRC–012 through PRC–017, are designed along with specific relay settings to assure that a given power system meets NERC performance requirements. Consumers Energy asserts that these relay systems are intended for a specific set of conditions and already

[175] The Commission also noted that section 3.5 excludes from the requirements of PRC–023–1 "relay elements used only for [s]pecial [p]rotection [s]ystems applied and approved in accordance with NERC Reliability Standards PRC–012 through PRC–017." Since PRC–012–0, PRC–013–0 and PRC–014–0 are currently proposed Reliability Standards pending before the Commission, the particular relay elements they involve remain subject to PRC–023–1 until the relevant Standards are approved by the Commission. Order No. 693–A, 120 FERC ¶ 61,053 at P 138.

[176] NERC Comments at 35.

[177] EEI at 27–28; Ameren at 15.

[178] TAPS, Attachment 1 at 17.

[179] Basin at 12–13.

[180] PSEG Companies at 12.

undergo a stringent review, such that additional review under PRC–023–1 is unnecessary and creates the risk that a special protection system approved under PRC–012 through PRC–017 may be found non-compliant under PRC–023–1. Dominion adds that relay elements used only for special protection systems applied and approved in accordance with PRC–012 through PRC–017 do not present a risk to the reliability of the grid because the instances in which they operate are rare events that are addressed and corrected in a timely manner.[181]

263. TAPS argues that the exclusions in sections 3.2 through 3.8 are designed to ensure that PRC–023–1 applies where it is needed to address loadability concerns, but does not interfere with relays that are not tripped by load current. TAPS adds that section 3.9, which excludes relay elements associated with DC converter transformers, is justified because the output of generators and DC line converters is not changed significantly with the loss of other facilities.[182]

c. Commission Determination

264. After further consideration, and in light of the comments, we will not direct the ERO to remove any exclusion from section 3, except for the exclusion of supervising relay elements in section 3.1. Consequently, we direct the ERO to revise section 1 of Attachment A to include supervising relay elements on the list of relays and protection systems that are specifically subject to the Reliability Standard. As with our other directives in this Final Rule, we do not prescribe this specific change as an exclusive solution to our reliability concerns regarding the exclusion of supervising relay elements. As we have stated, the ERO can propose an alternative solution that it believes is an equally effective and efficient approach to addressing the Commission's reliability concerns.[183]

265. Supervising elements ensure that a protection system is secure and does not operate when it should not operate. When a supervising relay is in place, it acts as a check on the supervised protection system because both must operate to trip a facility. If a supervising relay is set below the rating of the line, high loading conditions will cause it to be "picked-up," *i.e.,* continuously energized and ready to operate. When this occurs, the supervising relay will no longer be able to act as a check on the other protection system because the supervising relay will already have registered that it should operate. At that point, the supervising relay will be waiting for the supervised relay to become energized before tripping the protected facility.[184]

266. For example, current differential protection systems use communication systems to transmit and compare information between relays located at both terminals and to initiate the high-speed tripping of a facility when the difference of currents at the sending end and receiving end exceeds a threshold setting usually set at a small fraction of the normal line loading. Since these protection systems are dependent on communication systems, the protected facility will trip if communication is lost, even when the line continues to carry its normal load current, because the difference of the currents as seen at either end will be the load current which is much larger than the threshold setting. Consequently, overcurrent relays are typically used as supervising relays to prevent the protected facility from tripping if communication is lost. However, if the supervising relays are energized due to loading conditions, and then communication is lost, the current differential protection system will operate in the absence of a fault and the protected facility will trip.

267. NERC asserts that it is preferable to trip one line for loss of communications than not trip at all, thereby causing mis-coordination and/or stability problems. We disagree. Protective relays should not operate during non-fault conditions. The tripping of facilities for non-fault conditions, like NERC describes, or in the case of the August 2003 blackout is not desirable system performance.

268. We also disagree with IESO/Hydro One's assertion that the exclusion of supervising relays from PRC–023–1 is appropriate because such relays are not capable of independently opening the circuit breaker. While a supervising relay is not designed to independently trip a facility by initiating the opening of the circuit breaker, if that relay is picked up and energized during non-fault conditions, it is no longer capable of ensuring the security of a protection system and may result in the unnecessary tripping of the facility it is protecting. As we explained, if supervising relays are not subject to the Reliability Standard, and are set below the rating of the protected element, the loss of communications and heavy line loading conditions that approach the line rating would cause them to operate and unnecessarily disconnect the line.[185] A more recent example is an event that occurred on June 27, 2007 where 138 kV transmission lines in the NPCC region resulted in sequential tripping of the four 138 kV cable-circuits. The event resulted in the interruption of service to about 137,000 customers as well as the loss of five generators and six 138 kV transmission lines. This event is the type of situation that PRC–023–1 is intended to prevent, and illustrates why we must direct the ERO to modify Attachment A to include supervising relays.

269. Although we do not direct the ERO to remove section 3.1 from the list of excluded protection systems, we find it necessary to address some comments made in the context of the Commission's proposal. For example, we disagree with those commenters that suggest that the Commission should approve section 3.1 because it excludes from the Reliability Standard's scope relays and protection systems that rarely operate. These commenters appear to suggest that protection systems that rarely operate do not pose a risk to the reliability of the Bulk-Power System. We disagree. A protective relay, as an integral part of the Bulk-Power System, must be dependable and secure; it must operate correctly when required to clear a fault and refrain from operating unnecessarily, *i.e.,* during non-fault conditions or for faults outside of its zone of protection, regardless of how many times the relay must actually operate.[186] Relays must meet this expectation to contribute to ensuring Reliable Operation of the Bulk-Power System. Consequently, the notion that any specific relay should be excluded from the Reliability Standard's scope because it may operate only on rare occasions is inconsistent with the fundamental principles that make protective relays an integral part of ensuring Reliable Operation.

270. We also disagree with Ameren's assertion that removing section 3.1 from the list of exclusions would put the Bulk-Power System in a "less reliable N–1state." As we discuss above, if supervising relays that are used in

[181] Dominion at 8.

[182] TAPS at 27–28.

[183] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 186.

[184] It works like an "and" condition (0 + 0 = no trip line, 1 + 1 = trip line, 1 + 0 = no trip line). For a supervising relay like a fault detector to be always "picked up" means that the relay is energized (it is always a "1") and is waiting for another relay to also become energized before tripping a facility.

[185] NOPR, FERC Stats. & Regs. ¶ 32,642 at P 79.

[186] These fundamental objectives for protection systems are consistent if not identical with the ones stated in NERC Planning Standards III: System Protection and Control, at 43: Dependability—a measure of certainty to operate when required, Security—a measure of certainty not to operate falsely.

current differential schemes are excluded from PRC–023–1 and set much below the line rating, they will trip the protected lines inadvertently following the loss of communication system forming part of the protection system.

271. Finally, Duke asserts that section 3.3 is ambiguous with respect to whether it excludes protection meant for tripping or to block tripping, and that if it excludes protection meant to block tripping, it is in conflict with section 2 because many relays use the same logic to block for out-of-step conditions and for stable power swings. We clarify that we do not find a conflict between section 3.3, which excludes from the Reliability Standard's scope any protection system intended for protection during stable power swings, and section 2, which ensures that out-of-step blocking schemes do not block tripping during the loading conditions defined within PRC–023–1.

272. Out-of-step schemes, blocking and tripping, are generally associated with power swing protection applications. Out-of-step tripping schemes allow controlled tripping during loss of synchronism during unstable power swings while out-of-step blocking schemes block tripping during stable power swings. Because out-of-step tripping relays are supervised by load-responsive overcurrent relays, its applicability to the requirements of PRC–023–1 is appropriate. Because the reliability objective of Requirement R1 is to set protective relays while "maintaining reliable protection of the bulk-electric system for all fault conditions," as previously determined, out-of-step blocking schemes must allow tripping for faults during the loading conditions defined within PRC–023–1. Thus, the reliability goal of the two schemes for the purposes of PRC–023–1 is different, and consequently, we find no conflict within the Standard.

J. Effective Date

273. NERC proposed the following effective dates for Requirements R1 and R2: (1) The beginning of the first calendar quarter following applicable regulatory approvals for all transmission lines and transformers with low-voltage terminals operated/connected at and above 200 kV, except for switch-on-to fault-schemes; (2) the beginning of the first calendar quarter 39 months after applicable regulatory approvals for all transmission lines and transformers with low-voltage terminals operated/connected between 100 kV and 200 kV, including switch-on-to fault-schemes;[187] and (3) 24 months from notification by the planning coordinator that, pursuant to the "add in" approach, a facility has been added to the planning coordinator's list of critical facilities. For Requirement R3, NERC proposed an effective date of 18 months following applicable regulatory approvals.

274. NERC also proposed to include a footnote (exceptions footnote) to the "Effective Dates" section honoring temporary exceptions from enforcement actions approved by the NERC Planning Committee before NERC proposed the Reliability Standard.[188]

1. NOPR Proposal

275. In the NOPR, the Commission proposed to approve NERC's implementation plan for facilities operated at and above 200 kV. In light of its applicability proposals, the Commission proposed to reject the rest of NERC's implementation plan and require, for all sub-200 kV facilities, an effective date of 18 months following applicable regulatory approvals. The Commission also proposed to direct NERC to remove the exceptions footnote, explaining that discussions about potential enforcement actions are best left out of a Reliability Standard and instead handled by NERC's compliance and enforcement program.[189]

2. Comments on Effective Date Proposals

276. In general, commenters support the Commission's proposal to adopt the effective date proposed by NERC for facilities operated at and above 200 kV, but overwhelmingly oppose the Commission's proposal for an 18 month effective date for sub-200 kV facilities, regardless of whether the Commission directs the ERO to adopt the "rule out" approach or approves NERC's "add in" approach.[190] Commenters generally argue that the Commission should adopt NERC's proposal of an effective date of the beginning of the first calendar quarter 39 months after applicable regulatory approvals for 100 kV-200 kV facilities.

277. NERC argues that planning coordinators will require at least 18 months to identify the 100 kV-200 kV facilities that should be subject to the Reliability Standard, and possibly an additional 18 to 24 months to complete any design and construction changes necessary to comply with the Standard. Consumers Energy, EEI, and Oncor offer similar estimates.

278. APPA argues that NERC's implementation plan gives planning coordinators the time necessary to perform in-depth studies to identify which facilities are critical to the reliability of the bulk electric system, and gives affected entities the time to make any necessary costly upgrades. APPA adds that only a limited number of experienced industry experts and consultants will be available to assist entities in complying with the Reliability Standard, and speculates that their time will be in high demand.

279. TAPS observes that Order No. 672 recognizes that implementation timelines must balance any urgency in the need to implement a Reliability Standard with the reasonableness of the time allowed for those who must comply to develop the necessary procedures, software, facilities, staffing or other relevant capability.[191] TAPS argues that the Commission should give due weight to NERC's expert assessment of that balance and adopt the effective dates proposed by NERC.

3. Comments on Exceptions Footnote

280. EEI argues that the Commission's proposal to direct the ERO to remove the exceptions footnote is too prescriptive given the Commission's statutory role in the Reliability Standard development process. EEI argues that the Commission has gone much farther than identifying its concern because its proposal does not allow for the ERO to develop equally effective alternatives.[192]

281. Oncor and Consumers Energy agree with the Commission's proposal. Oncor argues that the need for the temporary exemption has expired and therefore should be removed from the Reliability Standard.

[187] "Switch-on-to-fault schemes" are protection systems designed to trip a transmission line breaker when the breaker is closed into a fault. Because the current fault detectors for these systems must be set low enough to detect "zero-voltage" faults, *i.e.,* close-in, three-phase faults, these systems may be susceptible to operate on load.

[188] The footnote states:

Temporary Exceptions that have already been approved by the NERC Planning Committee via the NERC System and Protection and Control Task Force prior to the approval of this [Reliability Standard] shall not result in either findings of non-compliance or sanctions if all of the following apply: (1) The approved requests for Temporary Exceptions include a mitigation plan (including schedule) to come into full compliance, and (2) the non-conforming relay settings are mitigated according to the approved mitigation plan.

[189] NOPR, FERC Stats. & Regs. ¶ 32,642 at P 85–86.

[190] Commenters argue that a "rule out" approach would require a much longer implementation period, with estimates of up to 12 years.

[191] TAPS at 29 (citing Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 333).

[192] EEI at 28.

4. Commission Determination

282. We decline to fully adopt the NOPR proposal and approve all of NERC's proposed effective dates, including its proposal of 39 months from the beginning of the first calendar quarter after applicable regulatory approvals for 100 kV–200 kV facilities. In light of our decision to approve the "add in" approach for 100 kV–200 kV facilities, and after consideration of the comments, we agree with NERC that this is an appropriate effective date.

283. Additionally, in light of our directive to the ERO to expand the Reliability Standard's scope to include sub-100 kV facilities that Regional Entities have already identified as necessary to the reliability of the Bulk-Power System through inclusion in the Compliance Registry, we direct the ERO to modify the Reliability Standard to include an implementation plan for sub-100 kV facilities.

284. We also direct the ERO to remove the exceptions footnote from the "Effective Dates" section. As the Commission stated in the NOPR, the exceptions footnote is addressed to potential enforcement actions, and is therefore best left out of the Reliability Standard and addressed in NERC's compliance and enforcement program. Moreover, we agree with Oncor that the need for the temporary exemption has expired and therefore should be removed from the Reliability Standard. We add that entities are free to request exceptions through NERC's existing process, subject to Commission review and approval.

K. Violation Risk Factors

285. Requirement R1 directs entities to set their relays according to one of the options set forth in sub-requirements R1.1 through R1.13. NERC assigned Requirement R1 a "high" violation risk factor, but did not assign violation risk factors to sub-requirements R1.1 through R1.13.

286. Requirement R2 provides that entities that set their relays according to sub-requirements R1.6 through R1.9, R1.12, or R1.13 must use the calculated circuit capability as the circuit's facility rating and must obtain the agreement of the planning coordinator, transmission operator, and reliability coordinator as to the calculated circuit capability. NERC assigned Requirement R2 a "medium" violation risk factor.

287. Requirement R3 requires planning coordinators to determine which sub-200 kV facilities are critical to the reliability of the bulk electric system and therefore subject to Requirement R1.[193] NERC assigned Requirement R3 a "medium" violation risk factor.

1. NOPR Proposal

288. In the NOPR, the Commission listed the five guidelines that it uses to evaluate proposed violation risk factor assignments (Violation Risk Factor Guidelines). According to these Guidelines, violation risk factor assignments should be consistent: (1) With the conclusions of the Final Blackout Report; (2) within a Reliability Standard; (3) among Reliability Standards with similar Requirements; and (4) with NERC's definition of the violation risk factor level; the Commission also stated that (5) the violation risk factor levels for Requirements that co-mingle a higher risk reliability objective and a lower risk reliability objective must not be watered down to reflect the lower risk level associated with the less important reliability objective.[194]

289. The Commission agreed with NERC that Requirement R1 should be assigned a "high" violation risk factor. The Commission added, however, that violation of any of the criteria in sub-requirements R1.1 through R1.13 present the same reliability risk as a violation of Requirement R1 because they set forth the options for compliance with Requirement R1. Consequently, the Commission proposed to direct the ERO to assign a "high" violation risk factor to each sub-requirement.

290. The Commission also proposed to direct the ERO to modify the violation risk factor assigned to Requirement R3 and its sub-requirements to reflect the Commission's applicability proposals.

2. Comments

291. NERC and other commenters oppose the Commission's proposal to assign a separate violation risk factor to sub-requirements R1.1 through R1.13. These commenters argue that the sub-requirements are alternative ways to comply with Requirement R1, not separate Requirements that must be complied with in their own right. The commenters point out that each sub-requirement is intended to address a different operating condition or system design condition and that, for any specific circuit, entities will set their relays pursuant to only one of the sub-requirements. NERC adds that its proposal to assign violation risk factors only to Requirement R1 is consistent with its informational filing in Docket No. RM08–11–000, where it described more fully its plans for a new, comprehensive approach to assigning violation risk factors.[195]

292. An individual commenter, Michael McDonald, argues that Requirement R1 should have a "medium" violation risk factor, rather than a "high" violation risk factor, because actions taken since the August 2003 blackout have reduced the likelihood that a relay loadability issue will cause a cascading outage.

3. Commission Determination

293. We approve NERC's assignment of a "high" violation risk factor to Requirement R1 and a "medium" violation risk factor to Requirement R2. These violation risk factor assignments are consistent with the Violation Risk Factor Guidelines.

294. We disagree with Michael McDonald, who argues that Requirement R1 should have a "medium" violation risk factor rather than a "high" violation risk factor. Violation risk factor assignments represent the risk a violation of a Requirement presents to the Bulk-Power System.[196] Although the Commission, the ERO, and industry have taken actions since the August 2003 blackout to reduce the likelihood that relay outages will cause cascading outages, these actions do not mitigate the risk of non-compliance with Requirement R1. In our view, a violation of Requirement R1 has the potential to put the Bulk-Power System at the risk of cascading outages like those that occurred during the August 2003 blackout. Consequently, we agree with the ERO that Requirement R1 should be assigned a "high" violation risk factor.

295. We will not require the ERO to assign a violation risk factor to each sub-requirement of Requirement R1 because we agree with the ERO that the sub-requirements are alternative ways, based on different operating or design configurations, of complying with Requirement R1. Consequently, an entity's failure to appropriately apply

[193] As proposed by NERC, Requirement R3 directs planning coordinators to identify the 100 kV–200 kV facilities that should be subject to Requirement R1. As we have explained, in this Final Rule we direct that the ERO revise Requirement R3 so that planning coordinators also identify sub-100 kV facilities that should be subject to the Reliability Standard.

[194] NOPR, FERC Stats. & Regs. ¶ 32,642 at P 88. For a complete discussion of each guideline, *see North American Electric Reliability Corp.,* 119 FERC ¶ 61,145, P 19–36 (*Violation Risk Factor Order*), *order on reh'g and compliance filing,* 120 FERC ¶ 61,145 (2007) (*Violation Risk Factor Rehearing Order*).

[195] In its informational filing, NERC indicates that NERC drafting teams will develop "rolled up" violation risk factors and violation severity levels.

[196] *North American Electric Reliability Corp.,* 121 FERC ¶ 61,179, at P 38 (2007).

one of the sub-requirements of Requirement R1 to a specific operating design or configuration is, as a violation of Requirement R1, subject to a "high" violation risk factor. While the Commission generally expects that the ERO will assign a violation risk factor to each Requirement and sub-requirement of a Reliability Standard, we will accept the ERO's proposal not to assign violation risk factors to sub-requirements R1.1 through R1.13 as an exception to our current policy because we are satisfied that the sub-requirements do not constitute independent compliance requirements separate from Requirement R1.[197]

296. We also agree with the ERO's decision to assign Requirement R2 a "medium" violation risk factor. Requirement R2 comprises two reliability obligations: (1) The required use of the calculated circuit capability as the facility rating of the circuit for entities that set their relays according to sub-requirements R1.6 through R1.9, R1.12, or R1.13; and (2) the entities' obligation to obtain the agreement of the planning coordinator, transmission operator, and reliability coordinator as to the calculated circuit capability. Requirement R2 co-mingles more than one reliability obligation and, consistent with Violation Risk Factor Guideline 5, the assigned violation risk factor reflects the reliability risk of a violation of the higher reliability obligation (*i.e.,* the requirement to use the calculated circuit capability as the facility rating of the circuit).

297. Finally, we direct the ERO to assign a "high" violation risk factor to Requirement R3. The Commission expects consistency between violation risk factors assigned to Requirements that address similar reliability goals.[198] NERC assigned a "high" violation risk factor to Requirement R1, which requires entities to set their relays according to one of the criteria in sub-requirements R1.1 through R1.13. Requirement R3 directs planning coordinators to determine which sub-200 kV facilities will be subject to Requirement R1. Since the facilities identified by the planning coordinator pursuant to Requirement R3 are required to meet Requirement R1, we conclude that the reliability risk to the Bulk-Power System of a violation of Requirement R3 is the same as a violation of Requirement R1. We direct the ERO to file the new violation risk factor no later than 30 days after the date of this Final Rule.

L. Violation Severity Levels

298. NERC proposed violation severity levels for Requirements R1, R2, and R3, but not for sub-requirements R1.1 through R1.13 or R3.1 through R3.3.

299. For Requirement R1, NERC proposed: (1) A "moderate" violation severity level when an entity complies with a sub-requirement of Requirement R1, but has incomplete or incorrect evidence of compliance; and (2) a "severe" violation severity level when an entity fails to comply with a sub-requirement of Requirement R1, or when the entity lacks any evidence of compliance.

300. NERC designated Requirement R2 as a "binary" Requirement and proposed a "lower" violation severity level when an entity sets its relays pursuant to sub-requirements R1.6 through R1.9, R1.12, or R1.13, but lacks evidence that it obtained the agreement of the planning coordinator, transmission operator, and reliability coordinator as to the calculated circuit capability.[199]

301. For Requirement R3, NERC proposed: (1) A "severe" violation severity level when an entity lacks a process to identify critical facilities; and (2) "moderate" and "high" violation severity levels based on the number of days that a planning coordinator is late in providing the critical facilities list to the entities that must receive it.

1. NOPR Proposal

302. In the NOPR, the Commission listed the four guidelines that it uses to evaluate proposed violation severity levels (Violation Severity Level Guidelines).[200] According to these Guidelines, violation severity levels should: (1) Avoid the unintended consequence of lowering the current level of compliance; (2) ensure uniformity and consistency among all approved Reliability Standards in the determination of penalties;[201] (3) be consistent with the corresponding Requirement; and (4) be based on a single violation, not on a cumulative number of violations.

303. The Commission observed that the violation severity levels assigned to Requirements R1 and R2 appear to be inconsistent with Violation Severity Level Guideline 3. The Commission noted that the two violation severity levels proposed for Requirement R1 address both: (1) The severity of a violation (*i.e.,* the fact that relay settings do not comply with Requirement R1); and (2) facts necessarily associated with evaluating compliance (*i.e.,* the existence of evidence that relay settings comply with Requirement R1). The Commission explained that Requirement R1 does not require evidence of compliance, only compliance. Similarly, the Commission stated that the single violation severity level proposed for Requirement R2 does not reflect the severity of a violation of Requirement R2, but the severity of lacking evidence of compliance with Requirement R2. Consequently, the Commission proposed to direct the ERO to: (1) Adopt a binary approach to Requirement R1; *i.e.,* assign a violation severity level based on whether or not the entity complies with Requirement R1; and (2) assign a violation severity level for Requirement R2 that addresses an entity's failure to comply with the entire Requirement; *i.e.,* its failure to calculate circuit capability as the facility rating and obtain agreement on that rating with the required entities. The Commission also proposed to direct the ERO to assign a single violation severity level to each sub-requirement in Requirement R1.

[197] NERC's assignment of violation risk factors in Reliability Standard PRC–023–1 appears to be consistent with the approach to assigning violation risk factors set forth in NERC's informational filing in Docket No. RM08–11–000. At NERC's request, the Commission has not acted on the informational filing. The Commission understands, however, that NERC anticipates formally filing a comprehensive "roll up" plan in the second quarter of 2010. Consequently, we direct the ERO to re-file the violation risk factors associated with the Requirements of PRC–023–1 when it submits its comprehensive plan.

[198] *Violation Risk Factor Order,* 119 FERC ¶ 61,145 at P 25.

[199] "Binary" Requirements are Requirements where compliance is defined in terms of "pass" or "fail."

[200] For a complete discussion of each guideline, *see North American Electric Reliability Corporation,* 123 FERC ¶ 61,284, at P 19–36 (*Violation Severity Level Order*), *order on reh'g and compliance filing,* 125 FERC ¶ 61,212 (2008) (*Violation Severity Level Rehearing Order*).

[201] In the *Violation Severity Level Order,* the Commission identified two specific concerns with the uniformity and consistency of the violation severity level assignments then under review: (a) The single violation severity levels assigned to individual binary requirements were not consistent; and (b) the violation severity level assignments contained ambiguous language. With respect to concern identified in (a), which the Commission referred to as "Guideline 2a," the Commission explained that NERC assigned different violation severity levels to different binary Requirements (*i.e.* pass/fail Requirements) without justifying the different assignments or explaining how they were consistent with the application of a basic pass/fail test. The Commission directed NERC to modify the violation severity levels by either: (1) Consistently applying the same severity level to each binary Requirement; or (2) changing from a binary approach to a gradated approach. *Violation Severity Level Order* 123 FERC ¶ 61,284 at P 23–27, 45–47. In its compliance filing, NERC chose the first option and proposed to apply a "severe" violation severity level to each of the binary Requirements. The Commission agreed with this approach. *North American Electric Reliability Corporation,* 127 FERC ¶ 61,293, at P 5, 11 (2009).

304. The Commission also stated that the single violation severity level assigned to Requirement R2 appears to be inconsistent with NERC's Guideline 2a compliance filing in Docket No. RR08–4–004.[202] The Commission explained that, in that docket, NERC assigned "severe" violation severity levels to binary Requirements. The Commission added that it expects the violation severity levels assigned to binary requirements to be consistent, and proposed to direct the ERO to revise the violation severity level assigned to Requirement R2 to be consistent with Guideline 2a.

305. Finally, in light of its proposals to direct the ERO to modify Requirement R3 and its sub-requirements, the Commission proposed to direct the ERO to assign new violation severity levels to Requirement R3 and its sub-requirements, consistent with the Violation Severity Level Guidelines.

2. Comments

306. NERC agrees with the Commission's proposal to review the violation severity levels in accordance with the Violation Severity Level Guidelines.[203] Other commenters oppose the Commission's proposal to assign a violation severity level to each sub-requirement in Requirement R1 for the same reasons that they oppose assigning a violation risk factor to each sub-requirement in Requirement R1.

307. Consumers Energy makes the general argument that "evidence" should be included in Requirements only when the compliance monitor (*e.g.,* the Regional Entity or NERC) uses it for a reliability purpose. Consumers Energy argues that if evidence is used only to determine whether an entity is in compliance with a Reliability Standard, the evidence should be instead represented in a Measure as reflected in PRC–023–1.

3. Commission Determination

308. We adopt the NOPR proposals with respect to the violation severity levels assigned to Requirements R1 and R2. As we explained in the NOPR, the violation severity levels assigned to Requirement R1 are inconsistent with Violation Severity Guideline 3 because they are based in part on the amount of evidence of compliance that an entity can produce, even though Requirement R1 does not require entities to have evidence of compliance. Consequently, we direct the ERO to assign a single violation severity level of "severe" for violations of Requirement R1.

309. While we adopt the NOPR proposal with respect to Requirement R1, we do not adopt the NOPR proposal to direct the ERO to assign individual violation severity levels to the sub-requirements of Requirement R1. As we explained with respect to the violation risk factors, we will make an exception to our general policy because we are satisfied that the sub-requirements of Requirement R1 do not constitute independent compliance requirements separate from Requirement R1.[204]

310. We also adopt the NOPR proposal with respect to the violation severity level assigned to Requirement R2. As the Commission pointed out in the NOPR, the single violation severity level assigned to Requirement R2 suffers from the same problem as the two violation severity levels assigned to Requirement R1; namely, it is based in part on whether an entity has evidence of compliance with the Requirement, even though the Requirement itself does not require an entity to have evidence of compliance. Additionally, Requirement R2 is a binary Requirement, and NERC's assignment of a "lower" violation severity level rather than a "severe" violation severity level is inconsistent with its Guideline 2a compliance filing in Docket No. RR08–4–004. In that filing, NERC assigned a "severe" violation severity level to binary Requirements. As the Commission stated when discussing Guideline 2a in the *Violation Severity Level Order,* single violation severity levels assigned to binary requirements should be consistent. Accordingly, we direct the ERO to change the violation severity level assigned to Requirement R2 from "lower" to "severe" to be consistent with Guideline 2a.

311. Finally, we direct the ERO to assign a "severe" violation severity level to Requirement R3. Requirement R3 directs planning coordinators to identify the critical sub-200 kV facilities that are subject to the Reliability Standard. Similar to our determination for Requirement R2, it is our view that Requirement R3 is a binary requirement; either the planning coordinator identified critical facilities or it did not. Consequently, we find that Requirement R3 must have a single violation severity level of "severe."

312. We direct the ERO to file the new violation severity levels described in our discussion no later than 30 days after the date of this Final Rule.

M. Miscellaneous

1. Purpose of the Reliability Standard

313. The Reliability Standard's stated purpose is to "require[] certain transmission owners, generator owners, and distribution providers to set protective relays according to specific criteria in order to ensure that the relays reliably detect and protect the electric network from all fault conditions, but do not limit transmission loadability or interfere with system operators' ability to protect system reliability."

a. Comments

314. BPA argues that the Commission should direct the ERO to revise the Reliability Standard's stated purpose because the Standard requires only that certain protective relays refrain from operating during permissible load conditions and does not require that protective relays reliably detect and protect the electric network from all fault conditions. BPA asserts that sub-requirement R1.12 touches on the subject of adequately detecting faults by allowing the loadability requirements of relay settings to be relaxed in order to allow adequate protection, but adds that neither sub-requirement R1.12 nor any other sub-requirement requires relays to be set to reliably detect "all" fault conditions and protect the electrical network from these faults. BPA argues that the class of relays covered by the Reliability Standard is not even capable of detecting "all" fault conditions. BPA requests, therefore, that the Commission direct the ERO to revise the Reliability Standard's stated purpose to be: "[t]o prevent certain protective relays from operating under permissible transmission line and equipment loads."[205]

b. Commission Determination

315. We disagree with BPA. Requirement R1 directs entities to set their relays according to one of its sub-requirements (R1.1 through R1.13), based on their transmission configurations. No matter what setting entities choose, they are required to apply it while "maintaining reliable protection of the bulk electric system for all fault conditions." Thus, any sub-requirement that an entity implements must protect the electric network from all fault conditions.

[202] *See supra* n. 202.

[203] NERC Comments at 40.

[204] Consistent with our treatment of violation risk factors, we direct the ERO to re-file the violation severity factors associated with the Requirements of PRC–023–1 when it submits its comprehensive plan.

[205] BPA at 1–2.

2. Transmission Facility Design Margin

a. Comments

316. Basin interprets the Commission's statement in the NOPR that "[s]ub-requirement R1.1 specifies transmission line relay settings based on the highest seasonal facility rating using the 4-hour thermal rating of a line, plus a design margin of 150 percent" to suggest that the Commission incorrectly assumed that relay margins include an additional transmission facility design margin, and that additional Total Transfer Capability (TTC) can be achieved with different relay settings. Basin states that relay operations do not affect the calculation of TTC because relay settings are established above the level of standard operation of the system and will not operate when facilities are loaded at their maximum ratings.

b. Commission Determination

317. We clarify that the Commission did not assume that "design margin," as it is used in the context of the Reliability Standard, equates to additional TTC on the transmission facility. The statement in the NOPR that Basin refers to is a direct quote from NERC where NERC describes "design margin" in the context of the margin (percentage) over the 4-hour facility rating protective relay setting criteria for sub-requirement R1.1.[206] The "design margin" described in this requirement is different than the "transmission reliability margin" that accounts for the inherent uncertainty in bulk electric system conditions in the calculation of TTC established in the Modeling, Data, and Analysis (MOD) Reliability Standards.

IV. Information Collection Statement

318. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting and recordkeeping (collections of information) imposed by an agency.[207] The information collection requirements in this Final Rule are identified under the Commission data collection, FERC–725G "Transmission Relay Loadability Mandatory Reliability Standard for the Bulk Power System." Under section 3507(d) of the Paperwork Reduction Act of 1995,[208] the proposed reporting requirements in the subject rulemaking will be submitted to OMB for review. Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 (*Attention:* Michael Miller, Office of the Executive Director, 202–502–8415) or from the Office of Management and Budget (*Attention:* Desk Officer for the Federal Energy Regulatory Commission, *fax:* 202–395–7285, *e-mail: oira_submission@omb.eop.gov*).

319. The "public protection" provisions of the Paperwork Reduction Act of 1995 requires each agency to display a currently valid control number and inform respondents that a response is not required unless the information collection displays a valid OMB control number on each information collection or provides a justification as to why the information collection number cannot be displayed. In the case of information collections published in regulations, the control number is to be published in the **Federal Register**.

320. *Public Reporting Burden:* In the NOPR, the Commission based its estimate of the Public Reporting Burden on the NERC Compliance Registry, as of March 3, 2009, and on NERC's July 30, 2008 petition for approval of PRC–023–1. The Commission stated that, as of March 3, 2009, NERC had registered in its Compliance Registry: (1) 568 distribution providers; (2) 825 generator owners; (3) 324 transmission owners; and (4) 79 planning authorities. The Commission also noted that the Reliability Standard does not apply to all transmission owners, generator owners, and distribution providers, but only to those with load-responsive phase protection systems as described in Attachment A of the Standard, applied to all transmission lines and transformers with low-voltage terminals operated or connected at 200 kV and above and between 100 kV and 200 kV as identified by the planning coordinator as critical to the reliability of the bulk electric system. The Commission further noted that some entities are registered for multiple functions, so there is some overlap between the entities registered as distribution providers, transmission owners, and generator owners. Given these parameters, the Commission estimated the Public Reporting Burden as follows:

Data collection	Number of respondents	Number of responses	Hours per respondent	Total annual hours
FERC–725G:				
M1—TOs, GOs and DPs must "have evidence" to show that each of its transmission relays are set according to Requirement R1.	450	1	Reporting: 0	Reporting: 0.
			Recordkeeping: 100	Recordkeeping: 45,000.
M2—Certain TOs, GOs and DPs must have evidence that a facility rating was agreed to by PA, TOP and RC.	166	1	Reporting: 0	Reporting: 0.
			Recordkeeping: 10	Recordkeeping: 1,660.
M3—PC must document process for determining critical facilities and (2) a current list of such facilities.	79	1	175	13,825.
Total	.....	.....	.....	60,485.

Based on the available information from the compliance registry, the Commission estimated that 525 entities would be responsible for compliance with the Reliability Standard.[209] The Commission also estimated that it would require 60,485 total annual hours for collection (reporting and recordkeeping) and that the average annualized cost of compliance would be $2,419,400 ($40/hour for 60,485 hours; the Commission based the $40/hour estimate on $17/hour for a file/record clerk and $23/hour for a supervisor).[210]

321. Several commenters express concern with the burden to be imposed by the Reliability Standard. Some of these comments address the Reliability Standard's potential impact on small entities; because these comments are also the subject of the analysis

[206] NERC Petition at 9.

[207] 5 CFR 1320.11.

[208] 44 U.S.C. 3507(d).

[209] NOPR, FERC Stats. & Regs. ¶ 32,642 at P 117.

[210] BPA notes that the NOPR erroneously showed this figure as $241,940 rather than $2,419,400.

performed under the Regulatory Flexibility Act, the Commission has provided a response under that section of this rulemaking. Other comments question the Commission's initial burden estimate.

322. APPA argues that the Commission has grossly underestimated the Public Reporting Burden and requests that the Commission develop a more accurate estimate. APPA notes that the Commission provided a breakdown by category of registered entities for a total of 1,717 entities, but then asserts that only 525 entities will be subject to PRC–023–1 as proposed by NERC. APPA states that it cannot assess how the Commission came up with this lower number, as the Commission provided no explanation of its methodology or the data it used to reach this conclusion. APPA states that the Commission's initial estimate appears to be based on the Reliability Standard as proposed by NERC, and therefore fails to account for the Commission's proposals to expand the Standard's applicability. APPA argues that the Commission must assess the Public Reporting Burden created by its proposals.

323. APPA also claims that the Commission's estimate of labor costs is so low as to be completely erroneous for burden evaluation purposes. Based on an informal survey of its members that own or operate transmission facilities above 100 kV, APPA states that 21 out of nearly 300 registered public power utilities would need to evaluate 791 terminals to comply with the Commission's proposals. At an estimated cost of between $500 and $1,200 per location, APPA estimates that the cost of compliance for these 21 members would be between $395,500 and $949,200; the Commission estimated $2,419,400 for the entire industry. APPA adds that entities will need seasoned and expensive electrical engineers and outside consultants to comply with the Commission's proposals, not file/record clerks who are paid $17 per hour or supervisory personnel who are paid $23 per hour. APPA reports that one of its members estimates that it would have to use engineers, managers and even director-level personnel to carry out the required tasks, at an estimated cost of $55–$75 per hour. APPA expects that the cost of external consultants could reach $200 per hour.

324. BPA states that the loaded cost for an engineer is approximately $80 per hour, twice the $40 per hour the Commission estimated for a file clerk and a supervisor. BPA observes that this would double the estimated annual cost of the Reliability Standard to $4,838,800. BPA also questions the estimate of 100 hours annually for each respondent to comply with Requirement R1. BPA states that it could take thousands of hours for larger utilities.

325. EEI argues that the Commission's estimate of hours for reporting and recordkeeping substantially underestimates the actual cost, in both time and money, required to comply with the Commission's modifications. EEI reports that one smaller investor-owned utility has estimated that it would take 4–8 hours of engineering time, per relay terminal, to review the more than 850 line terminals on its system operated between 100 kV and 200 kV. EEI states that it would take an additional 6–12 hours of engineering time per terminal if, as the utility expects, about one third of its line terminals require mitigation, and another 6–12 hours of operations and maintenance staff hours to implement relay settings for terminals requiring mitigation.

326. EEI asserts that it could cost $40,000 to replace each terminal in order to comply with the Commission's modifications. EEI states that there are more than 100,000 line terminals in the U.S. on facilities between 100 kV and 200 kV that would have to be checked if the Commission adopts a "rule out" approach. EEI estimates that this review could take 1.5 million labor hours, and another 750,000 hours if just one-half of the terminals must be replaced. EEI states that the aggregate cost to replace these terminals could exceed $2.4 billion.

327. Given the Commission's decision not to adopt the "rule out" approach, most of these comments are no longer relevant. However, in response to the comments that remain relevant, and upon further review, we have revised our initial estimates as reflected below.

Information Collection Costs: The Commission sought comments about the information collection costs needed to comply with PRC–023–1. Since many of the comments the Commission received estimated costs based on the "rule out" approach, they are no longer applicable given our decision in this Final Rule not to require the "rule out" approach. However, some commenters argue, apart from the "rule out" approach, that the NOPR underestimated the hours required to comply and the estimated cost of labor. After further consideration, with respect to the costs of labor, we agree that the $40/hour estimate for file/record clerks and supervisory employees is not correct. We also agree with commenters that electrical engineers will be required to comply with PRC–023–1. Therefore, we have revised estimates as indicated below:

- *Number of line terminals to be reviewed:* 53,000.
- *Number of hours per terminal:* 6.4.
- *Hourly rate for review by engineers:* $120.

Total Cost for review = (terminals to be reviewed × hours per terminal) × hourly rate for review by engineers = (53,000 × 6.4) × ($120/hour) = 339,200 hours × 120/hour = $40,704,000.

Sources

- *Title:* FERC–725–G "Mandatory Reliability Standard for Transmission Relay Loadability."
- *Action:* Proposed Collection of Information.
- *OMB Control No:* [To be determined.]
- *Respondents:* Business or other for profit, and/or not for profit institutions.
- *Frequency of Responses:* On Occasion.
- *Necessity of the Information:* The Transmission Relay Loadability Reliability Standard, if adopted, would implement the Congressional mandate of the Energy Policy Act of 2005 to develop mandatory and enforceable Reliability Standards to better ensure the reliability of the nation's Bulk-Power System. Specifically, the proposed Reliability Standard would ensure that protective relays are set according to specific criteria to ensure that relays reliably detect and protect the electric network from all fault conditions, but do not limit transmission loadability or interfere with system operator's ability to protect system reliability.

328. Interested persons may obtain information on the reporting requirements by contacting: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [*Attention:* Michael Miller, Office of the Executive Director, *Phone:* (202) 502–8415, *fax:* (202) 273–0873, *e-mail: michael.miller@ferc.gov*]. Comments on the requirements of the proposed rule may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 [*Attention:* Desk Officer for the Federal Energy Regulatory Commission], *e-mail: oira_submission@omb.eop.gov.*

V. Environmental Analysis

329. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human

environment.[211] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. The actions proposed here fall within the categorical exclusion in the Commission's regulations for rules that are clarifying, corrective or procedural, for information gathering, analysis, and dissemination.[212] Accordingly, neither an environmental impact statement nor environmental assessment is required.

VI. Regulatory Flexibility Act

330. The Regulatory Flexibility Act of 1980 (RFA)[213] generally requires a description and analysis of any final rule that will have significant economic impact on a substantial number of small entities. The RFA does not mandate any particular outcome in a rulemaking, but rather requires consideration of alternatives that are less burdensome to small entities and an agency explanation of why alternatives were rejected.

331. In drafting a rule, an agency is required to: (1) Assess the effect that its regulation will have on small entities; (2) analyze effective alternatives that may minimize a regulation's impact; and (3) make the analyses available for public comment.[214] In its NOPR, the agency must either include an Initial Regulatory Flexibility Act Analysis (Initial Analysis)[215] or certify that the proposed rule will not have a "significant impact on a substantial number of small entities."[216]

332. If, in preparing the NOPR, an agency determines that the proposal could have a significant impact on a substantial number of small entities, the agency shall ensure that small entities will have an opportunity to participate in the rulemaking procedure.[217]

333. In its Final Rule, the agency must also either prepare a Final Regulatory Flexibility Act Analysis (Final Analysis) or make the requisite certification. Based on the comments the agency receives on the NOPR, it can alter its original position as expressed in the NOPR but it is not required to make any substantive changes to the proposed regulation.

334. The statute provides for judicial review of an agency's final RFA certification or Final Analysis.[218] An agency must file a Final Analysis demonstrating a "reasonable, good-faith effort" to carry out the RFA mandate.[219] However, the RFA is a procedural, not a substantive, mandate. An agency is only required to demonstrate a reasonable, good faith effort to review the impact the proposed rule would place on small entities, any alternatives that would address the agency's and small entities' concerns and their impact, provide small entities the opportunity to comment on the proposals, and review and address comments. An agency is not required to adopt the least burdensome rule. Further, the RFA does not require an agency to assess the impact of a rule on all small entities that may be affected by the rule, only on those entities that the agency directly regulates and that are subject to the requirements of the rule.[220]

A. NOPR Proposal

335. In the NOPR, the Commission asserted that most of the entities, *i.e.,* transmission owners, generator owners, distribution providers, and "planning coordinators," or alternatively "planning authorities," to which the requirements of this rule will apply, do not fall within the applicable definition of "small entities." The Commission also stated that, based on available information regarding NERC's compliance registry, approximately 525 entities will be responsible for compliance with the new Reliability Standard. Consequently, the Commission certified that the Reliability Standard will not have a significant adverse impact on a substantial number of small entities and that no RFA analysis was required.

B. Comments

336. APPA, TAPS, NRECA, and SWTDUG argue that the "rule out" approach for 100 kV–200 kV facilities and the "add in" approach for sub-100 kV facilities will cause the Reliability Standard to have a significant adverse impact on a substantial number of small entities.

337. NRECA argues that the Commission's Initial Analysis is inadequate and its conclusion premature given the Commission's proposals to expand the Reliability Standard's applicability. NRECA argues that the Commission cannot develop an adequate Final Analysis without an Initial Analysis that lays the proper foundation for eliciting comments and seeking information. APPA argues that the Commission's Initial Analysis is flawed and fails to: (1) Assess the effect the regulation will have on small entities; (2) analyze effective alternatives that might minimize the regulation's impact; and (3) make such an analysis available for public comment.

338. APPA and NRECA also argue that the Commission failed to: (1) Provide its basis for claiming that only 525 entities from the NERC Compliance Registry will be required to comply with the Reliability Standard; (2) justify its assertion that the majority of the expected 525 entities required to comply do not qualify as small entities under the Small Business Act; (3) state how many of the 525 affected entities are small entities; and (4) identify the registered entities that are required to comply. APPA argues that the Commission's expectation that 525 facilities will be required to comply with the Reliability Standard is based on the Reliability Standard as proposed by NERC, and does not account for the Commission's potentially broader applicability proposals. APPA states that 261 of its members are registered entities and qualify as small entities. NRECA adds that a substantial majority of its approximately 930 rural electric cooperative members are small entities that would be adversely impacted by the proposed rule.

339. TAPS argues that the "rule out" approach will increase the burden on small systems and may force the Commission to depart from the Compliance Registry criteria that formed the basis for its RFA certification in Order No. 693. TAPS explains that if the "rule out" approach will make all 100 kV facilities subject to the Reliability Standard, including radial transmission lines, then the Standard will apply to unregistered small entities that have not previously been considered part of the bulk electric system and therefore do not appear on the Compliance Registry that served as the basis for the Commission's small entity impacts analysis.

C. Commission Determination

340. As discussed previously in this Final Rule, the Commission will not adopt the NOPR proposal to make PRC–023 applicable to all facilities operated at or above 100 kV, "ruling out" those facilities that would not demonstrably result in cascading outages, instability, uncontrolled separation, violation of facility ratings, or interruption of firm transmission service. Accordingly, to

[211] Order No. 486, *Regulations Implementing the National Environmental Policy Act,* 52 FR 47,897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987).

[212] 18 CFR 380.4(a)(5) (2009).

[213] 5 U.S.C. 601–612.

[214] 5 U.S.C. 601–604.

[215] 5 U.S.C. 603(a).

[216] 5 U.S.C. 605(b).

[217] 5 U.S.C. 609(a).

[218] 5 U.S.C. 611.

[219] *United Cellular Corp.* v. *FCC,* 254 F.3d 78, 88 (DC Cir. 2001); *Alenco Commc'ns, Inc.* v. *FCC,* 201 F.3d 608, 625 (5th Cir. 2000).

[220] *Mid-Tex Elec. Coop., Inc.* v. *FERC,* 773 F.2d 327 (DC Cir. 1985).

the extent that the Commission has decided to abandon the "rule out" approach in favor of an "add-in" approach, as discussed in previous portions of this Final Rule, the Commission expects that many of the concerns and impact estimates submitted by commenters are moot or no longer accurate.

341. Nonetheless, the Commission does find it appropriate to address commenters' concern regarding the number of entities that the Commission estimates will be subject to PRC–023–1 as proposed by NERC. Based on the Compliance Registry dated November 30, 2009, there are 573 entities registered as Distribution Providers, 821 entities registered as Generator Owners, 323 entities registered as Transmission Owners, and 80 entities registered as Planning Authorities. However, the Commission notes that some entities are registered for multiple functions, and therefore recognizes that there is some overlap between the entities registered as a Distribution Provider, Transmission Owner, Generator Owner, and/or Planning Authority. Therefore, after eliminating any duplicative registrations, the Commission finds that there are 1301 entities that are registered as engaging in one or more of the applicable functions within the scope of PRC–023–1.

342. Reliability Standard PRC–023–1 applies to Transmission Owners, Generator Owners, and Distribution Providers with load-responsive phase protection systems as described in Attachment A of the Reliability Standard, applied to facilities defined in requirements 4.1.1 through 4.1.4.[221] The Reliability Standard applies to facilities 100 kV and above and to transformers with low-voltage terminals 200 kV and above. Because there are no commercial generators with a terminal voltage as high as 100 kV and all generator step-up and auxiliary power transformers have low-voltage windings well below 200 kV, PRC–023–1 excludes generators and all generator step-up and auxiliary transformers. Therefore, no generator owner that is not also a transmission owner and/or a distribution provider will be subject to PRC–023–1. Accordingly, the Commission calculates that the potential applicability of the Final Rule may be reduced by 623, which is the total number of entities registered solely as a generator owner. Thus, the Commission anticipates that the Final Rule will apply to approximately 678 entities overall.[222]

343. According to the Department of Energy's Energy Information Administration (EIA), there were 3271 electric utility companies in the United States in 2007,[223] and approximately 3012 of these electric utilities qualify as small entities under the Small Business Act (SBA) definition.[224] Of those 3012 small entities, only 80 entities also appear in the NERC Compliance Registry. Accordingly, the Commission estimates that the Reliability Standard will affect a maximum of 80 SBUs, or approximately 12 percent of those entities estimated to be subject to the requirements of the Final Rule.

344. Based upon on this revised analysis, we certify that this Final Rule will not have a significant economic impact on a substantial number of small entities. Accordingly, no further RFA analysis is required.

VII. Document Availability

345. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

346. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

347. User assistance is available for eLibrary and the FERC's Web site during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or e-mail at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. E-mail the Public Reference Room at *public.referenceroom@ferc.gov.*

VIII. Effective Date and Congressional Notification

348. These regulations are effective 45 days from publication in **Federal Register** for non-major rules and 60 days from the later of the date Congress receives the agency notice or the date the rule is published in the **Federal Register**. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a "major rule" as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 18 CFR Part 40

By the Commission.

Kimberly D. Bose,

Secretary.

Note: The following Appendix will not appear in the Code of Federal Regulations.

APPENDIX A—COMMENTERS

Abbreviation	Commenter
Alcoa	Alcoa, Inc.
Ameren	Ameren Services Company.
APPA	American Public Power Association.
ATC	American Transmission Company, LLC.
Austin Energy	City of Austin, Texas.
Basin	Basin Electric Cooperative.
BPA	Bonneville Power Administration.
California Commission	Public Utilities Commission of the State of California.
City Utilities of Springfield	City Utilities of Springfield, Missouri.

[221] As proposed, the Commission notes PRC–023–1 is applicable to Generator Owners with load-responsive phase protection systems as described in Attachment A, applied to facilities defined in 4.1.1 through 4.1.4., however, excludes generator protection relays that are susceptible to load in Section (3) of Attachment A.

[222] The Commission derives this result by using the following equation: 1301 applicable entities (entities registered as one of more of the following functions: Distribution Provider, Transmission Owner, Generator Owner, and Planning Authority)—623 entities registered solely as a Generator Owner = 678.

[223] *See* U.S. Energy Information Administration, Form EIA–861, Dept. of Energy (2007), *available at http://www.eia.doe.gov/cneaf/electricity/page/eia861.html.*

[224] According to the SBA, a small electric utility is defined as one that has a total electric output of less than four million MWh in the preceeding year.

APPENDIX A—COMMENTERS—Continued

Abbreviation	Commenter
Consumers Energy	Consumers Energy Company.
CRC	Colorado River Commission of Nevada.
Dominion	Dominion Resources, Inc.
Duke	Duke Energy Corporation.
EEI	Edison Electric Institute.
ElectriCities	ElectriCities of North Carolina, Inc.
Entergy	Entergy Services, Inc.
E.ON	E.ON U.S. LLC.
EPSA	Electric Power Supply Association.
ERCOT	Electric Reliability Council of Texas, Inc.
Exelon	Exelon Corporation.
Fayetteville Public Works Commission	Fayetteville Public Works Commission.
Filing Cooperatives	Mohave Electric Cooperative, Inc., Trico Electric Cooperative, inc., Navopache Electric Cooperative, Inc., and Sulphur Springs Valley Electric Cooperative, Inc.
Georgia Transmission	Georgia Transmission Corporation.
IESO/Hydro One	Independent Electricity System Operator and Hydro One Networks Inc.
IRC	The ISO/RTO Council.
ISO New England	ISO New England Inc.
ITC	International Transmission Company.
Joint Commenters	Independent Electricity System Operator, PJM Interconnection L.L.C., Southwest Power Pool, and Midwest Independent Transmission Operator.
LES	Lincoln Electric System.
Manitoba Hydro	Manitoba Hydro.
McDonald	Michael McDonald.
MDEA Cities	Mississippi Delta Energy Agency, Clarksdale Public Utilities Commission of the City of Clarksdale, Mississippi, and the Public Service Commission of Yazoo City of the City of Yazoo City, Mississippi.
MEAG	Municipal Electric Authority of Georgia.
NARUC	National Association of Regulatory Utility Commissioners.
NERC	North American Electric Reliability Corporation.
New York Commission	New York State Public Service Commission.
NRECA	National Rural Electric Cooperative Association.
NV Energy	NV Energy.
NWCP	Northern Wasco County People's Utility District.
Oncor	Oncor Electric Delivery Company LLC.
Ontario Generation	Ontario Power Generation Inc.
PacifiCorp	PacifiCorp.
Pacific Northwest State Commissions	Washington Utilities and Transportation Commission, Idaho Public Utilities Commission, Public Utility Commission of Oregon, and Montana Public Service Commission.
Palo Alto	City of Palo Alto, California.
PG&E	Pacific Gas & Electric Company.
Portland General	Portland General Electric Company.
PSEG Companies	Public Service Electric & Gas Company, PSEG Energy Resources & Trade LLC, PSEG Power LLC.
Public Power Council	Public Power Council.
Seattle City Light	Seattle City Light.
Six California Cities	Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California.
SoCalEd	Southern California Edison Company.
South Carolina E&G	South Carolina Electric & Gas Company.
Southern	Southern Company Services, Inc.
SRP	Salt River Project Agricultural Improvement and Power District.
SWTDUG	Southwest Transmission Dependent Utility Group.
TANC	Transmission Agency of Northern California.
TAPS	Transmission Access Policy Study Group.
Tri-State	Tri-State Generation & Transmission Association.
TVA	Tennessee Valley Authority.
WAPA–RMR	Western Area Power Administration-Rocky Mountain Region.
WECC	Western Electricity Coordinating Council Relay Work Group.
Y–WEA	Y–W Electric Association, Inc.

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Friday,
April 2, 2010

Part III

Department of Energy

10 CFR Part 430

Energy Conservation Program: Test Procedures for Battery Chargers and External Power Supplies; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE–2009–BT–TP–0019]

RIN 1904–AC03

Energy Conservation Program: Test Procedures for Battery Chargers and External Power Supplies

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

ACTION: Notice of proposed rulemaking and public meeting.

SUMMARY: The U.S. Department of Energy (DOE) proposes major revisions to its test procedures for battery chargers and external power supplies. In particular, DOE proposes to insert a new active mode energy consumption test procedure for battery chargers, to assist in the development of energy conservation standards as directed by the Energy Independence and Security Act of 2007. DOE also proposes to amend portions of its existing standby and off mode battery charger test procedure to shorten the measurement time. DOE is also considering amending its existing active mode single-voltage external power supply test procedure to permit testing of certain types of external power supplies that the existing test procedure may be unable to test. Additionally, DOE proposes to insert a new procedure to address multiple-voltage external power supplies, which are not covered under the current single-voltage external power supply test procedure. Finally, DOE is announcing a public meeting to receive comment on the issues presented in this notice of proposed rulemaking.

DATES: DOE will hold a public meeting in Washington, DC on Friday, May 7, 2010, beginning at 9 a.m. DOE must receive requests to speak at the meeting before 4 p.m., Friday, April 23, 2010. DOE must receive a signed original and an electronic copy of statements to be given at the public meeting before 4 p.m., Friday, April 30, 2010.

DOE will accept comments, data, and information regarding this notice of proposed rulemaking (NOPR) before or after the public meeting, but no later than June 16, 2010. *See* Section V, "Public Participation," of this NOPR for details.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue, SW., Washington, DC 20585–0121. To attend the public meeting, please notify Ms. Brenda Edwards at (202) 586–2945. Please note that foreign nationals participating in the public meeting are subject to advance security screening procedures, requiring a 30-day advance notice. If a foreign national wishes to participate in the workshop, please inform DOE of this fact as soon as possible by contacting Ms. Brenda Edwards at (202) 586–2945 so that the necessary procedures can be completed.

Any comments submitted must identify the Battery Charger Active Mode Test Procedure NOPR, and provide the docket number EERE–2009–BT–TP–0019 and/or Regulation Identifier Number (RIN) 1904–AC03. Comments may be submitted using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: BC&EPS_Test_Proc@ee.doe.gov.* Include the docket number EERE–2009–BT–TP–0019 and/or RIN 1904–AC03 in the subject line of the message.
- *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Please submit one signed paper original.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 6th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024. Telephone: (202) 586–2945. Please submit one signed paper original.

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

Docket: For access to the docket to read background documents or comments received, visit the U.S. Department of Energy, 6th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at (202) 586–2945 for additional information regarding visiting the Resource Room. Please note: DOE's Freedom of Information Reading Room no longer houses rulemaking materials.

FOR FURTHER INFORMATION CONTACT: Mr. Victor Petrolati, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–4549. E-mail: *Victor.Petrolati@ee.doe.gov.* In the Office of General Counsel, contact Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585. Telephone: (202) 586–9507. E-mail: *Michael.Kido@hq.doe.gov.*

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

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I. Authority and Background

Title III of the Energy Policy and Conservation Act (42 U.S.C. 6291 *et seq.;* EPCA or the Act) sets forth a variety of provisions designed to improve energy efficiency. Part A of title III (42 U.S.C. 6291–6309) establishes the "Energy Conservation Program for Consumer Products Other Than Automobiles," which covers consumer products and certain commercial products (all of which are referred to below as "covered products"), including battery chargers (BCs) and external power supplies (EPSs).

Under EPCA, the overall program consists essentially of the following parts: Testing, labeling, and Federal energy conservation standards. The testing requirements consist of procedures that manufacturers of covered products must use to certify to the U.S. Department of Energy (DOE) that their products comply with EPCA energy conservation standards and to quantify the efficiency of their products. Also, these test procedures must be used whenever testing is required in an enforcement action to determine whether covered products comply with EPCA standards.

Section 323 of EPCA (42 U.S.C. 6293) sets forth generally applicable criteria and procedures for DOE's adoption and amendment of such test procedures. It states, for example, that test procedures for covered products should measure energy use, energy efficiency, or annual operating cost during a period that is representative of typical use. The test procedure should not be "unduly burdensome." (42 U.S.C. 6293(b)(3)) In addition, consistent with 42 U.S.C. 6293(b)(2) and Executive Order 12899, 58 FR 69681 (Dec. 30, 1993), if DOE determines that a test procedure amendment is warranted, it must publish proposed test procedures and offer the public an opportunity to present oral and written comments on them, with a comment period of not less than 75 days. Finally, in any rulemaking to amend a test procedure, DOE must determine "to what extent the proposed test procedure would alter the measured energy efficiency as determined under the existing test procedure." (42 U.S.C. 6293(e)(1)) If DOE determines that the amended test procedure would alter the measured efficiency of a covered product, DOE must amend the applicable energy conservation standard accordingly. (42 U.S.C. 6293(e)(2))

Relevant to today's notice, section 135 of the Energy Policy Act of 2005 (EPACT), Public Law 109–58, amended sections 321 and 325 of EPCA by providing definitions for BCs and EPSs and directing the Secretary to prescribe "definitions and test procedures for the power use of battery chargers and external power supplies." (42 U.S.C. 6295(u)(1)(A)) DOE complied with this requirement by publishing a test procedure final rule, 71 FR 71340, on December 8, 2006 (EPACT 2005 En Masse final rule). In that notice, DOE codified the test procedure for BCs in appendix Y to subpart B of part 430 in title 10 of the Code of Federal Regulations (CFR) ("Uniform Test Method for Measuring the Energy Consumption of Battery Chargers"; hereafter referred to as "appendix Y") and the test procedure for EPSs in appendix Z to subpart B of 10 CFR part 430 ("Uniform Test Method for Measuring the Energy Consumption of External Power Supplies"; hereafter referred to as "appendix Z").

On December 19, 2007, the Energy Independence and Security Act of 2007 (EISA 2007), Public Law 110–140, further amended sections 321, 323, and 325 of EPCA, prompting DOE to propose and promulgate amendments to its test procedures for BCs and EPSs.

Section 301 of EISA 2007 amended section 321 of EPCA by modifying definitions concerning EPSs. EPACT had amended EPCA to define an EPS as "an external power supply circuit that is used to convert household electric current into DC current or lower-voltage AC current to operate a consumer product." [1] (42 U.S.C. 6291(36)(A)) Section 301 of EISA 2007 further amended this definition by creating a subset of EPSs called Class A EPSs. EISA 2007 defined this subset as those EPSs that, in addition to meeting several other requirements common to all EPSs, are "able to convert to only 1 AC or DC output voltage at a time" and have "nameplate output power that is less than or equal to 250 watts." [2] (42 U.S.C. 6291(36)(C)(i))

Section 301 also amended EPCA to establish minimum standards for these products, which became effective on July 1, 2008 (42 U.S.C. 6295(u)(3)(A)), and directed DOE to publish a final rule by July 1, 2011, to determine whether to amend these standards. (42 U.S.C. 6295(u)(3)(D)) Section 301 further directed DOE to issue a final rule that prescribes energy conservation standards for BCs or determine that no "standard is technically feasible or economically justified." (42 U.S.C. 6295(u)(1)(E)(i)(II))

In satisfaction of this requirement, DOE is bundling BCs and Class A EPSs together in a single rulemaking proceeding to consider appropriate energy conservation standards for these products. DOE published a notice of Public Meeting and Availability of Framework Document for Battery Chargers and External Power Supplies on June 4, 2009. 74 FR 26816. DOE then

[1] The terms "AC" and "DC" refer to the polarity (*i.e.,* direction) and amplitude of current and voltage associated with electrical power. For example, a household wall socket supplies alternating current (AC), which varies in amplitude and reverses polarity. In contrast, a battery or solar cell supplies direct current (DC), which is constant in both amplitude and polarity.

[2] EISA 2007 defines a Class A EPS as an EPS that converts AC line voltage to only 1 lower AC or DC output, is intended to be used with an end-use product, is in a different enclosure from the end-use product, is wired to the end-use product, and has rated output power that is less than 250 watts. (42 U.S.C. 6291(36)(C)(i)).

held a public meeting to receive comment on the framework document [3] on July 16, 2009 (hereafter referred to as the framework document public meeting). During this public meeting, DOE also received comments on the BC active mode test procedure and other test procedure issues, some of which will be discussed in today's notice.

Under Section 302 of EISA, Congress instructed DOE to review its test procedures every seven (7) years. As needed, DOE must either amend the test procedure to (1) Improve its measurement representativeness or accuracy or (2) reduce its burden, or (3) determine that such amendments are unnecessary. DOE considers this rulemaking to constitute a 7-year review for both BC and EPS test procedures as required under EPCA, as modified by section 302 of EISA. (42 U.S.C. 6293(b)(1)(A)) Because DOE's existing test procedures for BCs and EPSs were in place on December 19, 2007, when the 7-year test procedure review provisions of EPCA were enacted (42 U.S.C. 6293(b)(1)(A)), DOE would have to review these test procedures by December 2014. But because DOE is conducting this rulemaking, the Department has satisfied this review requirement in advance of this date.

Section 309 of EISA further amended section 325(u)(1)(E) of EPCA, instructing DOE to issue no later than two years after EISA's enactment a final rule "that determines whether energy conservation standards shall be issued for external power supplies or classes of external power supplies." (42 U.S.C. 6295(u)(1)(E)(i)(I)) However, as section 301 of EISA simultaneously set standards for Class A external power supplies, DOE interprets sections 301 and 309 jointly as a requirement to determine, no later than two years after EISA's enactment, whether additional energy conservation standards shall be issued for EPSs that are outside the scope of the current Class A standards, *e.g.,* multiple-voltage EPSs.

Finally, section 310 of EISA 2007 amended section 325 of EPCA to establish definitions for active mode, standby mode, and off mode. (42 U.S.C. 6295(gg)(1)(A)) This section also directed DOE to amend its existing test procedures by December 31, 2008, to measure the energy consumed in standby mode and off mode for both BCs and EPSs. (42 U.S.C. 6295(gg)(2)(B)(i)) Further, it authorized DOE to amend, by rule, any of the definitions for active, standby, and off mode (42 U.S.C. 6295(gg)(2)(A)) The Department presented its then-proposed amendments during a public meeting on September 12, 2008 (hereafter referred to as the standby and off mode test procedure public meeting) and published them in the Test Procedures for Battery Chargers and External Power Supplies (Standby Mode and Off Mode) Final Rule on March 27, 2009. 74 FR 13318.

Today's notice proposes (1) the adoption of new test procedures for the active mode of BCs and all modes of multiple-voltage EPSs and (2) the modification of existing parts of the BC and EPS test procedures (*e.g.,* BC standby and off mode test duration). In doing so, it proposes to amend both appendices Y and Z in multiple places. Furthermore, although DOE proposes to retain the current language of certain sections of appendices Y and Z, in selecting proposed amendments for inclusion in today's notice, DOE considered all aspects of the existing BC and EPS test procedures. Nonetheless, DOE seeks comment on the entirety of the BC and EPS test procedure to ensure that no additional amendments are needed at this time to further improve the procedures' representativeness or reduce its burden.

In the absence of comments on issues beyond those discussed in today's notice, DOE expects to issue a final rule adopting these proposals in a timely manner. In this case, DOE would expect this rulemaking to satisfy the 7-year review requirement and would not expect any further review of the test procedures until 7 years after the effective date of the proposals in this notice—*i.e.,* no sooner than 2017.

To the extent that DOE receives comments on issues beyond those discussed in today's notice, DOE may address these comments in a separate test procedure rulemaking, which would allow DOE to finalize today's proposed BC active mode test procedure in time to support the corresponding standards rulemaking but allow sufficient time to take into consideration all comments from interested parties as required by the 7-year review provisions of 42 U.S.C. 6293(b)(1)(A).

II. Summary of the Proposal

In this notice of proposed rulemaking (NOPR), DOE proposes to:

(1) Insert a new test procedure to measure the energy consumption of BCs in active mode to assist in the development of energy conservation standards;

(2) Amend the BC test procedure to decrease the testing time of BCs in standby and off modes;

(3) Potentially amend the single-voltage EPSs test procedure to accommodate EPSs with Universal Serial Bus (USB) outputs and others that may not currently be tested in accordance with the test procedure; and

(4) Insert a new test procedure for multiple-voltage EPSs, a type of non-Class A EPS that DOE will evaluate in the non-Class A determination analysis.

Table 1 lists the sections of 10 CFR part 430 potentially affected by the amendments proposed in this NOPR. The left-hand column in the table cites the locations of the potentially affected CFR provisions, while the right-hand column lists the proposed changes.

TABLE 1—SUMMARY OF PROPOSED CHANGES AND AFFECTED SECTIONS OF 10 CFR PART 430

Existing section in 10 CFR Part 430	Summary of proposed modifications
Section 430.23 of Subpart B—Test procedures for the measurement of energy and water consumption.	• Modify '(aa) battery charger' to include energy consumption in active mode.
Appendix Y to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Battery Chargers.	• Renumber the existing sections to ease referencing and use by testing technicians.
1. Scope	• Limit scope to only include BCs intended for operation in the United States.

[3] "Energy Conservation Standards Rulemaking for Battery Chargers and External Power Supplies." May 2009. Available at: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/pdfs/bceps_frameworkdocument.pdf.*

TABLE 1—SUMMARY OF PROPOSED CHANGES AND AFFECTED SECTIONS OF 10 CFR PART 430—Continued

Existing section in 10 CFR Part 430	Summary of proposed modifications
2. Definitions	• Add definitions for: ○ Active power or real power (P). ○ Ambient temperature. ○ Apparent power (S). ○ Batch charger. ○ Battery rest period. ○ C-rate. ○ Crest factor. ○ Equalization. ○ Instructions or manufacturer's instructions. ○ Measured charge capacity. ○ Power factor. ○ Rated battery voltage. ○ Rated charge capacity. ○ Rated energy capacity. ○ Total harmonic distortion (THD). ○ Unit under test (UUT). • Remove definitions for: ○ Accumulated nonactive energy. ○ Energy ratio or nonactive energy ratio. • Modify definitions for: ○ Active mode. ○ Multi-port charger. ○ Multi-voltage a la carte charger. ○ Standby mode.
3. Test Apparatus and General Instructions	• Insert apparatus and instructions to measure energy consumption in active mode.
4. Test Measurement	• Insert procedures to measure energy consumption in active mode. • Modify 4(c) to change standby mode measurement time. • Modify 4(d) to change off mode measurement time.
Appendix Z to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of External Power Supplies.	
1. Scope	• No change.
2. Definitions	• Modify definition of active power.
3. Test Apparatus and General Instructions	• Modify 3(b) to accommodate multiple-voltage EPSs.
4. Test Measurement	• Potentially modify 4(a) to accommodate EPSs that communicate with the load, perform current limiting, or have output power greater than 250 watts. • Modify 4(b) to accommodate multiple-voltage EPSs.

In developing today's proposed test procedure amendments, DOE considered comments received from interested parties following the standby and off mode test procedure and framework document public meetings. Numerous comments dealt with testing new modes. In order to incorporate such changes, DOE reviewed the existing test procedures for BCs and EPSs, and found that, with some modifications, they could be used as a basis for updating DOE's test procedures. This issue is discussed in greater detail later in this notice.

DOE also examined whether the proposed amendments to its test procedures would significantly change the measured energy consumption or efficiency of the BC or EPS. This question is particularly important for Class A EPSs, which are subject to the EISA minimum efficiency standard that took effect on July 1, 2008. (42 U.S.C. 6295(u)(3)(A))

The amendments under consideration to the single-voltage EPS test procedure (used to test compliance with Class A EPS standards) would affect the measured efficiency of EPSs with USB output and others that communicate with their loads—the subset of Class A EPSs to which these amendments would apply.[4] As described in section III.D., these amendments are presented in today's notice because of DOE's concern that the current single-voltage EPS test procedure may not measure the efficiency of these EPSs in a manner representative of their typical use, resulting in a lower measured efficiency than achievable under typical operating conditions. Because the single voltage test procedure amendments discussed in section III.D. would modify the test conditions to make them more representative of typical use, the measured efficiency of these EPSs would likely increase. Nonetheless, DOE does not expect any commensurate increase in the standards level for these EPSs. EPSs that communicate with their loads should be held to the same standard as the remainder of EPSs, which do not communicate with their loads, as long as they are measured in a representative fashion.

The remaining amendments included in today's notice, if adopted, would have the following impacts on measured energy consumption or efficiency:

(1) The BC active mode test procedure amendment would change the measured energy consumption of BCs by eliminating the nonactive energy ratio metric and replacing it with a new metric that measures energy consumption in active mode;

(2) The standby and off mode test procedure amendment would not change the measured energy consumption of BCs or EPSs; and

[4] The term "communicating" with a load refers to an EPS's ability to identify or otherwise exchange information with its load (*i.e.,* the end-use product to which it is connected). While most EPSs provide power at a fixed output voltage regardless of what load is connected to their outputs, some EPSs will only provide power once they have "communicated" with the load and identified it as the intended load.

(3) The multiple-voltage EPS amendment would insert a new test procedure for these products,

A. Battery Charger Active Mode Test Procedure

The current DOE BC test procedure, first created by the EPACT 2005 En Masse final rule, 71 FR 71340, and amended by the standby and off mode final rule, 74 FR 13318, does not measure BC energy consumption in all modes. Instead, it excludes the energy consumed by the BC while charging a battery. The procedure measures energy consumption only in maintenance, standby (no battery), and off modes, when the battery has either been fully charged or removed from the BC.

The BC active mode test procedure proposal in today's notice, if adopted, would remove the inactive mode measurement (section 4(a) of appendix Y—which is a composite of different operational modes that would be measured separately under today's proposal), add active mode measurement to section 4(b), amend the scope, definitions, and test apparatus and general instructions (sections 1, 2, and 3) in support of the new active mode test procedure, as well as rearrange and renumber the sections to ease referencing and use by testing technicians. The active mode amendment is based on the optional battery charger system test procedure adopted by the California Energy Commission (CEC),[5] but has been modified to decrease testing burden (*e.g.,* by considering a shorter test period and more efficient use of equipment) and increase clarity (*e.g.,* by dividing complex procedures into discrete steps). These and other details of the proposal are discussed further in section III.B.

B. Review of Battery Charger and External Power Supply Standby Mode and Off Mode Test Procedures

DOE addressed the EPCA requirements to prescribe definitions and test procedures for measuring the energy consumption of EPSs and BCs in standby and off modes (42 U.S.C. 6298(gg)(A) and (B)) in the Test Procedures for Battery Chargers and External Power Supplies (Standby Mode and Off Mode) Final Rule. 74 FR 13318. This final rule incorporated standby and off mode measurements as well as updated definitions into appendices Y and Z.

In today's notice, DOE proposes amending the BC test procedure to require the use of a 30-minute warm-up period followed by a 10-minute measurement period. Currently, the DOE test procedure requires a 1-hour measurement period. This amendment would harmonize DOE's standby and off mode measurement for BCs with that contained in section IV of part 1 of the CEC BC test procedure. DOE anticipates that harmonizing its procedure with the CEC BC test procedure will produce a test procedure that decreases the testing burden on manufacturers while preserving testing accuracy. No changes are proposed to the standby and off mode test procedures for EPSs. Detailed discussion of the changes under consideration can be found in section III.C., below.

C. Review of Single-Voltage External Power Supply Test Procedure

DOE is also considering amending the test procedure for single-voltage EPSs to accommodate several classes of EPSs that cannot be tested in a representative or repeatable manner under the current test procedure. These EPSs include (1) Those that communicate with their loads through USB and other protocols,[6] (2) limit their output current below the maximum listed on their nameplate, and (3) have output power in excess of 250 watts. However, because these EPSs do not exist in significant numbers in the market, DOE has not been able to analyze them in depth and develop a general approach to testing them under the single-voltage EPS test procedure. Therefore, DOE will only be presenting the general outline of the test procedure changes under consideration, and will proceed in developing and promulgating a procedure covering these EPSs if it receives comments from interested parties verifying the approaches presented (*e.g.,* custom test fixtures in the case of EPSs that communicate with their loads). The three types of EPSs that could be affected are briefly described below, while the test procedure changes under consideration can be found in section III.D.

USB-Based EPSs

USB EPSs typically power portable electronic products such as cellular telephones and portable media players that frequently receive power and data from a personal computer through its USB port. In contrast to most EPSs, which only provide one pair of output conductors (for power), the USB interface provides two pairs—for data and power, respectively. Although DOE's current single-voltage EPS test procedure accommodates testing single-voltage EPSs that have more than one pair of output conductors, it may not result in measurements representative of typical use if the other pairs of conductors are necessary for the specified operation of the EPS.

EPSs That Communicate With Loads

In addition to USB-based EPSs, other EPSs exist that also communicate with loads (*e.g.,* notebook computers) using proprietary protocols. To address these designs, DOE is considering amending the single-voltage EPS test procedure to permit communication between the EPS and the load during testing. Any changes to the EPS test procedure to address this issue would affect only USB-compliant EPSs and other EPSs that cannot operate in a representative fashion without communication with the load. Additional details regarding this possible change are presented in section III.D.1., below.

Output Current Limiting EPSs

Similarly, DOE has encountered EPSs that may not be tested due to "output current limiting," *i.e.,* a mode of operation in which the EPS significantly lowers its output voltage once an internal limit on the output current has been exceeded. Although all EPSs limit their output current to provide additional safety during short-circuit conditions, some EPSs have been found to limit current to a value below the maximum specified on their nameplate. Because DOE's single-voltage EPS test procedure does not provide for this possibility, DOE is considering adding language specifying the correct loading points in this case. The changes under consideration are detailed in section III.D.2.

EPS with Nameplate Output Exceeding 250 Watts

Finally, the current DOE single-voltage EPS test procedure may not sufficiently accommodate the testing of single-voltage EPSs with nameplate output power greater than 250 watts. In contrast to EPSs with output power less than 250 watts, high-power EPSs may have several maximum output currents, something the test procedure does not take into consideration. DOE is therefore considering clarifying the current regulatory language to account for this configuration. The changes under

[5] Ecos Consulting, Electric Power Research Institute (EPRI) Solutions, Southern California Edison (SCE). "Energy Efficiency Battery Charger System Test Procedure." Version 2.2. November 12, 2008. *http://www.energy.ca.gov/appliances/2008rulemaking/2008-AAER-1B/2008-11-19_BATTERY_CHARGER_SYSTEM_TEST_PROCEDURE.PDF.*

[6] Some EPSs feature circuitry that allows them to communicate with their loads. This is used to tailor operation to the needs of the load as well as prevent use with incompatible loads.

consideration are detailed in section III.D.3.

D. Multiple-Voltage External Power Supply Test Procedure

Section 309 of EISA amended section 325 of EPCA by directing DOE to conduct a determination analysis for EPSs such as those EPSs equipped with multiple simultaneous output voltages. DOE is not aware of any existing test procedure developed specifically to measure the efficiency or energy consumption of multiple-voltage EPSs. To develop such a procedure, DOE reviewed related test procedures currently in use and proposed a test procedure for multiple-voltage EPSs based on the Environmental Protection Agency (EPA) single-voltage EPS [7] and internal power supply (IPS) [8] test procedures. 73 FR 48054. In today's notice, DOE is proposing a test procedure generally consistent with its August 2008 proposal, but with some changes to accommodate the concerns of interested parties.

Incorporating this amendment into the EPS test procedure would enable DOE to evaluate power consumption for multiple-voltage EPSs in all modes of operation: active, standby (*i.e.,* no-load), and off. A detailed discussion of DOE's proposed test procedure for multiple-voltage EPSs can be found in section III.E., below.

III. Discussion

A. Effective Date for the Amended Test Procedures

If adopted, the amendments proposed today would become effective 30 days after the publication of the final rule. As of this effective date, manufacturers (and DOE) would be required to use the amended appendices when testing to determine if BCs and EPSs comply with energy conservation standards. In addition, any representations made regarding energy use or the cost of energy use for such products manufactured on or after the effective date would have to be based on the amended test procedures in appendices Y and Z.

However, absent new standards, only the amendments to the single-voltage EPS test procedure would be binding after the effective date, since DOE does not yet have standards for non-Class A EPSs or BCs. DOE has initiated work on standards for non-Class A EPSs and BCs, with a framework document published on June 4, 2009. The amendments to the BC and non-Class A test procedures would become binding following publication of a final rule that establishes these standards.

B. Battery Charger Active Mode Test Procedure

The BC test procedure was inserted into appendix Y by the EPACT 2005 En Masse final rule, 71 FR 71368, and amended by the standby and off mode final rule 74 FR 13334. It is composed of four parts: (1) Scope, (2) definitions, (3) test apparatus and general instructions, and (4) test measurement. The test measurement section is further subdivided into:

(a) Inactive mode energy consumption measurement,[9] which incorporates by reference section 5 of the EPA ENERGY STAR BC test procedure [10];

(b) Active mode energy consumption measurement, which is currently reserved;

(c) Standby mode energy consumption measurement; and

(d) Off mode energy consumption measurement.

During the standby and off mode test procedure rulemaking, numerous interested parties commented that the current DOE test procedure is insufficient as a basis for the development of energy conservation standards, as it does not measure energy consumption during active (charge) mode. Many of these interested parties also recommended that DOE adopt the optional BC test procedure then under consideration in draft form at the CEC. As mentioned in the standby and off mode test procedure final rule, DOE was unable to act on these comments, as it had not proposed any active mode changes in the standby and off mode test procedure NOPR, 73 FR 48054 (August 15, 2008). 74 FR 13322.

On December 3, 2008, CEC adopted version 2.2 of the test procedure developed by Ecos, EPRI Solutions, and SCE, as an optional test procedure for the measurement of BC energy consumption in charging (active), maintenance, no-battery (standby), and off modes. The test procedure was incorporated by reference into section 1604(w) of title 20 of the California Code of Regulations,[11] alongside the DOE test procedure from appendix Y.

In its framework document, DOE mentioned its desire to amend the BC test procedure in appendix Y to measure energy consumption in each of the modes of operation of a BC (including active mode). During and after the framework document public meeting, interested parties expressed their general desire for DOE to adopt the CEC test procedure as the Federal test procedure for measuring the active mode energy consumption of BCs. In particular, Pacific Gas and Electric (PG&E), CEC, and Appliance Standards Awareness Project (ASAP) commented that DOE should expedite the rulemaking for an active mode test procedure, harmonizing with the CEC BC test procedure. (Pub. Mtg. Tr., No. 14 at pp. 40–41,[12] PG&E *et al.,* No. 20 at p. 7,[13] CEC *et al.,* No. 19 at p. 1 [14]). The

[7] "Test Method for Calculating the Energy Efficiency of Single-Voltage External Ac-Dc and Ac-Ac Power Supplies," August 11, 2004, previously incorporated by reference into appendix Y. *http://www.energystar.gov/ia/partners/prod_development/downloads/power_supplies/EPSupplyEffic_TestMethod_0804.pdf.*

[8] "Proposed Test Protocol for Calculating the Energy Efficiency of Internal Ac-Dc Power Supplies, Rev. 6.4.3," October 26, 2009. *http://efficientpowersupplies.epri.com/pages/Latest_Protocol/Generalized_Internal_Power_Supply_Efficiency_Test_Protocol_R6.4.3.pdf.*

[9] The inactive mode energy consumption consists of the energy measured over 36 hours in maintenance mode, followed by 12 hours in standby (no-battery) mode, with the possibility of abbreviating the measurement to 6 hours and 1 hour, respectively.

[10] Environmental Protection Agency (EPA). "Test Methodology For Determining the Energy Performance of Battery Charging Systems." December 2005. *http://www.energystar.gov/ia/partners/prod_development/downloads/Battery_Chargers_Test_Method.pdf.*

[11] California Energy Commission (CEC), "2009 Appliance Efficiency Regulations," August 2009.

[12] A notation in the form "Pub. Mtg. Tr., No. 14 at pp. 40–41" identifies an oral comment that DOE received during the July 16, 2009, framework document public meeting. This comment was recorded in the public meeting transcript in the docket of the BC and EPS energy conservation standards rulemaking (Docket No. EERE–2008–BT–STD–0005, RIN 1904–AB57), maintained in the Resource Room of the Building Technologies Program and available at *http://www1.eere.energy.gov/buildings/appliance_standards/residential/pdfs/bceps_standards_meeting_transcript.pdf.* This particular notation refers to a comment (1) recorded in document number 14, which is the public meeting transcript filed in the docket, and (2) appearing on pages 40–41 of document number 14.

[13] A notation in the form "PG&E *et al.,* No. 20 at p. 7" identifies a written comment that DOE has received and included in the docket of the BC and EPS energy conservation standards rulemaking (Docket No. EERE–2008–BT–STD–0005, RIN 1904–AB57). This comment was submitted by Pacific Gas and Electric Company, Southern California Edison Design & Engineering Services, Southern California Gas Company San Diego Gas and Electric Company, Appliance Standards Awareness Project, and American Council for an Energy-Efficient Economy. For referencing purposes, throughout this notice, comments submitted from these groups will be referred to as "PG&E *et al.*" This particular notation refers to (1) A comment submitted by Pacific Gas and Electric (PG&E) *et al.,* (2) in document number 20 in the docket, and (3) appearing on page 7 of document number 20.

[14] This comment was submitted by California Energy Commission, Pacific Gas and Electric Company, Southern California Edison Design & Engineering Services, Southern California Gas Company, San Diego Gas and Electric Company, American Council for an Energy-Efficient Economy, Appliance Standards Awareness Project, Consumer Federation of America, National Consumer Law Center, on behalf of its low-income clients, Midwest Energy Efficiency Alliance, Northwest Power and

Continued

Association of Home Appliance Manufacturers (AHAM) similarly requested that DOE harmonize its test procedure for battery chargers with other jurisdictions, but consider changes in methodology where appropriate. (AHAM, No. 16 at p. 2)

DOE researched existing worldwide test procedures for measuring BC energy consumption in active mode and found that there are currently three test procedures for measuring the energy consumption of consumer battery chargers: (1) The EPA ENERGY STAR BC test procedure, (2) the Canadian Standards Association (CSA) C381.2 test procedure,[15] and (3) the CEC test procedure.[5] No energy efficiency standards-setting or promoting organizations in Europe, Australia, or China have developed or adopted additional BC test procedures.

The EPA ENERGY STAR test procedure was adopted by ENERGY STAR in 2005 and has remained unchanged since then. This is the same test procedure incorporated by reference by DOE into sections 3 and 4(a) of appendix Y by the EPACT 2005 En Masse final rule, 71 FR 71340. Although it has been used to test numerous BCs (over 135 BCs qualified for the ENERGY STAR mark following testing in accordance with the test procedure),[16] this test procedure does not measure energy consumption of these products in active mode.

Similarly, the CSA 381.2 test procedure, adopted in 2008, does not measure BC active mode consumption. Instead, the procedure relies on the same inactive mode energy consumption measurement as the EPA ENERGY STAR BC test procedure and the current DOE test procedure.

The CEC test procedure, in contrast, includes active mode energy consumption through its 24-hour active and maintenance mode test. This test procedure was developed over six years through a collaborative process between energy efficiency advocates and industry experts, including multiple meetings and revisions (PG&E, No. 13 at p. 2). The result, according to PG&E, has been a test procedure that applies to the full spectrum of consumer battery chargers, regardless of input voltage (AC or DC), battery chemistry, and battery type (detachable or integral). PG&E provided test results from the application of the test procedure to over 142 consumer BCs (PG&E, No. 13 at p. 6).[17]

DOE has conducted further tests using this procedure and considers its measurement metrics, accuracy, and variability to be appropriate for the product being tested. Consequently, DOE is proposing to adopt part 1 of the CEC test procedure (for consumer products with input power under 2 kilowatts) to measure (1) BC energy consumption in active and maintenance modes and (2) the amount of energy recovered from the battery during discharge. DOE would, however, make several modifications to constrain its application to BCs sold in the United States, improve its clarity, and decrease its testing burden. DOE expects the resulting test procedure, explained in detail below, to produce equivalent results as the test procedure adopted by the CEC, while reducing the required technician and equipment time to perform the tests.

Finally, although part 1 of the CEC test procedure also contains instructions for measuring energy consumption in standby and off modes, DOE previously adopted standby and off mode test procedures in its March 2009 final rule. 74 FR 13334. Today's proposal retains these test procedures, which would be incorporated into sections 4(c) and 4(d) of appendix Y, and be modified as described in section III.B, in lieu of adopting their equivalents from the CEC test procedure (part 1, section IV). A summary of the CEC test procedure follows, along with specific modifications that DOE would make prior to incorporation in appendix Y. As with all other sections in this proposal, DOE seeks comment regarding all aspects of its proposed approach.

1. Summary of the CEC Test Procedure

The lengthy stakeholder consultation process conducted by the CEC led to the development of a test procedure for measuring the energy consumption of both consumer (part 1) and industrial (part 2) chargers.[18] Both parts of the test procedure measure the input energy to the battery charger when recharging a battery that had previously been conditioned (if necessary) and discharged to a specified depth. (Part 2 also requires measurement of the charger output energy.) Both parts of the test procedure then require measurement of the energy recoverable from the battery during discharge. Finally, the test procedure requires measurement of the charger input power with (1) The battery fully charged and connected to the charger (maintenance mode), (2) the battery removed from the charger (standby mode), and (3) the battery removed from the charger and the charger turned off, if a manual on-off switch is present (off mode). The number of tests, their duration, and other specifics vary between the two parts and also from charger to charger, depending on its capabilities.

The test procedure provides a set of definitions needed to test a wide variety of BCs. While some of these definitions are necessary for testing the larger industrial chargers, others are used in both parts of the test procedure and provide additional specificity beyond the definitions currently incorporated in section 2 of appendix Y.

Part 1 of the test procedure continues with specification of the test conditions in section I. Like the test conditions section of the EPA BC test procedure (which is incorporated into section 3 of appendix Y), this section of the CEC test procedure sets a variety of requirements, including limits on the input voltage to the charger, the speed and temperature of the air surrounding the unit under test (UUT), and measurement precision and accuracy. The AC input voltage waveform characteristics and ambient airspeed and temperature requirements of the CEC test procedure are equivalent to those of the EPA test procedure. The remaining requirements are stricter, however, specifying tighter limits on some parameters (*e.g.,* measurement resolution, etc.) and limits on additional parameters that may affect measurement results (*e.g.,* uncertainty, materials on which the BC may rest, characteristic of input voltage waveform for DC chargers, etc.). These tighter specifications on testing conditions should result in a more repeatable test procedure.

Following the test condition section, the CEC test procedure proceeds to specify the selection and setup of the battery and charger in section II. The age of the UUT is specified, as in the EPA test procedure. However, the CEC test procedure also specifies the mode of operation of the BC for chargers with several charge modes and/or additional functionality. Finally, the CEC test procedure specifies which batteries

Conservation Council, Southeast Energy Efficiency Alliance, and Southwest Energy Efficiency Project. For referencing purposes, throughout this notice, comments submitted from these groups will be referred to as "CEC *et al.*"

[15] Canadian Standards Association (CSA). C381.2–08. "Test Method for Determining the Energy Efficiency of Battery-Charging Systems." November 2008.

[16] EPA ENERGY STAR. "Qualified Product (QP) List for ENERGY STAR Qualified Battery Charging Systems ." October 1, 2009. Available at: *http://www.energystar.gov/ia/products/prod_lists/BCS_prod_list.pdf.*

[17] The above discussion applies to part 1 of the CEC test procedure; in addition, the test procedure also includes a part 2, which applies to larger (greater than 2000 watt output) BCs intended for transport and industrial applications.

[18] Part 2 of the CEC test procedure also applies to BCs for golf carts and other motive equipment that DOE considers to be consumer products. This issue is discussed further in section III.B.2.

should be used for the test, how to access their terminals, and how to estimate the energy capacity (used later in the test procedure to calculate the discharge rate) of the battery in case the battery is not labeled. The battery selection procedure is particularly helpful when testing BCs not packaged with batteries. Again, these additional specifications allow the test procedure to return repeatable results when testing a wider variety of BCs beyond those included in the EPA ENERGY STAR program.

Once the BC has been set to the correct mode or modes and the test battery or batteries have been identified, the measurements can begin. The measurement instructions are contained in section III of part 1, and specify how to condition, prepare, rest, charge, and discharge the battery, as well as which quantities to measure during each of these steps. Section III.A requires the tester to condition nickel-based batteries that have not been previously tested by charging them three times and discharging twice. This step is necessary because nickel-based batteries must be cycled several times before their capacity stabilizes and the test results become representative of typical use. The next step, preparation, consists of a controlled discharge to the end-of-discharge voltage. This step ensures that the battery has been fully discharged and that the energy consumed by the charger as it takes the battery from a fully discharged to a fully charged state can be compared to the energy recovered from the battery. Finally, the battery is rested, allowing it to return to the ambient temperature. Since many battery parameters depend on temperature, this step further improves the repeatability of the test procedure. All three of these initial steps are required for ensuring the repeatability of the test procedure, and are incorporated into today's proposal, with the minor modifications presented in sections III.B.5.(c) and III.B.5.(d) of this notice.

Section III of part 1 of the CEC test procedure requires measuring the energy consumed by the charger (as an integral of input power samples) when recharging the fully discharged and rested battery, but with any special charging functions (*e.g.,* equalization) turned off. This requirement is a significant departure from the EPA test procedure because the EPA procedure does not record the energy consumed during charging. The CEC test procedure also requires testers to record further parameters such as temperature, power factor, and current crest factor.

The CEC test procedure also specifies that the test must run for 24 hours or longer, as required by the manufacturer or as determined by the tester through observation of the charger (*see* section II.E of the part 1). Although BCs work at different rates, the CEC test procedure subjects them all to a full 24-hour charge and maintenance test. This is done to (1) obtain a uniform metric for comparisons and (2) increase the likelihood that the input power to the charger measured at the end of the 24-hour period is representative of the maintenance-mode power usage that a user will encounter when he or she leaves a battery connected to the charger for an extended period of time, which is the case for BCs used in handheld vacuum cleaners and cordless telephones, among others. While DOE believes these procedural requirements have merit, DOE seeks comment from interested parties on whether it is possible to shorten the measurement period that the CEC procedure currently requires while preserving the accuracy and completeness of that procedure's measurements. This method is described further in section III.B.5.(b) of this notice.

Finally, section IV of part 1 of the CEC test procedure describes the no-battery (standby) and off mode tests, while section V specifies the reporting requirements. Because DOE has already adopted standby and off mode test procedures for battery chargers, and because it specifies reporting requirements separately in section 430.22, it is not proposing today to incorporate these sections of the CEC test procedure into appendix Y.

Part 2 of the CEC test procedure follows a similar structure to part 1, but adds requirements to measure the output of the charger, test the charger with the battery at three different depths-of-discharge, and ensure charger-test battery compatibility, among others. These requirements may be needed to fully characterize the energy consumption of large lead-acid BCs for industrial applications; however, because DOE's current scope covers chargers for consumer products, DOE focused primarily on part 1, though the differences between the two parts are discussed in further detail in III.B.2. of this notice.

As the above summary shows, the CEC test procedure is a complete and detailed energy efficiency test procedure that can serve as a basis for a DOE test procedure. The steps outlined above contribute to the accurate measurement of the energy efficiency of battery chargers and have been incorporated into today's proposal, except where a less burdensome or more accurate alternative exists. These departures are presented in more detail in the subsequent sections.

2. Scope

The scope of the current DOE test procedure encompasses all BCs,[19] regardless of input voltage. However, following the framework document public meeting, a member company of the Information Technology Industry (ITI) Council submitted a comment requesting that DOE limit testing to U.S. line-voltage AC input (115 volts at 60 hertz).[20] (ITI member,[21] No. 17 at p. 1)

Limiting the scope of the test procedure to encompass BCs with DC or U.S. line-voltage AC input would ensure that all consumer battery chargers intended for use in the U.S. will be covered, while preventing unnecessary testing of industrial BCs or consumer BCs intended for use outside of the U.S. Such a modification to the scope would also be consistent with DOE's treatment of EPSs, which are not only defined as a circuit "used to convert household [line-voltage AC] electric current" in the statute (42 U.S.C. 6291(36)), but are also tested at 115 volts at 60 hertz, as specified in section 3 of appendix Z part 430 of title 10 of the CFR.

This limitation on input voltage would differentiate the proposed scope from that in the CEC BC test procedure. The proposed scope further differs from the CEC BC test procedure by including only BCs for consumer products. (42 U.S.C. 6291(32)) The CEC BC test procedure, on the other hand, covers not only BCs for consumer products, but also BCs for commercial and industrial applications such as forklifts and emergency egress lighting.

Even though the CEC test procedure covers BCs for applications from all market segments, it is divided by input and output parameters and intended application, among other criteria. For example, part 1 of the CEC BC test procedure applies to consumer chargers with input power under 2 kilowatts, while part 2 applies primarily to larger industrial chargers and chargers for golf carts and other consumer motive equipment.

[19] "The term 'battery charger' means a device that charges batteries for consumer products, including battery chargers embedded in other consumer products. (42 U.S.C. 6291(32))

[20] AC line voltage in the U.S. is nominally 120 volts at 60 hertz. However, several international test procedures specify testing at 115 volts, as that test condition will also be applicable to devices used in several South and Central American countries, where the AC line voltage is nominally 110 volts at 60 hertz.

[21] ITI submitted comments on behalf of one of its member companies, who wishes to remain anonymous. The comments submitted do not reflect the opinion of ITI.

Chargers for golf carts and other motive equipment were covered by part 2 of the CEC test procedure due to their similarity to large industrial BCs—both typically charge flooded lead-acid batteries. Part 2 addresses the particular concerns of testing these flooded lead-acid systems, such as different charger and battery manufacturers, high charger efficiency (necessary due to high output power), and an unsealed battery construction permitting measurements of the temperature and specific gravity of the acid electrolyte to determine battery state.

While these test procedure provisions may be necessary to accurately measure the energy efficiency of large industrial BCs, chargers for golf carts and other types of consumer motive equipment (collectively, consumer motive equipment) fall at the low-power end of the lead-acid BC range, where the need for a specialized test procedure is not as clear. For example, high-power industrial chargers are already highly efficient, so part 2 requires a series of tests under various conditions to detect any differences in energy consumption. On the other hand, there is sufficient efficiency variation in the consumer motive equipment BC market such that a less burdensome test procedure will suffice for energy consumption measurements. To accommodate consumer motive equipment within the BC test procedure, DOE has two options:

(1) Include BCs for consumer motive equipment batteries with those for all other consumer products, in a single test procedure based on part 1 of the CEC BC test procedure; or

(2) Include BCs for consumer motive equipment in one test procedure based on part 2 of the CEC BC test procedure, while including BCs for all other consumer products in a second test procedure based on part 1 of the CEC BC test procedure.

Approach 2, above, would result in an additional DOE test procedure based on part 2 of the CEC test procedure. However, because DOE's scope does not extend to large industrial chargers, this additional test procedure would only cover chargers for golf carts and other consumer motive equipment. Under this approach, separate test setup and measurement requirements would need to be established to test a class of products with few models and limited shipments.

However, a previous draft of the CEC test procedure included consumer motive equipment together with smaller consumer BCs, simplifying the testing requirements. Although the testing requirements for consumer motive equipment and the remaining consumer BCs were later separated into the two parts of the test procedure, an integrated test procedure remains valid for testing the efficiency of both classes of BCs.

Therefore, rather than proposing a separate procedure that would cover only a single class of BCs (consumer motive equipment), DOE proposes to follow approach 1 above and include consumer motive equipment chargers under a general test procedure for all consumer products. The particulars of this proposed test procedure are discussed at length in the remainder of this section.

For the reasons stated above, DOE proposes to amend section 1 of appendix Y to read as set out in the regulatory text of this NOPR.

Nonetheless, DOE is also considering approach 2—adopting an additional test procedure for consumer motive equipment chargers based on part 2 of the CEC test procedure—given sufficient comment and supporting data from interested parties. DOE invites interested parties to comment on both approaches. In particular, DOE seeks comment on the applicability of part 1 of the CEC test procedure, and today's proposed test procedure, to BCs for golf carts and other consumer motive equipment and the testing burden of part 2 of the CEC test procedure compared to part 1 of the CEC test procedure and today's proposed test procedure. DOE also seeks comment generally on the completeness of the battery chemistries included in its proposal.

3. Definitions

DOE is proposing to incorporate elements of the CEC test procedure into the current version of appendix Y. For example, some of the CEC definitions differed slightly from those in section 2 of appendix Y, while other terms used in the CEC test procedure were undefined in appendix Y. Because of these discrepancies, DOE is proposing to amend section 2 of appendix Y (definitions) by amending, deleting, and incorporating new definitions to prevent potential confusion with respect to today's proposal. Finally, DOE is proposing to remove definitions used only in section 4(a) of appendix Y (inactive mode energy consumption measurement), which DOE also proposes to remove (*see* section III.B.5. (a) of this notice).

The specific changes proposed in today's notice consist of a series of deletions, amendments and additions. First, DOE proposes to remove the definitions of "accumulated nonactive energy" and "energy ratio or nonactive energy ratio." Second, DOE proposes to modify the definitions of "active mode," "multi-port charger," "multi-voltage a la carte charger," and "standby mode." Finally, DOE proposes to add definitions for "active power or real power (P)," "ambient temperature," "apparent power (S)," "batch charger," "battery rest period," "rated energy capacity," "C-rate," "crest factor," "equalization," "instructions or manufacturer's instructions," "measured charge capacity" "power factor," "rated battery voltage," "rated charge capacity," "total harmonic distortion (THD)," and "unit under test (UUT)." By amending, deleting, and incorporating new definitions, DOE aims to improve the clarity and utility of its test procedure for BCs.

(a) Deletions of Existing Definitions

DOE is proposing to delete the definitions of "accumulated nonactive energy" and "energy ratio or nonactive energy ratio." These definitions are no longer useful since they relate only to the inactive energy consumption measurement (section 4(b)), which DOE is proposing to remove from appendix Y in today's notice.

(b) Revisions to Existing Definitions

DOE is proposing to update some of the definitions codified in appendix Y by the EPACT 2005 En Masse final rule, 71 FR 71368, to avoid confusion in their application to the proposed BC active mode test procedure. Specifically, DOE proposes to modify the definition of "active mode" by adding the alternative term "charge mode" to the definition. As these two terms are often used interchangeably, DOE believes that this change will reduce the confusion between the two terms.

Also, DOE proposes to modify the definition of "multi-port charger" and "multi-voltage a la carte charger." The definitions of "multi-port charger" and "multi-voltage a la carte charger" included in appendix Y did not previously specify that they encompassed a batch charger (*see* section III.B.3. (c)). As both the proposed BC active mode test procedure and the CEC test procedure upon which it is based rely on the characteristics of the charger when specifying the batteries to be used for the test, DOE is proposing to replace the current definitions in appendix Y with those in the CEC test procedure to ensure that battery selection for these types of BCs will be performed in the same manner.

Finally, DOE proposes to modify the definition of BC "standby mode," which is synonymous with "no-battery mode." These two terms are already included in the definition; however, DOE proposes

to remove the parenthetical and simply present both terms for consistency with its other definitions. DOE is proposing to redefine this term in section 2.24 of appendix Y, as set out in the regulatory text of this NOPR.

(c) Additions of New Definitions

Although the EPACT 2005 En Masse final rule inserted numerous definitions into appendix Y, 71 FR 71368, the expansion of the BC test procedure to include active mode requires DOE to propose additional definitions in today's notice. These proposed definitions (as well as the proposed procedure) are based on those used by the CEC and help clarify the proposed active mode test procedure. Nonetheless, these definitions have broader applicability, as they are based in large part on established international standards (*e.g.,* International Electrotechnical Commission (IEC) standard 62301, Household Electrical Appliances—Measurement of Standby Power, or Institute of Electrical and Electronics Engineers standard 1515–2000, Recommended Practice for Electronic Power Subsystems: Parameter Definitions, Test Conditions, and Test Methods). Furthermore, some of these definitions had previously been incorporated into the DOE EPS test procedure in appendix Z. 74 FR 13335.

By adopting the following definitions, DOE hopes to avoid confusion or inconsistency in the application of its proposed test procedure. Accordingly, DOE is proposing to incorporate definitions that are consistent with the CEC test procedure for the following terms in section 2 of appendix Y: "batch charger," "battery rest period," "equalization," "power factor," "rated energy capacity," and "rated battery voltage." The Department is also proposing new definitions for "active power or real power (P)," "ambient temperature," "apparent power (S)," "C-rate," "crest factor," "instructions or manufacturer's instructions," "measured charge capacity," "rated charge capacity," "total harmonic distortion (THD)," and "unit under test (UUT)." The proposed definitions are detailed below.

DOE is proposing to define "active power or real power (P)" using the definition found in IEEE standard 1515–2000, rather than the definition in the CEC test procedure. The CEC test procedure defines active power as the average of instantaneous power taken over one or more periods of time. In contrast, IEEE Standard 1515–2000 defines active power as the integral over one period of the product of the voltage and current waveforms divided by the period. DOE believes that the approach of IEEE Standard 1515–2000 is preferable because it is clearer and, as the industry standard, more widely accepted. Accordingly, DOE is proposing to define this term in appendix Y, section 2.2, as set out in the regulatory text of this NOPR.

DOE proposes to include a definition for "ambient temperature" in its test procedure based on the CEC definition except for the addition of the word "immediately." The primary reason for this change is to make the proposed DOE definition in appendix Y consistent with appendix Z and IEEE standard 1515–2000. Furthermore, the inclusion of the word "immediately" limits the definition to only the volume of air within close proximity to the unit under test. It is the temperature of this particular volume of air, and not of that elsewhere in the test room—that could potentially impact the test results.[22] DOE is proposing to define this term as set out in the regulatory text of this NOPR.

DOE notes that although it is not proposing to set a specified distance within which this temperature measure must be taken (*e.g.*, 5 feet from the unit under test in all directions), it is considering the inclusion of such a requirement in order to minimize the risks of potential gaming during compliance certification testing. Comments from the public on this particular issue are also sought.

To achieve consistency with the proposed definition of active mode, DOE proposes to include a definition for "apparent power (S)" in its test procedure that would incorporate language from the CEC test procedure (which is the same as that in appendix Z and IEEE standard 1515–2000), with the sole exception of specifying that the measurement be expressed in volt-amperes. This change achieves consistency with the active mode because that definition also specifies the units of measurement. Apparent power is used in the power factor definition and is included for consistency with the CEC test procedure, which includes a similar definition. DOE is proposing to define this term in appendix Y, section 2.4 as set out in the regulatory text of this NOPR.

DOE is also proposing a definition of "batch charger" based on the CEC definition. DOE believes that the CEC definition for "batch charger" is clear and concise, and is proposing that the definition be adopted verbatim. DOE is proposing to define this term in appendix Y, section 2.5 as set out in the regulatory text of this NOPR.

DOE is proposing to include a definition for "battery rest period" in the test procedure, adopted verbatim from the CEC test procedure. "Battery rest period" is the period between preparing the battery and the battery discharge test, as well as the period between the battery discharge test and the charge and maintenance mode test. DOE is proposing to define this term in appendix Y, section 2.9 as set out in the regulatory text of this NOPR.

The proposed "C-rate" definition is based on the CEC test procedure, but has been modified to remove the example C-rate calculation, retaining only the definition. C-rate is used in the test procedure to describe the rate of charge and discharge during testing. DOE is proposing to define this term in appendix Y, section 2.10 as set out in the regulatory text of this NOPR.

The proposed definition for "crest factor" is based on the definition in the CEC test procedure. Crest factor, which refers to the ratio of the peak instantaneous value of a quantity to its root-mean-square (RMS) value, is recorded when performing the charge mode and battery maintenance mode test. IEEE standard 1515–2000 and IEC standard 62301 both define this term in a manner similar to CEC. DOE is proposing to adopt the definition from the two industry standards, as that version is more concise. DOE is proposing to define this term in appendix Y, section 2.12 as set out in the regulatory text of this NOPR.

The proposed definition for "equalization" has been taken verbatim from the CEC test procedure. The equalization charge is not tested under the proposed test procedure, since it is considered one of the "special charge cycles that are recommended only for occasional use to preserve battery health." DOE is proposing to define this term in appendix Y, section 2.13 as set out in the regulatory text of this NOPR.

The proposed definition for "instructions or manufacturer's instructions" is based on the "instructions" definition from the CEC test procedure, which states that "'instructions' includes any information on the packaging or on the product itself * * * 'Instructions' also includes any service manuals or data sheets that the manufacturer offers for sale to independent service technicians, whether printed or in electronic form." DOE is proposing to expand the scope of this definition by also including information about the product that is

[22] The efficiency of BCs is dependent on temperature. Therefore, the test procedure specifies the ambient temperature to ensure consistent results between tests.

available on the manufacturer's website. These instructions, which only include those materials available at the time of the test, must be followed when setting up the battery charging system, except when in conflict with the requirements of this test procedure. DOE is proposing this change in the definition because the test procedure must be representative of typical use, and users will only be influenced by instructions publicly available at the time of the test. DOE is proposing to define this term in appendix Y, section 2.14 as set out in the regulatory text of this NOPR.

The proposed definition for "measured charge capacity" is based on the "measured charge capacity" definition from the CEC test procedure, but replaces the term "rate" with "current" and "final" with "specified end-of-discharge." These changes were made to clarify the definition by replacing general words with words that are more specific. In the proposed test procedure, the measured charge capacity must be calculated for those batteries that do not have a rated charge capacity. DOE is proposing to define this term in Y, section 2.15, as set out in the regulatory text of this NOPR.

The proposed definition for "power factor" has been taken verbatim from the "power factor" definition in the CEC test procedure. This definition is also present in IEEE standard 1515–2000 as "power factor (true)." The power factor is recorded when performing the charge mode and battery maintenance mode test. DOE is proposing to define this term in appendix Y, section 2.20 as set out in the regulatory text of this NOPR.

The proposed definition for "rated battery voltage" is based on the "rated battery voltage" definition from the CEC test procedure. The definition varies from the CEC definition in that it replaces the phrase "a batch of batteries includes series connections" with "there are multiple batteries that are connected in series," replaces "batch" with "batteries," and replaces "times" with "multiplied by." The rated battery voltage is recorded before testing and is used to calculate rated energy capacity. DOE is proposing to define this term in appendix Y, section 2.21 as set out in the regulatory text of this NOPR.

The proposed definition for "rated charge capacity" is based on the "rated charge capacity" definition from the CEC test procedure. DOE is proposing to add the clause "the manufacturer states the battery can store under specified test conditions," to clarify the definition. DOE is also proposing to replace the phrase "a batch of batteries included parallel connections" with "there are multiple batteries that are connected in parallel," "batch" with "batteries," and "times" with "multiplied by." The rated charge capacity is used in the proposed test procedure to select the battery used for testing when there are no batteries packaged with the charger and there are multiple batteries with the lowest rated voltage. DOE is proposing to define this term in appendix Y, section 2.22 as set out in the regulatory text of this NOPR.

The proposed definition for "rated energy capacity" has been taken verbatim from the "calculated energy capacity" definition in the CEC test procedure. DOE changed the word "calculated" to "rated" to emphasize that the value is computed using only rated values. The definition is proposed to avoid confusion with the term "measured charge capacity." DOE is proposing to define this term in appendix Y, section 2.23 as set out in the regulatory text of this NOPR.

DOE also proposes defining "total harmonic distortion (THD)," clarifying the input voltage requirements of the proposed test procedure. A variation of the definition (with an associated equation) is also present in IEEE standard 1515–2000 as well as in appendix Z. The inclusion of a THD requirement ensures the presence of a sufficiently sinusoidal input voltage waveform, which is necessary for repeatability. This factor is important when measuring the energy use of these products because the energy consumption of BCs depends on the shape of the input voltage waveform. The THD of the input voltage is required to be ≤ 2%, up to and including the 13th harmonic.[23] The proposed definition for this term would appear in appendix Z, section 2.25 and reads as set out in the regulatory text of this NOPR.

DOE proposes defining the term "unit under test (UUT)" in its battery charger test procedure based on the CEC test procedure definition, to clarify the term. The abbreviation "UUT" is defined in IEEE standard 1515–2000 and used throughout the proposed test procedure in place of the terms "battery charger" and "test battery." This proposed change would simplify the test procedure text. DOE is proposing to define this term in appendix Y, section 2.26 as set out in the regulatory text of this NOPR.

4. Test Apparatus and General Instructions

Appendix Y, section 3 currently specifies that the test apparatus, standard testing conditions, and instructions for testing battery chargers shall conform to the requirements specified in section 4, "Standard Testing Conditions," of the EPA's "Test Methodology for Determining the Energy Performance of Battery Charging Systems." As described below, DOE is proposing to remove the existing test apparatus and general instruction, and include sections I and II (the standard test conditions and battery charger system set up) of part 1 of the CEC test procedure, with minor revisions to improve the procedure's clarity.

(a) Confidence Intervals

The CEC test procedure specifies that all "[m]easurements of active power of 0.5 W or greater shall be made with an uncertainty of ≤ 2%. Measurements of active power of less than 0.5 W shall be made with an uncertainty of ≤ 0.01 W." However, the CEC test procedure does not specify any confidence levels to which these uncertainty measurements must adhere. The proposed uncertainty requirements for testing equipment specified are equivalent to those in the current CEC test procedure, with the addition of an explicit confidence qualifier. This qualifier, which is necessary when expressing uncertainty in measurement, is the 95 percent confidence level customarily employed in experimental work, which accounts for errors that fall within two standard deviations of the mean of a normal distribution. The proposed uncertainty requirements would make the test procedure consistent with standard engineering practice.

(b) Temperature

The temperature range currently specified in the CEC test procedure is 20 °C ± 5 °C. However, this low temperature range is difficult to maintain while testing in warmer climates. DOE is proposing raising the temperature specifications to 25 °C ± 5 °C to create a testing environment that is achievable across diverse climates. All of the consumer BC tests conducted to date by parties other than DOE[24] and mentioned at the framework document

[23] Any periodic signal can be decomposed into a sum of sine waves at integer multiples of its fundamental frequency (the inverse of the period of repetition). The signal can be represented by a sine wave at the same frequency as the original, plus a second sine wave at twice the frequency, plus a third sine wave at three times the frequency, and so on. These sine waves are known as "harmonics." Although the number of harmonics are infinite in number, their amplitude tends to decrease precipitously with each subsequent harmonic, such that it is reasonable to stop the measurement at a particular harmonic, and the 13th has been found to be sufficient in practice.

[24] BC efficiency test data submitted by Pacific Gas and Electric (collected by its technical consultant Ecos) are available on DOE's website. Please see: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/battery_external_std_2008.html.*

public meeting (PG&E, No. 13 at p. 6) were performed at temperatures between 20 and 27 degrees Celsius, which would be covered by the higher temperature range proposed in today's notice. By adjusting the temperature control within the test room in this manner, the testing burden will be lessened without sacrificing the accuracy and repeatability of the test procedure.

(c) AC Input Voltage and Frequency

The CEC test procedure requires, when possible, the testing of units that accept AC line-voltage input at two voltage and frequency combinations, 115 volts at 60 hertz and 230 volts at 50 hertz. As mentioned in section III.B.2., above, an ITI member company commented that testing should be limited to the U.S. line voltage (115 volts, 60 hertz) (ITI member, No. 17 at p. 1).

Since DOE's scope of coverage extends only to consumer BCs operating in the United States, DOE is proposing to require that BCs only be tested at the U.S. AC line voltage, 115V at 60Hz, even if they can also be operated at other voltages and frequencies (for worldwide use). This change will harmonize the DOE BC test procedure with the current EPS test procedure, which also specifies that "[t]he UUT shall be tested at 115 V [volts] at 60 Hz [hertz]." Since DOE is already proposing to limit the scope of its test procedure to cover BCs intended for operation at U.S. AC line voltage—whether or not they are also capable of operation at other voltages—limiting the testing to the U.S. input voltage and frequency should reduce the testing burden by half for BCs with universal input voltage (*i.e.,* capable of operating at both 115 and 230 volts) without impacting the representativeness of the test procedure.

(d) Charge Rate Selection

Section II.A (general setup) of part 1 of the CEC test procedure requires that, "If the battery charger has user controls to select from two or more charge rates (such as regular or fast charge) or different charge currents, the test shall be conducted with each of the possible choices." However, this option presents a large burden on manufacturers as each test can take over 24 hours to complete, which could take a manufacturer several days to complete testing of a single unit.

DOE believes that, given a choice, users will opt for the fastest charge that does not impact the battery's long term health, as evidenced by the popularity of successively faster chargers in the market. In light of this observation, to limit the test procedure burden while still maintaining its representativeness, DOE is proposing that, if the battery charger has user controls to select from two or more charge rates, the test shall be conducted at the fastest charge rate that is recommended by the manufacturer for everyday use.

(e) Battery Selection

Section II.C of part 1 of the CEC test procedure requires that multi-voltage, multi-port, and/or multi-capacity chargers be tested numerous times, with a variety of batteries. Again, since each test takes over 24 hours, following this aspect of the CEC procedure will result in more than three days of testing for some BCs. Interested parties also acknowledge the issue: an ITI member suggested that in cases where a battery charger offers multiple outputs, but one output is the primary intended scenario, the BC should only be tested using that output. (ITI member, No. 17 at p. 1)

Since any BC is a "multi-capacity" charger,[25] this burden is not limited to just a few specialty BCs. Manufacturers of products with user-replaceable batteries (*e.g.,* cellular telephones, power tools, etc.) tend to sell high-capacity add-on batteries, and the capacity of the replacement batteries increases gradually as battery technology improves with time. As a result, many BCs would need to be tested twice (once with the lowest and once with the highest capacity battery), which is a step included in the CEC test procedure. Furthermore, these BCs may require re-testing as new higher-capacity batteries are released after the manufacture of the original product. To reduce the number of tests, DOE is focusing on the typical usage scenario—*i.e.,* testing with the battery packaged with the charger. Since most users will not purchase the additional higher-capacity battery, the proposed DOE test procedure would require testing using only the battery packaged with the charger.

If multiple batteries or no batteries are packaged with the charger, DOE proposes selecting batteries for testing from those recommended for use with the BC by the manufacturer. In the absence of any recommendation, the batteries for test would be selected from any suitable for use with the charger. If these batteries vary in voltage or capacity, the charger would be tested with (1) The lowest voltage, lowest capacity battery; (2) the highest voltage, lowest capacity battery; and (3) the highest total energy capacity battery, as applicable. In each case, the term "battery" refers to one or more cells in one or more separate enclosures.

The proposed battery selection procedure described above for chargers packaged either with multiple or no batteries is consistent with section II.C of part 1 of the CEC test procedure. Because this procedure may result in multiple tests spanning several days for a single charger, DOE is also considering an alternative battery selection procedure that would require that the BC only be tested with the most typical battery intended for use with the BC. This alternative approach would attempt to reduce the testing burden while measuring "a representative average use cycle," as required by statute. (42 U.S.C. 6293(b)(3))

Nonetheless, due to insufficient information regarding the typical batteries used with chargers that are packaged with multiple batteries or packaged without batteries, DOE is unable to ensure that tests limited to just one battery (*e.g.,* the lowest capacity battery) would be representative of typical use. Therefore, DOE welcomes comments from interested parties on (1) the typical use of chargers for standard-sized, AA and AAA batteries and 12 volt lead-acid batteries, which are used with a variety of batteries, and (2) the likely burden due to the proposed battery selection method, which is based on the CEC test procedure.

(f) Non-Battery Charging Functions

The proposed active mode BC test procedure retains the instructions concerning additional functionality from section II.D of part 1 of the CEC test procedure, which requires the tester to turn off any user-controlled functions and disconnect all auxiliary electrical connections to the BC. These instructions address the two types of additional functionality typically included with battery chargers, *i.e.,* connections with other systems (*e.g.,* cordless telephone base) and user interaction (*e.g.,* power tool charger radio).

The first type of additional functionality is exemplified by cordless telephone bases that monitor the state of the telephone line and/or store voicemail messages. These types of devices provide an added utility through connection with other systems, *e.g.,* the telephone line. Because the additional functionality relies on the connection to other parts of the system, manufacturers can use a physical disconnection (required by the proposed

[25] Unless controlled by a timer, a BC designed for a specific voltage, chemistry, and physical package can charge all batteries of the same voltage, chemistry, and physical package, regardless of capacity. The only difference will be the charge time, which will increase with battery charge capacity.

BC active mode test procedure) as a signal to the device to disable the additional functionality and reduce power consumption to the level of a BC that is not equipped with that additional functionality.

The second type of additional functionality is exemplified by a power tool charger radio that provides an interface for operation by the user. Because this type of device already relies on users to operate it, a manufacturer should be able to add or repurpose one of the interface elements to allow a user (and tester) to turn off the additional functionality of the device. Doing so would reduce the device's power consumption to a level comparable with BCs and EPSs without the additional functionality. In either case, the energy consumption of the additional functionality can be substantially reduced, if not eliminated, which would reduce the energy consumption of the BC to the level of similar BCs equipped without additional functionality.

If adopted, the instructions in section 4.4 of the proposed test procedure would allow the BC to decrease the energy consumption of any additional functionality to a negligible level. Therefore, DOE does not expect to make any allowances for energy consumption due to additional functionality in the corresponding energy conservation standard. Nonetheless, DOE welcomes suggestions from interested parties on how it should address additional functionality.

(g) Determining the Charge Capacity of Batteries with No Rating

Section II.G of the CEC test procedure requires the use of trial-and-error to estimate the charge capacity [26] of batteries when it is not provided by the manufacturer. Reaching results in this manner would likely not be repeatable. Therefore, the method that DOE is proposing today explicitly lays out the iterative steps required to measure the battery capacity, providing a clear process which will likely limit the time required to determine the charge capacity and produce a more repeatable result than the trial-and-error method.

5. Test Measurement

Appendix Y, section 4 is currently divided into sections (a), (b), (c), and (d), as discussed above. DOE is proposing to: (1) Remove the existing inactive mode energy consumption measurement in section 4(a); (2) retain sections 4(c) and 4(d), which contain the standby and off mode test procedures; and (3) insert section III of part 1 of the CEC test procedure, "Measuring the Battery Charger System Efficiency," into section 4(b) with minor revisions for clarity and the following substantive modifications. Finally, DOE proposes renumbering the resulting section 4 for ease of reference and use by testing technicians.

(a) Removing Inactive Mode Energy Consumption Test Apparatus and Measurement

The inactive mode energy consumption measurement in section 4(a) of appendix Y requires integrating the input power to the BC over numerous hours in maintenance and no-battery modes and dividing it by the battery energy measured during discharge, resulting in a non-active energy ratio. The standby and off mode test procedure final rule added a requirement to measure standby (no-battery) and off mode energy consumption, 74 FR 13334, while today's proposal includes requirements to measure active (charge) and maintenance modes. Because these test procedure updates would collectively result in a BC test procedure that measures battery charger energy consumption in all four modes—active (charge), maintenance, standby (no-battery), and off—there is no longer a continued need for the inactive mode test procedure adopted on December 8, 2006. Therefore, in today's notice, DOE proposes to strike the inactive mode energy consumption measurement from section 4(a).

(b) Charge Test Duration

During the 2009 public meeting, DOE sought comment on shortening the 24-hour test period specified in the CEC procedure. The Power Tool Institute (PTI) saw no problem in shortening the maintenance mode test period (Pub. Mtg. Tr., No. 14 at p. 190), whereas AHAM and Wahl Clipper Corporation (Wahl) commented that a 24-hour charge cycle should be used as the basis for measuring active mode energy consumption. (AHAM, No. 16 at p. 2; Wahl, No. 23 at p. 1) Ecos Consulting (Ecos) added that a shorter test period was considered during the development of the CEC procedure but explained that it was not feasible to incorporate a shorter test period since many batteries have a much longer charge time. (Pub. Mtg. Tr., No. 14 at p. 191–92) PTI specifically cited nickel-cadmium as an example of a battery chemistry that requires charge of at least 16 hours, cautioning that if the active charge window were shortened, only a portion of the charge energy would be captured by the measurement. (Pub. Mtg. Tr., No. 14 at p. 190) Ecos also indicated that although charge indicator lights are reliable determinants of active mode duration, they are only included in roughly one-third of chargers and therefore cannot be relied on to shorten the measurement period in all cases. (Pub. Mtg. Tr., No. 14 at p. 193)

Although a shortened test period would reduce the burden on manufacturers, the 24-hour charge energy metric provides uniformity between tests and enables BCs for cellular telephones to be easily compared with BCs for cordless telephones, regardless of how long each BC spends actually charging a battery. In today's notice, DOE is proposing using a 24-hour charge and maintenance energy measurement consistent with the CEC test procedure, but is inviting interested parties to comment on incorporating an optional, shorter test period, described below.

To accommodate the comments of interested parties, DOE is proposing to retain the 24-hour test period but seeks comment on possibly supplementing it with an optional shortened test period that can be used when feasible. The proposal outlines scenarios where a shorter test period would be appropriate. These scenarios would require that a testing technician must determine that the BC is in steady-state operation in maintenance mode, at which point the input power no longer changes. In other words, continuing the test past this point under this scenario would not yield any new information regarding the energy consumption characteristics of the tested unit.

In the shortened test procedure, the BC would undergo an initial charging period with a duration determined by the state of a charge indicator light, manufacturers' instructions, or, in the absence of the above, a minimum of 4 hours. Following this, the technician would inspect the input power to the BC, and the BC would be in a steady state if its input power does not vary by more than 2 percent over a 1-hour period. A relatively constant input power over a significant length of time indicates that the BC has finished charging the battery and entered maintenance mode. Since, absent user interaction, the BC is expected to remain in this mode for all future time, it should be possible to stop the test early and extrapolate the energy measurement to the full 24-hour period.

[26] This parameter corresponds to the amount of charge a battery can store and is a function of the size and chemical composition of the battery. The testing technician must obtain this parameter to calculate the discharge current necessary to measure the battery energy during the discharge test.

This extrapolation is done by taking the energy consumption from the beginning of the test to the point when the BC entered steady-state operation and adding it to the steady-state maintenance mode power multiplied by the remaining number of hours in the test. This procedure is shown in detail in Eq. 1, below.

$$E_{24\ EXTRAPOLATED} = E_{CHARGE}\Big|_{t_{STEADY\text{-}STATE}}^{t=0} + P_{MAINT.STEADY\text{-}STATE} \times \left(24\text{h} - t_{STEADY\text{-}STATE}\right) \qquad \text{Eq. 1}$$

Where:

$E_{24\ EXTRAPOLATED}$ is the 24-hour energy estimate calculated through extrapolation;

$t_{STEADY\text{-}STATE}$ is the time at which the charger entered steady-state operation;

$E_{CHARGE}\Big|_{t_{STEADY\text{-}STATE}}^{t=0}$ is the energy consumption from the beginning of the test to the point when the BC entered steady-state operation and the test was interrupted;

$P_{MAINT.STEADY\text{-}STATE}$ is the maintenance power measured in steady state.

In this manner, the testing time for some BCs may be shortened, freeing valuable laboratory equipment without impacting the uniformity of the 24-hour metric. DOE evaluated the results of shortening the test method for six "fast" battery chargers (*e.g.,* lithium-ion battery chargers for notebook computer and DVD player applications) by utilizing data from 24-hour tests. DOE had simulated the effects of shortening the test period according to the proposed method described above, from 24 hours to an average of 5.7 hours, resulting in a time savings of 18.3 hours on average. Using only data obtained during these shortened test periods DOE then extrapolated 24-hour energy consumption. The calculated 24-hour energy consumption differed from the measured 24-hour energy consumption by an average of −1.1 percent, but with a range of −0.1 to +6.5 percent.

The 24-hour energy consumption of the fast BC with the greatest variation was calculated to be 6.5 percent lower with the shortened test method than that measured with the full 24-hour test method. This BC met the steady state criteria (meaning the unit was in maintenance mode) that allowed the shortened test period to be used. However, once in maintenance mode, the BC would periodically "wake up," presumably to provide pulses energy to the battery to counteract any self-discharge. Since these pluses happened once the unit was in maintenance mode, they were not captured by the shortened test procedure (which would have terminated the test soon after the BC had entered maintenance mode). Therefore, the extrapolated 24-hour energy consumption was lower than the measured 24-hour energy consumption.

Furthermore, DOE realizes that using the above method to shorten the measurement period for some "slow" chargers may also result in an extrapolated 24-hour energy consumption that differs widely from the measured 24-hour energy. For example, when the above test method was applied to nine slow chargers for nickel-metal hydride and lead-acid batteries, the extrapolated 24-hour energy consumption differs by 11.2 percent from the measured 24-hour energy on average.

In general, the input power to the BC during charging decreases with time, stopping the test early and extrapolating over the full 24 hours will tend to result in a higher calculated 24-hour energy consumption unless the BC has entered steady state.[27] Therefore, it is not in the manufacturer's interest to abuse this method and shorten the test inappropriately, as doing so will typically result in worse measured performance.[28] Furthermore, any DOE enforcement testing will be performed using only the full 24-hour test procedure as the method to determine compliance with the standard.

Because of the potential for significant discrepancies in results between the shortened and full, 24-hour measurement methods, DOE is not proposing to depart from the 24-hour method currently in the CEC test procedure. Nonetheless, DOE would like to invite interested parties to comment on allowing the shortened test method for units that meet the steady state criteria described above. After reviewing the comments DOE will consider incorporating this latter test method into the test procedure in the final rule. In particular, DOE would be interested in (1) a comparison of testing burden for the shortened and full testing methods, as well as (2) an assessment of the measurement variability between the two methods across a wide range of BCs.

(c) Battery Conditioning

Section III.A of part 1 of the CEC test procedure specifies that battery conditioning must be performed on all batteries, with the exception of lead-acid or lithium-based batteries. Battery conditioning is the process by which the battery is cycled several times prior to testing to permit the battery to reach its specified capacity. By conditioning the battery in this manner, any taken measurement will be representative of typical use. DOE's proposed active mode test procedure requires that the battery undergo two full charges followed by two full discharges, ending on a discharge. The third charge present in section III.A of the CEC test procedure has been removed from the proposal pursuant to the reversed testing order described in section III.B.5. (e), below.

(d) Battery Preparation

Section III.B of the CEC test procedure has a provision that requires preparing the battery for testing by performing a controlled discharge to a specified end-of-discharge voltage. This preparatory step ensures that the BC test begins and ends with the battery at the same known state—namely, fully discharged—such that all the energy consumed during the charge test can be fairly compared to the energy obtained from the battery during the discharge test. DOE's proposed active mode test procedure would likewise prepare the battery by bringing it to a known state prior to starting the test. However, the battery preparation would consist of charging the battery instead of discharging due to the proposed reversed testing order described below.

(e) Reversed Testing Order

In DOE's proposed BC active mode test procedure, the discharge test would be performed prior to the charge test, in reverse order of the CEC test procedure: The battery would be (1) Conditioned, if necessary; (2) charged until full by the BC under test, in preparation for the measurement; (3) discharged; and (4) recharged by the BC under test. The discharge energy in step (3) and the input power to the BC in step (4), above, would be measured. The proposed reversal of the test order will have no impact on the measured charge or discharge energy because the BC-battery system is deterministic and will behave in the same manner given the same inputs and environmental conditions.

[27] Of the nine slow chargers mentioned above, all had higher extrapolated than measured 24-hour energy consumption, some by as much as 30 percent.

[28] This generalization does not apply to chargers such as the fast charge mentioned above, which periodically wake up during maintenance mode.

The energy recovered from the battery during discharge will be the same whether it is measured once or many times (ignoring the long-term effects of storage or cycling), as will the charge energy consumed by the charger. Therefore, the order in which these steps are performed does not matter, as long as the measurement encompasses the entirety of a charge-discharge or discharge-charge cycle and all the energy consumed by the charger is accounted for during discharge, and vice-versa.

While reversing the testing order such that the discharge is performed prior to the charge would have no impact on the measurement results, it would allow the preparatory step to be a charge rather than a discharge. This distinction is important because it allows preparation to be conducted in the UUT, rather than a battery analyzer, and require less test equipment time. Thus, the proposed test procedure would further decrease testing burden without impacting accuracy.

(f) End of Discharge for Other Chemistries

Table D in part 1 of the CEC test procedure instructs that the end-of-discharge voltage for any battery chemistry not listed explicitly in the table be found "Per appropriate IEC standard." However, DOE cannot incorporate in its test procedure an open-ended reference to a non-existent standard. To address this concern, DOE spoke with members of industry and reviewed the literature [29] to identify which chemistries are likely to become popular in the near future as well as the end-of-discharge voltages associated with them. These chemistries would be explicitly included in the table of end-of-discharge voltages in the proposed test procedure. The additional chemistries would include nanophosphate lithium-ion and silver-zinc. If batteries of other chemistries are developed in the future, they would be addressed through the waiver process or a revision to the test procedure. DOE invites comments on whether the battery chemistries and associated discharge voltages contained in its proposed list are sufficient or require modification.

C. Review of Battery Charger and External Power Supply Standby and Off Mode Test Procedures

In the March 2009 final rule, DOE adopted a 1-hour test duration for the BC standby and off mode tests, based on the abbreviated test method in the EPA's "Test Methodology for Determining the Energy Performance of Battery Charging Systems, December 2005," previously incorporated by reference into appendix Y. 74 FR 13335. However, during the 2008 standby and off mode public meeting, interested parties suggested that the proposed 1-hour testing period be shortened further. Nonetheless, as mentioned in the March 2009 final rule, the BC standby mode test procedure must take into account equipment warm up and low-frequency pulsed operation to produce accurate and repeatable measurement results. 74 FR 13324.

In today's notice, DOE proposes amending the test period to a 30-minute warm up period followed by a 10-minute measurement period. This proposed modification would harmonize DOE's standby and off mode measurement procedures with sections IV.B and IV.C in part 1 of the optional CEC BC test procedure. Abbreviating the measurement period from 1 hour to 10 minutes will not affect the accuracy of the test because the amended test procedures would retain a 30-minute warm up period. Variations in component efficiency due to temperature are the most common reason for changes in BC energy consumption in standby and off modes, and the 30-minute warm up period would be sufficient to permit the input power of most BCs to stabilize. DOE recognizes that further instabilities (pulses) in energy consumption in standby and off modes may be caused by periodic operation of certain BC functions, as when a BC occasionally checks its output for the presence of the battery. In general, there is always a potential for a limited-time test procedure to fail to capture a behavior occurring at an arbitrary time, such that these pulses might be captured over a 1-hour measurement period but not in a 10-minute period. DOE has not, however, encountered any such cases in practice.

Based on the above reasons, DOE believes that the shortened test measurement will reduce testing burdens on manufacturers while providing an accurate and repeatable test. Further, DOE is proposing to retain the remainder of its BC standby and off mode test procedure. Finally, DOE is not proposing any changes to the standby and off mode test procedures for EPSs. The proposed measurement periods for these test procedures are only as long as necessary to obtain a repeatable result and would not impose an additional burden on manufacturers, as both are based on and incorporate by reference the no-load measurement in the EPA single-voltage EPS test procedure. DOE seeks comment on the merits of this aspect of today's proposal.

D. Review of the Single-Voltage External Power Supply Test Procedure

While DOE is interested in applying its single-voltage EPS test procedure (appendix Z to subpart B of 10 CFR part 430) to all single-voltage EPSs subject to current or potential future standards, DOE recognizes that some EPSs may not be testable under the existing test procedure in a representative or repeatable manner. In particular, the following devices may pose issues for the current procedure: (1) EPSs that communicate with their loads; (2) EPSs that limit their output current below that specified on the nameplate; and (3) high-power EPSs that do not display a clear maximum output power on their nameplates. A discussion of these three types of EPSs follows, along with test procedure changes necessary to accommodate them. DOE is considering adopting these changes pending comment from interested parties. DOE is also proposing to redefine "active power" for consistency with appendix Y and industry standards.

1. EPSs That Communicate With Their Loads

Some EPSs used for powering cellular telephones, notebook computers, and other consumer electronic products use USB and other protocols that require communication between the EPS and its load. Currently, DOE's single-voltage EPS test procedure incorporates by reference sections 4 and 5 of the CEC single-voltage EPS test procedure. Within these incorporated sections, the test procedure requires that "the tests should be conducted on the two output wires that supply the output power * * * [t]he other wires * * * should be left electrically disconnected."

This requirement is problematic, however, because it may interfere with the operation of EPSs that require additional output wires for communication with their loads. For example, the USB specification [30] requires devices to communicate over the data lines prior to transferring significant amounts of power (in excess of 1 "unit load" or approximately 0.5 watts). DOE is concerned that by requiring the disconnection of data lines, the existing single-voltage EPS test procedure may not test EPSs that use interfaces such as a USB in a

[29] See, for example: A123 Systems, "High Power Lithium Ion ANR26650M1A," April 2009, *http://www.a123systems.com/cms/product/pdf/1/ANR26650M1A_Datasheet_APRIL_2009.pdf.*

[30] "Universal Serial Bus Specification, Revision 2.0," April 27, 2000, p. 174. *http://www.usb.org/developers/docs/usb_20_122909-2.zip.*

manner that would be representative of their power consumption when operating.

The communication issue is not limited to EPSs with multiple sets of conductors. In some cases (*e.g.,* EPSs for some notebook computers), the communication between an EPS and its load can occur over the same set of conductors that transfer power, using an AC-coupled signal. Initial evaluations indicate that such communication may be used to set the output voltage of an EPS intended for use with multiple computers made by the same manufacturer. Because these EPSs may need to identify their load prior to operation, measurements conducted in the laboratory without the intended load (as required by the DOE test procedure) may not be representative of typical use.

DOE is uncertain of the extent of this problem in practice. In particular, although the cellular telephone industry is planning to adopt the USB interface as a "universal charging solution" for all handsets by 2012,[31] DOE's analysis of EPSs for cellular applications indicates that the transition to USB-compliant EPSs has not yet begun. Examination of eight mobile phone EPSs with connectors with four or more pins (including mini-USB connectors) revealed that in only one case were these pins connected to any wires in the output cable. Even in the single case of multiple pairs of conductors, the EPS performed as specified when tested according to the DOE test procedure (*i.e.,* with the additional wires disconnected), implying that no communication with the load was necessary for specified operation. Similarly, DOE has only been able to identify two models of EPSs for notebook computers that communicate with their loads. These observations lead DOE to believe that these products are not currently popular.

Even though power supplies that communicate with their loads are a rarity today, DOE does foresee a need for the test procedure to accommodate them in the future. To address this need, DOE is considering amending the single-voltage EPS test procedure by permitting manufacturers to supply additional connection instructions or fixtures for testing EPSs that require communication with the load. Today's notice does not contain a specific proposal for amending the test procedure but solicits comments from interested parties on specific EPSs that cannot be tested in a representative manner according to the DOE single-voltage EPS test procedure, due to the test procedure's requirements that the EPS be tested with a dummy load and that all additional conductors be disconnected. DOE is also seeking comments regarding specific changes that the procedures would need to permit the testing of these devices. Any amendments to the test procedure in this regard would only apply to EPSs that must communicate with their loads and would have no impact on existing standards for Class A EPSs.

2. EPSs With Output Current Limiting

As mentioned in section II.C., some EPSs limit their output current below that which is specified on their nameplate or in manufacturer datasheets. Whether due to manufacturing variation or another cause, this situation can be problematic because the current DOE test procedure may be unable to consistently measure the efficiency of these EPSs. The current DOE single-voltage EPS test procedure incorporates by reference the CEC single-voltage EPS test procedure and requires testing at fixed percentages (0, 25, 50, 75, and 100 percent) of nameplate output current. However, the test procedure does not specify what to do in cases when the EPS limits output current as described above, such that it is unable to output 100 percent or even 75 percent of its nameplate output current—which would prevent one from obtaining one or more efficiency measurements specified under the procedure.

DOE is considering several changes to the single-voltage EPS test procedure that would accommodate EPSs that limit their output current below that listed on the nameplate. In particular, DOE is considering adopting one of three options: (1) Ignore the loading points affected by output current limiting when calculating the average efficiency; (2) shift the loading points affected by output current limiting on a case-by-case basis such that they are no longer affected by current limiting (*i.e.,* if the EPS limits its output current to 90 percent of nameplate output current, calculate the active mode efficiency as the average of efficiencies at 25, 50, 75, and 90 percent load); or (3) record the efficiency as 0 percent for any loading points affected by output current limiting. DOE welcomes comments from interested parties on the prevalence of this issue as well as the above three proposed amendments under consideration.

3. High-Power EPSs

The scope of DOE's single-voltage EPS test procedure already permits the testing of high-power EPSs, as do most of the test setup and test measurement instructions. The only limitation that DOE has encountered while attempting to test high-power EPSs in accordance with the DOE test procedure involved nameplate output current. As mentioned above, the test procedure requires the nameplate output current to calculate the loading points for efficiency measurements. However, some high-power EPSs do not specify the maximum output current on the nameplate.

DOE partially addressed this issue in the standby and off mode test procedure final rule by modifying the definition of nameplate output current to include the output current provided by the manufacturer "if absent from the housing" of the EPS.[32] 74 FR 13335. However, when manufacturers do provide output current information, they may specify two maximum values: one for intermittent output current and another for continuous output current. To enable the testing of high-power EPSs, DOE is considering making changes to the single-voltage EPS test procedure that would detail what to do in cases when more than one maximum output current is specified on the nameplate or provided by the manufacturer.

In particular, DOE welcomes comments from interested parties on whether the situation where both intermittent and continuous output currents are listed on the EPS nameplate or in manufacturer documentation may cause confusion. Furthermore, DOE welcomes comments from interested parties on the potential impact of this confusion on the repeatability or representativeness of the single-voltage EPS test procedure already contained in appendix Z. DOE is considering amending the nameplate output power definition to specify that the maximum continuous current should be used as the nameplate output current when two or more currents are provided but seeks comments regarding the merits of this approach.

4. Active Power Definition

As mentioned in section III.B.3. (c) of this notice, DOE is proposing to define "active power" in section 2 of appendix Y based on the definition in IEEE standard 1515–2000. The definition in IEEE standard 1515–2000 is the widely

[31] GSM Association, "Mobile Industry Unites to Drive Universal Charging Solution for Mobile Phones," *GSM World,* February 17, 2009.

[32] Manufacturers typically specify the performance of an EPS through datasheets and other marketing materials.

accepted industry definition for "active power." However, if adopted, this definition would differ from the one currently in appendix Z. To harmonize the two definitions, DOE is proposing to redefine this term in appendix Z, section 2.c, as set out in the regulatory text of this NOPR.

E. Multiple-Voltage External Power Supply Test Procedure

Section 325 of EPCA, as amended by section 309 of EISA, directs DOE to promulgate a final rule determining whether energy conservation standards shall be issued for EPSs or "classes" of EPSs. (42 U.S.C. 6295(u)(1)(C)) Currently, DOE divides EPSs into Class A and non-Class A. Under section 301 of EISA, Congress required that Class A power supplies meet specifically prescribed standards that became effective on July 1, 2008. DOE is examining the possibility of developing standards for the remaining, non-Class A EPSs that are not covered by the Congressionally mandated standards.

Multiple-voltage EPSs (*i.e.,* EPSs that provide more than one output voltage simultaneously) have the highest shipments and widest range of consumer product applications of the EPSs that fall outside of Class A. Because it must develop test procedures either prior to (or concurrently with) the development of an efficiency standard for a product, DOE reviewed numerous test procedures in 2008 to develop a standardized test procedure for these products. In the standby and off mode NOPR, DOE proposed a multiple-voltage EPS test procedure that generally followed the structure of the CEC single-voltage EPS test procedure with some modifications specific to multiple-voltage power supplies. *See* 73 FR 48064–48068. However, due to the limited time available for review, DOE was unable to address the comments received from interested parties and decided not to incorporate these elements of the proposed test procedure into the March 2009 final rule until such time when DOE could provide a greater opportunity for comment. 74 FR 13322. In today's notice, DOE proposes adopting a test procedure generally consistent with its August 2008 proposal in the standby and off mode NOPR. However, to accommodate the concerns of some interested parties, DOE is also proposing several modifications to the previously proposed approach.

During the 2008 standby and off mode rulemaking, interested parties commented that the proposed loading conditions (25%, 50%, 75%, and 100% of full load) may not be appropriate for all multiple-voltage EPSs, particularly dedicated-use EPSs, because they do not provide a representative measure of energy consumption. On the other hand, when DOE presented a potential loading profile (as opposed to the previous simple average of the efficiencies measured at each of the four active-mode loading points) to incorporate into the test procedure during its framework document public meeting, PG&E commented that multiple voltage EPSs should be tested over their entire output current range to represent the range of loading possible with a variety of applications. (PG&E *et al.,* No. 20 at p. 17)

Therefore, in this notice, DOE is proposing measuring efficiency at no-load, 25%, 50%, 75%, and 100% of nameplate output, but without averaging the results as would have been required under the previous proposal. Instead, the currently proposed test procedure would output five separate efficiency or input power measurements, one for each loading point. The results could then be weighted during the standards phase of the rulemaking to reflect typical usage. This multiple-voltage test procedure, which otherwise remains unchanged from the one DOE proposed in 2008, would be incorporated into sections 3(b) and 4(b) of appendix Z.

By removing equal weighting of active-mode loading conditions (*i.e.,* averaging of efficiency results at each nonzero loading point) from the test procedure and reporting these metrics separately, DOE would be able to maintain a flexible and uniform test procedure. DOE would then tailor the weightings to each product class during the standards-setting phase of the rulemaking. In addition, by deciding on how to address the power supply weighting during the standards rulemaking, DOE will be able to receive additional comments from interested parties on the applications that use multiple-voltage EPSs and their expected usage to help shape the agency's decision on this issue.

F. Test Procedure Amendments Not Proposed in This Notice

As mentioned above, DOE presented potential modifications to the CEC test procedure during the framework document public meeting. After receiving comments, and doing further analysis, DOE is no longer proposing some of these amendments for incorporation into the test procedure. Nonetheless, DOE wishes to document these potential amendments and the comments received on these and other issues. These include:

(1) Accelerating the test procedure schedule

(2) Incorporating usage profiles into the test procedure

(3) Measuring charger output energy

(4) Measuring alternative depths of discharge

1. Accelerating the Test Procedure Schedule

During the framework document public meeting, some interested parties requested an expedited rulemaking schedule for the BC active mode test procedure. In particular AHAM suggested that DOE provide stakeholders with a revised battery charger test procedure, including active mode, by September 30, 2009, and that DOE complete the test procedure updates by the end of 2009 (AHAM, No. 16 at p. 2, Pub. Mtg. Tr., No. 14 at p. 45) AHAM also expressed general concern regarding how the Department can conduct its analyses for BCs without a finalized BC test procedure. (Pub. Mtg. Tr., No. 14 at p. 36)

DOE acknowledges the concerns of interested parties regarding an accelerated schedule; however, due to process requirements, DOE will continue with the current rulemaking schedule. The target date to issue the BC Active Mode Test Procedure remains October 31, 2010.

2. Incorporating Usage Profiles

Battery charging systems consume different amounts of energy while they are in different modes, and the amount of time that the charger spends in each mode varies depending on the applications of the end-use project. Some BCs, such as those for cell phones and media players, spend more time in active mode, while others, such as those for handheld vacuums and electric shavers, remain primarily in maintenance or unplugged mode.

At the framework document public meeting, DOE discussed incorporating BC usage profiles into the test procedure. These usage profiles would weight the energy consumption of the BC in each mode using the time spent in that mode. However, interested parties were opposed to the incorporation of usage profiles into the test procedure, and suggested that the consideration of usage profiles be instead deferred to the standard.

Ecos and PG&E *et al.* did not favor the incorporation of usage profiles. PG&E felt that it would be difficult to incorporate them because of insufficient data to arrive at a "realistic and creditable understanding." (Pub. Mtg. Tr., No. 14 at p. 161, Pub. Mtg. Tr., No. 14 at p. 158–59; PG&E *et al.,* No. 20 at

p. 15) Ecos similarly stated that they are not convinced that usage profiles should be used, especially in the test procedure. (Pub. Mtg. Tr., No. 14 at p. 182) PG&E agreed by stating that usage profiles may be feasible for future rulemakings once more data have been collected. (Pub. Mtg. Tr., No. 14 at p. 178) On the other hand, CEA and Wahl suggested that usage profiles should not be difficult to obtain. (Pub. Mtg. Tr., No. 14 at p. 178–79)

The DOE BC test procedure need not measure the energy consumption over a typical use cycle. It can, for example, measure the efficiency under abstract test conditions like the EPS test procedure. The usage profile can instead be incorporated into the energy conservation standard as part of the routine analysis that DOE applies during the standards rulemaking process. Adopting a test procedure that does not contain usage profiles will allow test results to be comparable across a wider range of products and jurisdictions, as regions with diverse consumer usage of BCs would be able to use the same test procedure. Because of these considerations, DOE is not proposing to incorporate usage profiles at this time.

3. Measuring Charger Output Energy

During the framework document public meeting, DOE suggested measuring the charger output energy rather than the battery output energy in order to calculate the total energy consumed by the BC during charging. DOE felt that measuring at the charger output, thereby bypassing the battery, could remove some of the variability from the measurement. Interested parties were unified in opposition to this change.

PG&E, Ecos, PTI, and AHAM all supported measuring the energy obtained from the battery during discharge (per the methods in the current ENERGY STAR test procedure and Part 1 of the CEC test procedure), rather than directly measuring the output energy of the charger. PG&E further stated that although measuring the output energy of the charger would be more accurate and easier, it will not be "realistic or representative of how things work in the real world" and stressed that this portion of the CEC test procedure should not be altered (Pub. Mtg. Tr., No. 14 at pp. 162–64; PG&E *et al.,* No. 20 at p. 14) An ITI member further stated that testing only be done with the battery supplied by the OEM, not replacement batteries supplied by third parties. (ITI member, No. 17 at p. 1)

Ecos commented that battery variations are not significant enough to warrant amending the CEC test procedure and added that variation in batteries can be averaged out statistically. (Pub. Mtg. Tr., No. 14 at p. 171–72) PTI admitted that even though battery variability may have an effect on the repeatability and reproducibility, "some of that may be addressed through some subsequent mathematics." (Pub. Mtg. Tr., No. 14 at p.166) AHAM, on the other hand, commented that manufacturers should not be required to test multiple units, which would greatly increase testing burden. (Pub. Mtg. Tr., No. 14 at p. 172)

PTI provided further support for measuring battery output energy by stating that it may be difficult to access the battery terminals, making direct measurements of the charger output energy impractical. (Pub. Mtg. Tr., No. 14 at p. 164–65)

Ecos further justified measuring battery discharge energy by noting that manufacturers choose the battery that they include or recommend for testing—*i.e.,* the battery is a design option for increasing efficiency. (Pub. Mtg. Tr., No. 14 at p. 167) PTI disagreed, stating that the needs of the application to a large extent determine the batteries used. (Pub. Mtg. Tr. No. 14 at pp. 174–75) However, because there is little variation between batteries once the appropriate chemistry has been selected, PTI also concluded that measuring the output from the charger would not be worth the added difficulty. (Pub. Mtg. Tr., No. 14 at p. 176)

AHAM and Wahl both recommended that the battery energy be measured and subsequently subtracted from the 24-hour cycle energy (AHAM, No. 16 at p. 4, Wahl, No. 23 at p. 1), whereas PTI suggested that normalizing (*i.e.,* dividing) the battery discharge energy by the charger input energy provides a measurement independent of battery size (which varies with the end-use application) and battery density (which varies with the progress of technology over time). (Pub. Mtg. Tr., No. 14 at pp. 165–66, 174)

FRIWO and Delta-Q offered contrasting comments, with FRIWO voicing general support for separate testing for batteries and BCs, using a dummy load to test the BC, unless the design of the product makes this impractical (as in the case of power tools) (FRIWO, No. 21 at pp. 1–2), while Delta-Q commented that the battery should be considered independent of the battery charging system during testing. (Delta-Q, No. 15 at p. 1)

The goal of the test procedure is to measure energy consumed by the battery charger during typical use, and this energy can be measured directly at the output of the charger or indirectly by measuring the energy recoverable from the battery during discharge. Measuring the discharge energy from the battery combines charger losses with battery losses, resulting in a system-wide measurement that is more representative of typical use. Given that interested parties voiced overwhelming support for system-wide measurements and did not express concern about the impact of battery variability on measurement repeatability, the proposed test procedure does not incorporate measurement at the output of the BC.

4. Alternative Depth-of-Discharge Measurement

At the framework document public meeting, DOE discussed the potential for testing BCs with batteries at 40 percent depth-of-discharge, meaning 60 percent full. (The term "depth-of-discharge" refers to the extent to which a battery's usable capacity has been discharged.) This potential change would model the behavior of consumers who recharge batteries before they are fully discharged and was inspired by part 2 of the CEC test procedure, which requires that batteries be tested at 100, 80, and 40 percent depth-of-discharge. Interested parties provided comments opposing the alternative depth-of-discharge; consequently, DOE is planning to continue using the 100 percent depth-of-discharge as the only condition for testing.

Ecos and PG&E opposed to the incorporation of a 40 percent depth-of-discharge (DOD) measurement and commented that a measurement from additional depths-of-discharge will complicate testing and development of standards. (Pub. Mtg. Tr., No. 14 at p. 195–96) PG&E added that a 40 percent DOD would be a generalization that is difficult to substantiate. (Pub. Mtg. Tr., No. 14 at p. 199–200; PG&E *et al.,* No. 20 at p. 16) Furthermore, Ecos noted that if a new method relying on testing at 40 percent DOD is developed, then many products will need to be re-tested in order to achieve sufficient data to set a standard. (Pub. Mtg. Tr., No. 14 at p. 206) AHAM agreed that establishing a typical depth-of-discharge is difficult; however, it is not going to be 100 percent but between 2 and 80 percent. (Pub. Mtg. Tr., No. 14 at p. 201)

Stakeholders also commented on the difficulty of consistently discharging a battery to an arbitrary depth. Ecos further commented that cutoff voltages

may be used rather than a percentage depth-of-discharge (as in the current Part 1 CEC test procedure) to terminate the discharge. (Pub. Mtg. Tr., No. 14 at p. 206) Wahl commented that the appropriate cutoff voltage should depend on the battery chemistry, using IEC standards as a precedent. (Pub. Mtg. Tr., No. 14 at p. 201–02) PTI provided a general statement that normalizing energy consumption by battery energy capacity reduces the effect of depth-of-discharge on test results. (Pub. Mtg. Tr., No. 14 at p. 204)

Due to the lack of support for measurement of BC energy consumption while charging batteries with different depths-of-discharge, DOE is not incorporating such measurement into today's proposal.

IV. Regulatory Review

A. Executive Order 12866

The Office of Management and Budget has determined that test procedure rulemakings do not constitute "significant regulatory actions" under Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB).

B. National Environmental Policy Act

In this proposed rule, DOE proposes test procedure amendments that it expects will be used to develop and implement future energy conservation standards for BCs and EPSs. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) (NEPA) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this proposed rule establishes or amends test procedures and does not result in any environmental impacts. Thus, this rulemaking is covered by Categorical Exclusion A6 under 10 CFR part 1021, subpart D, which applies to any rulemaking that is strictly procedural. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

C. Regulatory Flexibility Act

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

DOE reviewed today's proposed rule under the provisions of the Regulatory Flexibility Act and the policies and procedures published on February 19, 2003. As part of this rulemaking, DOE examined the existing compliance costs already borne by manufacturers and compared them to the revised compliance costs due to the proposed amendments in this NOPR, namely, the adoption of new test procedures for BC active mode and multiple-voltage EPSs and the modification of existing test procedures for BCs operating in standby and off mode and single-voltage EPSs with USB outputs.

Manufacturers are only required to test products subject to standards, and there are currently no standards for BCs or multiple-voltage EPSs. Until energy conservation standards are adopted, no entities, small or large, would be required to comply with the proposed BC and EPS test procedures. Therefore, DOE believes that today's proposed rule would not have a "significant economic impact on a substantial number of small entities," and the preparation of a regulatory flexibility analysis is neither required nor warranted at this point.

Class A EPSs, however, are subject to a standard, and manufacturers, including small entities, are required to perform testing in accordance with the single-voltage EPS test procedure to ensure compliance with the standard. However, the amendments discussed in section III.D. of this notice would not significantly change the existing test procedure, amending only the testing conditions for EPSs with USB outputs. DOE does not expect these amendments to impose a significant new testing and compliance burden and therefore would have no large economic impact on a significant number of small entities.

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

D. Paperwork Reduction Act

This rule contains an information collection requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under control number 1910–1400. Public reporting burden for the collection of test information and maintenance of records on regulated EPSs based on the certification and reporting requirements is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to DOE (*see* **ADDRESSES**) and by e-mail to: *Christine_Kymn@omb.eop.gov.*

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. For proposed regulatory actions likely to result in a rule that may cause expenditures by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish estimates of the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) UMRA also requires Federal agencies to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed "significant intergovernmental mandate." In addition, UMRA requires an agency plan for giving notice and opportunity for timely input to small governments that may be affected before establishing a requirement that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under

UMRA. 62 FR 12820. (This policy is also available at *http://www.gc.doe.gov*). Today's proposed rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

F. Treasury and General Government Appropriations Act, 1999

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

G. Executive Order 13132

Executive Order 13132, "Federalism," 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of today's proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) No further action is required by Executive Order 13132.

H. Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

I. Treasury and General Government Appropriations Act, 2001

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

J. Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs of OMB a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

Today's regulatory action is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

K. Executive Order 12630

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

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

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; FEAA.) Section 32 essentially provides in part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (FTC) concerning the impact of the commercial or industry standards on competition. Because the proposed rule does not incorporate any commercial standards, section 32 does not apply here. However, consistent with its ordinary practice, DOE intends to

provide both the Attorney General and the FTC a courtesy copy of this proposed rule.

V. Public Participation

A. Attendance at Public Meeting

The time, date and location of the public meeting are listed in the **DATES** and **ADDRESSES** sections at the beginning of this NOPR. To attend the public meeting, please notify Ms. Brenda Edwards at (202) 586–2945. As explained in the **ADDRESSES** section, foreign nationals visiting DOE headquarters are subject to advance security screening procedures.

B. Procedure for Submitting Requests To Speak

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

DOE requests that those persons who are scheduled to speak submit a copy of their statements at least one week prior to the public meeting. DOE may permit any person who cannot supply an advance copy of this statement to participate, if that person has made alternative arrangements with the Building Technologies Program in advance. When necessary, the request to give an oral presentation should ask for such alternative arrangements.

C. Conduct of Public Meeting

DOE will designate a DOE official to preside at the public meeting and may also employ a professional facilitator to aid discussion. The public meeting will be conducted in an informal, conference style. The meeting will not be a judicial or evidentiary public hearing and there shall not be discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. anti-trust laws.

DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. A court reporter will record the proceedings and prepare a transcript.

At the public meeting, DOE will present summaries of comments received before the public meeting, allow time for presentations by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant may present a prepared general statement (within time limits determined by DOE) before the discussion of specific topics. Other participants may comment briefly on any general statements. At the end of the prepared statements on each specific topic, participants may clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions from DOE and other participants. DOE representatives may also ask questions about other matters relevant to this rulemaking. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of procedures needed for the proper conduct of the public meeting.

DOE will make the entire record of this proposed rulemaking, including the transcript from the public meeting, available for inspection at the U.S. Department of Energy, 6th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The official transcript will also be posted on the Webpage at *http://www1.eere.energy.gov/buildings/appliance_standards/residential/battery_external.html.* Anyone may purchase a copy of the transcript from the transcribing reporter.

D. Submission of Comments

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

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

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

E. Issues on Which DOE Seeks Comment

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

1. BC Active Mode

DOE seeks comment from interested parties on the proposed approach for testing BCs in active mode, in particular the adoption and modification of the CEC test procedure. (*See* section III.B.)

2. Limiting the Scope of the Test Procedure

DOE seeks comment from interested parties on the proposed limitation of scope of the test procedure to encompass BCs with DC or U.S. line-voltage AC input. (*See* section III.B.1.)

3. BCs for Golf Carts and Other Consumer Motive Equipment

DOE seeks comment on including BCs for golf carts and other consumer motive equipment batteries in a single test procedure based on part 1 of the CEC BC test procedure. (*See* section III.B.2.)

4. Amendments to Definitions

DOE seeks comment from interested parties on the adoption of new definitions, in particular any deviation from those currently in the CEC test procedure. (*See* section III.B.3.)

5. Selecting the Charge Rate for Testing

DOE seeks comment from interested parties on the proposed modifications to section II of the CEC test procedure intended to ease testing burden, and in particular, recommendations on which charge rates are most representative of typical use. (*See* section III.B.4.(d).)

6. Selecting the Batteries for Testing

DOE seeks comment from interested parties on the batteries that are typically used with BCs that are packaged with multiple batteries or packaged without batteries (*e.g.,* AA and AAA and 12 volt lead-acid chargers) as well as the testing burdens associated with testing such chargers multiple times under the battery selection method currently in the CEC test procedure. (*See* part 1, section III.B.4.(e).)

7. Non-Battery Charging Functions

DOE seeks comment from interested parties on the categorization of non-battery charging functions and its intention not to make allowances for energy consumption due to additional functionality. (*See* section III.B.4.(f).)

8. Procedure for Determining the Charge Capacity of Batteries With No Rating

DOE seeks comment from interested parties on the proposed revision to section II.G of the CEC test procedure to explicitly lay out the iterative steps required to measure battery capacity when none is provided. (*See* section III.B.4.(g).)

9. Deletion of the Inactive Mode Energy Consumption Test Procedure

DOE seeks comment from interested parties on the proposal to strike the inactive mode energy consumption measurement from section 4(a) of appendix Y. (*See* section III.B.5.(a).)

10. Shortening the BC Charge and Maintenance Mode Test

DOE seeks comment from interested parties on the optional method of shortening the charge and maintenance mode test period in the proposed active mode amendment to the BC test procedure, in particular its impacts on testing burden and the accuracy and repeatability of the measurement. (*See* section III.B.5.(b).)

11. Reversing Testing Order

DOE seeks comment from interested parties on the proposed reversal of the CEC test procedure order, resulting in: The battery being (1) conditioned (if necessary); (2) charged until full by the BC under test, in preparation for the measurement; (3) discharged; and (4) recharged by the BC under test. The discharge energy in step (3) and the input power to the BC in step (4), above, would be measured. (*See* section III.B.5.(e).)

12. End-of-Discharge Voltages for Novel Chemistries

DOE seeks comment from interested parties on the end-of-discharge voltages for the nanophosphate lithium-ion and silver-zinc chemistries that are proposed for inclusion in Table 5.2 in appendix Y. (*See* section III.B.5.(f).)

13. Standby Mode and Off Mode Duration

DOE also invites comment on the proposed test method for measuring standby mode and off mode energy consumption for EPSs, including whether the duration of the measurement is sufficiently long. (*See* section III.C.)

14. Single-Voltage EPS Test Procedure Amendments To Accommodate EPSs That Communicate With Their Loads

DOE seeks comment on the possible modification of the single-voltage EPS test procedure to accommodate EPSs that must communicate with their loads; in particular the prevalence of such EPSs, the need to amend the test procedure to accommodate them, and suggestions on amendments. (*See* section III.D.1.)

15. Further Single-Voltage EPS Test Procedure Amendments

DOE seeks comment on the possible further modification of the single-voltage EPS test procedure to accommodate EPSs with output current limiting and high output power. (*See* sections III.D.2. and III.D.3.)

16. Loading Conditions for Multiple-Voltage EPSs

DOE seeks comments on all issues pertaining to testing of multiple-voltage EPSs. In particular, DOE invites comments on reporting 5 separate loading conditions (no-load, 25, 50, 75, and 100 percent of nameplate output current) without averaging the results. Additionally, DOE seeks comment on how it should weigh these measurements in an energy conservation standards rulemaking for multiple-voltage EPSs. (*See* section III.E.)

VI. Approval of the Office of the Secretary

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

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

Issued in Washington, DC, on January 29, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons stated in the preamble, DOE is proposing to amend part 430 of Chapter II of Title 10, Code of Federal Regulations as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

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

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

2. In § 430.23 revise paragraph (aa) to read as follows:

§ 430.23 Test procedures for the measurement of energy and water consumption.

* * * * *

(aa) *Battery Chargers.* The 24-hour energy consumption of a battery charger in active and maintenance modes, expressed in watt-hours, and the power consumption of a battery charger in maintenance mode, expressed in watts, shall be measured in accordance with section 5.10 of appendix Y of this subpart. The power consumption of a battery charger in standby mode and off mode, expressed in watts, shall be measured in accordance with sections 5.11 and 5.12, respectively, of appendix Y of this subpart.

* * * * *

3. Appendix Y to subpart B of part 430 is revised to read as follows:

Appendix Y to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Battery Chargers

1. Scope

This appendix covers the test requirements used to measure battery charger energy consumption for battery chargers operating at either DC or United States AC line voltage (120V at 60Hz).

2. Definitions

The following definitions are for the purposes of understanding terminology

associated with the test method for measuring battery charger energy consumption.[1]

2.1. *Active mode* or *charge mode* is the state in which the battery charger system is connected to the main electricity supply, and the battery charger is delivering current, equalizing the cells, and performing other one-time or limited-time functions in order to bring the battery to a fully charged state.

2.2. *Active power* or *real power* (P) means the average power consumed by a unit. For a two terminal device with current and voltage waveforms i(t) and v(t) which are periodic with period T, the real or active power P is:

$$P = \frac{1}{T}\int_0^T v(t)i(t)dt$$

2.3. *Ambient temperature* is the temperature of the ambient air immediately surrounding the unit under test.

2.4. *Apparent power* (S) is the product of root-mean-square (RMS) voltage and RMS current in volt-amperes (VA).

2.5. *Batch charger* is a battery charger that charges two or more identical batteries simultaneously in a series, parallel, series-parallel, or parallel-series configuration. A batch charger does not have separate voltage or current regulation, nor does it have any separate indicators for each battery in the batch. When testing a batch charger, the term "battery" is understood to mean, collectively, all the batteries in the batch that are charged together. A charger can be both a batch charger and a multi-port charger or multi-voltage charger.

2.6. *Battery* or *battery pack* is an assembly of one or more rechargeable cells and any integral protective circuitry intended to provide electrical energy to a consumer product, and may be in one of the following forms: (a) Detachable battery: A battery that is contained in a separate enclosure from the consumer product and is intended to be removed or disconnected from the consumer product for recharging; or (b) integral battery: A battery that is contained within the consumer product and is not removed from the consumer product for charging purposes.

2.7. *Battery energy* is the energy, in watt-hours, delivered by the battery under the specified discharge conditions in the test procedure.

2.8. *Battery maintenance mode* or *maintenance mode* is the mode of operation when the battery charger is connected to the main electricity supply and the battery is fully charged, but is still connected to the charger.

2.9. *Battery rest period* is a period of time between discharge and charge or between charge and discharge, during which the battery is resting in an open-circuit state in ambient air.

2.10. *C-rate* is the rate of charge or discharge, calculated by dividing the charge or discharge current by the rated charge capacity of the battery.

2.11. *Cradle* is an electrical interface between an integral battery product and the rest of the battery charger designed to hold the product between uses.

2.12. *Crest factor* for an AC or DC voltage or current waveform, is the ratio of the peak instantaneous value to the root-mean-square (RMS) value.

2.13. *Equalization* is a process whereby a battery is overcharged, beyond what would be considered "normal" charge return, so that cells can be balanced, electrolyte mixed, and plate sulfation removed.

2.14. *Instructions* or *manufacturer's instructions* means the documentation packaged with a product in printed or electronic form and any information about the product listed on a Web site maintained by the manufacturer and accessible by the general public at the time of the test.

2.15. *Measured charge capacity* of a battery is the product of the discharge current in amperes and the time in decimal hours required to reach the specified end-of-discharge voltage.

2.16. *Manual on-off switch* is a switch activated by the user to control power reaching the battery charger. This term does not apply to any mechanical, optical, or electronic switches that automatically disconnect main power from the battery charger when a battery is removed from a cradle or charging base, or for products with non-detachable batteries that control power to the product itself.

2.17. *Multi-port charger* means a battery charger which charges two or more batteries (which may be identical or different) simultaneously. The batteries are not connected in series or in parallel. Rather, each port has separate voltage and/or current regulation. If the charger has status indicators, each port has its own indicator(s). A charger can be both a batch charger and a multi-port charger if it is capable of charging two or more batches of batteries simultaneously and each batch has separate regulation and/or indicator(s).

2.18. *Multi-voltage charger* is a battery charger that, by design, can charge a variety of batteries (or batches of batteries, if also a batch charger) that are of different rated battery voltages. A multi-voltage charger can also be a multi-port charger if it can charge two or more batteries simultaneously with independent voltage and/or current regulation.

2.19. *Off mode* is the condition, applicable only to units with manual on-off switches, in which the battery charger:

(1) Is connected to the main electricity supply;

(2) Is not connected to the battery; and

(3) All manual on-off switches are turned off.

2.20. *Power factor* is the ratio of the active power (P) consumed in watts to the apparent power (S), drawn in volt-amperes (VA).

2.21. *Rated battery voltage* is specified by the manufacturer and typically printed on the label of the battery itself. If there are multiple batteries that are connected in series, the rated battery voltage of the batteries is the total voltage of the series configuration, that is, the rated voltage of each battery multiplied by the number of batteries connected in series. Connecting multiple batteries in parallel does not affect the rated battery voltage.

2.22. *Rated charge capacity* is the capacity the manufacturer declares the battery can store under specified test conditions, usually given in ampere-hours (Ah) or milliampere-hours (mAh) and typically printed on the label of the battery itself. If there are multiple batteries that are connected in parallel, the rated charge capacity of the batteries is the total charge capacity of the parallel configuration, that is, the rated charge capacity of each battery multiplied by the number of batteries connected in parallel. Connecting multiple batteries in series does not affect the rated charge capacity.

2.23. *Rated energy capacity* means the product (in watt-hours) of the rated battery voltage and the rated charge capacity.

2.24. *Standby mode* or *no-battery mode* means the condition in which:

(1) The battery charger is connected to the main electricity supply;

(2) The battery is not connected to the charger; and

(3) For battery chargers with manual on-off switches, all such switches are turned on.

2.25. *Total harmonic distortion* (THD), expressed as a percent, is the root mean square (RMS value of an AC signal after the fundamental component is removed and interharmonic components are ignored, divided by the RMS value of the fundamental component.

2.26. *Unit under test* (UUT) in this appendix refers to the combination of the battery charger and battery being tested.

3. Standard Test Conditions

3.1. General

The values that may be measured or calculated during the conduct of this test procedure have been summarized for easy reference in Table 3.1.

TABLE 3.1—LIST OF MEASURED OR CALCULATED VALUES

	Name of measured or calculated value	Reference	Value
1	Time required to reach end-of discharge, ($t_{discharge_0.5A}$)	Section 4.6.	
2	Charge Capacity Estimate	Section 4.6.	

[1] For clarity on any other terminology used in the test method, please refer to IEEE Standard 1515–2000.

TABLE 3.1—LIST OF MEASURED OR CALCULATED VALUES—Continued

	Name of measured or calculated value	Reference	Value
3	Trial 0.2 C discharge current, ($I_{0.2C_trial}$)	Section 4.6.	
4	Improved Charge Capacity Estimate (if second discharge lasts for less than 4 or more than 5 hours).	Section 4.6.	
5	Improved 0.2 C discharge current estimate (if second discharge lasts for less than 4 or more than 5 hours), ($I'_{0.2C_trial}$).	Section 4.6.	
6	Duration of the charge and maintenance mode test	Section 5.2.	
7	Battery Discharge Energy	Section 4.6.	
8	Initial time, power (W), power factor, and crest factor of the input current of connected battery.	Section 5.8.	
9	Power factor and crest factor of the input current during last 10 min of test	Section 5.8.	
10	Active and Maintenance Mode Energy Consumption	Section 5.8.	
11	Maintenance Mode Power	Section 5.9.	
12	24 Hour Energy Consumption	Section 5.10.	
12	Standby Mode Power	Section 5.11.	
13	Off Mode Power	Section 5.12.	

3.2. Verifying Accuracy and Precision of Measuring Equipment

a. Measurements of active power of 0.5 W or greater shall be made with an uncertainty of ≤ 2% at the 95% confidence level. Measurements of active power of less than 0.5 W shall be made with an uncertainty of ≤ 0.01 W at the 95% confidence level. The power measurement instrument shall. As applicable, have a resolution of:

(1) 0.01 W or better for measurements up to 10 W;

(2) 0.1 W or better for measurements of 10 to 100 W; or

(3) 1 W or better for measurements over 100 W.

b. Measurements of energy (Wh) shall be made with an uncertainty of ≤ 2% at the 95% confidence level. Measurements of voltage and current shall be made with an uncertainty of ≤ 1% at the 95% confidence level. Measurements of temperature shall be made with an uncertainty of ≤ 2 °C at the 95% confidence level.

c. All equipment used to conduct the tests must be selected and calibrated to ensure that measurements will meet the above uncertainty requirements. For suggestions on measuring low power levels, *see* IEC 62301, (Reference for guidance only, *see* § 430.4) especially Section 5.3.2 and Annexes B and D.

3.3. Setting Up the Test Room

All tests, battery conditioning, and battery rest periods shall be carried out in a room with an air speed immediately surrounding the UUT of ≤ 0.5 m/s. The ambient temperature shall be maintained at 25 °C ± 5 °C throughout the test. There shall be no intentional cooling of the UUT such as by use of separately powered fans, air conditioners, or heat sinks. The UUT shall be conditioned, rested, and tested on a thermally non-conductive surface. A readily available material such as Styrofoam will be sufficient. When not undergoing active testing, batteries shall be stored at 25 °C ± 5 °C.

3.4. Verifying the UUT's Input Voltage and Input Frequency

a. If the UUT is intended for operation on AC line-voltage input in the United States, it shall be tested at 115 V at 60 Hz. If the UUT is intended for operation on AC line-voltage input but cannot be operated at 115 V at 60 Hz, it shall not be tested.

b. If a charger is powered by a low-voltage DC or AC input, and the manufacturer packages the charger with a wall adapter, sells, or recommends an optional wall adapter capable of providing that low voltage input, then the charger shall be tested using that wall adapter and the input reference source shall be 115 V at 60 Hz. If the wall adapter cannot be operated with AC input voltage at 115 V at 60 Hz, the charger shall not be tested.

c. If the UUT is intended for operation only on DC input voltage and does not include a wall adapter, it shall be tested with one of the following input voltages: 12.0 V DC for products intended for automotive, recreational vehicle, or marine use, 5.0 V DC for products drawing power from a computer USB port, or the midpoint of the rated input voltage range for all other products. The input voltage shall be within ± 1% of the above specified voltage.

d. If the input voltage is AC, the input frequency shall be within ± 1% of the specified frequency. The THD of the input voltage shall be ≤ 2%, up to and including the 13th harmonic. The crest factor of the input voltage shall be between 1.34 and 1.49.

e. If the input voltage is DC, the AC ripple voltage (RMS) shall be:

(1) ≤ 0.2 V for DC voltages up to 10 V; or

(2) ≤ 2% of the DC voltage for DC voltages over 10 V.

4. Unit Under Test Setup Requirements

4.1. General Setup

a. The battery charger system shall be prepared and set up in accordance with the manufacturer's instructions, except where those instructions conflict with the requirements of this test procedure. If no instructions are given, then factory or "default" settings shall be used, or where there are no indications of such settings, the UUT shall be tested as supplied.

b. If the battery charger has user controls to select from two or more charge rates (such as regular or fast charge) or different charge currents, the test shall be conducted at the fastest charge rate that is recommended by the manufacturer for everyday use, or failing any explicit recommendation, the factory-default charge rate. If the charger has user controls for selecting special charge cycles that are recommended only for occasional use to preserve battery health, such as equalization charge, removing memory, or battery conditioning, these modes are not required to be tested. The settings of the controls shall be listed in the report for each test.

4.2. Selection and Treatment of the Battery Charger

The UUT, including the battery charger and its associated battery, shall be new products of the type and condition that would be sold to a customer. If the battery is lead-acid chemistry and the battery is to be stored for more than 24-hours between its initial acquisition and testing, the battery shall be charged before such storage.

4.3. Selection of Batteries To Use for Testing

a. For chargers with integral batteries, the battery packaged with the charger shall be used for testing. For chargers with detachable batteries, the battery or batteries to be used for testing will vary depending on whether there are any batteries packaged with the battery charger.

(1) If batteries are packaged with the charger, batteries for testing shall be selected from the batteries packaged with the battery charger, according to the procedure below.

(2) If no batteries are packaged with the charger, but the instructions specify or recommend batteries for use with the charger, batteries for testing shall be selected from those recommended or specified in the instructions, according to the procedure below.

(3) If no batteries are packaged with the charger and the instructions do not specify or recommend batteries for use with the charger, batteries for testing shall be selected from any that are suitable for use with the charger, according to the procedure below.

b. From the detachable batteries specified above, the technician shall use Table 4.1 to select the batteries to be used for testing depending on the type of charger being tested. Each row in the table represents a mutually exclusive charger type. The technician shall find the single applicable row for the UUT, and test according to those requirements.

c. A charger is considered as:

(1) Single-capacity if all associated batteries have the same rated charge capacity (*see* definition) and, if it is a batch charger, all configurations of the batteries have the same rated charge capacity.

(2) Multi-capacity if there are associated batteries or configurations of batteries that have different rated charge capacities.

d. The selected battery or batteries will be referred to as the test battery and will be used through the remainder of this test procedure.

TABLE 4.1—BATTERY SELECTION FOR TESTING

Type of charger			Tests to perform	
Multi-voltage	Multi-port	Multi-capacity	Number of tests	Battery selection (from all configurations of all associated batteries)
No	No	No	1	Any associated battery.
No	No	Yes	2	Lowest charge capacity battery. Highest charge capacity battery.
No	Yes	Yes or No	2	Use only one port and use the minimum number of batteries with the lowest rated charge capacity that the charger can charge. Use all ports and use the maximum number of identical batteries of the highest rated charge capacity the charger can accommodate.
Yes	No	No	2	Lowest voltage battery. Highest voltage battery.
Yes	Yes to either or both.		3	Of the batteries with the lowest voltage, use the one with the lowest charge capacity. Use only one port. Of the batteries with the highest voltage, use the one with the lowest charge capacity. Use only one port. Use all ports and use the battery or the configuration of batteries with the highest total calculated energy capacity.

4.4. Limiting Other Non-Battery-Charger Functions

a. If the battery charger or product containing the battery charger does not have any additional functions unrelated to battery charging, this subsection may be skipped.

b. Any optional functions controlled by the user and not associated with the battery charging process (*e.g.,* the answering machine in a cordless telephone charging base) shall be switched off. If it is not possible to switch such functions off, they shall be set to their lowest power-consuming mode during the test.

c. If the battery charger takes any physically separate connectors or cables not required for battery charging but associated with its other functionality (such as phone lines, serial or USB connections, Ethernet, cable TV lines, etc.), these connectors or cables shall be left disconnected during the testing.

d. Any manual on-off switches specifically associated with the battery charging process shall be switched on for the duration of the charge, maintenance, and no-battery mode tests, and switched off for the off mode test.

4.5. Accessing the Battery for the Test

a. The technician may need to disassemble the end-use product or battery charger to gain access to the battery terminals for the Battery Discharge Energy Test in section 5.6. If the battery terminals are not clearly labeled, the technician shall use a voltmeter to identify the positive and negative terminals. These terminals will be the ones that give the largest voltage difference and are able to deliver significant current (0.2 C) into a load.

b. All conductors used for contacting the battery must be cleaned and burnished prior to connecting in order to decrease voltage drops and achieve consistent results.

c. Manufacturer's instructions for disassembly shall be followed, except those instructions that:

(1) Lead to any permanent alteration of the battery charger circuitry or function;

(2) Could alter the energy consumption of the battery charger compared to that experienced by a user during typical use, *e.g.,* due to changes in the airflow through the enclosure of the UUT; or

(3) Contradict requirements of this test procedure.

d. Care shall be taken by the technician during disassembly to follow appropriate safety precautions. If the functionality of the device or its safety features is compromised, the product shall be discarded after testing.

e. Some products may include protective circuitry between the battery cells and the remainder of the device. In some cases, it is possible that the test battery cannot be discharged without activating protective control circuitry. If the manufacturer provides a description for accessing connections at the output of the protective circuitry, the energy measurements shall be made at the terminals of the test battery, so as not to include energy used by the protective control circuitry.

f. If the technician, despite diligent effort and use of the manufacturer's instructions:

(1) Is unable to access the battery terminals;

(2) Determines that access to the battery terminals destroys charger functionality; or

(3) Is unable to draw current from the test battery, then the Battery Discharge Energy and the Charging and Maintenance Mode Energy shall be reported as "Not Applicable."

4.6. Determining Charge Capacity for Batteries With No Rating

a. If the test battery has a rated charge capacity, this subsection may be skipped. Otherwise, if there is no rating for the battery charge capacity on the test battery or in the instructions, then the technician shall estimate the battery capacity in accordance with the following iterative procedure involving two or three charge and logged discharge cycles. These cycles can be used in lieu of the battery conditioning specified in section 5.3:

(1) The test battery shall be fully charged according to the procedure in section 5.2.

(2) The test battery shall then be discharged at a rate of 0.5 amperes until its average cell voltage under load reaches the end-of-discharge voltage specified in Table 5.2 for the relevant battery chemistry. The time required to reach end-of-discharge shall be measured, and the capacity estimated by multiplying the 0.5 ampere discharge current by the discharge time.

(3) The test battery shall again be fully charged, as in step a.(1), of this section.

(4) The test battery shall then be discharged at a trial 0.2 C rate based on the above capacity estimate. The trial 0.2 C discharge current can be calculated as follows:

$$I_{0.2C_TRIAL} = \frac{0.5\ \mathrm{A} \times t_{DISCHARGE_0.5\ \mathrm{A}}}{5\ \mathrm{h}}$$

Where:

$I_{0.2C_TRIAL}$ = is the trial discharge current; and

$t_{DISCHARGE_0.5A}$ is the time required to discharge the battery at 0.5 amperes.

(5) The time required to reach end-of-discharge shall again be measured. If this second discharge time is greater than 4.5 hours and less than 5.5 hours, the capacity determined using the above method shall be used as the rated charge capacity throughout the remainder of this test procedure. Furthermore, the current calculated above shall be used as the 0.2 C rate.

(6) Otherwise, if the second discharge time measured in step a.(4), of this section, is greater than 4.5 hours and less than 5.5 hours, the capacity estimate shall be updated by multiplying by the second discharge time, and an updated trial discharge current shall be calculated as follows:

$$I'_{0.2C_TRIAL} = \frac{I_{0.2C_TRIAL} \times t'_{DISCHARGE_0.5\,A}}{5\,\mathrm{h}}$$

Where:

$I_{0.2C_TRIAL}$ is the original trial discharge current;

$I'_{0.2C_TRIAL}$ is the updated trial discharge current;

$t'_{DISCHARGE_0.5A}$ is the updated discharge time measured at the $I_{0.2C_TRIAL}$ rate.

b. This updated capacity estimate and updated trial discharge current shall then be used throughout this test procedure as the rated battery capacity and the 0.2 C rate, respectively.

5. Test Measurement

The test sequence to measure the battery charger energy consumption is summarized in Table 5.1, and explained in detail below. Measurements shall be made under test conditions and with the equipment specified in Sections 3 and 4.

TABLE 5.1—TEST SEQUENCE

Step	Description	Data taken?	Equipment needed				
			Test battery	Charger	Battery analyzer or constant-current load	AC power meter	Thermometer (for flooded lead-acid BCs only)
1	Record general data on UUT; Section 5.1	Yes	X	X			
2	Determine test duration; Section 5.2	No					
3	Battery conditioning; Section 5.3	No	X	X	X		
4	Prepare battery for discharge test; Section 5.4	No	X	X			
5	Battery rest period; Section 5.5	No	X				X
6	Battery Discharge Energy Test; Section 5.6	Yes	X		X		
7	Battery Rest Period; Section 5.7	No	X				X
8	Conduct Charge Mode and Battery Maintenance Mode Test; Section 5.8.	Yes	X	X		X	
9	Determining the Maintenance Mode Power; Section 5.9.	Yes	X	X		X	
10	Calculating the 24–Hour Energy Consumption; Section 5.10.	No					
11	Standby Mode Test; Section 5.11	Yes		X		X	
12	Off Mode Test; Section 5.12	Yes		X		X	

5.1. Recording General Data on the UUT

The technician shall record:

(1) The manufacturer and model of the battery charger;

(2) The presence and status of any additional functions unrelated to battery charging;

(3) The manufacturer, model, and number of batteries in the test battery;

(4) The rated battery voltage of the test battery;

(5) The rated charge capacity of the test battery; and

(6) The rated charge energy of the test battery.

(7) The settings of the controls, if battery charger has user controls to select from two or more charge rates.

5.2. Determining the Duration of the Charge and Maintenance Mode Test

a. The charging and maintenance mode test, section 5.8, shall be 24 hours or longer, as determined by the items below, in order of preference:

(1) If the battery charger has an indicator to show that the battery is fully charged, that indicator shall be used as follows: If the indicator shows that the battery is charged after 19 hours of charging, the test shall be terminated at 24 hours. Conversely, if the full-charge indication is not yet present after 19 hours of charging, the test shall continue until 5 hours after the indication is present.

(2) If there is no indicator, but the manufacturer's instructions indicate that charging this battery or this capacity of battery should be complete within 19 hours, the test shall be for 24 hours. If the instructions indicate that charging may take longer than 19 hours, the test shall be run for the longest estimated charge time plus 5 hours.

(3) If there is no indicator and no time estimate in the instructions, but the charging current is stated on the charger or in the instructions, calculate the test duration as the longer of 24 hours or:

$$Duration = 1.4 \cdot \frac{RatedChargeCapacity\ (\mathrm{Ah})}{ChargeCurrent\ (\mathrm{A})} + 5\mathrm{h}$$

b. If none of the above applies, the duration of the test shall be 24 hours.

5.4. Preparing the Battery for Discharge Testing

Following any conditioning prior to beginning the battery discharge test (section 5.6), the test battery shall be fully charged for the duration specified in section 5.2 or no longer using the UUT.

5.5. Resting the Battery

The test battery shall be rested between preparation and the battery discharge test. The rest period shall be at least one hour and not exceed 24 hours. For batteries with flooded cells, the electrolyte temperature shall be less than 33 °C before charging, even if the rest period must be extended longer than 24 hours.

5.6. Battery Discharge Energy Test

a. If multiple batteries were charged simultaneously during the preparation step, the discharge energy is the sum of the discharge energies of all the batteries.

(1) For a multi-port charger: batteries that were charged in separate ports shall be discharged independently.

(2) For a batch charger: batteries that were charged as a group may be discharged individually, as a group, or in sub-groups connected in series and/or parallel. The position of each battery with respect to the other batteries need not be maintained.

b. During discharge, the battery voltage and discharge current shall be sampled and recorded at least once per minute. The values recorded may be average or instantaneous values.

c. For this test, the technician shall follow these steps:

(1) Ensure that the test battery has been charged by the UUT and rested according to the procedures above.

(2) Set the battery analyzer for a constant discharge current of 0.2 C and the end-of-discharge voltage in Table 5.2 for the relevant battery chemistry.

(3) Connect the test battery to the analyzer and begin recording the voltage, current, and wattage, if available from the battery analyzer. When the end-of-discharge voltage is reached or the UUT circuitry terminates the discharge, the test battery shall be returned to an open-circuit condition. If for any reason, current continues to be drawn from the test battery after the end-of-discharge condition is first reached, this additional energy is not to be counted in the battery discharge energy.

d. If not available from the battery analyzer, the battery discharge energy (in watt-hours) is calculated by multiplying the voltage (in volts), current (in amperes), and sample period (in hours) for each sample, and then summing over all sample periods until the end-of-discharge voltage is reached.

5.7. Resting the Battery

The test battery shall be rested between discharging and charging. The rest period shall be at least one hour and not more than 24-hours. For batteries with flooded cells, the electrolyte temperature shall be less than 33 °C before charging, even if the rest period must be extended longer than 4 hours.

5.8. Testing Charge Mode and Battery Maintenance Mode

a. The Charge and Battery Maintenance Mode test measures the energy consumed during charge mode and some time spent in the maintenance mode of the UUT. Functions required for battery conditioning that happen only with some user-selected switch or other control shall not be included in this measurement. (The technician shall manually turn off any battery conditioning cycle or setting.) Regularly occurring battery conditioning or maintenance functions that are not controlled by the user will, by default, be incorporated into this measurement.

b. During the measurement period, input power values to the UUT shall be recorded at least once every minute.

(1) If possible, the technician shall set the data logging system to record the average power during the sample interval. This allows the total energy to be computed as the sum of power samples (in watts) multiplied by the sample interval (in hours).

(2) If this setting is not possible, then the power analyzer shall be set to integrate or accumulate the input power over the measurement period and this result shall be used as the total energy.

c. The technician shall follow these steps:

(1) Ensure that user-controllable device functionality not associated with battery charging and any battery conditioning cycle or setting are turned off, as instructed in section 4.4;

(2) Ensure that the test battery used in this test has been conditioned, prepared, discharged, and rested as described in sections 5.3 through 5.7, above;

(3) Connect the data logging equipment to the battery charger;

(4) Record the start time of the measurement period, and begin logging the input power;

(5) Connect the test battery to the battery charger within 3 minutes of beginning logging. For integral battery products, connect the product to a cradle or wall adapter within 3 minutes of beginning logging;

(6) After the test battery is connected, record the initial time, power (W), power factor, and crest factor of the input current to the UUT. These measurements shall be taken within the first 10 minutes of active charging;

(7) Record the input power for the duration of the "Charging and Maintenance Mode Test" period, as determined by 5.2. The actual time that power is connected to the UUT shall be within ±5 minutes of the specified period;

(8) During the last 10 minutes of the test, record the power factor and crest factor of the input current to the UUT; and

(9) Disconnect power to the UUT, terminate data logging, and record the final time.

5.9. Determining the Maintenance Mode Power

a. After the measurement period is complete, the technician shall determine the average maintenance mode power consumption as follows. Examine the power-versus-time data, and:

(1) If the maintenance mode power is cyclic or shows periodic pulses, compute the average power over a time period that spans an integer number of cycles and includes at least the last 4 hours.

(2) Otherwise, calculate the average power value over the last 4 hours.

5.10. Determining the 24–Hour Energy Consumption

a. If the charge and maintenance test period determined in section 5.2 was 24-hours, either the accumulated energy or the average input power, integrated over the test period, shall be used to calculate 24-hour energy consumption.

b. If the charge and maintenance test period was greater than 24-hours, only the first 24-hours of the accumulated energy or the average input power, integrated over 24-hours, shall be used to calculate the 24-hour energy consumption.

TABLE 5.2—REQUIRED BATTERY DISCHARGE RATES AND END-OF-DISCHARGE BATTERY VOLTAGES

Battery chemistry	Discharge rate C	End-of-discharge voltage Volts per cell
Valve-Regulated Lead Acid (VRLA)	0.2	1.75
Flooded Lead Acid	0.2	1.70
Nickel Cadmium (NiCd)	0.2	1.0
Nickel Metal Hydride (NiMH)	0.2	1.0
Lithium Ion (Li-Ion)	0.2	2.5
Lithium Polymer	0.2	2.5
Rechargeable Alkaline	0.2	0.9
Nanophosphate Lithium Ion	0.2	2.0
Silver Zinc	0.2	1.2

5.11. Standby Mode Energy Consumption Measurement

a. Conduct a measurement of standby power consumption while the battery charger is connected to the power source. Disconnect the battery from the charger, allow the charger to operate for at least 30 minutes, and record the power (*i.e.,* watts) consumed as the time series integral of the power consumed over a 10 minute test period, divided by the period of measurement. If the battery charger has manual on-off switches, all must be turned on for the duration of the standby mode test.

b. Standby mode may also apply to products with integral batteries. If the product uses a cradle and/or adapter for power conversion and charging, then "disconnecting the battery from the charger" will require disconnection of the end-use product, which contains the batteries. The other enclosures of the battery charging system will remain connected to the main electricity supply, and standby mode power consumption will equal that of the cradle and/or adapter alone.

c. If the product also contains integrated power conversion and charging circuitry and is powered through a detachable AC power cord, then only the cord will remain connected to mains, and standby mode power consumption will equal that of the AC power cord (*i.e.,* zero watts).

d. Finally, if the product contains integrated power conversion and charging circuitry but is powered through a non-detachable AC power cord or plug blades, then no part of the system will remain connected to mains, and standby mode measurement is not applicable.

5.12 Off Mode Energy Consumption Measurement

a. If the battery charger has manual on-off switches, record a measurement of off mode energy consumption while the battery charger is connected to the power source. Remove the battery from the charger, allow the charger to operate for at least 30 minutes, and record the power (*i.e.,* watts) consumed as the time series integral of the power consumed over a 10-minute test period, divided by the period of measurement, with all manual on-off switches turned off. If the battery charger does not have manual on-off switches, record that the off mode measurement is not applicable to this product.

b. Off mode may also apply to products with integral batteries. If the product uses a cradle and/or adapter for power conversion and charging, then "disconnecting the battery from the charger" will require disconnection of the end-use product, which contains the batteries. The other enclosures of the battery charging system will remain connected to the main electricity supply, and off mode power consumption will equal that of the cradle and/or adapter alone.

c. If the product also contains integrated power conversion and charging circuitry and is powered through a detachable AC power cord, then only the cord will remain connected to mains, and off mode power consumption will equal that of the AC power cord (*i.e.,* zero watts).

d. Finally, if the product contains integrated power conversion and charging circuitry but is powered through a non-detachable AC power cord or plug blades, then no part of the system will remain connected to mains, and off mode measurement is not applicable.

4. Amend appendix Z to subpart B of part 430 by:

a. Revising paragraph 2(c).

b. Revising paragraphs 3(b) and 4(b).

The revisions read as follows:

Appendix Z to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of External Power Supplies

* * * * *

2. * * *

c. *Active power (P)* (also *real power*) means the average power consumed by a unit. For a two terminal device with current and voltage waveforms i(t) and v(t) which are periodic with period T, the real or active power P is:

$$P = \frac{1}{T}\int_0^T v(t)i(t)dt$$

* * * * *

3. * * *

(b) Multiple-Voltage External Power Supply. Unless otherwise specified, measurements shall be made under test conditions and with equipment specified below.

(i) Verifying Accuracy and Precision of Measuring Equipment

(A) Measurements of power 0.5 W or greater shall be made with an uncertainty of ≤ 2% at the 95% confidence level. Measurements of power less than 0.5 W shall be made with an uncertainty of ≤ 0.01 W at the 95% confidence level. The power measurement instrument shall have a resolution of:

(*1*) 0.01 W or better for measurements up to 10 W;

(*2*) 0.1 W or better for measurements of 10 to 100 W; or

(*3*) 1 W or better for measurements over 100 W.

(B) Measurements of energy (Wh) shall be made with an uncertainty of ≤ 2% at the 95% confidence level. Measurements of voltage and current shall be made with an uncertainty of ≤ 1% at the 95% confidence level. Measurements of temperature shall be made with an uncertainty of ≤ 2 °C at the 95% confidence level.

(C) All equipment used to conduct the tests must be selected and calibrated to ensure that measurements will meet the above uncertainty requirements. For suggestions on measuring low power levels, *see* IEC 62301, (Reference for guidance only, *see* § 430.4) especially Section 5.3.2 and Annexes B and D.

(ii) Setting Up the Test Room

All tests shall be carried out in a room with an air speed immediately surrounding the UUT of ≤ 0.5 m/s. The ambient temperature shall be maintained at 25 °C ± 5 °C throughout the test. There shall be no intentional cooling of the UUT such as by use of separately powered fans, air conditioners, or heat sinks. The UUT shall be conditioned, rested, and tested on a thermally non-conductive surface. A readily available material such as Styrofoam will be sufficient.

(iii) Verifying the UUT's Input Voltage and Input Frequency

(A) If the UUT is intended for operation on AC line-voltage input in the United States, it shall be tested at 115 V at 60 Hz. If the UUT is intended for operation on AC line-voltage input but cannot be operated at 115 V at 60 Hz, it shall not be tested. The input voltage shall be within ± 1% of the above specified voltage.

(B) If the UUT is intended for operation only on DC input voltage, it shall be tested with one of the following input voltages: 12.0 V DC for products intended for automotive, recreational vehicle, or marine use; 5.0 V DC for products drawing power from a computer USB port; or the midpoint of the rated input voltage range for all other products. The input voltage shall be within ± 1% of the above specified voltage.

(C) If the input voltage is AC, the input frequency shall be within ± 1% of the specified frequency. The THD of the input voltage shall be ≤ 2%, up to and including the 13th harmonic. The crest factor of the input voltage shall be between 1.34 and 1.49.

(D) If the input voltage is DC, the AC ripple voltage (RMS) shall be:

(*1*) ≤ 0.2 V for DC voltages up to 10 V

(*2*) ≤ 2% of the DC voltage for DC voltages over 10 V.

4. * * *

(b) Multiple-Voltage External Power Supply—Power supplies must be tested with the output cord packaged with the unit for sale to the consumer, as it is considered part of the unit under test. There are two options for connecting metering equipment to the output of this type of power supply: Cut the cord immediately adjacent to the output connector or attach leads and measure the efficiency from the output connector itself. If the power supply is attached directly to the product that it is powering, cut the cord immediately adjacent to the powered product and connect output measurement probes at that point. The tests should be conducted on the sets of output wires that constitute the output busses. If the product has additional wires, these should be left electrically disconnected unless they are necessary for controlling the product. In this case, the manufacturer shall supply a connection diagram or test fixture that will allow the testing laboratory to put the unit under test into active mode.

(i) Standby-Mode and Active-Mode Measurement—The measurement of the multiple-voltage external power supply standby mode (also no-load-mode) energy consumption and active-mode efficiency shall be as follows:

(A) Loading conditions and testing sequence. (*1*) If the unit under test has on-off switches, all switches shall be placed in the "on" position. Loading criteria for multiple-voltage external power supplies shall be based on nameplate output current

and not on nameplate output power because output voltage might not remain constant.

(*2*) The unit under test shall operate at 100 percent of nameplate current output for at least 30 minutes immediately before conducting efficiency measurements.

(*3*) After this warm-up period, the technician shall monitor AC input power for a period of 5 minutes to assess the stability of the unit under test. If the power level does not drift by more than 1 percent from the maximum value observed, the unit under test can be considered stable and measurements can be recorded at the end of the 5-minute period. Measurements at subsequent loading conditions, listed in Table 1, can then be conducted under the same 5-minute stability guidelines. Only one warm-up period of 30 minutes is required for each unit under test at the beginning of the test procedure.

(*4*) If AC input power is not stable over a 5-minute period, the technician shall follow the guidelines established by IEC Standard 62301 for measuring average power or accumulated energy over time for both input and output.

(*5*) The unit under test shall be tested at the loading conditions listed in Table 1, derated per the proportional allocation method presented in the following section.

TABLE 1—LOADING CONDITIONS FOR UNIT UNDER TEST

Loading Condition 1	100% of Derated Nameplate Output Current ± 2%.
Loading Condition 2	75% of Derated Nameplate Output Current ± 2%.
Loading Condition 3	50% of Derated Nameplate Output Current ± 2%.
Loading Condition 4	25% of Derated Nameplate Output Current ± 2%.
Loading Condition 5	0%.

(*6*) Input and output power measurements shall be conducted in sequence from Loading Condition 1 to Loading Condition 4, as indicated in Table 1. For Loading Condition 5, the unit under test shall be placed in no-load mode, any additional signal connections to the unit under test shall be disconnected, and input power shall be measured.

(B) Proportional allocation method for loading multiple-voltage external power supplies. For power supplies with multiple voltage busses, defining consistent loading criteria is difficult because each bus has its own nameplate output current. The sum of the power dissipated by each bus loaded to its nameplate output current may exceed the overall nameplate output power of the power supply. The following proportional allocation method must be used to provide consistent loading conditions for multiple-voltage external power supplies. For additional explanation, please refer to section 6.1.1 of the California Energy Commission's "Proposed Test Protocol for Calculating the Energy Efficiency of Internal Ac-Dc Power Supplies Revision 6.2," November 2007.

(*1*) Assume a multiple-voltage power supply with N output busses, and nameplate output voltages V_1, * * *, V_N, corresponding output current ratings I_1, * * *, I_N, and a nameplate output power P. Calculate the derating factor D by dividing the power supply nameplate output power P by the sum of the nameplate output powers of the individual output busses, equal to the product of bus nameplate output voltage and current I_iV_i, as follows:

$$D = \frac{P}{\sum_{i=1}^{N} V_i I_i},$$

(*2*) If $D \geq 1$, then loading every bus to its nameplate output current does not exceed the overall nameplate output power for the power supply. In this case, each output bus will simply be loaded to the percentages of its nameplate output current listed in Table 1. However, if $D < 1$, it is an indication that loading each bus to its nameplate output current will exceed the overall nameplate output power for the power supply. In this case, and at each loading condition, each output bus will be loaded to the appropriate percentage of its nameplate output current listed in Table 1, multiplied by the derating factor D.

(C) Minimum output current requirements. Depending on their application, some multiple-voltage power supplies may require a minimum output current for each output bus of the power supply for correct operation. In these cases, ensure that the load current for each output at Loading Condition 4 in Table 1 is greater than the minimum output current requirement. Thus, if the test method's calculated load current for a given voltage bus is smaller than the minimum output current requirement, the minimum output current must be used to load the bus. This load current shall be properly recorded in any test report.

(D) Test loads. Active loads such as electronic loads or passive loads such as rheostats used for efficiency testing of the unit under test shall be able to maintain the required current loading set point for each output voltage within an accuracy of ± 0.5 percent. If electronic load banks are used, their settings should be adjusted such that they provide a constant current load to the unit under test.

(E) Efficiency calculation. Efficiency shall be calculated by dividing the measured active output power of the unit under test at a given loading condition by the active AC input power measured at that loading condition. Efficiency shall be calculated at each Loading Condition (1, 2, 3, and 4, in Table 1) and be recorded separately.

(F) Power consumption calculation. Power consumption of the unit under test at Loading Conditions 1, 2, 3, and 4 is the difference between the active output power at that Loading Condition and the active AC input power at that Loading Condition. The power consumption of Loading Condition 5 (no-load) is equal to the AC active input power at that Loading Condition.

(ii) Off Mode Measurement—If the multiple-voltage external power supply unit under test incorporates any on-off switches, the unit under test shall be placed in off mode and its power consumption in off mode measured and recorded. The measurement of the off mode energy consumption shall conform to the requirements specified in paragraph 4.(b)(i) of this appendix. Note that the only loading condition that will be measured for off mode is "Loading Condition 5" in paragraph 4.(b)(i)(A) of this appendix, except that all manual on-off switches shall be placed in the off position for the measurement.

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April 2, 2010

Part IV

Department of Labor

Employment and Training Administration

20 CFR Part 618

Trade Adjustment Assistance; Merit Staffing of State Administration and Allocation of Training Funds to States; Final Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 618

RIN 1205–AB56

Trade Adjustment Assistance; Merit Staffing of State Administration and Allocation of Training Funds to States

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule.

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor (Department) issues this final rule to implement changes to the regulations for the Trade Adjustment Assistance for Workers (TAA) program under the Trade Act of 1974, as amended (Trade Act). This rule requires that personnel engaged in TAA-funded functions undertaken to carry out the worker adjustment assistance provisions must be State employees covered by a merit system of personnel administration. This rule also prescribes the system for allocating training funds to the States, as required by amendments to the Trade Act contained in the American Recovery and Reinvestment Act of 2009, commonly called the Recovery Act. The Recovery Act included provisions which reauthorized and significantly amended the TAA program.

DATES: *Effective Date:* This final rule is effective May 3, 2010.

FOR FURTHER INFORMATION CONTACT: Erin FitzGerald, Office of Trade Adjustment Assistance, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5428, Washington, DC 20210; telephone (202) 693–3560 (this is not a toll-free number).

Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Department issued a notice of proposed rulemaking (NPRM) proposing these TAA regulations on August 5, 2009. This final rule takes into consideration all comments received on the NPRM. This rule creates a new 20 CFR part 618.

The preamble to this final rule is organized as follows:

I. Background—provides a brief description of the development of the rule.
II. Subpart-by-Subpart Review—summarizes and discusses comments on the TAA regulations.
III. Administrative Information—sets forth the applicable regulatory requirements.

I. Background

The TAA program, authorized under Chapter 2 of Title II of the Trade Act (19 U.S.C. 2271 *et seq.*), provides adjustment assistance for workers whose jobs have been adversely affected by international trade. TAA assistance includes training, case management and reemployment services, income support, job search and relocation allowances, a wage supplement option for older workers, and eligibility for a health coverage tax credit. There are two steps for workers to obtain program benefits. A group of workers, or specified entities, must file with the Department and the State in which the jobs are located a petition for certification of eligibility to apply for TAA benefits and services. If the Department certifies the petition, based upon statutory criteria that test whether the group of workers was adversely affected by international trade, then the workers may individually apply with the Cooperating State Agency (CSA) for TAA benefits and services.

The States administer the provision of benefits and services in the TAA program as agents of the United States. Each State does so through a State agency designated as the CSA in a Governor-Secretary Agreement between the State's Governor and the United States Secretary of Labor (Secretary), as required under section 239 of the Trade Act. The CSA may also include the State Workforce Agency (if different) and other State or local agencies that cooperate in the administration of the TAA program, as provided in the Governor-Secretary Agreement.

The Trade and Globalization Adjustment Assistance Act of 2009 (TGAAA), part of the Recovery Act (Pub. L. 111–5, Div. B, Title I, Subtitle I, 123 Stat. 115), reauthorized and substantially amended the TAA program by revising the certification criteria to expand the types of workers who may be certified and by expanding the program benefits available to workers who are covered by a certification (adversely-affected workers or adversely-affected incumbent workers, referred to collectively in this notice as "adversely-affected workers"). The TGAAA amendments generally apply to adversely-affected workers covered under petitions for certification filed on or after May 18, 2009, and before January 1, 2011. To incorporate into regulations the substantial changes to the TAA program, the Department is creating a new 20 CFR part 618, which will implement the TAA program regulations that will succeed the current TAA program regulations in 20 CFR part 617. This rulemaking is relatively narrow in scope; it addresses only the staffing of TAA-funded functions and the allocation of TAA training funds to the States. A later NPRM will propose the remainder of 20 CFR part 618.

On August 5, 2009, the Department published an NPRM proposing two actions (74 FR 39198). The first was a requirement that, after a transition period, a State must engage only State government personnel to perform TAA-funded functions undertaken to carry out the worker adjustment assistance provisions of the Trade Act, and must apply to these personnel the standards for a merit system of personnel administration, in accordance with Office of Personnel Management (OPM) regulations at 5 CFR part 900, subpart F. These OPM regulations specify the merit system standards required for certain Federal grant programs. These standards have always been required for personnel administering Unemployment Insurance (UI) (section 303(a)(1) of the Social Security Act) and Wagner-Peyser Act—funded Employment Service (ES) programs in the States (20 CFR 652.215), and were required for personnel administering TAA from 1975 until 2005 under the Governor-Secretary Agreements.

The merit system standards contained in the OPM regulations at 5 CFR 900.603 are as follows:

(a) Recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment.

(b) Providing equitable and adequate compensation.

(c) Training employees, as needed, to assure high quality performance.

(d) Retaining employees on the basis of the adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected.

(e) Assuring fair treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, sex, religious creed, age or handicap and with proper regard for their privacy and constitutional rights as citizens. This "fair treatment" principle includes compliance with the Federal equal employment opportunity and nondiscrimination laws.

(f) Assuring that employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office.

In the NPRM, the Department stated that the purpose of requiring the application of these merit principles to State administration of the TAA program is to promote consistency,

efficiency, accountability, and transparency.

In addition to the merit staffing requirement, the second regulatory action proposed in the NPRM concerned the methodology by which the Department allocates training funds to the States. (The TGAAA uses the term "apportion" when discussing the dividing of training funds among the States. However, this final rule uses the term "allocation"' to avoid confusion, since customarily the Office of Management and Budget (OMB) "apportions" appropriated funds to the Department, which then "allocates" them to the States.) Before fiscal year (FY) 2004, the Department allocated training funds through a request process on a first-come, first-served basis; all distributions of TAA training funds were made in response to a State's request. This resulted in the Department distributing the majority of available TAA training funds early in the year, resulting in early exhaustion as TAA training funds are subject to a statutory maximum annual funding level, or "cap." Later needs were addressed through National Emergency Grant funds, provided under Section 173 of the Workforce Investment Act of 1998 (WIA) (29 U.S.C. 2918). However, this process proved to be inefficient, lengthy, and cumbersome, because it did not provide States with a predictable level of funding.

Therefore, starting in fiscal year 2004, the Department issued annual guidance establishing a formula for distributing TAA training funds to the States. The Department initially allocated 75 percent of the year's training funds, and held the remaining 25 percent in reserve, for later use by high-need States. The formula included a "hold harmless" feature, whereby the initial allocation to a State was at least 85 percent of the amount the State received in its initial allocation the prior fiscal year.

The formula instituted in 2004 had some limitations. Most significant was the relative inability of the Department to shift TAA training funds in response to changing economic conditions. This shortcoming was due in part to the 85 percent hold harmless feature, and in part to the details of the formula itself. This shortcoming was compounded by the fact that, under the Department's annual appropriations acts, appropriated funds, including funds for TAA, must be obligated (and re-obligated) by the Department within the fiscal year in which the funds are appropriated; therefore, the Department has very limited authority to move money between States once the funds are distributed. The Department is allowed to reclaim unexpended training funds from a given State, with the State's agreement, and to re-obligate such funds to other States, if the obligation is carried out within the same fiscal year the funds were appropriated. As a result, if a State is allocated FY 2009 training funds, those funds may be returned to the Department and provided to another State only during FY 2009. After the end of the fiscal year, the Department has no authority to redistribute any unused funds. Since States have three fiscal years to expend the funds obligated in any fiscal year, it is often not apparent that a State does not need all of the funds obligated to it in the fiscal year in which the funds were allocated. Thus, TAA training funds that the Department obligates to States within a fiscal year but remain unexpended by the States after three years are returned directly to the U.S. Treasury.

Section 1828(a) of the TGAAA amended section 236(a)(2) of the Trade Act to establish an annual training funding cap of $575 million, increased from $220 million annually, for fiscal years 2009 and 2010 and $143,750,000 for the period October 1, 2010 through December 31, 2010. The Conference Report on the Recovery Act makes clear that Congress increased the cap in part because the TGAAA amendments would result in more individuals being eligible for training benefits, and in part because in past times of high program participation, training funding was insufficient. H.R. Rep. No. 111–16, at 672 (2009) (Conf. Rep.).

The amended section 236(a)(2) also established a methodology for distributing TAA training funds based on a formula to be determined by the Department. The Trade Act now provides that the initial distribution of training funds must equal 65 percent of the training funds appropriated and that the remaining 35 percent will be held in reserve. The Department's initial allocation formula must be based on four factors set forth in the statute.

Section 236(f)(1) of the Trade Act (added by Section 1828(c) of the TGAAA) directs the Department to issue "such regulations as may be necessary to carry out the [allocation] provisions" on or before February 17, 2010. This final rule fulfills that statutory requirement.

II. Subpart-by-Subpart Review of the Final Rule

The Department issued a notice proposing these regulations on August 5, 2009, and received 42 comments. The Department read and carefully considered each comment in the process of developing this final rule; the substantive issues raised by the comments that are germane to the rule are responded to below. Most significantly, the NPRM proposed that a State not already in compliance with the merit staffing requirement must comply with this requirement with respect to the personnel responsible for employment and case management services under section 235 of the Trade by October 1, 2010. All other TAA administrative activities would have had to have been merit staffed by July 1, 2010. The Department has decided, in response to concerns raised in the comments, to now apply a single, later transition period for the merit staffing of both administration and employment and case management services with a compliance deadline of December 15, 2010.

Subpart H—Administration by Applicable State Agencies

As proposed, § 618.890, establishing the merit staffing requirement, contained four paragraphs. Paragraph (a) set forth the merit staffing requirement. Paragraph (b) detailed a transition period for States to come into compliance with this requirement. Paragraph (c) partially exempted from this merit staffing requirement those States whose employment service was exempted from the merit staffing requirement under Wagner-Peyser Act regulations. Paragraph (d) permitted a State to outsource TAA functions that are not inherently governmental, as defined in OMB Circular No. A–76 (Revised).

All 42 submissions received in response to the NPRM included comments on the proposed merit staffing requirement. As explained below, in response to several comments, the Department revised § 618.890(b) to reflect the adoption of a single transition deadline of December 15, 2010, for merit staffing of both administrative activities and employment and case management services.

Merit-Based State Personnel (§ 618.890(a))

Paragraph (a) provides that States must engage only State government personnel to perform TAA-funded functions undertaken to carry out the worker adjustment assistance provisions of the Trade Act, and must apply to such personnel the standards for a merit system of personnel administration applicable to personnel covered under 5 CFR part 900, subpart F. Section 618.890(a) restores the longstanding practice of requiring State merit staffed personnel to administer the TAA

program. From 1975 through 2005, the Governor-Secretary Agreements under which the States administer the TAA program as agents of the United States required that all administrative functions performed by the States in carrying out the TAA program be performed exclusively by staff subject to the merit system standards at 5 CFR 900.603. In 2005, the Governor-Secretary Agreements were modified to provide that TAA program staff need not be merit staffed, except that employees who perform functions under both the TAA program and the UI and/or ES programs must be merit staffed. However, in 2009, the Department provided advance notice in the Governor-Secretary Agreements that it would address merit staffing in rulemaking. This rule reinstates, and codifies in regulation, what had been the Department's longstanding practice of requiring merit staffing by the States in administering the TAA program.

The Department presented several rationales in the NPRM for this requirement. The Department will address the comments made on each rationale.

Authority

In the NPRM, the Department found authority to promulgate this rule in section 239 of the Trade Act. The Department received several comments on this issue.

Some of the commenters questioning our authority asserted that requiring the use of merit staff runs counter to the clear intent of Congress in passing the TGAAA. A small number of these commenters simply pointed out their belief that the proposed rule runs counter to Congress' intent, while others argued that Congress' intent to exclude merit staffing is clear from the actions of the Conference Committee tasked with reconciling the House and Senate bills to reauthorize and amend the Trade Act. One commenter focused on the House-passed bill, the Senate bill introduced by Senator Max Baucus, and the actions of the Conference Committee as relevant legislative history. Another commenter cited the minority views of the House Committee Report from 2007 (H.R. Rep. No. 110–414, pt. 1, at 119–120) as relevant legislative history. One commenter asserted that "because Congress specifically considered and intentionally rejected [merit staffing] in passing the TGAAA," the Department does not now have the authority to promulgate such a rule. Another commenter argued that the actions of the Conference Committee "precludes an interpretation of section 239 of the Trade Act that would grant the Department" the authority to enact this rule. One commenter suggested that if Congress had intended that certain TAA functions be provided by State merit staff, it would have included that provision in the TGAAA.

As an initial matter, the minority opinion in the House Committee Report is not indicative of Congressional intent. Regarding these commenters' broader arguments, the Department acknowledges that the TGAAA did not incorporate provisions that had been included in a bill passed by the House in the previous Congress during the previous Administration that would have statutorily mandated the use of merit staff in the TAA program, but the Conference Committee's failure to explain its actions precludes a finding that Congress clearly intended to prohibit the Department from enacting such a requirement through rulemaking. Courts have consistently stated as a general rule that Congressional intent cannot be clearly understood where actions taken by a committee in Congress, including the Conference Committee, are not explained. Because the Conference Report is silent on this matter, the legislative history cited by these commenters is insufficient to determine what Congress intended when it passed the TGAAA. Further weakening these commenters' assertions is the general rule that the opinion and understanding of a subsequent Congress is a poor indicator of what a previous Congress intended when it passed a specific provision of a bill. In the absence of any clear Congressional intent prohibiting it, the Department believes that promulgation of the merit staffing rule is within the discretionary authority delegated to it to interpret the Trade Act and administer the TAA program.

The Federal court opinion in *Michigan* v. *Herman,* 81 F.Supp.2d 840 (W.D. Mich. 1998), provides support for the Department's position. In that case the court upheld the Department's requirement that ES services be provided by merit staff under the Department's interpretation of the Wagner-Peyser Act. In its decision, the court noted that the Wagner-Peyser Act is silent on the issue, the legislative history is ambiguous on the matter, and that Congress' failure to alter the Department's longstanding interpretation of the Wagner-Peyser Act indicated that Congress intended to defer to the Department's interpretation of the Act. *Michigan,* 81 F.Supp.2d at 847–848. As in *Michigan,* the Trade Act does not directly address merit staffing; the legislative history is ambiguous, and for 30 years Congress did not expressly repudiate the Department's longstanding interpretation of the Trade Act as requiring merit staffing in the face of silence in the statute and ambiguity in the legislative history; and Congress failed to alter the Department's State merit staffing requirement despite amending the Trade Act several times between 1975 and 2005 when the Governor-Secretary Agreement expressly required merit staffing. Accordingly, only a clear, unambiguous statement from Congress would be sufficient to prohibit the Department from exercising its discretion and requiring merit staffing through rulemaking.

A few commenters asserted that section 239 of the Trade Act does not provide the Department authority to require State use of merit staffing in implementing the TAA program. Some of these commenters generally asserted that the TGAAA does not require the use of merit staffing. As discussed above, the Department is acting within its discretion in requiring merit staffing. One of these commenters disagreed that sections 239(a)(4) (cooperation with the Secretary and other State and Federal agencies in providing payments and services), 239(f) (advising and interviewing adversely-affected workers), and 239(i) (control measures) of the Trade Act provided the authority for the Department to require merit staffing. This commenter asserted that Congress did not intend to provide authority to require merit staffing under section 239(a)(4), an assertion it supported by stating that "neither the statutory text itself nor the legislative history to section 239(a)(4)" provide the authority cited by the Department. The commenter asserted that "neither the statutory text itself nor the legislative history to section 239(f) says anything about merit staffing," and therefore the Department does not have the authority to issue such a rule. The commenter additionally asserted that section 239(i) cannot be used to support this rule as this section was added "at the insistence of Senate negotiators opposed to the imposition of a [S]tate merit staffing requirement."

The Conference Report on section 239 is silent on the issue of merit staffing, while these provisions in section 239 provide the Department with broad authority to prescribe rules to govern the efficient administration of the TAA program. In the face of legislative silence, the Department believes that these provisions in section 239 provide it with sufficient authority to ensure the effective administration of the TAA program in any manner that will meet the goal of efficient and effective

program administration. As explained throughout this preamble, the Department's promulgation of this rule is necessary for the most effective administration of the TAA program.

Finally, one commenter faulted the Department's reliance on "Congress' decision to require the provision of TAA-funded employment and case management services to TAA-eligible workers as a justification for imposing" the merit staffing requirement because "the agreement on this portion of the TGAAA Act was directly linked" to the compromise that included the dropping of the merit staffing provision from the House version of the bill. As with the assertions about sections 239(a)(4), (f), and (i), the commenter did not cite to any legislative history to support this contention, and the Department is aware of none.

Principal-Agent Relationship

In the NPRM, the Department discussed the principal-agent relationship, under which the Department directs the State administration of the TAA program, as support for the use of State merit staff to administer the TAA program. The Department explained that implementing the TAA program requires States to make determinations concerning the Federally-funded services and benefits to which adversely-affected workers are entitled.

The Department received a small number of comments on this discussion. One of the commenters agreed that the Department has "broad authority to ensure that the TAA program functions in a proper and efficient manner," including through implementation of a State merit staffing requirement for use of TAA funds, since States act as agents of the United States. Another commenter suggested that the principal-agent provisions have long been part of the Trade Act, so the Department may not use that longstanding relationship as a basis for implementing a new merit staffing requirement at this time. This commenter also asserted that the Department failed to identify any way in which the current method of providing services using non-merit staff has undermined the principal-agent relationship.

The principal-agent relationship, present in all Federal UC programs, invests the Department, as principal, with broad discretion to interpret the statute and to prescribe the operational and administrative details of the TAA program. This differs from the grantor-grantee relationship, found in programs like WIA, in which substantial operational and administrative discretion reposes in the grantee. The Department's broad discretion as the principal provides it ample authority to prescribe administrative rules, including a merit staffing requirement. The fact that the principal-agent relationship is longstanding does not limit the role of the principal, just as it did not limit that role in 2005.

The TGAAA created additional entitlements to benefits within that relationship. The TGAAA created a requirement to provide employment and case management services to TAA-certified workers, almost tripled the training funding authorization to provide longer-term training to an expanded pool of certified workers, increased by 26 the number of weeks of income support for workers within a 91-week period, added the reemployment trade adjustment assistance (RTAA) benefit for older workers, enhanced other benefits and services, and expanded group eligibility. The Department anticipates the total funding for these features to virtually double, and of course these new features add complexity and additional challenges in administering the program. It is, therefore, appropriate at this time for the Department to reconsider the minimum requirements to which States, on behalf of the Department and the United States, must adhere in order to effectively administer the TAA program.

Further, the Department disagrees with the commenter's assertion that in order to promulgate this rule the Department must show how the past use of non-merit staff has undermined the principal-agent relationship. The principal-agent relationship, which existed before this rulemaking and was reinforced in the provisions of all of the Governor-Secretary Agreements on TAA program administration, provides the Department the authority to direct States as to the manner of administering the TAA program. The Department's authority as principal is reinforced by its authority to interpret and apply the statute as the agency designated by Congress to administer the TAA program.

Complex Entitlement Program

In the NPRM, the Department stated that the TAA program is a complex entitlement program, similar to the UI program which is also administered by State merit staff. The Department also noted that the TAA and UI programs are integrally related. For example, the TAA program's trade readjustment allowance (TRA) is a UI benefit payable after exhaustion of other forms of UI and is subject to many of the same or similar requirements and procedures that apply to State UI programs.

The Department received several comments agreeing that the integral relationship between the TAA program and UI programs would benefit from the requirement that TAA program funds be administered by State merit staff. Some of these commenters cited the need for State merit staff especially because, in their experience, personnel who determine eligibility for TRA benefits must thoroughly understand UI eligibility requirements and program complexities.

A small number of commenters disagreed. One of these commenters asserted that WIA programs have equally complex requirements, yet those programs are often effectively administered by non-merit staff. Another of these commenters stated that the TAA program "is more closely aligned with the [WIA]-funded rapid response and dislocated worker programs," because both of these programs "address the training and reemployment needs of workers affected by a dislocation event * * *," and therefore, the administration of the program should be designed to more closely coordinate with WIA, which can be done most effectively at the local level under the existing system. Similarly, another commenter averred that the responsibilities of TAA staff more closely resemble WIA staff activities than those of UI and ES program staff.

The Department recognizes that there are similarities between WIA and TAA, and requires coordination between the two programs. However, the structure of the TAA program, by operating within a principal-agent relationship, reflects greater Federal authority and responsibility than is present in the grantor-grantee relationship under which WIA operates. Unlike TAA, WIA participants are not entitled by law to program benefits, and any eligibility for UI payments that a WIA participant may have is not affected by determinations of eligibility to receive WIA services. In the TAA program, TRA eligibility is an extension of UI eligibility that takes into account State and Federal eligibility criteria. Maintaining eligibility for TRA requires continuing eligibility determinations, taking into account factors such as enrollment in training, length of training, employment decisions, and earnings. By adding employment and case management services as a required benefit of the program, Congress recognized that the proper provision of these services, including quality case management, is essential to the adjustment of adversely-

affected workers. For example, if a TAA case manager is not familiar with the requirements for enrollment in training in order to receive TRA, or does not possess a full understanding of the rules setting the amount of income an adversely-affected worker may earn while still receiving TRA, an adversely-affected worker may be incorrectly determined ineligible for TRA. By losing eligibility for TRA, the worker may lose eligibility for the health coverage tax credit, and find it difficult to continue training. As one commenter noted, "meeting these complicated requirements requires a very specialized, highly-trained workforce with expertise that cannot be easily outsourced or transferred to other organizations."

A few commenters encouraged the Department to let each State choose its own staffing strategy. According to these comments, the Department is imposing a "one size fits all" approach by requiring State merit staffing. The Department is promulgating this requirement because it has determined that nationwide consistency in the TAA program is of paramount importance. The Department has also determined that the State merit staffing requirement will promote program efficiency, accountability and transparency.

The important point is that adversely-affected workers now are entitled to receive a range of tailored services under the TAA program. The Department recognizes that many adversely-affected workers receive services under other programs for which they are also eligible, such as WIA, which are not delivered by State merit-staffed personnel. In contrast, since TAA is a complex entitlement program that requires States to make substantive determinations of benefit entitlement, as agents of the United States, the Department is requiring State merit-staffed administration of the TAA-funded services to which adversely-affected workers are entitled. However, while the Department expects the primary delivery of case management services for TAA participants will be through TAA-funded State merit staff, non-merit staff funded by partner programs may provide those services when, for example, TAA funds have been exhausted, when demand for services exceeds TAA-funded staff capacity to deliver those services, or when specific services have already been provided under another Federal program. In fact, section 235 of the Trade Act requires the Secretary to make employment and case management services available to adversely-affected workers directly or through agreements with the States and section 235a makes provides funding for States to provide those services. Section 239(g)(5) of the Trade Act specifically requires States acting under such agreements to provide such services through other Federal programs in the event that allocated TAA funding for employment and case management services is insufficient to make these required services available to all adversely-affected workers in a State.

Relationship With WIA

Many commenters argued for the continuation of a structure involving co-enrollment and integration with WIA services. These commenters remarked that their State's integrated service delivery system is highly efficient, responsive, and consistent; has good coverage throughout the State; has worked well for many years; and provides the full range of "wrap-around" services and in-depth assessments. One commenter stated that a merit staff requirement is diametrically opposed to the Department's stated goal of program integration. One commenter added that having the WIA and TAA programs administered by two different entities and staff would result in a potential loss of co-enrollment opportunities. One commenter supported State practices that respect the principles of local governance, community-based service delivery, and system-wide accountability.

Some of these commenters noted that 27 States and Puerto Rico have opted to allow a variety of State and local government employees and contractors to provide services to TAA participants. These commenters noted that this has allowed for a high degree of integration of the services provided through TAA and the One-Stop delivery system. Along the same line, other commenters suggested that local workforce areas are better poised to assist participants with training choices and reemployment services than State merit staff because of awareness of demand occupations, local resources, and the local economic climate. One commenter added that in some local areas, non-merit staff currently providing TAA benefits show higher job retention rates and higher salaries than merit staff. Several commenters mentioned the requirement to provide case management, and expressed concern that the proposed rule would require States to establish redundant, costly, and disruptive public structures because the States would be prohibited from using existing local workplace resources.

The use of merit staff in the TAA program has not previously impeded, and will not in the future impede, the provision of services to adversely-affected workers in the centers of the One-Stop delivery system (One-Stop centers) established under WIA. The TAA program will continue to be a One-Stop partner, as are other merit-staffed programs, including UI and the ES, which are integrally related to TAA. As the Governor-Secretary Agreement provides, the States will continue to use One-Stop centers as the main point of participant intake and delivery of TAA benefits and services.

Consistent with Trade Act section 239(g)(5), there is nothing in this rule prohibiting the delivery, in appropriate circumstances, of employment and case management services to adversely-affected workers by staff funded by WIA or other Federal programs through co-enrollment. As a partner in the One-Stop delivery system, the TAA program will continue to coordinate with the other partners in the system to ensure adversely-affected workers are provided access to a broad array of comprehensive services. In light of the current mix of merit staffed and non-merit staffed One-Stop partners already participating in the One-Stop delivery system, the restoration of the TAA merit-staffing requirement will not preclude effective coordination and integration within that system.

Under the amendments, the TAA program for the first time will be able to devote TAA funding to the provision of employment and case management services. These services were previously not allowable uses of funds under the TAA program. To the extent that adversely-affected workers received these services, they received them through other programs, generally WIA or the ES. Now, dedicated TAA funds will allow the TAA program to ensure that these services are provided to adversely-affected workers in a high-quality and in-depth manner. However, the WIA, ES and other resources and structures that were used to provide these services to adversely-affected workers in the past are not being eliminated or dismantled. They will continue to be available to provide services to the dislocated workers and adults who continue to be eligible for those programs, including adversely-affected workers, and the provision of these benefits should continue to be coordinated with the TAA program facilitated through the One-Stop delivery system established under WIA.

Adversely-affected workers currently receive many services in addition to case management and employment services, including supportive services and other wrap-around services, which

are funded and provided under other programs for which adversely-affected workers also qualify. The Department will continue to encourage the provision of services to adversely-affected workers by such other programs in order to supplement TAA-funded services. In fact, section 239(g)(5) of the Trade Act specifically requires States to provide employment and case management services through other Federal programs, in the event that allocated TAA funding for employment and case management services is insufficient to make these required services available to all adversely-affected workers in a State. Moreover, the Governor-Secretary Agreements require coordination of the TAA program with activities carried out under WIA to help ensure that a comprehensive array of services is available to adversely-affected workers. The operating instructions to implement the TGAAA amendments (TEGL No. 22–08) also affirmed the desirability of co-enrollment of adversely-affected workers in WIA and other programs to ensure comprehensive services are available. The commenters have not explained how the merit-staffing requirement precludes co-enrollment in other programs or effective coordination by TAA with the other programs, including both merit staffed and non-merit staffed programs, which also are partners in the One-Stop delivery system under WIA. In sum, this rule does not undermine the feasibility or importance of the co-enrollment of adversely-affected workers in WIA and other Federal programs.

State Merit System Advantages

In the NPRM, the Department described various desirable features of State merit personnel systems. The Department stated that State merit staff employees are directly accountable to State government entities. Also, the Department noted that the standards for State merit staff performance and their determinations on the use of public funds require that decisions be made in the best interest of the public and of the population to be served.

The Department received several comments on this topic. Some commenters extolled the benefits of using State merit staff for the TAA program. One commenter expressed the opinion that it would be preferable to have TAA eligibility determinations made by public agency merit staff that are hired according to objective personnel standards and are insulated from political and other pressures. Another commenter claimed that if State merit staffing is required, then citizens and elected officials could more easily locate the entity to hold accountable for TAA program issues.

In contrast, several commenters argued that non-merit staffing models are equally effective. These commenters argued that their experience with local TAA staff is that they have provided quality service to adversely-affected workers. For example, one commenter noted that local staff have correctly applied eligibility criteria and have effectively performed their TAA duties. One commenter noted that agreements between the States and local entities can, and have, addressed some of the features attributed to State merit staff such as strict government standards on the use of personal information. This commenter also remarked that the State is always responsible for administering TAA, regardless of how the program is staffed.

Other commenters contended that local staff who have been providing TAA services in recent years have become knowledgeable about the program and have gained valuable experience that benefits adversely-affected workers. These commenters cautioned that losing that background and expertise would harm the TAA program.

There are unique advantages to using the State merit personnel system for staffing the TAA program. State merit staff employees are hired into and operate within a publicly accountable organization with a State-wide perspective and are responsible to the general public. Some features of the State merit staffing model that add value to the TAA program are the objective nature of public personnel systems; the strict government standards governing the use of personal information; and that State agencies already address such issues as the impartial treatment of applicants to and beneficiaries of public programs, and operating with high standards of public transparency.

Further, the direct employer-employee relationship between State merit staff and the State agency (or agencies) responsible for delivery of TAA services makes it easier for adversely-affected workers to hold their State government accountable for the services to which they are entitled. Although it is certainly possible to hold local and/or non-merit staff and their employers accountable, the attenuated lines of authority between State agencies, local entities, contactors, *etc.,* creates a more amorphous web of relationships that can make it more difficult for adversely-affected workers to locate the source of TAA program responsibility.

The Department does not question that there are local staff who have effectively served the TAA program, and understands that some local staff have attained knowledge and experience. Indeed, this rule does nothing to disturb the local delivery of TAA services. State personnel may and do perform TAA functions at the local level. Further, States may hire persons who are knowledgeable about and experienced in delivering TAA services consistent with State merit standards. This rule simply requires that personnel engaged in TAA-funded functions, except as specified in § 618.890, must be employees covered by the State merit system of personnel administration, permitting non-merit staff to be converted to State employment, if accomplished in accordance with the merit principles.

Consistency, Efficiency, Accountability and Transparency

In the NPRM, the Department explained that its purpose in requiring State merit staffing of TAA-funded functions "is to promote consistency, efficiency, accountability, and transparency in the administration of the TAA program." 74 FR 39199, Aug. 5, 2009. The Department received several comments about this purpose. Several of these agreed that requiring State merit staff personnel to administer the TAA program would ensure better consistency, efficiency, transparency, and accountability. Some of these commenters focused on the disadvantages of and inconsistencies in local implementation of the program.

One commenter expressed the belief that the proposed rule would help prevent a proliferation of different management practices and structures that make accountability and equal access more difficult to achieve. In addition, this commenter stated that One-Stop centers vary considerably with respect to size, capacity, and type of operator, and there is variation in services and quality depending on location. One commenter warned that the priorities of other local programs can sometimes take precedence over the TAA program. Another commenter observed that "the diversified WIA structure results in a degree of impenetrability for service recipients and policy makers," and asserted that requiring State merit employees to perform TAA-funded functions would ensure that citizens and elected officials are able to "place accountability where it belongs." One commenter noted that staff turnover combined with inconsistency of service from one local workforce board area to another is not

conducive to an efficient operation of the TAA program.

One commenter provided a detailed argument supporting the idea that Federal benefit entitlement programs must be carried out by State employees who are free from political pressures and the for-profit motives of private-sector contractors. According to this commenter, the TAA program should be operated at the State level by personnel who have been recruited, selected, compensated, and evaluated according to a merit system of personnel administration. This commenter asserted that local One-Stop centers have divergent policies, which sometimes result in significant variances in the treatment received by persons who have worked at the same workplace, depending on where they live. Moreover, the commenter explained that the speed and consistency by which workers are determined to be eligible for benefits and may actually begin receiving benefits can differ from worker to worker in the same One-Stop center. Another commenter described a situation where workers were denied eligibility for TAA benefits in a One-Stop center, but the workers travelled to another One-Stop center in a different area and were declared eligible for TAA benefits.

A commenter also expressed the opinion that State merit staff administration of the program would provide the flexibility to respond to layoffs regardless of where they occur in the State, and that well-trained "State-level" staff will bring stability and continuity to the provision of services. This commenter contended that the civil service system ensures hiring and promotions are based on competence, rather than nepotism, political connections, or favoritism. In addition, the commenter explained that public administration provides important due process protections for benefit recipients who might be subject to discrimination by private contractors who are subject to standards different from State merit staff.

Some commenters, however, disagreed with the Department's assertion that State merit staff would promote consistency, efficiency, transparency, and accountability in the TAA program. These commenters generally agreed that the TAA program should strive for consistency, efficiency, accountability, and transparency, but asserted that these goals were already being achieved through the locally-administered approach used in their jurisdiction.

For example, one commenter maintained that consistency can be accomplished by focusing on applying policies and procedures rather than on who delivers the service. Another commenter contended that State-wide training and monitoring of local staff can help to produce consistency. Another commenter suggested that technical assistance is a tool that can support consistency.

Other commenters stated that local delivery of TAA services is efficient. A few of these commenters argued that the local staff model is more flexible and can more nimbly respond to layoff events and training opportunities than a larger bureaucracy. Some of these commenters contended that it would be inefficient and potentially confusing to have merit staff TAA case managers because some recipients of TAA services also have WIA case managers. According to one commenter, TAA and other Federal programs have been effectively administered at the local level by professionals who have earned the trust of constituents.

A few commenters maintained that performance measures, oversight, and monitoring are tools through which local delivery entities may be held accountable. Another commenter averred that accountability is ensured by the separation of program administration and operations, regardless of whether State staff is merit-based.

Similarly, some commenters stated that local delivery options are transparent. A few commenters contended that strict government standards on the use of personal information and transparency have been addressed in data sharing agreements between the commenters' State and local areas. One commenter asserted that transparency is the product of frequent and thorough monitoring, and one commenter suggested that a merit staffing requirement be used as a corrective-action recourse based upon a finding of deficiencies in State performance. Another commenter stated that an adversely-affected worker should receive services required to return to work, no matter where he or she enters the system, and service administration should not be differentiated by whether or not the adversely-affected worker first makes contact with a merit staff employee.

It is clear that in many areas using local delivery options, significant effort has been expended to achieve the goals of consistency, efficiency, accountability and transparency. The Department remains committed to the local delivery of services, which is in fact how services in the Department's workforce programs—including State-administered programs such as TAA—are delivered. The merit staffing requirement ensures that the services provided locally to adversely-affected workers will be administered uniformly within States and across States. Accordingly, commenters should not be concerned that this rule will force a "dismantling" of a local service delivery system. In fact, the new funding stream provided under the TGAAA for case management and employment services allows resources under WIA and the ES that were previously used for that purpose for adversely-affected workers to be used to provide services to the many other dislocated workers and adults eligible for those programs who are not eligible to apply for TAA. TAA services will continue to be provided through the local One-Stop delivery system established under WIA.

The Department agrees with the comment that adversely-affected workers should receive services that will help them return to work even if their first contact in the system is not with a merit staff employee. As a result, co-enrollment of workers in both WIA and TAA programs will continue to be encouraged, as discussed more fully above.

The different approaches to consistency, efficiency, accountability and transparency described by the various commenters illustrate that the States are employing a patchwork approach that could lead to inconsistent service delivery. The Department believes that consistency in the application of eligibility criteria and the treatment of workers nationally is imperative. Consistency should be the overarching design of the service delivery system for services delivered with TAA funds, rather than a corrective action approach that could be used if performance goals are missed. Consistency is best achieved by administering the TAA program through merit staff who are hired, trained, and employed by one or two State agencies under the same merit system, operate under the same personnel rules, and are accountable to the same State agency or agencies. Non-merit staff personnel employed outside of the State agency, often by either local agencies or private entities, are subject to varying procedures and work rules, and different, and potentially conflicting, obligations to their actual employers. This structure is more likely to produce an inconsistent application of the eligibility criteria for the various TAA benefits and services.

Similarly, placing administrative responsibility with the merit-staffed personnel of one or two State agencies promotes efficiency and makes it easier to hold the State agencies accountable. For example, layoff events may trigger TAA certifications covering large numbers of workers who seek TAA at the same time. A State agency may quickly move funding and personnel to areas in the State where TAA services are most needed to advise these adversely-affected workers as soon as practicable of the TAA program benefits and services and the procedures and deadlines for applying for such benefits and services, as required by the Governor-Secretary Agreement. In contrast, funds allocated to local workforce boards and contractors are generally restricted to serve a specified area which impedes a State's ability to move funds as needs change. Focusing TAA administration in one or two State agencies also reduces the number of entities responsible across a State, thereby making it easier for the public to know who administers the program and promoting accountability and transparency.

On a related point, one commenter asserted that this rule will "likely inhibit the ability of [S]tates to comply with section 239(f)" requiring the coordination of services because it will lead to "duplicative staffing and increased inefficiency" in States currently using non-merit staff to provide services to both WIA and TAA participants. The Department disagrees that this rule will lead to duplicative staffing and inefficiencies in administering the program. As discussed throughout this preamble, the TAA program continues to be a required partner in the One-Stop delivery system, and co-enrollment with WIA is still encouraged. In the absence of any evidence suggesting otherwise, the Department reasonably believes that requiring States to use merit staffing will improve the administration of the TAA program.

State personnel serving under a merit system are non-partisan public officials who are directly accountable to elected officials. The standards for their performance and their determinations on the use of public funds require that decisions be made in the best interest of the public and of the population to be served. The use of a State merit system is further intended to ensure that the administrative personnel meet objective professional qualifications, provide fair treatment to participants, comply with strict government standards on the use of personal information, and perform in a setting where decisions are made in accordance with high standards of public transparency. These features of a State merit system are appropriate to apply to State administration of the TAA program.

A few commenters questioned whether the Department has any data supporting the assertion that State merit staff is inherently better qualified to deliver TAA services than other providers. The Department is acting on the experience it has gained in overseeing the State administration of the TAA program under a merit staffing system that had been in place for approximately 30 years of the TAA program's 35-year existence. In addition, UI, a program similar to TAA and one that actually works in conjunction with TAA, is efficiently administered by State merit staff. ES also is efficiently administered by State merit staff and works in conjunction with TAA. Based on this experience and the similarities to other programs successfully staffed by State merit personnel, the Department believes a return to a State merit based system will help to promote consistency, efficiency, accountability, and transparency in the administration of the TAA program.

Costs

Various comments addressed the cost of the State merit staffing requirement. One commenter noted that, given the number of TAA petitions that are pending, requiring State merit staffing of TAA-funded functions would mean "the [S]tate would need significantly more * * * merit staff [S]tatewide at an additional annual cost of at least $10 Million." Other commenters opined more generally that the merit staffing requirement could result in a "substantial" cost increase. One commenter stated simply that it will be "more" costly for case management services to be provided by State merit staff. Another commenter stated that there would be "financial burdens attached to staffing and additional staffing needs." One commenter suggested that this rule would result in "a system backlog" because of an insufficient number of State merit staff. Finally, one commenter argued that the TAA funds provided by the Department will not be adequate to address "long term costs" of State personnel such as pension payments.

The TAA allocation provided to the States by the Department covers the costs of the program. TAA allocations include funding for employment and case management services and administrative costs. Under the TGAAA, significantly more funding is available for the TAA program. The training cap for the program has increased from $220 million to $575 million, and an additional amount equal to 15 percent of the allocation to each State for training will be allocated to the State for TAA administration and employment and case management services, as well as an additional $350,000 to each State specifically for employment and case management services. This will result in States having a considerably greater sum available for administration than under the lower training cap. And in fact, none of the commenters provided any empirical data to support the contention that the funding would be insufficient for this purpose.

The final rule requires States to use merit staff to perform TAA-funded functions. Such staff may be staff new to TAA, or they may be staff who have been providing TAA services in the past, including non-merit staff who are converted to State employment. Each State will comply with this rule's merit staffing requirement with the Federal funds allocated to that State for TAA administration and case management and employment services. In that way, any costs incurred in implementing this requirement will be funded by the TAA program. Commenters provided with no data that suggests that States cannot comply with this rule with the available funds, and the Department is aware of no such data. The Department is available to provide assistance to any State with questions about what costs are allowable charges to TAA funds.

Transition Period (§ 618.890(b))

As proposed, § 618.890(b) provided that States must comply with the merit staffing requirement by October 1, 2010 for employment and case management services under section 235 of the Trade Act, and by July 1, 2010 for all other TAA administrative activities that are required to be merit staffed. The Department received several comments on this provision. One commenter stated that the proposed transition period is reasonable and provides sufficient time for States to plan implementation. One commenter generally stated that the transition period would delay, not reduce, the costs and disruptions to States. Other commenters stated that the aggressive transition period for implementing the merit staff requirements would make it impossible for a State to hire and train an adequate number of qualified staff before the implementation date. One of these commenters specifically asserted that, assuming that this final rule publishes in mid-February 2010, the four and one-half month time frame to implement merit staffing for TAA

administrative functions by July 1 is "very aggressive." This commenter argued that being unprepared at the implementation date would lead to a loss of consistency and effectiveness of the program. A couple of commenters noted that their States are currently subject to hiring restrictions that could impact the ability to hire and train staff by the implementation deadline. One of these commenters also noted that the rule would require States to move the delivery of employment and case management services to merit staff a mere three months before the TGAAA amendments expire.

The Department recognizes the concern raised by several commenters that, at least for their States, the transition period proposed in the NPRM was too short. Accordingly, the Department has decided to extend the transition period to allow States more time to effect this change. The deadline for implementing the merit staffing requirement for both employment and case management services and administrative services now is December 15, 2010. Thus, paragraph (b) of § 618.890 is revised to provide a new transition deadline of December 15, 2010.

As for the comments regarding State hiring freezes, the positions subject to the merit staffing requirement are Federally funded positions that should not be subject to State-imposed hiring freezes because merit staff are hired using those Federal funds provided. Unemployment Insurance Program Letter (UIPL) No. 18–09, titled "Application of State-Wide Personnel Actions, including Hiring Freezes, to the Unemployment Insurance Program" addresses precisely this issue. It provides that any State-wide personnel action that does not take into account the needs of the State UI program is not a "method of administration" under section 303(a)(1) of the Social Security Act for assuring the proper and prompt payment of UI. This principle, and thus the UIPL, applies equally to the TAA program under 20 CFR 617.50(f), requiring "[f]ull payment of TAA when due * * * with the greatest promptness that is administratively feasible." Also, consistent with Federal UI programs, States are required, through their agreements to administer the program as agents of the Department, to use the TAA funds provided by the Department consistent with the rules and regulations in effect for the program—including this rule. Therefore, if a State does not have merit staff it must hire merit staff using the funds allocated by the Federal Government.

The transition deadline falls 15 days before the expiration of the TGAAA amendments. The transition period was developed taking into account the need for a reasonable amount of time for implementation, weighed against the need to ensure program consistency, efficiency, accountability, and transparency as quickly as possible. The regulatory provision requiring merit staffing is not dependent on the program changes made by the TGAAA, or the expiration date it provided for those changes. The Department's legal authority and rationales for requiring State merit staffing for TAA-funded functions are based on the Department's responsibility for assuring that the TAA program is properly and efficiently administered. While the additional complexity and new entitlement created by the TGAAA provide additional support for the decision to require State merit staffing, the requirement does not depend solely on the TGAAA. We note that the President's FY 2011 Budget supports extension of the TGAAA provisions.

In the NPRM, the Department proposed to title part 618 "Trade Adjustment Assistance under the Trade Act of 1974 For Workers Certified under Petitions Filed After May 17, 2009." However, in response to the comment concerning the TGAAA's sunset provision, and to avoid any confusion that the merit staffing requirement applies only with respect to workers certified under petitions filed after May 17 2009, the Department changes the title to "Trade Adjustment Assistance under the Trade Act of 1974, As Amended." This change clarifies that part 618 will contain all the regulations for administering the program operated under the Trade Act, not just the regulations implementing amendments specific to the TGAAA—and that the merit staffing requirement applies with respect to all workers regardless of the date of the petition under which they were certified.

As mentioned above, there are different eligibility criteria for and different services available to adversely-affected workers, depending on the date on which their petition was filed. Workers covered by petitions filed before May 18, 2009 are subject to the requirements relating to benefits and services that were contained in the Trade Act prior to the TGAAA, while workers covered by petitions filed on or after May 18, 2009 are subject to the requirements added under the TGAAA. Such variances add to program complexity, as also noted above. However, the requirement of merit staffing transcends these programmatic distinctions. Once a State has converted to merit staff as required by this rule, those staff members serve all workers, regardless of the date a petition was filed.

The revised title of part 618 also more accurately describes these regulations. Although certain provisions of the TGAAA only relate to petitions filed on or after May 18, 2009, not all provisions of the law relate to that filing date. Different provisions have different effective dates, including the provisions relating to the formula for distribution of the training funds, which went into effect on October 1, 2009. Therefore, "Trade Adjustment Assistance under the Trade Act of 1974, As Amended" is a more appropriate title.

Exemptions for States With Employment Service Operation Exemptions (§ 618.890(c))

Section 618.890(c) partially exempts from the TAA State merit staffing requirement those States that have received an exemption from the ES merit staffing requirements under the Wagner-Peyser Act. These States are Colorado, Massachusetts, and Michigan. The Department has concluded that allowing this limited exemption will prevent complications and confusion in these three States, thereby allowing the efficient administration of the TAA program. The paragraph (c) exemption does not apply to the administration of TRA, and also it applies in each of these States only in the same scope that the ES merit staffing exemption applies.

The Department received several comments on the issue of these exemptions. Several of these commenters expressed general support for permitting the States of Colorado, Massachusetts, and Michigan to continue to use non-State and non-merit personnel to administer the TAA program. One commenter argued that the challenges of implementing the merit staffing requirement are as great for its State, which is not exempted under paragraph (c), as they would be for the exempted States. One commenter stated that the Department does not possess the legal authority under TAA to relieve any State from the requirement of merit staffing. Another commenter urged the Department to add a particular State to the exemption; similarly, a small number of commenters suggested that the Department allow waivers from the merit staffing requirement.

The legal authority to exempt States under paragraph (c) is based on the Department's authority to interpret the Trade Act and administer the TAA program, as explained more fully above.

The Department granted the ES exemptions as demonstrations under the Wagner-Peyser Act, and decided that no additional demonstrations or exemptions would be granted. *See* 20 CFR 652.215. The Department has considered the issue of additional TAA exemptions, but has decided that, because of the importance of merit staffing, declining to permit additional exemptions (or waivers) will better serve workers under the TAA program. And, whereas the ES exemptions would result in inconsistent service delivery to adversely-affected workers if the three exempt States were required to implement the TAA merit staffing requirement, it is fully consistent and reasonable for States with ES State merit staff to comply with this rule.

The Department makes no change to this paragraph as proposed.

Exceptions for Non-Inherently Governmental Functions (§ 618.890(d))

Proposed paragraph (d) provided that the merit staffing requirement would not prohibit a State from outsourcing TAA functions that are not inherently governmental, as defined by OMB Circular No. A–76 (Revised). The Department received no comments opposing this paragraph, but is changing this provision very slightly by adding "any supplemental OMB guidance or superseding authority, and in DOL guidance." This addition acknowledges that the definition of "inherently governmental" in OMB Circular No. A–76 (Revised) could be expanded upon in subsequent guidance or superseded by subsequent authority and that DOL may issue an authoritative interpretation of OMB guidance for purposes of the TAA program.

Subpart I—Allocation of Training Funds to States

In the NPRM, the Department proposed subpart I to implement the funding provisions of the TGAAA. In addition to increasing the funds available under the training cap, the TGAAA prescribed a formula for allocating training funds to the States. As required by the TGAAA and proposed in § 618.910, the initial allocation of training funds is determined by the application of four factors: (1) The trend in the number of workers covered by certifications of eligibility during the most recent four consecutive calendar quarters for which data is available; (2) the trend in the number of workers participating in training during the most recent four consecutive calendar quarters for which data is available; (3) the number of workers estimated to be participating in training during the fiscal year; and (4) the amount of funding estimated to be necessary to provide approved training during the fiscal year. At present, the Department will assign each of these factors an equal weight. However, proposed § 618.910(f)(4) provided that the Department may, after December 31, 2010, change the weighting of these factors after an opportunity for public comment.

For each of the four factors, the Department will determine the national total and each State's percentage of the national total. Based on a State's percentage of each of these factors, the Department will determine the percentage that the State will receive of the amount available for initial allocations, and will adjust that percentage to account for the hold harmless provision. The total initial allocations to the States will total 65 percent of the training funds appropriated, as mandated by section 236(a)(2)(C) of the Trade Act, as amended by the TGAAA.

The formula will still include a "hold harmless" feature, but at a much lower level than the Department has been using to date. Although the initial allocation to a State had been at least 85 percent of the amount the State received in its initial allocation the prior fiscal year, the statute now requires that a State's initial allocation be at least 25 percent of the amount the State received in its initial allocation the prior fiscal year.

The Department's practice has been that, if the formula would result in an initial allocation of less than $100,000 to a State, then that State's allocation was reallocated to the other States. Where a State had an initial allocation of less than $100,000, it could request reserve funds in order to obtain the limited TAA funding that the State required. The NPRM proposed to codify that practice in regulations.

The TGAAA amended the Trade Act to require the Department to make the initial distribution to States "as soon as practicable after the beginning of each fiscal year," and to require that 90 percent of a fiscal year's training funds be distributed to the States by July 15 of that fiscal year. As stated above, the initial allocations will equal 65 percent of the funds available for training. In accordance with the amendments, the Department will also provide to States which receive training funds, either through an initial allocation or through a request for reserve funds, an additional 15 percent for TAA administration and employment and case management services, as well as an additional $350,000 to each State specifically for employment and case management services.

The 35 percent of the total training funds held in reserve is higher than the previous 25 percent reserve. Subject to the requirement in section 236(a)(2)(B)(ii) of the Act that 90 percent of the funds be distributed by July 15 of the fiscal year, these reserve funds will, as in the past, be available to be distributed to States on an as-needed basis to provide funding to States experiencing high activity levels that cannot be addressed with the funds received in the initial allocation.

The Department received several comments on the proposed rules governing the allocation of training funds to States. The majority of the comments were generally supportive of the allocation methodology, calling it "much improved over the current practice," because it "faithfully executes the language of the TAA law" and because "the proposed funding distribution would bring funding levels to a more equitable level * * * [and] will allow for a more accurate distribution of funds." One commenter noted that the allocation portion of the rule "will look at each [S]tate's recent TAA use, and will better allocate funding among [S]tates based on current realities, instead of using more stale data," concluding that "[s]uch open-mindedness and ability to adapt will make for a better program." The Department will address the comments by topic below.

Annual Training Cap (§ 618.900)

This section implements section 236(a)(2)(A) of the Trade Act which caps the amount of TAA training funds available in each fiscal year. The Department received no comments on, and makes no change to, this section as proposed.

Distribution of the Initial Allocation of Training Funds (§ 618.910)

This section implements the initial distribution of TAA training funds requirements in section 236(a)(2)(B) and section 236(a)(C)(ii) of the Trade Act. The Department received no comments on paragraphs (a) (initial allocation), (b) (timing of the distribution of the initial allocation), (d) (minimum initial allocation), or (e) (process of determining initial allocation) of this section.

The Department received one comment on paragraph (c) of § 618.910, implementing amended section 236(a)(2)(C)(iii) of the Trade Act. That section is the hold harmless provision, providing that the amount of the initial distribution to a State will not be less

than 25 percent of the State's prior year initial distribution. Paragraph (c) adopts the minimum hold harmless, 25 percent, permitted by the Trade Act. This commenter argued that reducing the hold harmless to 25 percent (from the 85 percent the Department previously used) "may create significant fluctuations in yearly allocations to States." The commenter noted that these fluctuations will extend to administrative funds as States' administrative allocations are a percentage of their total training allocations. The commenter suggested that instead, the Department set the hold harmless provision at 50 percent of the prior year's allocation.

The Department recognizes that the 25 percent hold harmless may result in a State receiving an initial allocation that is significantly lower than the State's initial allocation in the previous year. And, the commenter is correct that States' administrative allocations will fluctuate in sync with their initial training allocations. However, these fluctuations would occur because of an attendant fluctuation among the States' need for TAA training funds. It was Congress's clear intent that the hold harmless percentage be set at 25 percent. *See* Conf. Rep. at 672–73 ("[t]he provision addresses these problems by lowering the "hold harmless" provision to 25 percent"). However, the Department will monitor the effects of the "hold harmless" and, if warranted, will modify it. Further, § 618.920 will permit a State to receive reserve funds should the initial allocation be insufficient to meet the State's training needs.

The Department received two comments on paragraph (f) of § 618.910 implementing section 236(a)(2)(C)(ii) of the Trade Act. That section establishes four factors that the Department must use in determining the amount of each State's initial allocation, and permits the Department to add "such other factors as [it] considers appropriate. * * *" Paragraph (4) explains the steps the Department will follow in determining the initial allocation of training funds.

The first comment on paragraph (f) was on paragraph (1)(iv), which describes the fourth initial allocation factor: the amount of funding estimated to be necessary to provide approved training during the fiscal year. This commenter expressed concern that the fourth factor fails to address job search and relocation expenditures, and that funds for those expenditures are not allocated elsewhere. To the extent that this commenter has suggested variance from the fourth statutory factor, the Department is without discretion to change the factor prescribed in the Trade Act. To the extent that the commenter is discussing job search and relocation funding, the comment is outside the scope of this rulemaking but the process is described in TEGL No. 9–09. The allocation addressed in this rule is limited to TAA training funds.

The second comment requested that the Department consider "such other factors as National Emergency Grants, demographics of the affected workforce, technology requirements (such as new reporting and new IT system functionality), petition certification volume, and funds allocated under WIA." While additional factors to determine the initial allocation may be helpful at a later date, and are within the Department's discretion to adopt, for now, the Department will maintain only the four factors specified in the statute and laid out in the proposed rule. The Department needs to acquire experience with the four statutory factors before deciding whether to add other factors, and may seek public comment on potential additional factors in the future.

The Department makes no change to this section as proposed.

Reserve Fund Distribution (§ 618.920)

This section addresses the distribution of the funds that remain in reserve after the initial allocations to the States. As required by section 236(a)(2)(C)(i) of the Trade Act, this section provides that the remaining 35 percent of the total annual training funds will be held in reserve for later distribution in response to requests by States that can show need for additional training funds. The Department received one comment in favor of the reserve fund distribution.

The Department makes no change to this section as proposed.

Second Distribution (§ 618.930)

This section provides that at least 90 percent of the total training funds for a fiscal year will be distributed to the States by July 15 of that fiscal year, as required by section 236(a)(2)(B)(ii) of the Trade Act. The Department received no comments on this issue, and makes no change to this section as proposed.

Insufficient Funds (§ 618.940)

This section provides that if, in a given fiscal year, the Secretary estimates that the amount of funds necessary to pay for approved training will exceed the legislative cap, and therefore there will be insufficient funds to meet the needs of all States for the year, the Department will decide how the funds remaining in reserve at that time will be allocated among the States, as provided by section 236(a)(2)(E) of the Trade Act. The Department received no comments on this issue, and makes no change to this section as proposed.

Technical Corrections

The Department is making two technical corrections to the rule. The first correction is in the title of Subpart I as it appeared in the table of contents in the NPRM. In the table of contents, the NPRM indicated that subpart I would be titled, "Apportionment of Training Funds to States." However, as explained above, the Department is using the word "allocation" to describe the distribution of training funds to the States. Accordingly, the table of contents in this final rule correctly reads, "Allocation of Training Funds to States."

The second correction is to the title of § 618.890(d). In the NPRM, the paragraph was titled, "Exemptions for Non-inherently Governmental Functions." The Department is correcting the title to the more technically accurate, "Exceptions for Non-inherently Governmental Functions."

III. Administrative Information

Regulatory Flexibility Analysis, Executive Order 13272, Small Business Regulatory Enforcement Fairness Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. Chapter 6, requires the Department to evaluate the economic impact of this final rule on small entities. The RFA defines small entities to include small businesses, small organizations, including not-for-profit organizations, and small governmental jurisdictions. The Department must determine whether the final rule imposes a significant economic impact on a substantial number of such small entities. The Department concludes that this rule directly regulates only States and does not directly regulate any small entities; any regulatory effect on small entities would be indirect. Accordingly, the Department has determined this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the RFA.

The Department has also determined that this final rule is not a "major rule" for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, as amended (SBREFA), Public Law 104–121, 110 Stat. 847. SBREFA requires agencies to take certain actions when a "major rule" is promulgated. SBREFA defines a "major rule" as one that will have an annual effect on the economy of $100 million or more; that

will result in a major increase in costs or prices for, among others, State or local government agencies; or that will significantly and adversely affect the business climate.

This final rule will not result in a major increase in costs or prices for States or local government agencies. In this instance the States, acting as agents of the Federal Government, are administering TAA benefits and services to adversely-affected workers while the Federal Government provides appropriated funds to States to operate the program. Nor will this rule significantly and adversely affect the business climate. The opposite is true: the TAA program provides funds to train adversely-affected workers for employment in positions that are in economic demand, thereby assisting in meeting businesses' needs. Finally, the final rule will not have an annual effect on the economy of $100 million or more.

For the foregoing reasons, the Department determines that the final rule is not a "major rule" for SBREFA purposes.

Executive Order 12866

Executive Order 12866 requires that for each "significant regulatory action" by the Department, the Department conduct an assessment of the regulatory action and provide OMB with the regulation and the requisite assessment prior to publishing the regulation. A significant regulatory action is defined to include an action that will have an annual effect on the economy of $100 million or more, as well as an action that raises a novel legal or policy issue. As discussed in the SBREFA analysis, this final rule will not have an annual effect on the economy of $100 million or more. However, the rule does raise novel policy issues about the allocation of TAA training funds. Therefore, the Department submitted this final rule to OMB for review under Executive Order 12866.

Paperwork Reduction Act

The purposes of the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* include minimizing the paperwork burden on affected entities. The PRA requires certain actions before an agency can adopt or revise a collection of information, including publishing a summary of the collection of information and a brief description of the need for and proposed use of the information. This final rule does not require the collection of any new information. The data collection relevant to this rule, related to the Reserve Funding Request Form (ETA–9117), is currently approved by OMB under control number 1205–0275 (expires February 28, 2013).

Because this final rule does not require the collection of any new information nor revises an existing collection of information, the PRA is not implicated.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995, this final rule does not include any Federal mandate that may result in increased expenditure by State, local, and Tribal governments in the aggregate of more than $100 million, or increased expenditures by the private sector of more than $100 million. State governments administer TAA as agents of the United States and are provided appropriated Federal funds for all TAA expenses.

Executive Order 13132

Executive Order 13132 at section 6 requires Federal agencies to consult with State entities when a regulation or policy may have a substantial direct effect on the States or the relationship between the National Government and the States, or the distribution of power and responsibilities among the various levels of government, within the meaning of the Executive Order. Section 3(b) of the Executive Order further provides that Federal agencies must implement regulations that have a substantial direct effect only if statutory authority permits the regulation and it is of national significance. Further, section 239(f) of the Trade Act requires consultation with the States in the coordination of the administration of the provisions for employment services, training, and supplemental assistance under sections 235 and 236 of the Trade Act and under title I of the WIA.

As the Department explained in the NPRM, 74 FR 39206, because a merit staffing requirement may fall within the requirements of Section 3(b), and because of the consultation requirement in section 239(f) of the Trade Act, the Department has consulted on a variety of issues arising from the TGAAA amendments. These consultations have been with the States both directly and through communication with the National Association of State Workforce Agencies, the National Association of Workforce Boards, and the National Governors Association, during the formation of the Governor-Secretary Agreements between the States and the Department. Additionally, the Department has consulted with the public at large through this rulemaking's notice and comment process.

In the NPRM, the Department recognized that there may be some costs to the States that have to convert some TAA-related staff to their merit staffing system. The Department received a small number of comments on this matter. These commenters thought that the Department should have gathered data on and better assessed the costs to States before proposing the merit staffing requirement.

The Department provides States with appropriated Federal funds for TAA employment and case management services, including staff, and for administration of the TAA program. These Federal funds are intended to cover the costs of the TAA program. And in fact, under the TGAAA, TAA funds (including funds for administration) have increased significantly. The Department expects that the amount of State dollars that will be required to fund this conversion to State merit staffing is insubstantial. None of the commenters provided any data to the contrary. As noted above, the TAA program operated successfully for years with merit staffing required in the Governor-Secretary Agreements, and with less funding, so there is no reason to believe that the costs will be substantial or will exceed the available amounts of administrative funds. Nevertheless, the Department is willing to work with those States that have to convert some of their TAA-related staff to their merit staffing system to ensure that these States are utilizing Federal funds to the fullest extent possible within allowable cost categories. In the end, though, States are responsible for staffing the TAA program in their State at a level commensurate with their Federal funding allocation.

Executive Order 13045

Executive Order 13045 concerns the protection of children from environmental health risks and safety risks. This final rule has no impact on safety or health risks to children.

Executive Order 13175

Executive Order 13175 addresses the unique relationship between the Federal Government and Indian Tribal governments. The order requires Federal agencies to take certain actions when regulations have "Tribal implications." Required actions include consulting with Tribal governments before promulgating a regulation with Tribal implications and preparing a Tribal impact statement. The order defines regulations as having Tribal implications when they have substantial direct effects on one or more Indian Tribes, on the relationship between the

Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

This final rule addresses how the Department will allocate to the States training funds under the Trade Act, and requires that personnel engaged in TAA-funded functions undertaken to carry out the worker adjustment assistance provisions must be State employees covered by the merit system of personnel administration. Accordingly, the Department concludes that this final rule does not have Tribal implications.

Environmental Impact Assessment

The Department has reviewed this final rule in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the regulations of the Council on Environmental Quality (40 CFR part 1500), and the Department's NEPA procedures (29 CFR part 11). The final rule will not have a significant impact on the quality of the human environment, and, thus, the Department has not prepared an environmental assessment or an environmental impact statement.

Assessment of Federal Regulations and Policies on Families

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), requires the Department to assess the impact of this final rule on family well-being. A rule that is determined to have a negative effect on families must be supported with an adequate rationale.

The Department has assessed this final rule and determines that it will not have a negative effect on families.

Executive Order 12630

This final rule is not subject to Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, because it does not involve implementation of a policy with takings implications.

Executive Order 12988

This final rule has been drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform, and will not unduly burden the Federal court system. The final rule has been written to minimize litigation and provide a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities.

Executive Order 13211

This final rule is not subject to Executive Order 13211, because it will not have a significant adverse effect on the supply, distribution, or use of energy.

Plain Language

The Department drafted this rule in plain language.

List of Subjects in 20 CFR Part 618

Administrative practice and procedure, Grant programs—Labor, Reporting and recordkeeping requirements, Trade adjustment assistance.

■ For the reasons discussed in the preamble, and under authority of 19 U.S.C. 2320, the Department of Labor adds 20 CFR part 618 to read as follows:

PART 618—TRADE ADJUSTMENT ASSISTANCE UNDER THE TRADE ACT OF 1974, AS AMENDED

Subpart A–G [Reserved]

Subpart H—Administration by Applicable State Agencies

Sec.
618.890 Merit staffing.

Subpart I—Allocation of Training Funds to States

618.900 Annual training cap.
618.910 Distribution of initial allocation of training funds.
618.920 Reserve fund distributions.
618.930 Second distribution.
618.940 Insufficient funds.

Subpart A–G [Reserved]

Subpart H—Administration by Applicable State Agencies

Authority: 19 U.S.C. 2320; Secretary's Order No. 03–2009, 74 FR 2279, Jan. 14, 2009.

§ 618.890 Merit staffing

(a) *Merit-based State personnel.* The State must, subject to the transition period in paragraph (b) of this section, engage only State government personnel to perform Trade Adjustment Assistance (TAA)-funded functions undertaken to carry out the worker adjustment assistance provisions of the Trade Act of 1974, as amended, and must apply to such personnel the standards for a merit system of personnel administration applicable to personnel covered under 5 CFR part 900, subpart F.

(b) *Transition period.* A State not already in compliance with the merit system requirement of paragraph (a) of this section must comply by December 15, 2010.

(c) *Exemptions for States with employment service operation exemptions.* A State whose employment service received an exemption from merit staffing requirements from the Secretary of Labor (Secretary) under the Wagner-Peyser Act will retain an exemption from the requirements of paragraph (a) of this section. The exemption does not apply to the State's administration of trade readjustment allowances which remain subject to the requirements of paragraph (a) of this section. To the extent that a State with an authorized ES exemption provides TAA-funded services using staff not funded under the Wagner-Peyser Act, the exemption in this paragraph does not apply, and they remain subject to the requirements of paragraph (a) of this section.

(d) *Exceptions for non-inherently governmental functions.* The requirements of paragraph (a) of this section do not prohibit a State from outsourcing functions that are not inherently governmental, as defined in Office of Management and Budget (OMB) Circular No. A–76 (Revised), in any supplemental OMB guidance or superseding authority, and in DOL guidance.

Subpart I—Allocation of Training Funds to States

Authority: 19 U.S.C. 2320; 19 U.S.C. 2296(g); Secretary's Order No. 03–2009, 74 FR 2279, Jan. 14, 2009.

§ 618.900 Annual training cap.

The total amount of payments that may be made for the costs of training will not exceed the cap established under section 236(a)(2)(A) of the Trade Act.

(a) For each of the fiscal years 2009 and 2010, this cap is $575,000,000; and

(b) For the period beginning October 1, 2010, and ending December 31, 2010, this cap is $143,750,000.

§ 618.910 Distribution of initial allocation of training funds.

(a) *Initial allocation.* The initial allocation for a fiscal year will total 65 percent of the training funds available for that fiscal year. The Department of Labor (Department) will announce the amount of each State's initial allocation of funds in accordance with the requirements of this section at the beginning of each fiscal year. The Department will determine this initial allocation on the basis of the full amount of the training cap for that year, even if the full amount has not been

appropriated to the Department at that time.

(b) *Timing of the distribution of the initial allocation.* The Department will, as soon as practical after the beginning of each fiscal year, distribute the initial allocation announced under paragraph (a) of this section. However, the Department will not distribute the full amount of the initial allocation until it receives the entire fiscal year's appropriation of training funds. If the full year's appropriated amount of training funds is less than the training cap, then the Department will distribute 65 percent of the amount appropriated.

(c) *Hold harmless provision.* Except as provided in paragraph (d) of this section, in no case will the amount of the initial allocation to a State in a fiscal year be less than 25 percent of the initial allocation to that State in the preceding fiscal year.

(d) *Minimum initial allocation.* If a State has an adjusted initial allocation of less than $100,000, as calculated in accordance with paragraph (e)(2) of this section, that State will not receive any initial allocation, and the funds that otherwise would have been allocated to that State instead will be allocated among the other States in accordance with this section. A State that does not receive an initial distribution may apply under § 618.920(b) for reserve funds to obtain the training funding that it requires.

(e) *Process of determining initial allocation.* (1) The Department will first apply the factors described in paragraph (f) of this section to determine an unadjusted initial allocation for each State.

(2) The Department will then apply the hold harmless provision of paragraph (c) of this section to the unadjusted initial allocation, as follows:

(i) A State whose unadjusted initial allocation is less than its hold harmless amount but is $100,000 or more, will have its initial allocation adjusted up to its hold harmless amount. If a State's unadjusted allocation is less than $100,000, the State will receive no initial allocation, in accordance with paragraph (d) of this section. Those funds will be shared among other States as provided in paragraph (e)(3) of this section.

(ii) A State whose unadjusted initial allocation is no less than its hold harmless threshold will receive its hold harmless amount and will also receive an adjustment equal to the State's share of the remaining initial allocation funds, as provided in paragraph (e)(3) of this section.

(3) The initial allocation funds remaining after the adjusted initial allocations are made to those States receiving only their hold harmless amounts, as described in paragraph (e)(2)(i) of this section, will be distributed among the States with unadjusted initial allocations that were no less than their hold harmless amounts, as described in paragraph (e)(2)(ii) of this section (the remaining States). The distribution of the remaining initial allocation funds among the remaining States will be made by reapplying the calculation in paragraph (f) of this section. This recalculation will disregard States receiving only their hold harmless amount under paragraph (e)(2)(i) of this section, so that the combined percentages of the remaining States total 100 percent.

(f) *Initial allocation factors.* (1) In determining how to make the initial allocation of training funds, the Department will apply, as provided in paragraph (f)(3) of this section, the following factors with respect to each State:

(i) The trend in the number of workers covered by certifications of eligibility during the most recent four consecutive calendar quarters for which data are available. The trend will be established by assigning a greater weight to the most recent quarters, giving those quarters a larger share of the factor;

(ii) The trend in the number of workers participating in training during the most recent four consecutive calendar quarters for which data are available. The trend will be established by assigning a greater weight to the most recent quarters, giving those quarters a larger share of the factor;

(iii) The number of workers estimated to be participating in training during the fiscal year. The estimate will be calculated by dividing the weighted average number of training participants for the State determined in paragraph (f)(1)(ii) of this section by the sum of the weighted averages for all States and multiplying the resulting ratio by the projected national average of training participants for the fiscal year, using the estimates underlying the Department's most recent budget submission or update; and

(iv) The amount of funding estimated to be necessary to provide approved training to such workers during the fiscal year. The estimate will be calculated by multiplying the estimated number of participants in paragraph (f)(1)(iii) of this section by the average training cost for the State. The average training cost will be calculated by dividing total training expenditures for the most recent four quarters by the average number of training participants for the same time period.

(2) The Department may use such other factors that it considers appropriate.

(3) The Department will assign each of the factors listed in paragraphs (f)(1)(i) through (f)(1)(iv) of this section an equal weight. For each of these weighted factors, the Department will determine the national total and each State's percentage of the national total. Based on a State's percentage of each of these weighted factors, the Department will determine the percentage that the State will receive of the amount available for initial allocations. The percentages of initial allocation amounts calculated for all States combined will total 100 percent of initial allocation funds.

(4) The Department may, by administrative guidance published for comment, change the weights provided in paragraphs (f)(1) and (f)(3) of this section, or add additional factors. No such changes or additions will take effect before December 31, 2010.

§ 618.920 Reserve fund distributions.

(a) The remaining 35 percent of the training funds for a fiscal year will be held by the Department as a reserve. Reserve funds will be used, as needed, for additional distributions during the remainder of the fiscal year and for those States that do not receive an initial distribution. States may not receive reserve funds for TAA administration or employment and case management services without a request for training funds.

(b) A State requesting reserve funds must demonstrate that at least 50 percent of its training funds have been expended, or that it needs more funds to meet unusual and unexpected events. A State requesting reserve funds also must provide a documented estimate of expected funding needs through the end of the fiscal year. That estimate must be based on an analysis that includes at least the following:

(1) The average cost of training in the State;

(2) The expected number of participants in training through the end of the fiscal year; and

(3) The remaining funds the State has available for training.

§ 618.930 Second distribution.

The Department will distribute at least 90 percent of the total training funds for a fiscal year to the States no later than July 15 of that fiscal year. The Department will first fund all acceptable requests for reserve funds filed before June 1. If there are any funds remaining

to be distributed after these reserve fund requests are satisfied, those funds will be distributed to those States that received an initial allocation in an amount greater than their hold harmless amount, using the methodology described in § 618.910.

§ 618.940 Insufficient funds.

If, during a fiscal year, the Department estimates that the amount of funds necessary to pay the costs of approved training will exceed the training cap under § 618.900, the Department will decide how the amount of available training funds that have not been distributed at the time of the estimate will be allocated among the States for the remainder of the fiscal year. That decision will be communicated through administrative notice.

Signed at Washington, DC, this 22nd day of March 2010.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2010–6697 Filed 4–1–10; 8:45 am]

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Part V

Environmental Protection Agency

40 CFR Parts 50, 51, 70, and 71

Reconsideration of Interpretation of Regulations That Determine Pollutants Covered by Clean Air Act Permitting Programs; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 50, 51, 70, and 71

[EPA–HQ–OAR–2009–0597; FRL–9133–6]

RIN 2060–AP87

Reconsideration of Interpretation of Regulations That Determine Pollutants Covered by Clean Air Act Permitting Programs

AGENCY: Environmental Protection Agency.

ACTION: Final Action on Reconsideration of Interpretation.

SUMMARY: EPA has made a final decision to continue applying the Agency's existing interpretation of a regulation that determines the scope of pollutants subject to the Federal Prevention of Significant Deterioration (PSD) program under the Clean Air Act (CAA or Act). In a December 18, 2008 memorandum, EPA established an interpretation clarifying the scope of the phrase "subject to regulation" found within the definition of the term "regulated NSR pollutant." After considering comments on alternate interpretations of this term, EPA has decided to continue to interpret it to include each pollutant subject to either a provision in the CAA or regulation adopted by EPA under the CAA that requires actual control of emissions of that pollutant. Thus, this action explains that EPA will continue following the interpretation in the December 18, 2008 memorandum with one exception. EPA is refining its interpretation to establish that the PSD permitting requirements will not apply to a newly regulated pollutant until a regulatory requirement to control emissions of that pollutant "takes effect." In addition, this notice addresses several questions regarding the applicability of the PSD and Title V permitting programs to greenhouse gases (GHGs) upon the anticipated promulgation of EPA regulations establishing limitations on emissions of GHGs from vehicles under Title II of the CAA. Collectively, these conclusions result in an EPA determination that PSD and Title V permitting requirements will not apply to GHGs until at least January 2, 2011.

DATES: This final action is applicable as of March 29, 2010.

FOR FURTHER INFORMATION CONTACT: Mr. David Svendsgaard, Air Quality Policy Division (C504–03), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number: (919) 541–2380; fax number: (919) 541–5509, e-mail address: *svendsgaard.dave@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

Entities potentially affected by this action include sources in various industry groups and State, local, and tribal governments.

B. How is this document organized?

This document is organized as follows:

I. General Information
II. Background
III. This Action
A. Overview
B. Analysis of Proposed and Alternative Interpretations for Subject to Regulation
1. Actual Control Interpretation
2. Monitoring and Reporting Interpretation
3. State Implementation Plan (SIP) Interpretation
4. Endangerment Finding Interpretation
5. Section 209 Waiver Interpretation
C. Other Issues on Which EPA Solicited Comment
1. Prospective Codification of Interpretation
2. Section 821 of the Clean Air Act Amendments of 1990
3. Timing of When a Pollutant becomes Subject to Regulation
IV. Application of PSD Interpretive Memo to Permitting for GHGs
A. Date by Which GHGs Will Be "Subject to Regulation"
B. Implementation Concerns
C. Interim EPA Policy To Mitigate Concerns Regarding GHG Emissions from Construction or Modification of Large Stationary Sources
D. Transition for Pending Permit Applications
V. PSD Program Implementation by EPA and States
VI. Application of the Title V Program to Sources of GHGs
VII. Statutory Authority
VIII. Judicial Review

II. Background

On December 18, 2008, then-EPA Administrator Stephen Johnson issued a memorandum setting forth EPA's interpretation regarding which pollutants were "subject to regulation" for the purposes of the Federal PSD permitting program. *See* Memorandum from Stephen Johnson, EPA Administrator, to EPA Regional Administrators, RE: EPA's Interpretation of Regulations that Determine Pollutants Covered by Federal Prevention of Significant Deterioration (PSD) Permit Program (Dec. 18, 2008) ("PSD Interpretive Memo" or "Memo"); *see also* 73 FR 80300 (Dec. 31, 2008) (public notice of Dec. 18, 2008 memo). The Memo interprets the phrase "subject to regulation" to include pollutants "subject to either a provision in the CAA or regulation adopted by EPA under the CAA that requires actual control of emissions of that pollutant," while excluding pollutants "for which EPA regulations only require monitoring or reporting." *See* Memo at 1. The Memo was necessary after issues were raised regarding the scope of pollutants that should be addressed in PSD permitting actions following the Supreme Court's April 2, 2007 decision in *Massachusetts* v. *EPA,* 549 U.S. 497 (2007).

In *Massachusetts* v. *EPA,* the Supreme Court held that GHGs, including carbon dioxide (CO_2), fit within the definition of air pollutant in the CAA. The case arose from EPA's denial of a petition for rulemaking filed by more than a dozen environmental, renewable energy, and other organizations requesting that EPA control emissions of GHGs from new motor vehicles under section 202(a) of the CAA. The Court found that, in accordance with CAA section 202(a), EPA was required to determine whether or not emissions of GHGs from new motor vehicles cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare, or whether the science is too uncertain to make a reasoned decision.[1]

On November 13, 2008, the Environmental Appeals Board (EAB) issued a decision in a challenge to a PSD permit to construct a new electric generating unit in Bonanza, Utah. *In re Deseret Power Electric Cooperative,* PSD Appeal No. 07–03 (EAB Nov. 13, 2008) ("*Deseret*"). The permit was issued by EPA Region 8 in August 2007 and did not include best available control technology (BACT) limits for CO_2. At the time, the Region acknowledged *Massachusetts* but found that decision alone did not require PSD permits to include limits on CO_2 emissions. In briefs filed in the EAB case, EPA maintained the position that the Agency had a binding, historic interpretation of the phrase "subject to regulation" in the Federal PSD regulations that required PSD permit limits to apply only to those pollutants already subject to actual control of emissions under other provisions of the CAA. Response of EPA Office of Air and Radiation and Region 8 to Briefs of Petitioner and Supporting Amici (filed March 21, 2008). Accordingly, EPA argued that the regulations contained in 40 CFR part 75, which require monitoring of CO_2 at some sources, did not make CO_2 subject

[1] On December 15, 2009, EPA published the final endangerment and cause or contribute findings for GHGs under section 202(a) of the CAA. *See* 74 FR 66495.

to PSD regulation. The order and opinion issued by the EAB remanded the permit after finding that prior EPA actions were insufficient to establish a historic, binding interpretation that "subject to regulation" for PSD purposes included only those pollutants subject to regulations that require actual control of emissions. However, the EAB also rejected arguments that the CAA compelled only one interpretation of the phrase "subject to regulation" and found "no evidence of a Congressional intent to compel EPA to apply BACT to pollutants that are subject only to monitoring and reporting requirements." Thus, the Board remanded the permit to the Region to "reconsider whether or not to impose a CO_2 BACT limit in light of the 'subject to regulation' definition under the CAA." The Board encouraged EPA to consider "addressing the interpretation of the phrase 'subject to regulation under this Act' in the context of an action of nationwide scope, rather than through this specific permitting proceeding." *See Deseret* at 63–64.

EPA issued the PSD Interpretive Memo shortly after the *Deseret* decision with the stated purpose to "establish[ ] an interpretation clarifying the scope of the EPA regulation that determines the pollutants subject to the Federal Prevention of Significant Deterioration (PSD) program under the Clean Air Act (CAA or Act)" by providing EPA's "definitive interpretation" of the definition of the term "regulated NSR pollutants" found at 40 CFR 52.21(b)(50) and resolving "any ambiguity in subpart ([iv]) of that paragraph, which includes 'any pollutant that otherwise is subject to regulation under the Act.' " *See* Memo at 1. As the Memo explains, the statute and regulation use similar language—the regulation defines a regulated NSR pollutant to include "[a]ny pollutant that otherwise is subject to regulation under the Act" and requires BACT for "each regulated NSR pollutant," per 40 CFR 52.21(b)(50) and (j), while the Act requires BACT for "each pollutant subject to regulation under this [Act]," per CAA sections 165(a)(4) and 169. The EAB had determined that "the meaning of the term 'subject to regulation under this Act' as used in [CAA] sections 165 and 169 is not so clear and unequivocal as to preclude the Agency from exercising discretion in interpreting the statutory phrase" in implementing the PSD program. *See Deseret* at 63.

The PSD Interpretive Memo seeks to resolve the ambiguity in implementation of the PSD program by stating that "EPA will interpret this definition of 'regulated NSR pollutant' to exclude pollutants for which EPA regulations only require monitoring or reporting but to include each pollutant subject to either a provision in the Clean Air Act or regulation adopted by EPA under the Clean Air Act that requires actual control of emissions of that pollutant." The Memo states that "EPA has not previously issued a definitive interpretation of the definition of 'regulated NSR pollutant' in section 52.21(b)(50) or an interpretation of the phrase 'subject to regulation under the Act' that addressed whether monitoring and reporting requirements constitute 'regulation' within the meaning of this phrase." The Memo, however, explains that the interpretation reflects the "considered judgment" of then-Administrator Johnson regarding the PSD regulatory requirements and is consistent with both historic Agency practice and prior statements by Agency officials. *See* Memo at 1–2.

The PSD Interpretive Memo is not a substantive rule promulgated under section 307(d) of the CAA, but rather an interpretation of the terms of a regulation at 40 CFR 52.21(b)(50).[2] An interpretive document is one that explains or clarifies, and is consistent with, existing statutes or regulation. *See National Family Planning and Reproductive Health Ass'n* v. *Sullivan,* 979 F.2d 227, 236–37 (D.C. Cir. 1992). The PSD Interpretive Memo explains and clarifies the meaning of the definition of "regulated NSR pollutant" in section 52.21(b)(50) of the existing NSR regulations, and does not alter the meaning of the definition in any way that is inconsistent with the terms of the regulation. As a result, EPA concluded that the PSD Interpretive Memo was an interpretive rule that could be issued without a notice and comment rulemaking process.

However, the PSD Interpretive Memo observed that the adoption of an interpretation of a rule without a notice and comment process does not preclude subsequent action by the Agency to solicit public input on the interpretation. Indeed, given the significant public interest in the issue addressed in the December 18, 2008 memorandum, EPA subsequently elected to seek public input on the memorandum and alternative readings of the regulations.

On December 31, 2008, EPA received a petition for reconsideration of the position taken in the PSD Interpretive Memo from Sierra Club and 14 other environmental, renewable energy, and citizen organizations. *See* Petition for Reconsideration, In the Matter of: EPA Final Action Published at 73 FR 80300 (Dec. 31, 2008), entitled "Clean Air Act Prevention of Significant Deterioration (PSD) Construction Permit Program; Interpretation of Regulations That Determine Pollutants Covered by the Federal PSD Permit Program." Petitioners argued that the PSD Interpretive Memo "was impermissible as a matter of law, because it was issued in violation of the procedural requirements of the Administrative Procedures [*sic*] Act * * * and the Clean Air Act * * *, it directly conflicts with prior agency actions and interpretations, and it purports to establish an interpretation of the Act that conflicts with the plain language of the statute." *See* Petition at 2. Accordingly, Petitioners requested that EPA reconsider and retract the PSD Interpretive Memo. Petitioners later amended their Petition for Reconsideration to include a request to stay the effect of the Memo pending the outcome of the reconsideration request. Amended Petition for Reconsideration (filed Jan. 6, 2009).[3]

On February 17, 2009, EPA granted the Petition for Reconsideration, on the basis of the authority conferred by section 553(e) of the Administrative Procedure Act (APA), and announced its intent to conduct a rulemaking to allow for public comment on the issues raised in the Memo and on any issues raised by the EAB's *Deseret opinion,* to the extent they do not overlap with the issues raised in the Memo.[4] Because the Memo was not a substantive rule promulgated under section 307(d) of the APA, the reconsideration action was not a reconsideration under the authority of section 307(d)(7)(B) of the CAA. *See* Letter from Lisa P. Jackson, EPA Administrator, to David Bookbinder, Chief Climate Counsel at Sierra Club (Feb. 17, 2009). EPA did not stay the effectiveness of the PSD Interpretive Memo pending reconsideration, but the Agency did reiterate that the Memo

[2] The PSD Interpretive Memo also reflects EPA's interpretation of sections 165(a)(4) and 169(3) of the CAA, which use language similar to the EPA regulations that are based on these provisions of the statute. The Memo discusses the Agency's interpretation of the CAA and concludes that the Agency's interpretation of its regulations is not precluded by the terms of the CAA.

[3] On January 15, 2009, a number of environmental organizations that filed this Petition for Reconsideration also filed a petition challenging the PSD Interpretive Memo in U.S. Court of Appeals for the District of Columbia Circuit. *Sierra Club* v. *E.P.A.,* No. 09–1018 (D.C. Cir., filed Jan. 15, 2009). Thereafter, various parties moved to intervene in that action or filed similar petitions challenging the Memo. The consolidated D.C. Circuit cases have been held in abeyance pending this reconsideration process. *Id.,* Order (filed March 9, 2009).

[4] Because the grant of reconsideration directed the Agency to conduct this reconsideration using a notice and comment process, the proposal did not address the procedural challenge presented in the Petition for Reconsideration.

"does not bind States issuing [PSD] permits under their own State Implementation Plans." *Id.* at 1.

On October 7, 2009 (74 FR 51535), EPA proposed a reconsideration of the PSD Interpretive Memo that solicited comment on five possible interpretations of the regulatory phrase "subject to regulation"—the "actual control" interpretation (adopted by the Memo); the "monitoring and reporting" interpretation (advocated by Petitioners); the inclusion of regulatory requirements for specific pollutants in SIPs (discussed in both the Memo and the Petition for Reconsideration); an EPA finding of endangerment (discussed in the Memo); and the grant of a section 209 waiver interpretation (raised by commenters in another EPA action). EPA also addressed, and requested public comment on, other issues raised in the PSD Interpretive Memo and related actions that may influence this reconsideration.

Of the five interpretations described in the proposed reconsideration notice, EPA expressly favored the actual control interpretation, which has remained in effect since issuing the memorandum, notwithstanding the EPA's grant of reconsideration. The proposal explained that the actual control interpretation best reflects EPA's past policy and practice, is in keeping with the structure and language of the statute and regulations, and best allows for the necessary coordination of approaches to controlling emissions of newly identified pollutants. While the other interpretations may represent reasoned approaches for interpreting "subject to regulation," no particular one is compelled by the statute, nor did the EAB determine that any one of them was so compelled. Because EPA had overarching concerns over the policy and practical application of each of the alternative interpretations, the Agency proposed to retain the actual control interpretation. Nevertheless, EPA requested comment on all five of the interpretations.

III. This Action

A. Overview

EPA has made a final decision to continue applying (with one limited refinement) the Agency's existing interpretation of 40 CFR 52.21(b)(50) that is articulated in the PSD Interpretive Memo. For reasons explained below, and addressed in further detail in the document "Reconsideration of Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs: EPA's Response to Public Comments", after reviewing the comments, EPA has concluded that the "actual control interpretation" is a permissible interpretation of the CAA and is the most appropriate interpretation to apply given the policy implications. However, EPA is refining its interpretation in one respect to establish that PSD permitting requirements apply to a newly regulated pollutant at the time a regulatory requirement to control emissions of that pollutant "takes effect" (rather than upon promulgation or the legal effective date of the regulation containing such a requirement). In addition, this notice addresses several outstanding questions regarding the applicability of the PSD and Title V permitting programs to GHGs upon the anticipated promulgation of EPA regulations establishing limitations on emissions of GHGs from vehicles under Title II of the CAA.[5]

EPA received 71 comments on the proposed reconsideration notice published on October 7, 2009 (74 FR 51535).[6] Commenters represented a range of interests, including State regulatory agencies, corporations that may need to obtain PSD permits, trade associations representing various industrial sectors, and environmental and public interest groups. Commenters representing States and regulated entities generally expressed support for the actual control interpretation, while environmental and public interest groups generally favored the alternative interpretations. States and regulated entities also supported EPA's proposed action to apply PSD requirements at the point in time when an actual control requirement becomes effective, with many entities specifically requesting that EPA interpret "effective" to mean the compliance date of a rule. Environmental stakeholders supported retaining the position in the existing PSD Interpretive Memo that PSD requirements apply to a pollutant upon the promulgation of the relevant requirement for that pollutant.

EPA has not been persuaded that the Agency is compelled by the CAA, the terms of EPA regulations, or prior EPA action to apply any of the four alternatives to its preferred interpretation described in the October 7, 2009 notice—monitoring and reporting requirement, EPA-approved SIP, endangerment finding, or CAA section 209 waiver. EPA has likewise not been persuaded that all of the alternative interpretations are precluded by the CAA. However, since Congress has not precisely spoken to this issue, EPA has the discretion to choose among the range of permissible interpretations of the statutory language. Since EPA's interpretation of the regulations is not precluded by the statutory language, EPA is electing to maintain that interpretation on policy grounds. EPA has concluded that the "actual control" interpretation is not only consistent with decades of past practice, but provides the most reasonable and workable approach to developing an appropriate regulatory scheme to address newly identified pollutants of concern. Thus, except as to the one element that EPA proposed to modify, EPA is reaffirming the PSD Interpretive Memo and its establishment of the actual control interpretation as EPA's definitive interpretation of the phrase "subject to regulation" under the PSD provisions in the CAA and EPA regulations.

EPA has been persuaded by public comments on the proposed reconsideration to modify the portion of its interpretation regarding the timing of when a pollutant becomes subject to regulation under the CAA and thus covered by the requirements of the PSD permitting program. Specifically, EPA is modifying its interpretation of 40 CFR 52.21(b)(50) of its regulations, and the parallel provision in 40 CFR 51.166(b)(49), to establish that the PSD requirements will not apply to a newly regulated pollutant until a regulatory requirement to control emissions of that pollutant "takes effect." EPA has concluded that this approach is consistent with the CAA and a reasonable reading of the regulatory text.

Based on these final determinations, EPA will continue to apply the interpretation reflected in the PSD Interpretive Memo with one refinement. For the reasons discussed in more detail below, EPA has not generally found cause to change the discussion or reasoning reflected in the Memo. As a result, EPA does not see a need to either withdraw or re-issue the Memo. However, this notice refines one paragraph of that memorandum to reflect EPA's current view that a pollutant becomes subject to regulation

[5] On September 28, 2009, EPA proposed a rule establishing emissions standards for new motor vehicles, starting with Model Year 2012, that would reduce GHGs and improve fuel economy from motor vehicles. This proposal was a joint proposal by EPA and the U.S. Department of Transportation (DOT), with DOT proposing to adopt corporate average fuel economy (CAFE) standards for model years 2012 and after. *See* 74 FR 49453.

[6] In some cases, a commenter on the proposed reconsideration of the PSD Interpretive Memo addressed an issue or topic that is under consideration in the forthcoming PSD and Title V GHG Tailoring Rule. Accordingly, EPA refers the reader to that rulemaking for EPA responses to those comments.

at the time the first control requirements applicable to a pollutant take effect. Public comments raised several questions regarding the application of the PSD program and Title V permits to GHGs that EPA did not specifically raise in the October 7, 2009 proposed notice of reconsideration. Some of these comments raised significant issues that the Agency recognizes the need to address at this time to ensure the orderly transition to the regulation of GHGs under these permitting programs. Thus, this notice reflects additional interpretations and EPA statements of policy on topics not discussed in the October 7, 2009 notice. These interpretations and polices have been developed after careful consideration of the public comments submitted to EPA on this action and related matters. In subsequent actions, EPA may address additional topics raised in public comments on this action that the Agency did not consider necessary to address at this time.

Regarding GHGs, EPA has concluded that PSD program requirements will apply to GHGs upon the date that the anticipated tailpipe standards for light-duty vehicles (known as the "LDV Rule") take effect. Based on the proposed LDV Rule, those standards will take effect when the 2012 model year begins, which is no earlier than January 2, 2011. While the LDV Rule will become "effective" for the purposes of planning for the upcoming model years as of 60 days following publication of the rule, the emissions control requirements in the rule do not "take effect"— *i.e.,* requiring compliance through vehicular certification before introducing any Model Year 2012 into commerce—until Jan. 2, 2011, or approximately 9 months after the planned promulgation of the LDV Rule. Furthermore, as EPA intends to explain soon in detail in the final action on the PSD and Title V GHG Tailoring Rule (known as the "Tailoring Rule"),[7] in light of the significant administrative challenges presented by the application of the PSD and Title V requirements for GHGs (and considering the legislative intent of the PSD and Title V statutory provisions), it is necessary to defer applying the PSD and Title V provisions for sources that are major based only on emissions of GHGs until a date that extends beyond January 2, 2011.

[7] The proposed "Tailoring Rule" can be found at 74 FR 55291 (Oct. 27, 2009).

B. Analysis of Proposed and Alternative Interpretations for Subject to Regulation

1. Actual Control Interpretation

EPA has concluded that the "actual control" interpretation (as articulated in the PSD Interpretive Memo) is permissible under the CAA and is preferred on policy grounds. Thus, EPA will continue to interpret the definition of "regulated NSR pollutant" in 40 CFR 52.21(b)(50) to exclude pollutants for which EPA regulations only require monitoring or reporting but to include each pollutant subject to either a provision in the CAA or regulation promulgated by EPA under the CAA that requires actual control of emissions of that pollutant. As discussed further below, EPA will also interpret section 51.166(b)(49) of its regulations in this manner. This interpretation is supported by the language and structure of the regulations and is consistent with past practice in the PSD program and prior EPA statements regarding pollutants subject to the PSD program. The CAA is most effectively implemented by making PSD emissions limitations applicable to pollutants after a considered judgment by EPA (or Congress) that particular pollutants should be subject to control or limitation. The actual control interpretation promotes the orderly administration of the permitting program by allowing the Agency to first assess whether there is a justification for controlling emissions of a particular pollutant under relevant criteria in the Act before applying the requirements of the PSD permitting program to a pollutant.

Because the term "regulation" is susceptible to more than one meaning, there is ambiguity in the phrase "each pollutant subject to regulation under the Act"[8] that is used in both sections 165(a)(4) and 169(3) of the CAA. As discussed in the Memo, the term "regulation" can be used to describe a rule contained in a legal code, such as the Code of Federal Regulations, or the act or process of controlling or restricting an activity. The primary meaning of the term "regulation" in Black's Law Dictionary (8th Ed.) is "the act or process of controlling by rule or restriction." However, an alternative meaning in this same dictionary defines the term as "a rule or order, having legal force, usu. issued by an administrative agency or local government." The primary meaning in Webster's dictionary for the term "regulation" is "the act of regulating: The state of being regulated." Merriam-Webster's Collegiate Dictionary 983 (10th Ed. 2001). Webster's secondary meaning is "an authoritative rule dealing with details of procedure" or "a rule or order issued by an executive authority or regulatory agency of a government and having the force of law." Webster's also defines the term "regulate" and the inflected forms "regulated" and "regulating" (both of which are used in Webster's definition of "regulation") as meaning "to govern or direct according to rule" or to "to bring under the control of law or constituted authority." *Id.*

The PSD Interpretive Memo reasonably applies a common meaning of the term "regulation" to support a permissible interpretation that the phrase "pollutant subject to regulation" means a pollutant subject to a provision in the CAA or a regulation issued by EPA under the Act that requires actual control of emissions of that pollutant. Public comments have not demonstrated the dictionary meanings of the term "regulation" described in the Memo are no longer accepted meanings of this term. In light of the different meanings of the term "regulation," EPA has not been persuaded by public comments that the CAA plainly and unambiguously requires that EPA apply any of the other interpretations described in the October 7, 2009 notice. Moreover, the Memo carefully explains how the actual control interpretation is consistent with the overall context of the CAA in which sections 165(a)(4) and 169(3) are found. After consideration of public comment, EPA continues to find this discussion persuasive. The "subject to regulation" language appears in the BACT provisions of the Act, which themselves require actual controls on emissions. The BACT provisions reference the New Source Performance Standards (NSPS) and other control requirements under the Act, which establish a floor for the BACT requirement. *See* 42 U.S.C. 7479(3). Other provisions in the CAA that authorize EPA to establish emissions limitations or controls on emissions provide criteria for the exercise of EPA's judgment to determine which pollutants or source categories to regulate. Thus, it follows that Congress expected that pollutants would only be regulated for purposes of the PSD program after: (1) The EPA promulgated regulations requiring control of a particular

[8] The CAA requires BACT for "each pollutant subject to regulation under this Act." *See* CAA 165(a)(4), 169(3). The United States Code refers to "each pollutant regulated under this chapter," which is a reference to Chapter 85 of Title 42 of the Code, where the CAA is codified. *See* 42 U.S.C. 7475(a)(4), 7479(3). For simplicity, this notice generally uses "the Act" and the CAA section numbers rather than the U.S. Code citation.

pollutant on the basis of considered judgment, taking into account the applicable criteria in the CAA, or (2) EPA promulgates regulations on the basis of Congressional mandate that EPA establish controls on emissions of a particular pollutant, or (3) Congress itself directly imposes actual controls on emissions of a particular pollutant. In addition, considering other sections in the Act that require reasoned decision-making and authorize the collection of emissions data prior to establishing controls on emissions, it is also consistent with the Congressional design to require BACT limitations for pollutants after a period of data collection and study that leads to a reasoned decision to establish control requirements. Public commenters did not demonstrate that it was erroneous for EPA to interpret the PSD provisions in this manner, based on the context of the Act.

Furthermore, the actual control interpretation is consistent with the terms of the regulations EPA promulgated in 2002.[9] EPA continues to find the reasoning of the PSD Interpretive Memo to be persuasive. The structure and language of EPA's definition of "regulated NSR pollutant" at 40 CFR 52.21(b)(50) supports the actual control interpretation. The first three parts of the definition describe pollutants that are subject to regulatory requirements that mandate control or limitation of the emissions of those pollutants, which suggests that the use of "otherwise subject to regulation" in the fourth prong of the definition also intended some prerequisite act or process of control. The definition's use of "subject to regulation" should be read in light of the primary meanings of "regulation" described above, which each use or incorporate the concept of control.

One commenter stated that EPA's suggestion that its proposed interpretation will allow for a more practical approach to determining whether emissions of air pollutants endanger health and human welfare amounts only to a policy preference. The commenter argued that EPA's policy preference should be subordinate to statutory language and Congressional intent. Another commenter made similar comments and stated that EPA cannot avail itself of additional, non-statutory *de facto* extensions of time to fulfill its statutory obligations.

Where the governing statutory authority is susceptible to more than one interpretation, it is not impermissible for EPA to apply policy preferences when determining which interpretation to apply, so long as the interpretation EPA elects to follow is a permissible one. The PSD Interpretive Memo provides a persuasive explanation for why the interpretation reflected in that memorandum is consistent with the terms of the CAA and Congressional intent. In this instance, EPA's policy preferences are fully consistent with that intent. As explained above, Congress intended for EPA to gather data before establishing controls on emissions and to make reasoned decisions.

EPA continues to prefer the actual control interpretation because it ensures an orderly and manageable process for incorporating new pollutants into the PSD program after an opportunity for public participation in the decision making process. Several commenters who supported EPA's proposal to continue applying the "actual control" interpretation identified these considerations as important reasons that EPA should continue doing so. EPA agrees with these comments. As discussed persuasively in the PSD Interpretive Memo, under this interpretation, EPA may first assess whether there is a justification for controlling emissions of a particular pollutant under relevant criteria in the Act before imposing controls on a pollutant under the PSD program. In addition, this interpretation permits the Agency to provide notice to the public and an opportunity to comment when a new pollutant is proposed to be regulated under one or more programs in the Act. It also promotes the orderly administration of the permitting program by providing an opportunity for EPA to develop regulations to manage the incorporation of a new pollutant into the PSD program, for example, by promulgating a significant emissions rate (or *de minimis* level) for the pollutant when it becomes regulated. *See* 40 CFR 52.21(b)(23). Furthermore, this interpretation preserves the Agency's ability to gather data on pollutant emissions to inform their judgment regarding the need to establish controls on emissions without automatically triggering such controls. This interpretation preserves EPA's authority to require control of particular pollutants through emissions limitations or other restrictions under various provisions of the Act, which would then trigger the requirements of the PSD program for any pollutant addressed in such an action.

Some commenters who opposed the actual control interpretation argued that this deliberate approach leads to "analysis paralysis" and is subject to political manipulation. The commenter further noted that the case-by-case BACT requirement does not contemplate waiting years for EPA to conduct analyses and "develop" control options; rather, BACT must be based on control options that are available. Then, permitting agencies are to make "case-by-case" determinations "taking into account energy, environmental, and economic impacts and other costs," thereby ensuring that the decision is informed by the available solutions, their efficacy and costs.

While this analysis may sometimes take more time than the commenter would prefer, a deliberative and orderly approach to regulation is in the public interest and consistent with Congressional intent. It would be premature to impose the BACT requirement on a particular pollutant if neither EPA nor Congress has made a considered judgment that a particular pollutant is harmful to public health and welfare and merits control.

Once the Agency has made a determination that a pollutant should be controlled using one or more of the regulatory tools provided in the CAA and those controls take effect, EPA agrees that a BACT analysis must then be completed based on available information. As the commenter points out, the BACT process is designed to determine the most effective control strategies achievable in each instance, considering energy, environmental, and economic impacts. Thus, EPA agrees that the onset of the BACT requirement should not be delayed in order for technology or control strategies to be developed. Furthermore, EPA agrees with the commenter that delaying the application of BACT to enable development of guidance on control strategies is not necessarily consistent with the BACT requirement. The BACT provisions clearly contemplate that the permitting authority will develop control strategies on a case-by-case basis. Thus, EPA is not in this final action relying on the need to develop guidance for BACT as a justification for choosing to continue applying the actual control interpretation. However, in the absence of guidance on control strategies from EPA and other regulatory agencies, the BACT process may be more time and resource intensive when applied to a new pollutant. Under a mature PSD permitting program, successive BACT analyses establish guidelines and precedents for subsequent BACT determinations. However, when a new pollutant is regulated, the first permit applicants and permitting authorities that are faced with determining BACT for a new

[9] *See* 67 FR 80186–80289.

pollutant must invest more time and resources in making an assessment of BACT under the statutory criteria. Given the potentially large number of sources that could be subject to the BACT requirement when EPA regulates GHGs, the absence of guidance on BACT determinations for GHGs presents a unique challenge for permit applicants and permitting authorities. EPA intends to address this challenge in part by deferring, under the Tailoring Rule, the applicability of the PSD permitting program for sources that would become major based solely on GHG emissions. EPA is also developing guidance on BACT for GHGs.

Several commenters expressed concern with EPA's explanation that the actual control interpretation best reflects EPA's past practice. One commenter argued that the *Deseret* decision rejects the idea that "past policy and practice" is a sufficient justification for EPA's preferred interpretation. In addition, several commenters argued that the memorandum was in fact not consistent with past EPA practice, based on their interpretation of a statement made in the preamble to a rule which promulgated PSD regulations in 1978.

While the record continues to show that the actual control interpretation is consistent with EPA's historic practice, EPA agrees that continuity with past practice alone does not justify maintaining a position when there is good cause to change it. In this case, however, EPA has not found cause to change an interpretation that is consistent with Congressional intent and supported by the policy considerations described earlier. Thus, EPA is not retaining the actual control interpretation simply to maintain continuity with historic practice. The record reflects that EPA's past practice was grounded in a permissible interpretation of the law and supported by rational policy considerations. Commenters have not otherwise persuaded EPA to change its historic practice in this area.

A review of numerous Federal PSD permits shows that EPA has been applying the actual control interpretation in practice—issuing permits that only contained emissions limitations for pollutants subject to regulations requiring actual control of emissions under other portions of the Act. Furthermore, in 1998, well after promulgation of the initial CO_2 monitoring regulations in 1993, EPA's General Counsel concluded that CO_2 would qualify as an "air pollutant" that EPA had the authority to regulate under the CAA, but the General Counsel also observed that "the Administrator has made no determination to date to exercise that authority under the specific criteria provided under any provision of the Act." [10] The 1978 **Federal Register** notice promulgating the initial PSD regulations stated that pollutants "subject to regulation" in the PSD program included "any pollutant regulated in Subchapter C of Title 40 of the Code of Federal Regulations." Commenters argue this statement illustrates that EPA has in fact applied the PSD BACT requirement to any pollutant subject to only a monitoring requirement codified in this portion of the Code of Federal Regulations. However, this comment overlooked the discussion in the PSD Interpretive Memo regarding the differing meanings of the term "regulation" and "regulate." The 1978 preamble did not amplify the meaning of the term "regulated in." Thus, commenters have not demonstrated that EPA had concluded in 1978 that monitoring requirements equaled "regulation" within the meaning of sections 165(a)(4) and 169(3) of the CAA, nor have commenters provided any examples of permits issued by EPA after 1978 that demonstrate EPA's interpretation was inconsistent with the practice described in the PSD Interpretive Memo.

Therefore, EPA affirms that the actual control interpretation expressed in the PSD Interpretive Memo continues be the operative statement for the EPA interpretation of the meaning of the regulatory phrase "subject to regulation" within the Federal PSD rules.

2. Monitoring and Reporting Interpretation

EPA is not persuaded that the monitoring and reporting interpretation is compelled by the CAA, and the Agency remains concerned that application of this approach would lead to odd results and make the PSD program difficult to administer. EPA continues to find the reasoning of the PSD Interpretive Memo persuasive.

The monitoring and reporting interpretation would make the substantive requirements of the PSD program applicable to particular pollutants based solely on monitoring and reporting requirements (contained in regulations established under section 114 or other authority in the Act). This approach would lead to the perverse result of requiring emissions limitations under the PSD program while the Agency is still gathering the information necessary to conduct research or evaluate whether to establish controls on the pollutant under other parts of the Act. Such a result would frustrate the Agency's ability to gather information using section 114 and other authority and make informed and reasoned judgments about the need to establish controls or limitations for particular pollutants. If EPA interpreted the requirement to establish emissions limitations based on BACT to apply solely on the basis of a regulation that requires collecting and reporting emissions data, the mere act of gathering information would essentially dictate the result of the decision that the information is being gathered to inform (whether or not to require control of a pollutant). Many commenters representing State permitting agencies and industry groups agree with the policy arguments advanced by EPA and others that EPA's critical information gathering activities will be constrained, with likely adverse environmental and public health consequences, if monitoring requirements are necessarily associated with the potentially significant implementation and compliance costs and resource constraints of the PSD program. Commenters expressed concern that without the ability to gather data or investigate unregulated pollutants, for fear of triggering automatic regulation under the CAA, EPA will not have the flexibility to review the validity of controlling new pollutants.

EPA agrees that a monitoring and reporting interpretation would hamper the Agency's ability to conduct monitoring or reporting for investigative purposes to inform future rulemakings involving actual emissions control or limits. In addition, it is not always possible to predict when a new pollutant will emerge as a candidate for regulation. In such cases, the Memo's reasoning is correct in that EPA would be unable to promulgate any monitoring or reporting rule for such a pollutant without triggering PSD under this interpretation.

An environmental organization disagreed with the proposed notice of reconsideration, and commented that EPA has issued monitoring and reporting regulations for CO_2 in 40 CFR part 75, promulgated pursuant to section 821 of the 1990 CAA Amendments. The commenter felt that these monitoring and reporting rules are "regulation" in that they are contained in a legal code, have the force of law, and bring the subject matter under the control of law and the EPA. Furthermore, the commenter says that EPA itself has characterized these

[10] Memorandum from Jonathan Z. Cannon, General Counsel to Carol M. Browner, Administrator, entitled *EPA's Authority to Regulate Pollutants Emitted by Electric Power Generation Sources* (April 10, 1998).

monitoring and reporting requirements as "regulations." In contrast, another commenter argued that an agency's interpretation of a statute should focus first on the ordinary dictionary meaning of the terms used and that monitoring emissions does not fit within any of the types of activities understood to constitute "regulation" of those emissions in the ordinary meaning of that term. Each of these commenters focuses on only one of the two potential meanings of the term "regulation" described above.

The commenter that favors the "monitoring and reporting" interpretation appears to focus only on the dictionary meanings that describe a rule contained in a legal code. The commenter has not demonstrated that it is impermissible for EPA to construe the CAA on the basis of another common meaning of the term "regulation." In the context of construing the Act, the EAB observed in the *Deseret* case that a plain meaning could not be ascertained from looking solely at the word "regulation." The Board reached this conclusion after considering the dictionary definitions of the term "regulation" cited above. *See Deseret* slip op. at 28–29. EPA continues to find the reasoning of the EAB and the PSD Interpretive Memo to be persuasive. The EAB found "no evidence of Congressional intent to compel EPA to apply BACT to pollutants that are subject only monitoring and reporting requirements." *See Deseret* at 63.

Comments have not convincingly shown that Congress clearly intended to use the term "regulation" in section 165(a)(4) and 169(3) to describe any type of rule in a legal code. Some commenters presented alternative theories of Congressional intent regarding the BACT provisions, but they have not persuasively demonstrated that the interpretation of Congressional intent based on the context of the CAA described in the PSD Interpretive Memo is erroneous.

For example, one commenter opposed to EPA's proposed action commented that the PSD Interpretive Memo ignores the Congressionally-established purpose of PSD to protect public health and welfare from actual and potential adverse effects. *See* CAA section 160(1). Specifically, this commenter stated that to limit application of BACT until after control requirements are in place following an endangerment finding ignores the broad, protective purpose of the PSD program. The commenter said that the emphasis on "potential adverse effect[s]" distinguishes PSD the requirement from the National Ambient Air Quality Standards (NAAQS) and NSPS programs, which require that EPA make an endangerment finding before establishing generally applicable standards such as the NSPS or motor vehicle emissions standards. According to this commenter, BACT's case-by-case approach provides the dynamic flexibility necessary to implement an emission limitation appropriate to each particular source. This commenter feels that the PSD program's ability to address potential adverse effects is hindered by the position that an endangerment determination and actual control limits must be first established.

EPA does not agree that the terms of section 160 cited by the commenter compel EPA to read sections 165(a)(4) and 169(3) to apply to a pollutant before the Agency has established control requirements for the pollutant. Section 160(1) describes PSD's purpose to "protect public health and welfare from any actual or potential adverse effect which in the Administrator's judgment may reasonably be anticipated to occur from air pollution." Thus, this goal contemplates an exercise of judgment by EPA to determine that an actual or potential adverse effect may reasonably be anticipated from air pollution. In that sense, this goal is consistent with NAAQS and NSPS programs, which contemplate that regulation of a pollutant will not occur until a considered judgment by EPA that a substance or source category merits control or restriction. The commenter has not persuasively established that the "potential adverse effect" language in section 160(1) makes this provision markedly different than the language used in sections 108(a)(1)(A) and 111(b)(1)(A). All three sections use the phrase "may reasonably be anticipated." Furthermore, section 160 contains general goals and purposes and does not contain explicit regulatory requirements. The controlling language in the PSD provisions is the "subject to regulation" language in sections 165(a)(4) and 169(3). As discussed earlier, the "actual control" interpretation is based on a common and accepted meaning of the term "regulation." To the extent the goals and purpose in section 160 are instructive as to the meaning of other provisions in Part C of the Act, section 160(1) is just one of several purposes of the PSD program that Congress specified. The Act also instructs EPA to ensure that economic growth occurs consistent with the preservation of existing clean air resources. *See* CAA section 160(3). EPA's interpretation is consistent with this goal because it allows EPA to look at the larger picture by coordinating control of an air pollutant under the PSD program with control under other CAA provisions.

EPA finds the logic of the PSD Interpretive Memo more persuasive. The Memo considers the full context of the CAA, including the health and welfare criteria that generally must be satisfied to establish control requirements under other parts of the Act, information gathering provisions that contemplate data collection and study before pollutants are controlled, and requirements for reasoned decision making. While some commenters presented arguments for why it might be possible or beneficial to apply the BACT requirement before a control requirement is established for a pollutant elsewhere under the Act, these arguments do not demonstrate that the contextual reading of the CAA described in the Memo is erroneous. Thus, the comments have at most provided another permissible reading of the Act, but they do not demonstrate that EPA must require BACT limitations for pollutants that are not yet controlled but only subject to data collection and study.

EPA continues to believe that the monitoring and reporting interpretation is inconsistent with past agency practice because, as the Memo notes, "EPA has not issued PSD permits containing emissions limitations for pollutants that are only subject to monitoring and reporting requirements," including CO_2 emissions. Further, the Memo determines that the monitoring and reporting interpretation is not required under the 1978 preamble language, explaining that the preamble language could be interpreted in a variety of ways and "did not specifically address the issue of whether a monitoring or reporting requirement makes a pollutant 'regulated in' [Subpart C of Title 40] of the Code of Federal Regulations." *See* Memo at 11–12. Commenters have not demonstrated that the Agency specifically intended, through this statement, to apply the PSD requirements to pollutants that were covered by only a monitoring and reporting requirement codified in this part of the CFR.

One commenter questioned EPA's basis for rejecting the monitoring and reporting interpretation because they believe EPA has not identified a pollutant other than CO_2 that would be affected by the monitoring and reporting interpretation. However, EPA's GHG Reporting Rule covers six GHGs, not just CO_2. Further, EPA has promulgated regulations that require monitoring of oxygen (O_2) in the stack of a boiler under certain circumstances. *See* 40

CFR 60.49Da(d). These examples help demonstrate why monitoring and reporting requirements alone should not be interpreted to trigger PSD and BACT requirements.

For the reasons discussed above, EPA affirms the Memo's rejection of the monitoring and reporting interpretation for triggering PSD requirements for a new pollutant.

3. State Implementation Plan (SIP) Interpretation

In discussing the application of the actual control interpretation to specific actions under the CAA, the PSD Interpretive Memo rejects an interpretation of "subject to regulation" in which regulatory requirements for a particular pollutant in the EPA-Approved State Implementation Plan (SIP) for a single State would "require regulation of that pollutant under the PSD program nationally." (Hereinafter, referred to as the "SIP interpretation.") In this action, EPA affirms and supplements the rationale for rejecting the SIP interpretation provided in the PSD Interpretive Memo and the reconsideration proposal. Since the meaning of the term "subject to regulation" is ambiguous and susceptible to multiple interpretations, the SIP interpretation is not compelled by the structure and language of the Act. Furthermore, there would be negative policy implications if EPA adopted this interpretation.

The Memo reasons that application of the SIP interpretation would convert EPA's approval of regulations applicable only in one State into a decision to regulate a pollutant on a nationwide scale for purposes of the PSD program. The Memo explains that the establishment of SIPs is better read in light of the "cooperative federalism" underlying the Act, whereby Congress allowed individual States to create and apply some regulations more stringently than Federal regulations within its borders, without allowing individual States to set national regulations that would impose those requirements on all States. *See Ellis* v. *Gallatin Steel Co.,* 390 F.3d 461, 467 (6th Cir. 2004). In rejecting the SIP interpretation, the Memo also explains that EPA adopted a similar position in promulgating the NSR regulations for fine particulate matter (or "$PM_{2.5}$"), without any public comments opposing that position. *See* Memo at 15–16.

EPA continues to believe that the CAA and EPA's implementing regulations are intended to provide States flexibility to develop and implement SIPs to meet the air quality goals of their individual State. Each State's implementation plan is a reflection of the air quality concerns in that State, allowing a State significant latitude in the treatment of specific pollutants of concern (or their precursors) within its borders based on air quality, economic, and other environmental concerns of that State. As such, pollutant emissions in one State may not present the same problem for a State a thousand miles away. As expressed in the PSD Interpretive Memo, EPA continues to have concerns that the SIP interpretation would improperly limit the flexibility of States to develop and implement their own air quality plans, because the act of one State to establish regulatory requirements for a particular pollutant would drive national policy. If EPA determined that a new pollutant becomes "subject to regulation" nationally within the meaning of section 165 based solely on the provisions of an EPA-approved SIP, then all States would be required to subject the new pollutant to PSD permitting whether or not control of the air pollutant was relevant for improving that State's air quality. Whether one State, five States, or 45 States make the decision that their air quality concerns are best addressed by imposing regulations on a new pollutant, EPA does not think those actions should trump the cooperative federalism inherent in the CAA. While several States may face similar air quality issues and may choose regulation as the preferred approach to dealing with a particular pollutant, EPA is concerned that allowing the regulatory choices of some number of States to impose PSD regulation on all other States would do just that.

Some commenters support the SIP interpretation, and fault the Agency's rejection of the interpretation by stating that neither the Act, nor the Memo, provides a basis for a position that regulation by a single State is not enough to constitute "regulation under the Act" on a nationwide basis for purpose of section 165. Petitioners and another commenter also assert that CO_2 is already "subject to regulation under the Act" and take the position that any requirement EPA adopts and approves in an implementation plan makes the covered pollutant "subject to regulation under the Act" because it is approved by the EPA "under the Act," and because it becomes enforceable by the State, by EPA and by citizens "under the Act" upon approval.

EPA disagrees with the Petitioner and with this commenter that this reasoning necessarily means that a pollutant regulated in one SIP approved by EPA must automatically be regulated through the PSD program nationally. In fact, Congress demonstrated intent, in the language and structure of the Act, for SIP requirements to have only a local or regional effect.

In section 102(a) of the CAA, Congress directs EPA to encourage cooperative activities among States, and the adoption of uniform State and local laws for the control of air pollution "as practicable in light of the varying conditions and needs." This language informs the issue of whether SIP requirements have nationwide applicability in two ways. First, there would be no need for EPA to facilitate uniform adoption of standards in different air quality control regions, if the regulation of an air pollutant by one region would automatically cause that pollutant to be regulated in another region. Second, Congress bounded its desire to promote uniformity by recognizing that addressing local air quality concerns may preempt national uniformity of regulation.

Indeed, section 116 of the CAA grants States the right to adopt more stringent standards than the uniform, minimum requirements set forth by EPA. *See* 42 U.S.C. 7416. The legislative history of the 1977 CAA Amendments shows that Congress understood that States may adopt different and more stringent standards then the Federal minimum requirements. *See, e.g.,* 122 Cong. Rec. S12456 (daily ed. July 26, 1976) (statement of Sen. Randolph) ("[T]he States are given latitude in devising their own approaches to air pollution control within the framework of broad goals. * * * The State of West Virginia has established more stringent requirements than those which, through the Environmental Protection Agency, are considered as adequate * * *"); 122 Cong. Rec. S12458 (daily ed. July 26, 1976) (statement of Sen. Scott) ("The States have the right, however, to require higher standards, and they should have under the police powers.") Congress could not have intended States to have latitude to implement their own approaches to air pollution control, and simultaneously, require that air pollutants regulated by one State automatically apply in all other States.

Importantly, the legislative history also shows that Congress intended to limit the EPA's ability to disapprove a State's decision to adopt more stringent requirements in setting forth the criteria for approving State submissions under section 110. This intent is supported by the following passage:

> State implementation plans usually contain a unified set of requirements and frequently do not make distinctions between the controls needed to achieve one kind of

ambient standard or another. To try to separate such emission limitations and make judgments as to which are necessary to achieving the national ambient air quality standards assumes a greater technical capability in relating emissions to ambient air quality than actually exists.

A federal effort to inject a judgment of this kind would be an unreasonable intrusion into protected State authority. EPA's role is to determine whether or not a State's limitations are adequate and that State implementation plans are consistent with the statute. Even if a State adopts limits which may be stricter than EPA would require, EPA cannot second guess the State judgment and must enforce the approved State emission limit.[11]

123 Cong. Rec. S9167 (daily ed. June 8, 1977) (statement of Sen. Muskie).

This Congressional intent is reflected within the statutory language. Under section 110(k)(3), the EPA Administrator "shall approve" a State's submittal if it meets the requirements of the Act, and under section 110(l) "shall not" approve a plan revision "if the revision would interfere with any other applicable requirement of this Act." Courts have similarly interpreted this language to limit EPA's discretion to approve or disapprove SIP requirements. *See, e.g., State of Connecticut* v. *EPA,* 656 F.2d 902, 906 (2d. Cir. 1981) ("As is illustrated by Congress's use of the word 'shall,' approval of an SIP revision by the EPA Administrator is mandatory if the revision has been the subject of a proper hearing and the plan as a whole continues to adhere to the requirements of section 110(a)(2)") (referencing *Union Electric Co.* v. *EPA,* 427 U.S. 246, 257 (1976); and *Mission Indus., Inc.* v. *EPA,* 547 F.2d 123 (1st Cir. 1976)). These provisions of the statute do not establish any authority or criteria for EPA to judge the approvability of a State's submission based on the implications such approval would have nationally. The absence of such authority or criteria in the applicable standard argues against nationwide applicability of SIP requirements and the SIP interpretation.

Moreover, under section 307(b) of the CAA, Congress assigns review of specific regulations promulgated by EPA and "any other nationally applicable regulations promulgated or final action taken, by the Administrator under this Act" only to the U.S. Court of Appeals for the District of Columbia Circuit ("D.C. Circuit"). In contrast, "the Administrator's action in approving and promulgating any implementation plan under Section 110 * * * or any other final action of the Administrator under this Act * * * which *is local or regionally applicable* may be filed only in the United States Court of Appeals for the appropriate circuit." 42 U.S.C. 7607(b) (*emphasis added*). Thus, Congress set forth its intended applicability of these regulations in assigning judicial venue and clearly articulated that requirements in a SIP are generally "local or regionally applicable."

Even if the Act could be read to support EPA review of the national implications of State SIP submissions, such an approach would be undesirable for policy reasons. As highlighted in the reconsideration proposal, one practical effect of allowing State-specific concerns to create national regulation is that EPA's review of SIPs would likely be much more time-consuming, because EPA would have to consider each nuance of the SIP as a potential statement of national policy. Thus, EPA would have heightened oversight of air quality actions in all States—even those regarding local and State issues that are best decided by local agencies. EPA approval of SIPs would be delayed, which would in turn, delay State's progress toward improving air quality. And, EPA would be required to defend challenges to the approval of a SIP with national implications in the D.C. Circuit Court of Appeals rather than the local Circuit Court of Appeals. The potential increased burden of reviewing and approving SIPs to analyze the national implications of each SIP, and the associated delay in improving air quality, creates a compelling policy argument against adoption of the SIP interpretation.

Petitioners also fault EPA's reliance on *Connecticut* v. *EPA,* 656 F.2d 902 (2d Cir. 1981) and assert that this case has nothing to do with the issue of whether a pollutant is "subject to regulation under the Act." In the PSD Interpretive Memo, EPA cited *Connecticut* to support the notion that while a State is free to adopt air quality standards more stringent than required by the NAAQS or other Federal law provisions, Congress precludes those stricter requirements from applying to other States. The Agency agrees with commenter that the circumstances involved in that case are not directly analogous, but, nevertheless, the case supports the inference that EPA has drawn from it. The Court concluded that "[n]othing in the Act, however, indicates that a State must respect its neighbor's air quality standards (or design its SIP to avoid interference therewith) if those standards are more stringent than the requirements of Federal law." If a State is not required to respect the more stringent requirements of a neighboring State in developing its own implementation plan, then by inference, the State would also not be compelled to follow the more stringent standards.

In sum, after reconsidering the legal and policy issues, EPA declines to adopt the SIP interpretation.

4. Endangerment Finding Interpretation

The PSD Interpretive Memo states that the fourth part of the regulated NSR pollutant definition ("[a]ny pollutant that otherwise is subject to regulation") should not be interpreted "to apply at the time of an endangerment finding." *See* Memo at 14 (hereinafter, referred to as the "endangerment finding interpretation."). After considering public comments, EPA is affirming the position expressed in the PSD Interpretative Memo that an endangerment finding alone does not make the requirements of the PSD program applicable to a pollutant. EPA maintains its view that the terms of EPA's regulations and the relevant provisions of the CAA do not compel EPA to conclude that an air pollutant becomes "subject to regulation" when EPA finds that it endangers public health or welfare without contemporaneously promulgating control requirements for that pollutant.

As explained in EPA's Endangerment and Cause or Contribute Findings for GHGs under section 202(a) of the CAA, there are actually two separate findings involved in what is often referred to as an endangerment finding. 74 FR 66496 (Dec. 15, 2009). The first finding addresses whether air pollution may reasonably be anticipated to endanger public health or welfare. The second finding involves an assessment of whether emissions of an air pollutant from the relevant source category cause or contribute to this air pollution. In this notice, EPA uses the phrase "endangerment finding" to refer to EPA findings on both of these questions. The EPA interpretation described here applies to both findings regardless of whether they occur together or separately.

As explained in the proposed reconsideration, an interpretation of "subject to regulation" that does not include endangerment findings is consistent with the first three parts of the definition of "regulated NSR pollutant" in section 52.21(b)(50) of EPA's regulations. Unlike the first three parts of the definition, an endangerment finding does not itself contain any restrictions (*e.g.*, regarding the level of air pollution or emissions or use). Moreover, two parts of the definition involve actions that can occur only after

[11] Notably, the legislative record refers to "State" emission limit, and makes no note of this State emission limitation having broader applicability.

an endangerment finding of some sort has taken place. In other words, other parts of the definition already bypass an endangerment finding and apply the PSD trigger to a later step in the regulatory process.

Specifically, under the first part of that definition, PSD regulation is triggered by promulgation of a NAAQS under CAA section 109. However, in order to promulgate NAAQS standards under section 109, EPA must first list, and issue air quality criteria for a pollutant under section 108, which in turn can only happen after EPA makes an endangerment finding and a version of a cause or contribute finding, in addition to meeting other requirements. *See* CAA sections 108(a)(1) and 109(a)(2). Thus, if EPA were to conclude that an endangerment finding, cause or contribute finding, or both would make a pollutant "subject to regulation" within the meaning of the PSD provisions, this would read all meaning out of the first part of the "regulated NSR pollutant" definition because a pollutant would become subject to PSD permitting requirements well before the promulgation of the NAAQS under section 109. *See* 40 CFR 52.21(b)(50)(i).

Similarly, the second part of the definition of "regulated NSR pollutant" includes any pollutant that is subject to a standard promulgated under section 111 of the CAA. Section 111 requires the EPA Administrator to list a source category, if in his or her judgment, "it causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare." *See* CAA section 111(b)(1)(A). After EPA lists a source category, it promulgates NSPS for that source category. For a source category not already listed, if EPA were to list it on the basis of its emissions of a pollutant that was not previously regulated, and such a listing made that pollutant "subject to regulation" within the meaning of the PSD provisions, this chain of events would result in triggering PSD permitting requirements for that pollutant well in advance of the point contemplated by the second prong of the regulated NSR pollutant definition. *See* 40 CFR 52.21(b)(50)(ii).

Furthermore, as discussed in the Memo, waiting to apply PSD requirements at least until the actual promulgation of control requirements that follow an endangerment finding is sensible. The Memo explains that when promulgating the final regulations establishing the control requirements for a pollutant, EPA often makes decisions that are also relevant to decisions that must be made in implementing the PSD program for that pollutant. *See* Memo at 14. For example, EPA often does not make a final decision regarding how to identify the specific pollutant subject to an NSPS standard until the NSPS is issued, which occurs after both the endangerment finding and the source category listing.

Public comments echoed these concerns. One commenter said that subjecting the pollutant to PSD requirements, including imposition of BACT emission limits, before the Agency has taken regulatory action to establish emission controls would turn the CAA process on its head. Another commenter indicated that triggering PSD review upon completion of an endangerment finding, but potentially before the specific control requirement that flows directly from the endangerment finding, clearly undermines the orderly process created by Congress for regulation of new air pollutants. A third commenter added that establishing controls without having a standard to be achieved leads to uncertainty in the permitting program.

In further support of EPA's interpretation that an endangerment finding does not make an air pollutant "subject to regulation" is the fact that an endangerment finding is not a codified regulation; it does not contain any regulatory text. The PSD Interpretive Memo explains, and numerous commenters agree, that an endangerment finding should not be construed as "regulating" the air pollutant(s) at issue because there is no actual regulatory language applicable to the air pollutant at this time in the Code of Federal Regulations. Rather, the finding is a prerequisite to issuing regulatory language that imposes control requirements. This is true even if the endangerment finding is a "rule" for purposes of administrative processes; that does not alter the fact that there is no regulation or regulatory text attached to the endangerment finding itself. Since an endangerment finding does not establish "regulation" within the common meaning of the term applied by EPA, EPA does not believe the CAA compels EPA to apply PSD requirements to a pollutant on the basis of an endangerment finding alone.

EPA's interpretation is also consistent with the Supreme Court's decision in *Massachusetts.* In its decision, the Court acknowledged that EPA "has significant latitude as to the manner, timing, content and coordination" of the regulations that would result from a positive endangerment finding under section 202(a). *See* 549 U.S. at 532. Just as EPA has discretion regarding the timing of the section 202(a) control regulations that would flow from an endangerment finding under that section, it also has some discretion regarding the timing of the triggering of PSD controls that the statute requires based on those section 202(a) regulations. EPA has reasonably determined that PSD controls should not precede any other control requirements. Some commenters cited *Massachusetts* in support of EPA's position.

For the foregoing reasons, EPA affirms that the prerequisite act of making an endangerment finding, a cause or contribute finding, or both, does not make a pollutant "subject to regulation" for the purposes of the PSD program. This interpretation applies to both steps of the endangerment finding—the finding that air pollution may reasonably be anticipated to endanger public health or welfare, and the finding that emissions of an air pollutant from a particular source category causes or contributes to this air pollution—regardless of whether the two findings occur together or separately. As explained above, EPA believes that there are strong legal and policy reasons for rejecting the endangerment finding interpretation.

5. Section 209 Waiver Interpretation

EPA is affirming its position that an Agency decision to grant a waiver to a State under section 209 of the CAA does not make the PSD program applicable to pollutants that may be regulated under State authority following a grant of such a waiver. For the reasons discussed below, the granting of a waiver does not make the pollutants that are regulated by a State after obtaining a section 209 waiver into pollutants regulated under the CAA. Furthermore, EPA is also affirming the position that PSD requirements are not applicable to a pollutant in all States when a handful of States besides the one obtaining the waiver adopt identical standards under section 177 of the CAA that are then approved into State SIPs by EPA.

As explained in the proposal, neither the PSD Interpretive Memo nor the Petition for Reconsideration raise the issue of whether a decision to grant a waiver under the section 209 of the CAA triggers PSD requirements for a pollutant regulated by a State after obtaining a waiver. EPA received comments in response to the notice of an application by California for a CAA section 209 waiver to the State of California to adopt and enforce GHG emission standards for new motor vehicles that suggested that arguments might be made that the grant of the waiver made GHGs subject to regulation

across the country for the purposes of PSD. *See* 74 FR 32744, 32783 (July 8, 2009). Those commenters requested that EPA state clearly that granting the California Waiver did not render GHGs subject to regulation under the CAA, while others commented that the question of when and how GHGs should be addressed in the PSD program or otherwise regulated under the Act should instead be addressed in separate proceedings. At that time, EPA stated that these interpretation issues were not a part of the waiver decision and would be more appropriately addressed in another forum.

In the proposed reconsideration notice, EPA proposed to affirm the following position that EPA previously explained to Congress: "a decision to grant a waiver under section 209 of the Act removes the preemption of State law otherwise imposed by the Act. Such a decision is fundamentally different from the decisions to establish requirements under the CAA that the Agency and the [EAB] have considered in interpreting the provisions governing the applicability of the PSD program." Letter from Lisa P. Jackson, EPA Administrator, to Senator James M. Inhofe (March 17, 2009). Specifically, EPA proposed to find that neither the CAA nor the Agency's PSD regulations make the PSD program applicable to pollutants that may be regulated by States after EPA has granted a waiver of preemption under section 209 of the CAA. Accordingly, EPA said that the Agency's decision to grant a section 209 waiver to the State of California to establish its own GHG emission standards for new motor vehicles does not trigger PSD requirements for GHGs.

Several commenters disagreed with EPA's proposed position on the section 209 waiver provisions, and assert that EPA's granting of the waiver results in "actual control." According to these commenters, even under EPA's interpretation of "subject to regulation," CO_2 is now subject to BACT. One of these commenters argues that EPA's granting of a waiver is an EPA regulatory action that "controls" CO_2 by allowing California and 10 other States to "regulate" CO_2 under the Act. Another one of these commenters states that 10 States used section 177 of the CAA to adopt the California Standards into their SIPs, thus making these provisions enforceable by both EPA and citizens under the CAA. *See, e.g.*, 42 U.S.C. 7413; 42 U.S.C. 7604(a)(1), (f)(3). EPA has not been persuaded to change its proposed position based on these comments.

EPA does not disagree that the regulations promulgated by the State pursuant to the waiver will require control of emissions and thus constitute "regulation" of GHGs under the meaning applied by EPA. However, the principal issue here is whether this regulation occurs under the authority of the Clean Air Act (*i.e.*, "under the Act.").

In the proposed reconsideration notice, EPA explained that a waiver granted under CAA section 209(b)(1) simply removes the prohibition found in section 209(a) that forbids States from adopting or enforcing their own standards relating to control of emissions from new motor vehicles or new motor vehicle engines. Thus, the grant of the waiver does not lead to regulation "under the Act" because it simply allows California to exercise the same authority to adopt and enforce State emissions standards for new motor vehicles that California could have exercised without the initial prohibition in section 209(a). Several other commenters agreed with EPA's position and reasoning. They explained that a waiver constitutes a withdrawal of Federal preemption that allows a State to develop its own State standards to regulate vehicle emissions; the waiver does not transform these State standards into Federal standards. Other supporting commenters also assert that there is nothing in the legislative history that supports a conclusion that Congress intended section 209 waivers to result in application of PSD requirements. The opposing comments have not convincingly articulated a mechanism through which EPA's action granting the waiver in fact requires control of emissions (as opposed to the States action under State law). If EPA granted the waiver alone and the State ultimately decided not to implement its regulation, there would be no control requirement in effect under the CAA.

As explained in the proposed reconsideration notice, EPA also finds it instructive that enforcement of any emission standard by the State after EPA grants a section 209 waiver would occur pursuant to State enforcement authority, not Federal authority. EPA would continue to enforce the Federal emission standards EPA promulgates under section 202. EPA does not enforce the State standard. EPA only conducts testing to determine compliance with the Federal standard promulgated by EPA and any enforcement would be for violation of EPA standards, not the State standards. As one commenter noted, CAA section 209(b)(3) provides that where a State has adopted standards that have been granted a waiver "compliance with such State standards shall be treated as compliance with applicable Federal standards for purposes of this subchapter," but does not say that such State standards actually become the Federal standards. Accordingly, EPA finds the absence of legislative history supporting the contrary position, and the language in section 209(b)(3) instructive as Congress clearly recognized the co-existence of the Federal and State standards. This shows Congress did not intend that State regulations replace, or transform State standards into Federal regulations "under the Act." EPA agrees with supporting commenters' conclusions summarized here, and is not persuaded to change the proposed position.

EPA has also concluded that the adoption of identical standards by several States under section 177 does not make a pollutant covered by those standards "subject to regulation under the Act" in all States. Like section 209, section 177 only grants States authority to regulate under State authority by removing Federal preemption. Adoption of California standards by other States does not change the fact that those standards are still State standards enforced under State law and Federal law is approved in a SIP. However, EPA agrees that when a State adopts alternate vehicle standards into its SIP pursuant to section 177, and EPA approves the SIP, these standards become enforceable by EPA and citizens under the CAA. Nonetheless, EPA does not agree that this compels an interpretation that any pollutant included in an individual State SIP requirement becomes "subject to regulation" in all States under the CAA. As discussed earlier, EPA rejects the theory that a regulation of a pollutant in one or more States in an EPA-approved implementation plan necessarily makes that pollutant subject to regulation in all States. Such an approach is inconsistent with the fundamental principle of cooperative federalism embodied in the CAA.

In summary, EPA concludes that neither the act of granting a section 209 waiver of preemption for State emission standards nor the EPA-approval of standards adopted into a SIP pursuant to section 177 makes a pollutant "subject to regulation under the Act" in all States for the purposes of the PSD program.

C. Other Issues on Which EPA Solicited Comment

1. Prospective Codification of Interpretation

Through the proposed reconsideration notice, EPA requested comment on whether the Agency should codify its final interpretation of the "subject to regulation" in the statute and regulation

by amending the Federal PSD rules at 40 CFR 52.21. EPA received a number of comments both in support of and opposing codification.

EPA does not believe it is necessary to codify its interpretation in the regulatory text. EPA feels it is important to promptly communicate and apply these final decisions regarding the applicability of the PSD program in light of recent and upcoming actions related to GHGs. More specifically, EPA recently finalized the "Mandatory Reporting of Greenhouse Gases" rule (known as the "Reporting Rule"),[12] which added monitoring requirements for additional GHGs not covered in the Part 75 regulations. Further, EPA is poised to finalize by the end of March 2010 the LDV Rule that will establish controls on GHGs that take effect in Model Year 2012, which starts as early as January 2, 2011. Thus, these actions make it important that EPA immediately apply its final interpretation of the PSD regulations on this issue (as refined in this action). Furthermore, even if EPA modified the text of the Federal rules, many States may continue to proceed under an interpretation of their rules. EPA thus believes overall implementation of PSD permitting programs is facilitated by this notice that describes how existing requirements in Federal regulations at 40 CFR 52.21 are interpreted by EPA and how similar State provisions may be interpreted by States.

Likewise, EPA does not believe it is necessary to re-issue the PSD Interpretive Memorandum. The Agency has not identified any legal requirement for the Agency to re-issue an interpretive rule after a process of reconsideration. No comparable procedure is required after the reconsideration of substantive rule. In the latter situation, a notice of final action is sufficient to conclude the reconsideration process and an Agency may simply decline to revise an existing regulation that remains in effect. EPA has therefore concluded that this notice of final action is sufficient to conclude the reconsideration process initiated on February 17, 2009 and that there is no need to re-issue the entire memorandum in order for EPA to continue applying the interpretation reflected therein, as refined in this notice.

2. Section 821 of the Clean Air Act Amendments of 1990

In the October 7, 2009 notice, EPA also solicited comment on the question of whether section 821 of the Clean Air Act Amendments of 1990 is part of the Clean Air Act. EPA indicated that the Agency was inclined against continuing to argue that section 821 was not a part of the CAA, as the Office of Air and Radiation and Region 8 had done in briefs submitted to the EAB in the *Deseret* matter. This question bears on the determination of whether the CO_2 monitoring requirements in EPA's Part 75 regulations are requirements "under the Act." In the proposed reconsideration notice, EPA explained that it would be necessary to resolve whether or not the CO_2 monitoring and reporting regulations in Part 75 were promulgated "under the Act" if EPA adopted the monitoring and reporting interpretation. EPA received public comments on both sides of this issue, with one environmental organization pressing EPA to drop the position that section 821 is not a part of the CAA and several industry parties requesting that EPA affirm it.

EPA has not yet made a final decision on this question, and it is not necessary for the Agency to do so at this time. Since EPA is not adopting the monitoring and reporting interpretation, the status of section 821 is not material to the question of whether and when CO_2 is "subject to regulation under the Act." Because there are currently no controls on CO_2 emissions, the pollutant is not "subject to regulation." Given that the provisions in Part 75 do not "regulate" emissions of CO_2, it is unnecessary determine whether such provisions are "under the Act" or not to determine PSD applicability. Furthermore, the promulgation of EPA's Reporting Rule makes this issue even less material. In that rule, which became effective in December 2009 and required monitoring to begin in January of this year, EPA established monitoring and reporting requirements for CO_2 and other GHGs under sections 114 and 208 of the CAA. Thus, there can be no dispute that monitoring and reporting of CO_2 (as well as other GHGs) is now occurring under the CAA, regardless of the status of section 821 of the 1990 amendments. At this point, the section 821 issue would only become relevant if a court were to find that the monitoring and reporting interpretation is compelled by the CAA and a party subsequently seeks to retroactively enforce such a finding against sources that had not obtained a PSD permit with any limit on CO_2 emissions. If this situation were to arise, EPA will address the section 821 issue as necessary.

3. Timing of When a Pollutant Becomes Subject to Regulation

The October 7, 2009 notice also solicited comment on whether the interpretation of "subject to regulation" should also more clearly identify the specific date on which PSD regulatory requirements would apply. In the PSD Interpretive Memo, EPA states that the language in the definition of "regulated NSR pollutant" should be interpreted to mean that the fourth part of the definition should "apply to a pollutant upon promulgation of a regulation that requires actual control of emissions." *See* Memo at 14. After evaluating the underlying statutory requirement in the CAA and the language in all parts of the regulatory definition more closely, EPA proposed to modify its interpretation of the fourth part of the definition with respect to the timing of PSD applicability. The Agency proposed to interpret the term "subject to regulation" in the statute and regulation to mean that PSD requirements apply when the regulations addressing a particular pollutant become final and effective.

Based on public comments and other considerations raised in the proposal, EPA has determined that it is necessary to refine the portion of the PSD Interpretive Memo that addresses the precise point in time when a pollutant becomes subject to regulation for purposes of the PSD program. As a result, while the Memo is otherwise unchanged by the reconsideration proceeding, this final notice will adjust the first paragraph of section II.F of the Memo (bottom of page 14) to reflect EPA's conclusion that it is more appropriate and consistent with the reasoning of the Memo to construe EPA regulations and the CAA to make a pollutant subject to PSD program requirements when the first controls on a pollutant take effect. This refines the approach proposed in the October 7, 2009 notice.

Like the PSD Interpretive Memorandum itself, the refinement to EPA's interpretation described in this final notice is an interpretation of the regulation at 40 CFR 52.21 and the CAA provisions that provide the statutory foundation for EPA's regulations. The refinement reflected in this notice explains, clarifies, and is consistent with existing statutes and the text of regulatory provisions at 40 CFR 52.21(b)(50)(ii) through (iv). Some commenters argued that courts have limited an Agency's ability to fundamentally change a long-standing, definitive, and authoritative interpretation of a regulation[13] without

[12] *See* 74 FR 56259 (Oct. 30, 2009).

[13] To EPA's knowledge, no court has required a rulemaking procedure when the Agency seeks to issue or change its interpretation of a statute. Nevertheless, EPA has completed this notice and comment proceeding before deciding to adopt the

Continued

engaging in a notice and comment rulemaking. *See, e.g., Alaska Professional Hunters Association* v. *FAA,* 177 F.3d 1030, 1033–34 (D.C. Cir. 1999); *Paralyzed Veterans of America* v. *D.C. Arena L.P.,* 117 F.3d 579, 586 (D.C. Cir. 1997). Since EPA's interpretation of the PSD program regulations is unchanged in most respects by this action, it is not clear that the particular refinement to that interpretation that EPA is making in this action would invoke the doctrine described in these cases. Even if this refinement is viewed as a fundamental change, EPA has completed the revision reflected in this action after a notice and comment process. Furthermore, since EPA initiated a process of reconsidering and soliciting comment on the PSD Interpretive Memo within three months of its issuance, the memorandum had not yet become particularly well-established or long-standing. *See MetWest Inc.* v. *Secretary of Labor,* 560 F.3d 506, 511 n.4 (D.C. Cir. 2009). Thus, the doctrines reflected in these cases do not preclude the action EPA has taken here to refine its interpretation of the regulations.

The regulatory language of 40 CFR 52.21(b)(50)(iv) does not specify the exact time at which the PSD requirements should apply to pollutants in the fourth category of the definition of "regulated NSR pollutant." In the PSD Interpretive Memo, EPA states that EPA interprets the language in this definition to mean that the fourth part of the definition should "apply to a pollutant upon promulgation of a regulation that requires actual control of emissions." *See* Memo at 14. However, after continuing to consider the underlying statutory requirement in the CAA and the language in all parts of the regulatory definition more closely, EPA proposed in the October 7, 2009 notice to modify its interpretation of the fourth part of the definition with respect to the timing of PSD applicability. In the proposed notice of reconsideration, EPA observed that the term "subject to regulation" in the statute and regulation is most naturally interpreted to mean that PSD requirements apply when the regulations addressing a particular pollutant become final and effective. In addition, EPA expressed a desire to harmonize the application of the PSD requirements with the limitation in the Congressional Review Act (CRA) that a major rule cannot take effect until 60 days after it is published in the **Federal Register.**

In this final notice on reconsideration, based on information provided in public comments, EPA is refining its interpretation of the time the PSD requirements will apply to a newly-regulated pollutant. Under the PSD program, EPA will henceforth interpret the date that a pollutant becomes subject to regulation under the Act to be the point in time when a control or restriction that functions to limit pollutant emissions takes effect or becomes operative to control or restrict the regulated activity. As discussed further below, this date may vary depending on the nature of the first regulatory requirement that applies to control or restrict emissions of a pollutant.

Several public comments observed that a date a control requirement becomes "final and effective" and the date it actually "takes effect" may differ. Some commenters supported these points with reference to Federal court decisions that suggest the date that the terms of a regulation become effective can take more than one form. In one case involving the Congressional Review Act, the United States Court of Appeals for the Federal Circuit observed that the date a regulation may "take effect" in accordance with the CRA is distinct from the "effective date" of the regulation. *See Liesegang* v. *Sec'y of Veterans Affairs,* 312 F.3d 1368, 1374–75 (Fed. Cir. 2002), *amended on reh'g in part on other grounds,* 65 Fed. Appx. 717 (Fed. Cir. 2003). In this opinion, the court observed that "[t]he ordinary meaning of 'take effect' is '[t]o be in force; go into operation'" *Id.* at 1375 (quoting Black's Law Dictionary at 1466 (7th ed. 1999). Based on this, the court reasoned that the CRA does not "change the date on which the regulation becomes effective" but rather "only affects the date when the rule becomes operative." *Id.* In another case, the Second Circuit Court of Appeals described a distinction between the date a rule may "take effect" under the CRA, the "effective date" for application of the rule to regulated manufacturers, and the "effective date" for purposes of modifying the Code of Federal Regulations. *See Natural Resources Defense Council* v. *Abraham,* 355 F.3d 179, 202 (2d Cir. 2004).

The Office of the Federal Register (OFR) uses the term "effective date" to describe the date that amendments in a rulemaking document affect the current Code of Federal Regulations. *See* **Federal Register** Document Drafting Handbook, at p. 2–10 (Oct. 10, 1998). However, OFR draws a contrast between such a date and the compliance or applicability date of a rule, which is described as "the date that the affected person must start following the rule." *Id.* at 2–11. Thus, the "effective date" of a regulation is commonly used to describe the date by which a provision in the Code of Federal Regulations is enacted as law, but it is not necessarily the same as the time when provision enacted in the Code of Federal Regulations is operative on the regulated activity or entity. The latter may be described as the "compliance," "applicability," or "takes effect" date.

The terms of the CAA also recognize a similar distinction in some instances. CAA section 112(i)(3)(A) provides that "after the effective date of any emissions standard, limitation or regulation promulgated under this section and applicable to a source, no person may operate such source in violation of such standard, limitation, or regulation except, in the case of an existing source, the Administrator shall establish a compliance date or dates for each category or subcategory of existing sources, which shall provide for compliance as expeditiously as practicable, but in no event later than 3 years after the effective date of such standard." Another example in section 202 of the Act is discussed in more detail below.

Another formulation may be found in Section 553(c) of the APA (5 U.S.C. 553(c)), which provides, with some exceptions, that "[t]he required publication or service of a substantive rule shall be made not less than 30 days before its effective date." The APA does not define the term "effective date" or make precisely clear whether it is referring to the date a regulation has the force of law or the date by which a regulatory requirement applies to a regulated entity or activity. The APA also separately recognizes the concept of finality of Agency action for purposes of judicial review. *See* 5 U.S.C. 704.

In the October 7, 2009 notice, EPA did not clearly distinguish between the various forms of the date when a regulatory requirement may become effective. One commenter observed that the EPA analysis in the proposed reconsideration notice appeared to blur the distinction between the "effective date" set by EPA and the date that Congress allows a regulation to become effective under the CRA. EPA in fact discussed all of these concepts in its notice, with part of the discussion focused on the date a regulation becomes "final" and "effective" and a part on when a regulation may "take effect" under the CRA. EPA viewed these forms of the date when a regulation becomes "effective" to be essentially the same, but the case law

revised interpretation of the CAA described in this notice.

suggests that administrative agencies do not necessarily need to harmonize the date that regulatory requirements take effect with the "effective date" of a regulation, meaning the date a regulation has the force of law and amends the Code of Federal Regulations. Since these are distinct concepts, the effective date of a regulation for purposes of amending the CFR may precede the date when a regulatory requirement "takes effect" or when a regulated entity must comply with a regulatory requirement. A regulation may "take effect" subsequent to its stated "effective date" where it has been published in final form but does not require immediate implementation by the agency or compliance by regulated entities.

The key issue raised by EPA in the October 7, 2009 notice was determining which date should be determined by EPA to be the date when a pollutant becomes "subject to regulation" and, thus, the date when the requirements of the PSD permitting program apply to that pollutant. In recognition of the distinction between the "effective date" of the regulation for purposes of amending the CFR and the point at which a regulatory restriction may "take effect," EPA has considered whether it is permissible to construe sections 165(a)(4) and 169(3) of the CAA to mean that a pollutant becomes "subject to regulation" at the point that a regulatory restriction or control "takes effect." In the October notice, EPA observed that the use of "subject to" in the Act suggests that PSD requirements are intended to be triggered when those standards become effective for the pollutant. EPA also said that no party is required to comply with a regulation until it has become final and effective. Prior to that date, an activity covered by a rule is not in the ordinary sense "subject to" any regulation. Regardless of whether one interprets regulation to mean monitoring or actual control of emissions, prior to the effective date of a rule there is no regulatory requirement to monitor or control emissions.

The same reasoning applies to the date that a regulation "takes effect," as that term is used in the judicial decisions described above. Regulated entities are not required to comply with a regulatory requirement until it takes effect. Prior to the date a regulatory requirement takes effect, the activity covered by a rule is not in the ordinary sense subject to any regulation.

As discussed in the PSD Interpretive Memo, as used in the context of the PSD provisions in EPA regulations and the CAA, EPA interprets the term "regulation" in the context of sections 165(a)(4) and 169 of the CAA to mean the act or process of controlling or restricting an activity. This interpretation applies a common meaning of the term regulation reflected in dictionaries.

Thus, EPA agrees with commenters that the term "subject to regulation" used in both the CAA and EPA's regulations may be construed to mean the point at which a requirement to control a pollutant takes effect. The CAA does not necessarily preclude construing a pollutant to become subject to regulation upon the promulgation date or the date that a regulation becomes final and effective for purposes of amending the CFR or judicial review. However, EPA has been persuaded by public comments that the phrase "subject to regulation" may also be interpreted to mean the date by which a control requirement takes effect.

Indeed, EPA has concluded that the latter interpretation is more consistent with the actual control interpretation reflected in the PSD Interpretive Memo. As one commenter observed, a regulation would have to have become actually effective, in the sense that actual legal obligations created by the regulation have become currently applicable for regulated entities and are no longer merely prospective obligations, before that regulation could make a pollutant subject to actual control. Another commenter noted that a regulated entity has no immediate compliance obligations and cannot be held in violation of the regulation until a legal obligation becomes applicable to them on the "takes effect" date. Thus, based on this reasoning, EPA has decided that it will construe the point at which a pollutant becomes "subject to regulation" within the meaning of section 52.21(b)(50)(iv) of EPA's regulations to be when a control or restriction is operative on the activity regulated. EPA agrees with commenters that there is generally no legally enforceable obligation to control a pollutant when a regulation is promulgated or, in some instances, even when a regulation becomes effective for some purposes.

Thus, EPA currently interprets the time that a pollutant becomes a "regulated NSR pollutant" under section 52.21(b)(50)(iv) to be the time when a control or restriction on emissions of the pollutant takes effect or becomes operative on the regulated activity. Given EPA's conclusion that this is a permissible interpretation of the "subject to regulation" language in sections 165(a)(4) and 169(3) of the CAA, EPA will also interpret other parts of section 52.21(b)(50) to make a pollutant a regulated NSR pollutant on the date that a control requirement takes effect, provided such an interpretation is not inconsistent with the existing language of the regulations.

EPA does not agree with several commenters who suggested that EPA determine that a pollutant does not become subject to regulation until the time that an individual source engages in the regulated activity. EPA does not believe such a reading is consistent with the "subject to regulation" language in the CAA. Even if no source is actually engaged in the activity, once a standard or control requirement has taken effect, no source may engage in the regulated activity without complying with the standard. At this point, the regulated activity and the emissions from that activity are controlled or restricted, thus being subject to regulation within the common meaning of the term regulation used in EPA's regulations and section 165(a)(4) and 169(3) of the CAA.

Likewise, EPA does not agree with commenters who argued that a pollutant does not become subject to regulation until the date when a source must certify compliance with regulatory requirements or submit a compliance report. In some instances, a compliance report or certification of compliance may not be required until well after the point that a regulation operates to control or restrict the regulated activity. Thus, EPA does not feel that it would be appropriate as a general rule to establish the date when a source certifies compliance or submits its compliance report as the date that a pollutant becomes subject to regulation.

Since the fourth part of the definition of "regulated NSR pollutant" functions as a catch-all provision, it may cover a variety of different types of control requirements established by EPA under the CAA. These different types of regulations may contain a variety of different mechanisms for controlling emissions and have varying amounts of lead time before controls take effect under the particular regulatory framework. Thus, whenever the Agency adopts controls on a new pollutant under a portion of the CAA covered by the fourth part of the definition, EPA anticipates that it will be helpful to States and regulated sources for EPA to identify the date when a new pollutant becomes subject to regulation. In section IV.A of this notice, EPA provides such an analysis for the forthcoming LDV Rule that is anticipated to establish the first controls on GHGs.

EPA has also concluded that it is appropriate to extend the reasoning of this interpretation across all parts of the definition of the term "regulated NSR

pollutant." The reasoning described above is equally applicable to the regulation of additional pollutants under the specific sections of the Act delineated in the first three parts of the definition of "regulated NSR pollutant." While the date a control requirement may take effect could vary across sections 109, section 111, and Title VI, EPA does not see any distinction in the applicability of the legal reasoning above to these provisions of the CAA. There should be less variability among rules promulgated under the same statutory section, so EPA does not expect that it will be necessary for EPA to identify the date that a new pollutant becomes subject to regulation each time EPA regulates a new pollutant in a NAAQS or NSPS. EPA can more readily identify the specific dates when controls under such rules take effect.

By way of example, the NSPS under section 111 of the Act preclude operation of a new source in violation of such a standard after the effective date of the standard. *See* 42 U.S.C. 7411(e). Thus, the control requirements in an NSPS take effect on the effective date of the rule. Once such a standard takes effect and operates to preclude operations in violation of the standards, then EPA interprets the statute and EPA's PSD regulations to also require that the BACT requirement apply to a pollutant that is subject to NSPS. Consistent with the October 7, 2009 proposal, EPA has determined that the existing language in section 52.21(b)(50)(ii) of its regulations may be construed to apply to a new pollutant upon the effective date of an NSPS. This part of the definition covers "[a]ny pollutant that is subject to any standard promulgated under section 111 of the Act." *See* 40 CFR 52.21(b)(50)(ii). While the word "promulgated" appears in this part of the definition, this term modifies the term "standard" and does not directly address the timing of PSD requirements. Under the language in this part of the definition, the PSD requirements apply when a pollutant becomes "subject to" the underlying standard, which is "promulgated under" section 111 of the Act. Thus, this language can be interpreted to make an NSPS pollutant a regulated NSR pollutant upon the effective date of an NSPS. EPA did not receive any public comments that opposed reading this portion of the definition to invoke PSD requirements upon the effective date of an NSPS. This can logically be extended to be consistent with the general view described above that the time a pollutant becomes subject to regulation is the time when a control requirement "takes effect." As discussed above, the effective date of an NSPS is also that date when the controls in an NSPS "take effect."

Likewise, under section 169(a)(3) of the Act, a source applying for a PSD permit must demonstrate that it will not cause or contribute to a violation of the NAAQS in order to obtain the permit. Once a NAAQS is effective with respect to a pollutant, the standard operates through section 169(a)(3) of the Act and section 52.21(k) of EPA's regulations to preclude construction of a new source that would cause or contribute to a violation of such standard.

Using the effective date of a NAAQS to determine when a pollutant covered by a NAAQS becomes a regulated NSR pollutant is more consistent with EPA's general approach for determining when a new NAAQS applies to pending permit applications. EPA generally interprets a revised NAAQS that establishes either a lower level for the standard or a new averaging time for a pollutant already regulated to apply upon the effective date of the revised NAAQS. Thus, unless EPA promulgates a grandfathering provision that allows pending applications to apply standards in effect when the application is complete, a final permit decision issued after the effective date of a NAAQS must consider such a NAAQS. As described above, the effective date of the NAAQS is also the date a NAAQS takes effect through the PSD permitting program to regulate construction of a new or modified source.

Since a NAAQS covering a new pollutant would operate through the PSD permitting program to control emissions of that pollutant from the construction or modification of a major source upon the effective date of the NAAQS, a NAAQS covering a new pollutant takes effect on the effective date of the regulation promulgating the NAAQS. EPA does not agree with one commenter's suggestion that such a NAAQS would not take effect until the time a State first promulgates limitations for the pollutant in a SIP. Under section 165(a)(3) of the Act and the Federal PSD permitting regulations at 52.21(k), to obtain a PSD permit, a major source must demonstrate that the proposed construction will not cause or contribute to a violation of a NAAQS. Due to these requirements, the PSD program operates to incorporate the NAAQS as a governing standard for permitting construction of large sources. Thus, under the Federal PSD program regulations at least, a new pollutant covered by a NAAQS becomes subject to regulation at a much earlier date. These PSD provisions require emissions limitations for the NAAQS pollutant before construction at a major source may commence and thereby function to protect the NAAQS from new source construction and modifications of existing major sources in the SIP development period before a completion of the planning process necessary to determine whether additional standards for a new NAAQS pollutant need to be developed. The timing when the NAAQS operates in this manner under SIP-approved programs is potentially more nuanced and depends on whether State laws are sufficiently open-ended to call for application of a new NAAQS as a governing standard for PSD permits upon the effective date. EPA believes that State laws that use the same language as in EPA's PSD program regulations at 52.21(k) and 51.166(k) are sufficiently open-ended and allow such a NAAQS to "take effect" through the PSD program upon the effective date of the NAAQS. Notwithstanding this complexity in SIP-approved programs, the applicability of the Federal PSD program regulations to a new NAAQS pollutant upon the effective date of the NAAQS is sufficient to determine that a new pollutant is subject to regulation on this date.

In the October 7, 2009 notice, EPA observed that one portion of its existing regulations was not necessarily consistent with this reading of the CAA. For the first class of pollutants described in the definition of "regulated NSR pollutant," the PSD requirements apply once a "standard has been promulgated" for a pollutant or its precursors. *See* 40 CFR 52.21(b)(50)(i). The use of "has been" in the regulation indicates that a pollutant becomes a "regulated NSR pollutant," and hence PSD requirements for the pollutant are triggered, on the date a NAAQS is promulgated. Thus, EPA observed in the October 7, 2009 notice that it may not be possible for EPA to read the regulatory language in this provision to make PSD applicable to a NAAQS pollutant upon the effective date of the NAAQS. EPA did not propose to modify the language in 40 CFR 52.21(b)(50)(i) in the October 2009 notice because EPA had not yet reached a final decision to interpret the CAA to mean that a pollutant is subject to regulation on the date a regulatory requirement becomes effective. Since EPA was not proposing to establish a NAAQS for any additional pollutants, the timing of PSD applicability for a newly identified NAAQS pollutant did not appear to be of concern at the time. No public comments on the October 2009 notice addressed this issue. Since EPA is now

adopting a variation of the proposed interpretation with respect to the timing of PSD applicability, EPA believes it will be appropriate to propose a revision of the regulatory language in section 52.21(b)(50)(i) at such time as EPA may consider promulgation of a NAAQS for an additional pollutant. Until that time, EPA will continue to apply the terms of section 52.21(b)(50)(i) of the regulation. This is permissible because, even though EPA believes the better reading of the Act is to apply PSD upon the date that a control requirement "takes effect," the Agency has not determined in this action that the CAA precludes applying PSD requirements upon the promulgation of a regulation that establishes a control requirement (as a NAAQS does through the PSD provisions).

IV. Application of PSD Interpretive Memo to PSD Permitting for GHGs

A. Date by Which GHGs Will Be "Subject to Regulation"

Although the PSD Interpretive Memo and this reconsideration reflect a broad consideration of the most appropriate legal interpretation and policy for all pollutants regulated under the CAA, the need to clarify this issue as a general matter has been driven by concerns over the effects of GHG emissions on global climate and the contention made by some parties in permit proceedings that EPA began regulating CO_2 as early as the promulgation of monitoring and reporting requirements in EPA's Part 75 rules to implement section 821 of the CAA Amendments of 1990. The vast majority of public comments on the October 7, 2009 notice focused on the regulation of GHGs under the PSD program. As a result, EPA recognizes that it is critically important at this time for the Agency to make clear when the requirements of the PSD permitting program for stationary sources will apply to GHGs. For the reasons discussed below, GHGs will initially become "subject to regulation" under the CAA on January 2, 2011, assuming that EPA issues final GHG emissions standards under section 202(a) applicable to model year 2012 new motor vehicles as proposed. As a result, with that assumption, the PSD permitting program would apply to GHGs on that date. However, the Tailoring Rule, noted above, proposed various options for phasing in PSD requirements for sources emitting GHGs in various amounts above 100 or 250 tons per year. Since EPA has not yet completed that rulemaking, today's action concludes only that, under the approach envisioned for the vehicle standards, GHGs would not be considered "subject to regulation" (and no source would be subject to PSD permitting requirements for GHGs) earlier than January 2, 2011. The final Tailoring Rule will address the applicability of PSD requirements for GHG-emitting sources that are not presently subject to PSD permitting.

EPA's determination that PSD will begin to apply to GHGs on January 2, 2011 is based on the following considerations: (1) The overall interpretation reflected in the PSD Interpretive Memo; (2) EPA's conclusion in this notice that a pollutant becomes subject to regulation when controls "take effect," and (3) the assumption that the agency will establish emissions standards for model year 2012 vehicles when it completes the proposed LDV Rule.

As proposed, the LDV Rule consists of two kinds of standards—fleet average standards determined by the emissions performance of a manufacturer's fleet of various models, and separate vehicle standards that apply for the useful life of a vehicle to the various models that make up the manufacturer's fleet. CAA section 203(a)(1) prohibits manufacturers from introducing a new motor vehicle into commerce unless the vehicle is covered by an EPA-issued certificate of conformity for the appropriate model year. Section 206(a)(1) of the CAA describes the requirements for EPA issuance of a certificate of conformity, based on a demonstration of compliance with the emission standards established by EPA under section 202 of the Act. A certification demonstration requires emission testing, and must be done for each model year.

The certificate covers both fleet average and vehicle standards, and the manufacturer has to demonstrate compliance with both of these standards for purposes of receiving a certificate of conformity. The demonstration for the fleet average is based on a projection of sales for the model year, and the demonstration for the vehicle standard is based on emissions testing and other information.

Both the fleet average and vehicle standards in the LDV Rule will require that automakers control or limit GHG emissions from the tailpipes of these vehicles. As such, they clearly constitute "regulation" of GHGs under the interpretation in the PSD Interpretive Memo. This view is consistent with the position originally expressed by EPA in 1978 that a pollutant regulated in a Title II regulation is a pollutant subject to regulation. *See* 42 FR at 57481. However, the regulation of GHGs will not actually take effect upon promulgation of the LDV Rule or on the effective date of the LDV Rule when the provisions of the rule are incorporated into the Code of Federal Regulations.

Under the LDV Rule, the standards for GHG emissions are not operative until the 2012 model year, which may begin as early as January 2, 2011. In accordance with the requirements of Title II of the CAA and associated regulations, vehicle manufacturers may not introduce a model year 2012 vehicle into commerce without a model year 2012 certificate of conformity. *See* CAA section 203(a)(1). A model year 2012 certificate only applies to vehicles produced during that model year, and the model year production period may begin no earlier than January 2, 2011. *See* CAA section 202(b)(3)(A) and implementing regulations at 40 CFR 85.2302 through 85.2305. Thus, a vehicle manufacturer may not introduce a model year 2012 vehicle into commerce prior to January 2, 2011.

There will be no controls or limitations on GHG emissions from model year 2011 vehicles. The obligation on an automaker for a model year 2012 vehicle would be to have a certificate of conformity showing compliance with the emissions standards for GHGs when the vehicle is introduced into commerce, which can occur on or after January 2, 2011. Therefore, the controls on GHG emissions in the Light Duty Rule will not take effect until the first date when a 2012 model year vehicle may be introduced into commerce. In other words, the compliance obligation under the LDV Rule does not occur until a manufacturer may introduce into commerce vehicles that are required to comply with GHG standards, which will begin with MY 2012 and will not occur before January 2, 2011. Since CAA section 203(a)(1) prohibits manufacturers from introducing a new motor vehicle into commerce unless the vehicle is covered by an EPA-issued certificate of conformity for the appropriate model year, as of January 2, 2011, manufacturers will be precluded from introducing into commerce any model year 2012 vehicle that has not been certified to meet the applicable standards for GHGs.

This interpretation of when the GHG controls in the LDV Rule take effect, and therefore, make GHGs subject to regulation under the Act for PSD purposes, is consistent with the statutory language in section 202(a)(2) of the CAA. This section provides that "any regulation prescribed under paragraph (1) of this subsection (and

any revision thereof) shall *take effect* after such period as the Administrator finds necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period." *See* 42 U.S.C. 7521(a)(2) (emphasis added). The final LDV Rule will apply to model years 2012 through 2016. The time leading up to the introduction of model year 2012 is the time that EPA "finds necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period." Model year 2012 is therefore when the GHG standards in the rule "take effect."

EPA does not agree with several commenters who have suggested that the GHG standards in the proposed LDV Rule would not take effect until October 1, 2011. The latter date appears to be based on how the National Highway Traffic Safety Administration (NHTSA) determines the beginning of the 2012 model year under the Energy Policy and Conservation Act (EPCA). Under EPCA, a more stringent CAFE standard must be prescribed by NHTSA at least 18 months before the beginning of the model year. For purposes of this EPCA provision, NHTSA has historically construed the beginning of the model year to be October 1 of the preceding calendar year. *See* 49 U.S.C. 32902(g)(2); 74 FR 49454, 49644 n.447 (Sep. 28, 2009). Although EPA has endeavored to harmonize its section 202(a) standards with the NHTSA CAFE standards, EPA's standards are promulgated under distinct legal authority in the CAA. Thus, the section 202(a) standards promulgated in the LDV Rule are not subject to EPCA or NHTSA's interpretation of when a model year begins for purposes of EPCA. Under EPA's planned LDV Rule, model year 2012 vehicles may be introduced into commerce as early as January 2, 2011. Although as a practical matter, some U.S. automakers may not begin introducing model year 2012 vehicles into commerce until later in 2011, they may nevertheless do so as early as January 2, 2011 under EPA's regulations. Consistent with the discussion above, EPA construes the phrase "subject to regulation" in section 165(a)(4) and 169(3) of the Act to mean that the BACT requirement applies when controls on a pollutant first apply to a regulated activity, and not the point at which an entity first engages in the regulated activity. In this instance, the regulated activity is the introduction of model year 2012 vehicles into commerce. As of January 2, 2011, a manufacturer may not engage in this activity without complying with the applicable GHG standards.

Likewise, EPA does not agree with commenters who argued that EPA should not consider the GHG controls in the LDV Rule to take effect until automakers have to demonstrate compliance with the fleet average standards at the end of the model year, based on actual vehicle model production. As discussed above, the LDV Rule includes both fleet average standards and vehicle standards that apply to individual vehicles throughout their useful lives. As discussed above, both of these standards for GHG emissions are operative on model year 2012 vehicles introduced into commerce on or after January 2, 2011. Thus, controls on GHG emissions from automobiles will take effect prior to the date that a manufacturer must demonstrate compliance with the fleet average standards. The fact that the manufacturer demonstrates final compliance with the fleet average at a later date, based on production for the entire year, does not change the fact that their conduct was controlled by both the fleet average and the vehicle standards, and subject to regulation, prior to that date.

B. Implementation Concerns

A substantial number of commenters requested that EPA defer application of the PSD program requirements to GHGs based on various practical implementation considerations, and several of these comments argued that the CAA affords EPA the discretion to set an implementation date based on such concerns. EPA agrees that application of PSD program requirements to GHGs presents several significant implementation challenges for EPA, States and other entities that issue permits, and the sources that must obtain permits. Indeed, many of the public comments have illustrated the magnitude of the challenge beyond what is described in the proposed notice on reconsideration of the PSD Interpretive Memo and the proposed Tailoring Rule.

In recognition of the substantial challenges associated with incorporating GHGs into the PSD program, EPA's preference would be to establish a specific date when the PSD permitting requirements initially apply to GHGs based solely on these practical implementation considerations. However, EPA has not been persuaded that it has the authority to proceed in this manner. While EPA may have discretion as to the manner and time for regulating GHG emissions under the CAA, once EPA has determined to regulate a pollutant in some form under the Act and such regulation is operative on the regulated activity, the terms of the Act make clear that the PSD program is automatically applicable.

Nonetheless, given the substantial magnitude of the PSD implementation challenges presented by the regulation of GHGs, EPA proposed in the Tailoring Rule to at least temporarily limit the scope of GHG sources covered by the PSD program to ensure that permitting authorities can effectively implement it. EPA based the proposal primarily on two legal doctrines: The "absurd results" doctrine, which EPA proposed to apply on the basis that Congress did not envision that the PSD program would apply to the many small sources that emit GHGs; and the "administrative necessity" doctrine, which EPA proposed to apply because of the extremely large administrative burdens that permitting authorities would confront in permitting the GHG sources. In comment on that action, as well as in comments on the PSD Interpretive Memo reconsideration proposal, EPA received numerous suggestions that it is necessary to limit the scope of sources covered at the time GHGs become subject to regulation. Commenters further stated that it is necessary to select a "trigger date" for GHG permitting that takes into account the time needed for permitting authorities to adopt any scope-limiting measures (including the need to amend State law), to secure the necessary additional financial and other resources, and to hire and train the staff needed to respond to the increase in permitting workload. These comments make clear that more time will be needed beyond January 2, 2011 before permitting of many GHG stationary sources can begin. Thus, EPA will be taking additional action in the near future in the context of the Tailoring Rule to address GHG-specific circumstances that will exist beyond January 2, 2011.

C. Interim EPA Policy To Mitigate Concerns Regarding GHG Emissions From Construction or Modification of Large Stationary Sources

While EPA has concluded that GHGs will not become subject to regulation (and hence the PSD BACT requirement will not apply to them) earlier than January 2, 2011, permitting authorities that issue permits before January 2, 2011 are already in a position to, and should, use the discretion currently available under the BACT provisions of the PSD program to promote technology choices for control of criteria pollutants that will also facilitate the reduction of GHG emissions. More specifically, the CAA

BACT definition requires permitting authorities selecting BACT to consider the reductions available through application of not only control methods, systems, and techniques, but also through production processes, and requires them to take into account energy, environmental, and economic impacts. Thus, the statute expresses the need for a comprehensive review of available pollution control methods when evaluating BACT that clearly requires consideration of energy efficiency. The consideration of energy efficiency is important because it contributes to reduction of pollutants to which the PSD requirements currently apply and have historically been applied. Further, although BACT does not now apply to GHG, BACT for other pollutants can, through application of more efficient production processes, indirectly result in lower GHG emissions.

Neither the statute nor EPA regulations specify precisely how to address energy efficiency in BACT determinations, nor has EPA fully articulated how to take climate considerations into account under the "energy, environmental, and economic impacts" considerations of BACT. Further, while EPA's BACT guidance for currently regulated pollutants has addressed some facets of these issues, EPA believes that, given the potential importance of the indirect GHG benefits, it will be useful for EPA to summarize this guidance and further clarify it as necessary in order to further illustrate where PSD permitting authorities should be using existing BACT authority for pollutants that are presently regulated in ways that can indirectly address concerns about GHG emissions from large stationary sources. EPA is developing such guidance and plans to issue it in the near future.

D. Transition for Pending Permit Applications

Some commenters requested that EPA address the question of how the application of PSD requirements to GHGs will affect applications for PSD permits that are pending on the date GHGs initially become "subject to regulation." These commenters generally asked that EPA establish an exclusion for any PSD permit application that was submitted in complete form before the date on which PSD begins to apply to GHGs.

In light of EPA's conclusion that pollutants become subject to regulation for PSD purposes when control requirements on that pollutant take effect and that such requirements will not take effect for GHGs until January 2, 2011 if EPA finalizes the proposed LDV Rule as anticipated, EPA does not see any grounds to establish a transition period for permit applications that are pending before GHGs become subject to regulation. As a general matter, permitting and licensing decisions of regulatory agencies must reflect the law in effect at the time the agency makes a final determination on a pending application. *See Ziffrin* v. *United States,* 318 U.S. 73, 78 (1943); *State of Alabama* v. *EPA,* 557 F.2d 1101, 1110 (5th Cir. 1977); *In re: Dominion Energy Brayton Point, LLC,* 12 E.A.D. 490, 614–616 (EAB 2006); *In re Phelps Dodge Corp.,* 10 E.A.D. 460, 478 n.10 (EAB 2002). Thus, in the absence of an explicit transition or grandfathering provision in the applicable regulations (and assuming EPA finalizes the LDV Rule as planned), each PSD permit issued on or after January 2, 2011 would need to contain provisions that satisfy the PSD requirements that will apply to GHGs as of that date.

Under certain circumstances, EPA has previously allowed proposed new major sources and major modifications that have submitted a complete PSD permit application before a new requirement becomes applicable under PSD regulations, but have not yet received a final and effective PSD permit, to continue relying on information already in the application rather than immediately having to amend applications to demonstrate compliance with the new PSD requirements. In such a way, these proposed sources and modifications were "grandfathered" or exempted from the new PSD requirements that would otherwise have applied to them.

For example, EPA adopted a grandfathering provision when it changed the indicator for the particulate matter NAAQS from total suspended particulate matter (TSP) to particulate matter less than 10 microns (PM10). The Federal PSD regulations at 40 CFR 52.21(i)(1)(x) provide that the owners or operators of proposed sources or modifications that submitted a complete permit application before July 31, 1987, but did not yet receive the PSD permit, are not required to meet the requirements for PM10, but could instead satisfy the requirements for TSP that were previously in effect.

In addition, EPA has allowed some grandfathering for permit applications submitted before the effective date of an amendment to the PSD regulations establishing new maximum allowable increases in pollutant concentrations (also known as PSD "increments"). The Federal PSD regulations at 40 CFR 52.21(i)(10) provide that proposed sources or modifications that submitted a complete permit application before the effective date of the increment in the applicable implementation plan are not required to meet the increment requirements for PM10, but could instead satisfy the increment requirements for TSP that were previously in effect. Also, 40 CFR 52.21(i)(9) provides that sources or modifications that submitted a complete permit application before the provisions embodying the maximum allowable increase for nitrogen oxides (NO_X) [14] took effect, but did not yet receive a final and effective PSD permit, are not required to demonstrate compliance with the new increment requirements to be eligible to receive the permit.

Under the particular circumstances presented by the forthcoming application of PSD requirements to GHGs, EPA does not see a justification for adopting an explicit grandfathering provision of the nature described above. Permit applications submitted prior to the publication of this notice should in most cases be issued prior to January 2, 2011 and, thus, effectively have a transition period of nine months to complete processing before PSD requirements become applicable. Additional time for completion of action on applications submitted prior to the onset of PSD requirements for GHGs therefore does not appear warranted to ensure a smooth transition and avoid delays for pending applications. To the extent any pending permit review cannot otherwise be completed within the next nine months based on the requirements for pollutants other than GHGs, it should be feasible for permitting authorities to begin incorporating GHG considerations into permit reviews in parallel with the completion of work on other pollutants without adding any additional delay to permit processing.

Furthermore, the circumstances surrounding the onset of requirements for GHGs are distinguishable from prior situations where EPA has allowed grandfathering of applications that were deemed complete prior to the applicability new PSD permitting requirements. First, this action and the PSD Interpretive Memo do not involve a revision of the PSD permitting regulations but rather involves clarifications of how EPA interprets the existing regulatory text. This action articulates what has, in most respects, been EPA's longstanding practice. It has been EPA's consistent position since

[14] The increments for emissions of the various oxides of nitrogen are expressed as concentrations of nitrogen dioxide (NO_2).

1978 that regulation of a pollutant under Title II triggers PSD requirements for such a pollutant. *See* 42 FR 57481. Thus, permitting authorities and permit applicants could reasonably anticipate that completion of the LDV Rule would trigger PSD and prepare for this action. Many commenters interpreted EPA's October 7, 2009 notice as proposing to trigger PSD requirements within 60 days of the promulgation of the LDV Rule rather than the January 2, 2011 date that EPA has determined to be the date the controls in that rule take effect. Second, there are presently no regulatory requirements in effect for GHGs. On the other hand, at the time EPA moved from using TSP to using PM10 as the indicator for the particulate matter NAAQS, grandfathered sources were still required to satisfy PSD requirements for particulate matter based on the TSP indicator. Likewise, when EPA later updated the PSD increment for particulate matter to use the PM10 indicator, the grandfathered sources were still required to demonstrate that they would not cause or contribute to a violation of the particulate matter increment based on TSP. In the case of the adoption of the NO_2 increment, grandfathered sources were still required to demonstrate that they would not cause or contribute to a violation of the NO_2 NAAQS. In contrast, for GHGs, there are no measures currently in effect that serve to limit emission of GHGs from stationary sources.

For these reasons, EPA does not intend to promulgate a transition or grandfathering provision that exempts pending permit applications from the onset of GHG requirements in the PSD program. As discussed above, in the absence of such a provision, PSD permits that are issued on or after January 2, 2011 (in accordance with limitations promulgated in the upcoming Tailoring Rule) will be required to contain provisions that fulfill the applicable program requirements for GHGs.

V. PSD Program Implementation by EPA and States

Consistent with the PSD Interpretive Memo, the refined interpretation reflected in this notice (that a pollutant subject to actual control becomes subject to regulation at the time such controls take effect) is an interpretation of the language in 40 CFR 52.21(b)(50) of EPA's regulations. EPA will apply the PSD Interpretive Memo, with the refinement described above, when implementing the Federal permitting program under 40 CFR 52.21. Furthermore, EPA will expect that States that implement the Federal PSD permit program under delegation from an EPA Regional Office will do the same.

In addition, EPA will apply the interpretation reflected in this notice and the PSD Interpretive Memo in its oversight of existing State programs and review and approval of new program submissions. Many States implement the PSD program pursuant to State laws that have been approved by EPA as part of the SIP, pursuant to a determination by EPA that such laws meet the PSD program criteria set forth in 40 CFR 51.166. The EPA regulation setting forth PSD program requirements for SIPs also includes the same definition of the term "regulated NSR pollutant" as the Federal program regulation. *See* 40 CFR 51.166(b)(49). Because this regulation uses the same language as contained in 40 CFR 52.21 and the same considerations apply to implementation of the PSD program under State laws, EPA will interpret section 51.166(b)(49) in the same manner as section 52.21(b)(50). However, in doing so, EPA will be mindful that permitting authorities in SIP-approved States have some independent discretion to interpret State laws, provided those interpretations are consistent with minimum requirements under the Federal law.

To the extent approved SIPs contain the same language as used in 40 CFR 52.21(b)(50) or 40 CFR 51.166(b)(49), SIP-approved State permitting authorities may interpret that language in State regulations in the same manner reflected in the PSD Interpretive Memo and this notice. However, EPA will not seek to preclude actions to address GHGs in PSD permitting actions prior to January 2, 2011 where a State permitting authority feels it has the necessary legal foundation and resources to do so.

EPA has not called on any States to make a SIP submission that addresses the interpretive issues addressed in this notice and the PSD Interpretive Memo. As long as States are applying their approved program regulations consistent with the minimum program elements established in 40 CFR 51.166, EPA does not believe it will be necessary to issue a SIP call for all States to address this issue. However, permitting authorities in SIP-approved States do not have the discretion to apply State laws in a manner that does not meet the minimum Federal standards in 40 CFR 51.166, as interpreted and applied by EPA. Thus, if a State is not applying the PSD requirements to GHGs for the required sources after January 2, 2011, or lacks the legal authority to do so, EPA will exercise its oversight authority as appropriate to call for revisions to SIPs and to otherwise ensure sources do not commence construction without permits that satisfy the minimum requirements of the Federal PSD program.

To enable EPA to assess the consistency of a State's action with any PSD program requirements for GHGs, States should ensure that the record for each PSD-permitting decision addresses whether the State has elected to follow EPA's interpretation or believes it is appropriate to apply a different interpretation of State laws that is nonetheless consistent with the requirements of EPA's PSD program regulations. In light of additional actions to be taken by EPA in the Tailoring Rule, States that issue permits in the near term may want to preserve the discretion to modify their approach after other EPA actions are finalized. In light of this contingency, one option States may consider is to establish that the State will not interpret its laws to require PSD permits for sources that are not required to obtain PSD permits under EPA regulations.

VI. Application of the Title V Program to Sources of GHGs

Although the PSD Interpretive Memorandum and the October 7, 2009 proposed reconsideration notice addressed only PSD permitting issues, EPA received several comments on the proposed reconsideration that also addressed the application of Title V permitting requirements to GHGs. Most of these comments urged EPA to apply the same approach for determining major source applicability for Title V permitting that EPA applies to PSD. EPA has in fact been following the PSD approach in many respects. As with the PSD program, currently GHGs are not considered to be subject to regulation and have not been considered to trigger applicability under Title V. EPA discussed this in the preamble to the proposed Tailoring Rule as described below. *See* 74 FR at 55300 n.8.

Title V requires, among other things, that any "major source"—defined, as relevant here, under CAA sections 302(j) and 501(2)(b), as "any stationary facility or source of air pollutants which directly emits, or has the potential to emit, one hundred tons per year or more of any air pollutant * * *"—apply for a Title V permit. EPA interprets this requirement to apply to sources of pollutants "subject to regulation" under the Act. EPA previously articulated its interpretation that this Title V permitting requirement applies to "pollutants subject to regulation" in a 1993 memorandum from EPA's air

program. Memorandum from Lydia N. Wegman, Deputy Director, Office of Air Quality Planning and Standards, U.S. EPA, "Definition of Regulated Air Pollutant for Purposes of Title V" (Apr. 26, 1993) ("Wegman Memo"). EPA continues to maintain this interpretation. The interpretation in this memorandum was based on: (1) EPA's reading of the definitional chain for "major source" under Title V, including the definition of "air pollutant" under section 302(g) and the definition of "major source" under 302(j); (2) the view that Congress did not intend to require a variety of sources to obtain Title V permits if they are not otherwise regulated under the Act (*see also* CAA section 504(a), providing that Title V permits are to include and assure compliance with applicable requirements under the Act); and (3) consistency with the approach under the PSD program. While the specific narrow interpretation in the Wegman Memo of the definition of "air pollutant" in CAA section 302(g) is in question in light of *Massachusetts* (finding this definition to be "sweeping"), EPA believes the core rationale for its interpretation of the applicability of Title V remains sound. EPA continues to maintain its interpretation, consistent with CAA sections 302(j), 501, 502 and 504(a), that the provisions governing Title V applicability for "a major stationary source" can only be triggered by emissions of pollutants subject to regulation. This interpretation is based primarily on the purpose of Title V to collect all regulatory requirements applicable to a source and to assure compliance with such requirements—*see, e.g.,* CAA section 504(a)—and on the desire to promote consistency with the approach under the PSD program.

In applying this interpretation under Title V, the Wegman Memo also explains that EPA does not consider CO_2 to be a pollutant subject to regulation based on the monitoring and reporting requirements of section 821 of the Clean Air Act Amendments of 1990. As articulated in numerous orders issued by EPA in response to petitions to object to Title V permits, EPA views the Title V operating permits program as a vehicle for ensuring that air quality control requirements are appropriately applied to facility emission units and that compliance with these requirements is assured. *See, e.g., In the Matter of Fort James Camas Mill,* Petition No. X–1999–1 at 3–4 (Dec. 22, 2000); *In the Matter of Cash Creek Generation, LLC,* Petition Nos. IV–2008–1 & IV–2008–2 at 2 (Dec. 15, 2009). The Wegman Memo points out that section 821 involves reporting and study of emissions, but is not related to actual control of emissions. Since the reporting requirements of section 821 have no connection to existing air quality control requirements, it is appropriate not to treat them as making CO_2 "subject to regulation" for purposes of Title V. *Cf.* Section 504(b) (providing EPA authority to specify requirements for "monitoring and analysis of pollutants regulated under this Act.").

EPA has not previously explicitly considered the question of when a pollutant becomes "subject to regulation" under this established interpretation of the Title V requirements.[15] EPA received comments in this reconsideration proceeding specifically on the question of when a pollutant becomes subject to regulation for purposes of Title V. In light of these comments, and the decision to adopt a "takes effect" approach for PSD, EPA believes it is appropriate to address this issue for Title V with respect to GHG.

EPA is mindful of the different purposes for the PSD and Title V programs under the statute. While PSD results in substantive control requirements as necessary to meet air quality goals, Title V is focused on identifying, collecting, and assuring compliance with other Act requirements (including PSD), and generally does not itself result in new control requirements. Nevertheless, as reflected in the Wegman Memo, the two programs have historically followed the same approach for determining when a pollutant is "subject to regulation."[16] EPA believes that a "takes effect" approach to the triggering of new pollutants is desirable and appropriate for Title V, for many of the reasons described above for PSD. EPA is therefore generally inclined to follow the approach adopted today for PSD, and concludes that GHGs are "subject to regulation," for purposes of determining whether a source of GHGs is a "major source" for Title V, no earlier than the date on which a control requirement for GHGs "takes effect." EPA currently anticipates that the LDV Rule will be the first control requirement for GHGs to take effect. Under this approach, as with PSD, if the LDV Rule takes effect as of January 2, 2011, a source that is not currently subject to Title V for its GHG emissions could become so no earlier than January 2, 2011.[17]

Finally, as with PSD, EPA expects that, beyond January 2, 2011, there will remain significant administrative and programmatic considerations associated with permitting of GHGs under Title V. In light of this, as discussed above with regard to PSD permitting, EPA will be further addressing in the final Tailoring Rule (to be promulgated in the near future) the manner in which sources can become subject to Title V as a result of their GHG emissions.

VII. Statutory Authority

The statutory authority for this action is provided by section 553 of the Administrative Procedure Act (5 U.S.C. 553) and the Clean Air Act (CAA), as amended (42 U.S.C. 7401 *et seq.*). Relevant portions of the CAA include, but are not necessarily limited to, sections 101, 165, 169, 301, 302, 307, 501, 502, and 504 (42 U.S.C. 7401, 7475, 7479, 7601, 7602, 7607, 7661, 7661a, and 7661d).

VIII. Judicial Review

This action is a nationally applicable final action under section 307(b) of the Act. As a result, any legal challenges to this action must be brought to the United States Court of Appeals for the District of Columbia Circuit by June 1, 2010.

Dated: March 29, 2010.

Lisa P. Jackson,

Administrator.

[FR Doc. 2010–7536 Filed 4–1–10; 8:45 a.m.]

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[15] The preamble to the proposed Tailoring Rule implicitly assumed that a pollutant will become "subject to regulation" for PSD and Title V at the same time (and, in one case, suggests that time will be on promulgation of the LDV Rule). The latter statement was based on the interpretation in the current PSD Interpretive Memorandum, but failed to note that EPA had proposed to change that interpretation in the October 7, 2009 notice (signed the same day as the proposed Tailoring Rule). *See* 74 FR at 55300 and 55340–41.

[16] Wegman Memo at 5.

[17] This date is also when EPA expects the first CAA control program addressing GHGs at stationary sources (*i.e.,* the PSD program) to be in place.

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