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Presidential Documents

Title 3—

The President

Proclamation 8487 of March 31, 2010

Cesar Chavez Day, 2010

By the President of the United States of America

A Proclamation

The rights and benefits working Americans enjoy today were not easily gained; they had to be won. It took generations of courageous men and women, fighting to secure decent working conditions, organizing to demand fair pay, and sometimes risking their lives. Some, like Cesar Estrada Chavez, made it the cause of their lives. Today, on what would have been his 83rd birthday, we celebrate Cesar's legacy and the progress achieved by all who stood alongside him.

Raised by a family of migrant farm workers, Cesar Chavez spent his youth moving across the American Southwest, working in fields and vineyards, and experiencing firsthand the hardships he would later crusade to abolish. At the time, farm workers were deeply impoverished and frequently exploited, exposed to very hazardous working conditions, and often denied clean drinking water, toilets, and other basic necessities. The union Cesar later founded with Dolores Huerta, the United Farm Workers of America (UFW), still addresses these issues today.

After serving in the United States Navy, Cesar Chavez became a community organizer and began his lifelong campaign for civil rights and social justice. Applying the principles of nonviolence, he empowered countless laborers, building a movement that grew into the UFW. He led workers in marches, strikes, and boycotts, focusing our Nation's attention on their plight and using the power of picket lines to win union contracts.

"The love for justice that is in us is not only the best part of our being, but it is also the most true to our nature," Cesar Chavez once said. Since our Nation's earliest days of independence, we have struggled to perfect the ideals of equal justice and opportunity enshrined in our founding documents. As Cesar suggests, justice may be true to our nature, but as history teaches us, it will not prevail unless we defend its cause.

Few Americans have led this charge so tirelessly, and for so many, as Cesar Chavez. To this day, his rallying cry—"Sí, se puede," or "Yes, we can,"—inspires hope and a spirit of possibility in people around the world. His movement strengthened our country, and his vision lives on in the organizers and social entrepreneurs who still empower their neighbors to improve their communities.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim March 31, 2010, as Cesar Chavez Day. I call upon all Americans to observe this day with appropriate service, community, and education programs to honor Cesar Chavez's enduring legacy.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of March, in the year of our Lord two thousand ten, and of the Independence of the United States of America the two hundred and thirty-fourth.

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Rules and Regulations

Federal Register
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Doc. No. AMS–FV–09–0090; FV10–916/917–1 IFR]

Nectarines and Peaches Grown in California; Changes in Handling Requirements for Fresh Nectarines and Peaches

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rule changes the handling requirements applicable to well matured fruit covered under the nectarine and peach marketing orders (orders). The orders regulate the handling of nectarines and peaches grown in California and are administered locally by the Nectarine Administrative and Peach Commodity Committees (committees). This rule updates the variety-specific size requirements to reflect changes in commercially significant varieties. This will enable handlers to continue to ship fresh nectarines and peaches in a manner that meets consumer needs, increases returns to producers and handlers, and reflects current industry practices.

DATES: Effective April 6, 2010; comments received by June 4, 2010 will be considered prior to issuance of a final rule.

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

FOR FURTHER INFORMATION CONTACT: Jerry L. Simmons, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906; or E-mail: *Jerry.Simmons@ams.usda.gov* or *Kurt.Kimmel@ams.usda.gov.*

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order Nos. 916 and 917, both as amended (7 CFR parts 916 and 917), regulating the handling of nectarines and peaches grown in California, respectively, hereinafter referred to as the "orders." The orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

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

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

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

This rule changes the handling requirements applicable to well matured fruit covered under the nectarine and peach orders. This rule updates the variety-specific size requirements to reflect changes in commercially significant varieties. These changes will enable handlers to continue to ship fresh nectarines and peaches in a manner that meets consumer needs, increases returns to producers and handlers, and reflects current industry practices.

Sections 916.52 and 917.41 of the orders provide authority for handling regulations for fresh California nectarines and peaches. The regulations may include grade, size, maturity, quality, pack, and container requirements. The orders also provide that whenever such requirements are in effect, the fruit subject to such regulation must be inspected by the Federal or Federal-State Inspection Service (Inspection Service) and certified as meeting the applicable requirements.

The nectarine order has been in effect since 1939, and the peach order has been in effect since 1958. The orders have been used over the years to establish quality control programs that include minimum grade, size, and maturity standards. These programs have helped improve the quality of product moving from the farm to market, and have helped growers and handlers more effectively market their crops. Additionally, the orders have been used to ensure that only satisfactory quality nectarines and peaches reach the consumer. This has helped increase and maintain market demand over the years.

Sections 916.53 and 917.42 authorize the modification, suspension, or termination of regulations issued under §§ 916.52 and 917.41, respectively.

Changes in regulations have been implemented to reflect changes in industry operating practices and to solve marketing problems as they arise. The committees meet whenever needed, but at least annually, to discuss the orders and the various regulations in effect and to determine if, or what, changes may be necessary to reflect industry needs. As a result, regulatory changes have been made numerous times over the years to address industry changes and to improve program operations.

Currently, handling requirements are in effect for nectarines and peaches packed in containers marked "CA WELL MAT" or "California Well Matured." The term "well matured" is defined in the orders' rules and regulations, and has been used for many years by the industry to describe a level of maturity higher than the definition of "mature" in the United States Standards for Grades of Nectarines (7 CFR 51.3145 through 51.3160) and United States Standards for Grades of Peaches (7 CFR 51.1210 through 51.1223). Other handling requirements were suspended in 2007 to reduce handler inspection costs (72 FR 49128; August 28, 2007).

The committees met on December 10, 2009, and unanimously recommended that the handling requirements be revised for the 2010 season, which is expected to begin in April. No official crop estimate was available at the time of the committees' meetings because the nectarine and peach trees were dormant. The committees will recommend a crop estimate at their meetings in early spring.

Both orders provide authority (in §§ 916.52 and 917.41) to establish size requirements. Size regulations encourage producers to leave fruit on the tree longer, which improves both the size and maturity of the fruit. Acceptable fruit size provides greater consumer satisfaction and promotes repeat purchases, thereby increasing returns to producers and handlers. In addition, increased fruit size results in increased numbers of packed containers of nectarines and peaches per acre, which is also a benefit to producers and handlers.

Varieties recommended for specific size regulations have been reviewed and such recommendations are based on the specific characteristics of each variety. The committees conduct studies each season on the range of sizes attained by the regulated varieties and those varieties with the potential to become regulated, and determine whether revisions to the size requirements are appropriate.

Nectarines: Section 916.356 of the order's rules and regulations specifies minimum size requirements for fresh nectarines in paragraphs (a)(2) through (a)(9). This rule revises paragraphs (a)(4) and (a)(6) of § 916.356 to establish variety-specific minimum size requirements for 10 varieties of nectarines that were produced in commercially significant quantities of more than 10,000 containers for the first time during the 2009 season. This rule also removes the variety-specific minimum size requirements for twelve varieties of nectarines whose shipments fell below 5,000 containers during the 2009 season.

For example, one of the varieties recommended for addition to the variety-specific minimum size requirements is the Snow Pearl™ variety of nectarines, recommended for regulation at a minimum size 84. A minimum size of 84 means that a packed standard lug box will contain not more than 84 nectarines. Studies of the size ranges attained by the Snow Pearl™ variety revealed that 100 percent of the containers met the minimum size of 84 during the 2008 and 2009 seasons. Sizes ranged from size 30 to size 80, with 23.1 percent of the containers meeting the size 30, 25 percent meeting the size 40, 48.9 percent meeting the size 50, 2 percent meeting the size 60, .1 percent meeting the size 70, and .9 percent meeting the size 80 in the 2009 season.

A review of other varieties with the same harvesting period indicated that the Snow Pearl™ variety was also comparable to those varieties in its size ranges for that time period. Discussions with handlers known to handle the variety confirm this information regarding minimum size and harvesting period, as well. Thus, the recommendation to place the Snow Pearl™ variety in the variety-specific minimum size regulation at a minimum size 84 is appropriate. This recommendation results from size studies conducted over a two-year period.

Historical data such as this provides the committee with the information necessary to recommend the appropriate sizes at which to regulate various nectarine varieties. In addition, producers and handlers of the varieties affected are personally invited to comment when such size recommendations are deliberated. Producer and handler comments are also considered at both committee and subcommittee meetings when the staff receives such comments, either in writing or verbally.

For reasons similar to those discussed in the preceding paragraph, paragraph (a)(4) of § 916.356 is revised to include the Honey Lite, June Sweet, and Kay Diamond nectarine varieties and paragraph (a)(6) of § 916.356 is revised to include the Crimson Sweet, July Bright, June Ice, Raspberry Jewel, Red Baron 2, Snow Pearl™, and 225LP242 nectarine varieties.

This rule also revises paragraph (a)(2) of § 916.356 to remove the May Fire and May Glo nectarine varieties; paragraph (a)(3) of § 916.356 to remove the May Glo nectarine variety; paragraph (a)(4) of § 916.356 to remove the Early Pearl nectarine variety; and paragraph (a)(6) of § 916.356 to remove the Alta Red, Autumn Blaze, Autumn Fire, Big Jim, La Reina, Neptune, P–R Red, Royal Giant, and Terra White nectarine varieties from the variety-specific minimum size requirements because fewer than 5,000 containers of each of these varieties were produced during the 2009 season. Nectarine varieties removed from the nectarine variety-specific minimum size requirements become subject to the non-listed variety size requirements specified in paragraphs (a)(7), (a)(8), and (a)(9) of § 916.356.

Peaches: Section 917.459 of the order's rules and regulations specifies minimum size requirements for fresh peaches in paragraphs (a)(2) through (a)(6), and paragraphs (b) and (c). This rule revises paragraphs (a)(5) and (a)(6) of § 917.459 to establish variety-specific minimum size requirements for eight peach varieties that were produced in commercially significant quantities of more than 10,000 containers for the first time during the 2009 season. This rule also removes the variety-specific minimum size requirements for eleven varieties of peaches whose shipments fell below 5,000 containers during the 2009 season.

For example, one of the varieties recommended for addition to the variety-specific minimum size requirements is the Ivory Duchess variety of peaches, which was recommended for regulation at a minimum size 80. A minimum size of 80 means that a packed standard lug box contains not more than 80 peaches. Studies of the size ranges attained by the Ivory Duchess variety revealed that 100 percent of the containers met the minimum size of 80 during the 2008 and 2009 seasons. Sizes ranged from size 30 to size 80, with 7.7 percent of the containers meeting the size 30, 50.5 percent meeting the size 40, 5.5 percent meeting the size 50, 25.3 percent meeting the size 60, 1.7 percent meeting the size 70, and 9.3 percent meeting the size 80 in the 2009 season.

A review of other varieties with the same harvesting period indicated that the Ivory Duchess variety was also comparable to those varieties in its size ranges for that time period. Discussions with handlers known to pack the variety confirm this information regarding minimum size and the harvesting period, as well. Thus, the recommendation to place the Ivory Duchess variety in the variety-specific minimum size regulation at a minimum size 80 is appropriate.

Historical data such as this provides the committee with the information necessary to recommend the appropriate sizes at which to regulate various peach varieties. In addition, producers and handlers of the varieties affected are personally invited to comment when such size recommendations are deliberated. Producer and handler comments are also considered at committee meetings when the staff receives such comments, either in writing or verbally.

For reasons similar to those discussed in the preceding paragraph, paragraph (a)(5) of § 917.459 is revised to include the Ivory Duchess peach variety and paragraph (a)(6) of § 917.459 is revised to include the Crimson Jewel, Golden Moon, Ivory King, Pearl Princess, Snow Duchess, 116LM397, and 382LN469 peach varieties.

This rule also revises paragraph (a)(2) of § 917.459 to remove the April Snow peach variety; paragraph (a)(3) of § 917.459 to remove the Snow Kist peach variety; paragraph (a)(5) of § 917.459 to remove the David Sun and Sweet Crest peach varieties; and paragraph (a)(6) of § 917.459 to remove the Coral Princess, Jasper Treasure, Royal Lady, September Lady, Spring Candy, Sugar Lady, and Sweet Kay peach varieties from the variety-specific minimum size requirements because less than 5,000 containers of each of these varieties was produced during the 2009 season. Peach varieties removed from the peach variety-specific minimum size requirements become subject to the non-listed variety size requirements specified in paragraphs (b) and (c) of § 917.459.

The committees recommended these changes in the minimum size requirements based on a continuing review of the sizing and maturity relationships for these nectarine and peach varieties, and the consumer acceptance levels for various fruit sizes. This rule is designed to establish minimum size requirements for fresh nectarines and peaches consistent with expected crop and market conditions. This should help establish and maintain orderly marketing conditions for these fruits in the interests of producers, handlers, and consumers.

Initial Regulatory Flexibility Analysis

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

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

Industry Information

There are approximately 101 California nectarine and peach handlers subject to regulation under the orders covering nectarines and peaches grown in California, and about 475 producers of these fruits in California. Small agricultural service firms, which include handlers, are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. A majority of these handlers and producers may be classified as small entities.

The committees' staff has estimated that there are fewer than 50 handlers in the industry who would not be considered small entities. For the 2009 season, the committees' staff estimated that the average handler price received was $11.50 per container or container equivalent of nectarines or peaches. A handler would have to ship at least 608,696 containers to have annual receipts of $7,000,000. Given data on shipments maintained by the committees' staff and the average handler price received during the 2009 season, the committees' staff estimates that small handlers represent approximately 50 percent of all the handlers within the industry.

The committees' staff has also estimated that fewer than 50 producers in the industry would not be considered small entities. For the 2009 season, the committees estimated the average producer price received was $6.50 per container or container equivalent for nectarines and peaches. A producer would have to produce at least 115,385 containers of nectarines and peaches to have annual receipts of $750,000. Given data maintained by the committees' staff and the average producer price received during the 2009 season, the committees' staff estimates that small producers represent more than 80 percent of the producers within the industry.

Under authority provided in §§ 916.52 and 917.41 of the orders, grade, size, maturity, pack, and container marking requirements are established for fresh shipments of California nectarines and peaches, respectively. Such requirements are in effect on a continuing basis.

Sections 916.356 and 917.459 of the orders' rules and regulations establish minimum sizes for various varieties of nectarines and peaches. This rule makes adjustments to the minimum sizes authorized for certain varieties of each commodity for the 2010 season. Minimum size regulations are put in place to encourage producers to leave fruit on the trees for a longer period of time, increasing both maturity and fruit size. Increased fruit size increases the number of packed containers per acre, and coupled with heightened maturity levels, also provides greater consumer satisfaction, which in turn fosters repeat purchases that benefit producers and handlers alike.

Annual adjustments to minimum sizes of nectarines and peaches, such as these, are recommended by the committees based upon historical data, producer and handler information regarding sizes attained by different varieties, and trends in consumer purchases.

An alternative to such action would include not establishing minimum size regulations for these new varieties. Such an action, however, would be a significant departure from the committees' past practices and represent a significant change in the regulations as they currently exist. For these reasons, this alternative was not recommended.

The committees make recommendations regarding the revisions in handling requirements after considering all available information, including comments received by committee staff. At the meetings, the impact of and alternatives to these recommendations are deliberated. The committees consist of individual producers and handlers with many years of experience in the industry and are familiar with industry practices and trends. All committee meetings are open to the public and comments are widely solicited. In addition, minutes of all meetings are distributed to committee members and others who have requested them, and are also available on the committees' Web site, thereby

increasing the availability of this critical information within the industry.

Regarding the impact of this action on the affected entities, both large and small entities are expected to benefit from the changes, and the costs of compliance are not expected to be significantly different between large and small entities.

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

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

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

The committees have appointed a number of joint subcommittees to review certain issues and make recommendations to the committees. The Compliance Subcommittee met on November 3, 2009, and discussed this issue in detail. Their recommendations were presented at the meetings of both committees on December 10, 2009. As with all committee meetings, the November 3 and December 10 meetings were public meetings, and all entities, both large and small, were able to express their views on this issue. All of the committees' meetings are widely publicized throughout the nectarine and peach industry, and all interested parties are invited to attend and participate in committee deliberations.

Finally, interested persons are invited to submit comments on this interim rule, including the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following Web site: *http://www.ams.usda.gov/AMSv1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Antoinette Carter at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on changes to the handling requirements currently prescribed under the marketing orders for California fresh nectarines and peaches. Any comments received will be considered prior to finalization of this rule.

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

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule should be implemented as soon as possible, since shipments of California nectarines and peaches are expected to begin in early April; (2) the committees met and unanimously recommended these changes at public meetings, and interested persons had opportunities to provide input at all those meetings; and (3) the rule provides a 60-day comment period, and any written comments received will be considered prior to any finalization of this rule.

List of Subjects

7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

7 CFR Part 917

Marketing agreements, Peaches, Pears, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR parts 916 and 917 are amended as follows:

■ 1. The authority citation for 7 CFR parts 916 and 917 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 916—NECTARINES GROWN IN CALIFORNIA

■ 2. Section 916.356 is amended by revising the introductory text of paragraphs (a)(2), (a)(3), (a)(4), and (a)(6) to read as follows:

§ 916.356 California nectarine grade and size regulation.

(a) * * *

(2) Any package or container of April Glo variety nectarines unless:

* * * * *

(3) Any package or container of Burnectfive (Spring Flare® 21), Burnectten (Spring Flare® 19), Crimson Baby, Earliglo, Honey May, May Pearl™, Polar Ice, Polar Light, Red Jewel or Zee Fire variety nectarines unless:

* * * * *

(4) Any package or container of Arctic Star, Burnectone (Spring Ray®), Burnecttwelve (Sweet Flair® 21), Burnectthirteen (Snow Flare® 22), Burnectfourteen (Snow Flare® 21), Diamond Bright, Diamond Pearl, Gee Sweet, Honey Lite, June Pearl, June Sweet, Kay Diamond, Kay Fire, Kay Glo, Kay Sweet, Prima Diamond IV, Prima Diamond VI, Prima Diamond XIII, Prince Jim, Prince Jim 1, Red Roy, Rose Bright, Rose Diamond, Royal Glo, or Zee Grand variety nectarines unless:

* * * * *

(6) Any package or container of 15G225, 225LP242, Arctic Belle, Arctic Blaze, Arctic Ice, Arctic Jay, Arctic Mist, Arctic Pride, Arctic Queen, Arctic Snow (White Jewel), Arctic Sweet, August Bright, August Fire, August Glo, August Lion, August Pearl, August Red, August Sweet, Bright Pearl, Burnectfour (Summer Flare® 35), Burnectseven (Summer Flare® 28), Burnecteleven (Summer Flare® 30), Burnectfifteen (Summer Flare® 27), Burnectseventeen (Summer Flare® 32), Candy Gold, Candy Pearl, Crimson Sweet, Diamond Ray, Early Red Jim, Fire Pearl, Fire Sweet, Giant Pearl, Grand Bright, Grand Candy, Grand Pearl, Grand Sweet, Honey Blaze, Honey Dew, Honey Diva, Honey Fire, Honey Kist, Honey Rose, Honey Royale, July Bright, July Pearl, July Red, June Ice, Kay Pearl, La Pinta, Larry's Red, Late Red Jim, Mike's Red, Orange Honey, Prima Diamond IX, Prima Diamond X, Prima Diamond XIX, Prima Diamond XXIV, Prima Diamond XXVIII, Prince Jim 3, Raspberry Jewel, Red Baron 2, Red Bright, Red Diamond, Red Glen, Red Jim, Red Pearl, Regal Pearl, Regal Red, Ruby Bright, Ruby Diamond, Ruby Pearl, Ruby Sweet, Saucer, September Bright (26P–490), September Free, September Red, Signature, Snow Pearl, Sparkling June, Spring Bright, Spring Pearl™, Spring Sweet, Sugar Pearl™, Sugarine, Summer Blush, Summer Bright, Summer Diamond, Summer Fire, Summer Jewel, Summer Lion, Summer Red, Sunburst, Sun Valley Sweet, Zee Glo or Zephyr variety nectarines unless:

* * * * *

PART 917—FRESH PEARS AND PEACHES GROWN IN CALIFORNIA

■ 3. Section 917.459 is amended by revising the introductory text of

paragraphs (a)(2), (a)(3), (a)(5), and (a)(6) to read as follows:

§ 917.459 California peach grade and size regulation.

(a) * * *

(2) Any package or container of Earlitreat, Snow Angel, Supechfifteen, or Super Lady variety peaches unless:

* * * * *

(3) Any package or container of Island Prince, Snow Peak, Spring Princess, or Super Rich variety peaches unless:

* * * * *

(5) Any package or container of Babcock, Bev's Red, Bright Princess, Brittney Lane, Burpeachone (Spring Flame® 21), Burpeachfourteen (Spring Flame® 20), Burpeachnineteen (Spring Flame® 22), Candy Red, Crimson Lady, Crown Princess, Early May Crest, Flavorcrest, Honey Sweet, Ivory Duchess, Ivory Queen, June Lady, Magenta Queen, May Crest, May Sweet, Prima Peach IV, Queencrest, Rich May, Sauzee Queen, Scarlet Queen, Sierra Snow, Snow Brite, Springcrest, Spring Lady, Spring Snow, Springtreat (60EF32), Sugar Time (214LC68), Supecheight (012–094), Supechnine, Sweet Scarlet, or Zee Diamond variety peaches unless:

* * * * *

(6) Any package or container of 116LM397, 382LN469, August Lady, August Saturn, Autumn Flame, Autumn Jewel, Autumn Red, Autumn Rich, Autumn Rose, Autumn Snow, Autumn Sun, Burpeachtwo (Henry II®), Burpeachthree (September Flame®), Burpeachfour (August Flame®), Burpeachfive (July Flame®), Burpeachsix (June Flame®), Burpeachseven (Summer Flame® 29), Burpeachfifteen (Summer Flame® 34), Burpeachtwenty (Summer Flame®), Burpeachtwentyone (Summer Flame® 26), Candy Princess, Country Sweet, Crimson Jewel, Diamond Candy, Diamond Princess, Earlirich, Early Elegant Lady, Elegant Lady, Fancy Lady, Fay Elberta, Full Moon, Galaxy, Glacier White, Golden Moon, Henry III, Henry IV, Ice Princess, Ivory King, Ivory Princess, Jasper Gem, Jillie White, Joanna Sweet, John Henry, Kaweah, Klondike, Last Tango, Natures #10, O'Henry, Peach-N-Cream, Pearl Princess, Pink Giant, Pink Moon, Prima Gattie 8, Prima Peach 13, Prima Peach XV, Prima Peach 20, Prima Peach 23, Prima Peach XXVII, Queen Jewel, Rich Lady, Ruby Queen, Ryan Sun, Saturn (Donut), September Blaze, September Snow, September Sun, Sierra Gem, Sierra Rich, Snow Beauty, Snow Blaze, Snow Duchess, Snow Fall, Snow Gem, Snow Giant, Snow Jewel, Snow King, Snow Magic, Snow Princess, Sprague Last Chance, Strawberry, Sugar Crisp, Sugar Giant, Summer Dragon, Summer Fling, Summer Lady, Summer Sweet, Summer Zee, Sweet Blaze, Sweet Dream, Sweet Henry, Sweet September, Tra Zee, Valley Sweet, Vista, White Lady, or Zee Lady variety peaches unless:

* * * * *

Dated: March 30, 2010.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. 2010–7569 Filed 4–2–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 925 and 944

[Doc. No. AMS–FV–09–0085; FV10–925–1 IFR]

Grapes Grown in a Designated Area of Southeastern California and Imported Table Grapes; Relaxation of Handling Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rule relaxes the handling requirements prescribed under the California table grape marketing order (order) and the table grape import regulation. The order regulates the handling of table grapes grown in a designated area of southeastern California and is administered locally by the California Desert Grape Administrative Committee (committee). The import regulation is authorized under section 8e of the Agricultural Marketing Agreement Act of 1937 and regulates the importation of table grapes into the United States. This rule relaxes the one-quarter pound minimum bunch size requirement for the 2010 and subsequent seasons for grapes packed in consumer packages holding 2 pounds net weight or less. Under the relaxation, up to 20 percent of the weight of such containers may consist of single clusters of at least five berries each. This action continues the relaxation that was prescribed on a one-year test basis in 2009 and provides California desert grape handlers and importers the flexibility to respond to an ongoing marketing opportunity to meet consumer needs.

DATES: Effective April 8, 2010; comments received by May 5, 2010 will be considered prior to issuance of a final rule.

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

FOR FURTHER INFORMATION CONTACT: Jerry Simmons, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906, or E-mail: *Jerry.Simmons@ams.usda.gov* or *Kurt.Kimmel@ams.usda.gov.*

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 925, as amended (7 CFR part 925), regulating the handling of grapes grown in a designated area of southeastern California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This rule is also issued under section 8e of the Act, which provides that whenever certain specified commodities, including table grapes, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities.

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

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

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

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

This rule relaxes the one-quarter pound minimum bunch size requirement for the 2010 and subsequent seasons for grapes packed in containers holding 2 pounds net weight or less. Under the relaxation, up to 20 percent of the weight of such containers may consist of single clusters weighing less than one-quarter pound, but with at least five berries each. This action continues the relaxation that was prescribed on a test basis for the 2009 regulatory period and provides California desert grape handlers and importers the flexibility to respond to an ongoing marketing opportunity to meet consumer needs. The committee met on November 12, 2009, and unanimously recommended the change for California desert grapes. The change in the import regulation is required under section 8e of the Act.

Section 925.52(a)(1) of the order provides authority to regulate the handling of any grade, size, quality, maturity, or pack of any and all varieties of grapes during the season. Section 925.53 provides authority for the committee to recommend to USDA changes to regulations issued pursuant to § 925.52. Section 925.55 specifies that when grapes are regulated pursuant to § 925.52, such grapes must be inspected by the Federal or Federal-State inspection service to ensure they meet applicable requirements.

Section 925.304(a) of the order's rules and regulations requires grapes to meet the minimum grade and size requirements of U.S. No. 1 Table, or U.S. No. 1 Institutional, or to meet all the requirements of U.S. No. 1 Institutional, except that a tolerance of 33 percent is provided for off-size bunches. The requirements for the U.S. No. 1 Table and U.S. No. 1 Institutional grades are set forth in the United States Standards for Grades of Table Grapes (European or Vinifera Type) (7 CFR 51.880 through 51.914) (Standards). In addition, § 925.304(a) prescribes relaxed handling requirements for the 2009 regulatory period for U.S. No. 1 Table grapes packed in individual consumer packages containing 2 pounds net weight or less. The regulatory period runs from April 10 through July 10 each year.

Prior to the 2009 regulatory period, U.S. No. 1 Table grade grapes were required to meet a minimum bunch size requirement of one-quarter pound. Since 2009, there has been interest in packing grapes in individual consumer packages known as clamshells. These containers have been most commonly used to pack strawberries in the past but are also being used for other fruit. They are made of a clear, rigid plastic and vary in size, typically holding two pounds of fruit or less. Some retailers prefer these containers because they are a consistent net weight and can be scanned at check-out. This is particularly convenient for retailers that do not have facilities for weighing produce, such as convenience stores and fast food outlets. Some consumers also prefer the convenience of prepackaged individual portions of fruit.

It is difficult to fill these small containers to the desired weight using complete bunches weighing one-quarter pound or more. Smaller portions of bunches are needed to combine with the larger bunches to fill the containers to the desired weight.

In response to this new market demand, the minimum bunch size requirements were relaxed for the regulatory period April 10 through July 10, 2009, on a test basis to allow California grape handlers to pack consumer packages containing 2 pounds net weight or less with portions of bunches weighing less than one-quarter pound. The final rule was published in the **Federal Register** on August 3, 2009 (74 FR 38323). These smaller portions were needed to fill the containers to the weights they were designed to hold.

Based on the positive results of the 2009 relaxation and an ongoing marketing opportunity, the committee unanimously recommended continuing relaxation of the one-quarter pound minimum bunch size requirement for the 2010 and subsequent seasons for U.S. No. 1 Table grade grapes packed in consumer packages containing 2 pounds net weight or less. Under this relaxation, up to 20 percent of the weight of such containers may consist of single clusters weighing less than one-quarter pound, but with at least five berries each. This action will continue to provide handlers with the flexibility to respond to an ongoing marketing opportunity to meet consumer needs. Section 925.304(a) is modified accordingly.

Under section 8e of the Act, minimum grade, size, quality, and maturity requirements for table grapes imported into the United States are established under Table Grape Import Regulation 4 (7 CFR 944.503) (import regulation). The change in the California Desert Grape Regulation 6 minimum bunch size requirement for the 2010 and subsequent seasons requires a corresponding change to the minimum bunch size requirement for imported table grapes. Similar to the domestic industry, this action will continue to allow importers the flexibility to respond to an ongoing marketing opportunity to meet consumer needs. Section 944.503(a)(1) is revised accordingly.

Initial Regulatory Flexibility Analysis

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

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

There are about 15 handlers of southeastern California grapes who are subject to regulation under the order and about 50 grape producers in the production area. In addition, there are about 100 importers of grapes. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $7,000,000

and small agricultural producers are defined as those whose annual receipts are less than $750,000. Four of the 15 handlers subject to regulation have annual grape sales of more than $7,000,000. Based on data from the National Agricultural Statistics Service and the committee, the average crop value for 2009 was about $55,000,000. Dividing this figure by the number of producers (50) yields an average annual producer revenue estimate of $1,100,000, which is above the SBA threshold of $750,000. Based on the foregoing, it may be concluded that a majority of grape handlers and none of the producers may be classified as small entities. It is estimated that the average importer receives $3.2 million in revenue from the sale of grapes. Also, it may be concluded that the majority of importers may be classified as small entities.

This rule revises § 925.304(a) of the rules and regulations of the California desert grape order and § 944.503(a)(1) of the table grape import regulation. This rule relaxes the one-quarter pound minimum bunch size requirement for the 2010 and subsequent seasons for U.S. No. 1 Table grade grapes packed in small consumer packages containing 2 pounds net weight or less. Under the relaxation, up to 20 percent of the weight of each consumer package weighing two pounds or less may consist of single clusters weighing less than one-quarter pound, but with at least five berries each. Authority for the change to the California desert grape order is provided in §§ 925.52(a)(1) and 925.53. Authority for the change to the table grape import regulation is provided in section 8e of the Act.

There is general agreement in the industry for the need to continue to relax the minimum bunch size requirement for grapes packed in these consumer packages to allow for more packaging options. No additional alternatives were considered because the 2009 one-year test relaxation produced the desired results with no identified problems. The committee unanimously agreed that the relaxation for grapes packed in consumer packages containing 2 pounds net weight or less was appropriate to prescribe for the 2010 and subsequent seasons.

Regarding the impact of this rule on affected entities, this rule provides both California desert grape handlers and importers the flexibility to continue to respond to an ongoing marketing opportunity to meet consumer needs. This marketing opportunity initially existed in the 2009 season, and the minimum bunch size regulations were relaxed accordingly during that time on a test basis. As in 2009, handlers and importers will be able to provide buyers in the retail sector more packaging choices. The relaxation may result in increased shipments of consumer-sized grape packages, which would have a positive impact on producers, handlers, and importers.

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

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

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

Further, the committee's meeting was widely publicized throughout the grape industry, and all interested persons were invited to attend the meeting and participate in committee deliberations. Like all committee meetings, the November 12, 2009 meeting was a public meeting, and all entities, both large and small, were able to express their views on this issue. Also, the World Trade Organization, the Chilean Technical Barriers to Trade inquiry point for notifications under the U.S.-Chile Free Trade Agreement, the embassies of Argentina, Brazil, Canada, Chile, Costa Rica, Egypt, Italy, Mexico, Morocco, Peru, and South Africa, and known grape importers were notified of this action.

Finally, interested persons are invited to submit comments on this rule, including the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/AMSv1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide*. Any questions about the compliance guide should be sent to Antoinette Carter at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on the continued relaxation of the handling requirements currently prescribed under the marketing order for grapes grown in southeastern California and for grapes imported into the United States. Any comments received will be considered prior to finalization of this rule.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this rule.

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

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This action continues the 2009 season test relaxation of the handling requirements for grapes grown in a designated area of southeastern California and for grapes imported into the United States for the 2010 and subsequent seasons; (2) California desert grape handlers are aware of this action, which was unanimously recommended by the committee at a public meeting; (3) the regulatory period begins on April 10, 2010; and (4) this rule provides a 30-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects

7 CFR Part 925

Grapes, Marketing agreements and orders, Reporting and recordkeeping requirements.

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

■ For the reasons set forth in the preamble, 7 CFR parts 925 and 944 are amended as follows:

■ 1. The authority citation for 7 CFR parts 925 and 944 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA

§ 925.304 [Amended]

■ 2. Amend § 925.304 by removing "during the period April 10 through July 10, 2009," from the fourth sentence in paragraph (a).

PART 944—FRUITS; IMPORT REQUIREMENTS

■ 3. Amend § 944.503 by removing "during the period April 10 through July 10, 2009," from the fourth sentence in paragraph (a)(1).

Dated: March 26, 2010.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2010–7563 Filed 4–2–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 948

[Doc. No. AMS–FV–08–0115; FV09–948–2 IFR]

Irish Potatoes Grown in Colorado; Relaxation of the Handling Regulation for Area No. 3

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rule relaxes the size requirement prescribed under the Colorado potato marketing order. The marketing order regulates the handling of Irish potatoes grown in Colorado, and is administered locally by the Colorado Potato Administrative Committee for Area No. 3 (Committee). This rule provides for the handling of all varieties of potatoes with a minimum diameter of ¾ inch, if the potatoes otherwise meet U.S. No. 1 grade. This change is intended to provide potato handlers with greater marketing flexibility, producers with increased returns, and consumers with a greater supply of potatoes.

DATES: Effective April 6, 2010; comments received by June 4, 2010 will be considered prior to issuance of a final rule.

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

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

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 97 and Order No. 948, both as amended (7 CFR part 948), regulating the handling of Irish potatoes grown in Colorado, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

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

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

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

This rule relaxes the size requirement for all varieties of Colorado Area No. 3 potatoes by allowing the handling of potatoes with a minimum diameter of ¾ inch, if the potatoes otherwise meet U.S. No. 1 grade. This change is intended to provide potato handlers with greater marketing flexibility, producers with increased returns, and consumers with a greater supply of potatoes.

Section 948.22 authorizes the issuance of grade, size, quality, maturity, pack, and container regulations for potatoes grown in the production area. Section 948.21 further authorizes the modification, suspension, or termination of requirements issued pursuant to § 948.22.

Section 948.40 provides that whenever the handling of potatoes is regulated pursuant to §§ 948.20 through 948.24, such potatoes must be inspected by the Federal-State Inspection Service, and certified as meeting the applicable requirements of such regulations.

Under the order, the State of Colorado is divided into three separate regulatory areas for marketing order purposes. Area No. 1, commonly known as the Western Slope, includes and consists of the counties of Routt, Eagle, Pitkin, Gunnison, Hinsdale, La Plata, and all counties west thereof; Area No. 2, commonly known as the San Luis Valley, includes and consists of the counties of Saguache, Huerfano, Las Animas, Mineral, Archuleta, and all counties south thereof; and Area No. 3 includes and consists of all the remaining counties in the State of Colorado which are not included in Area No. 1 or Area No. 2. The order currently regulates the handling of potatoes grown in Areas No. 2 and No. 3 only; regulation for Area No. 1 is currently not active.

Grade, size, and maturity regulations specific to the handling of Colorado potatoes grown in Area No. 3 are contained in § 948.387 of the order's administrative rules and regulations.

The Committee met on June 4, 2009, and again on November 17, 2009, to discuss decreasing the minimum size requirement for certain potatoes. As a consequence of these deliberations, the Committee unanimously recommended on November 17 that § 948.387(a) of the order's handling regulation be revised to provide for the handling of all varieties of potatoes with a minimum diameter of ¾ inch, if the potatoes otherwise meet U.S. No. 1 grade requirements (a potato meeting all the requirements of a U.S. No. 1 grade potato as defined in the U.S. Standards for Grades of Potatoes would have a minimum size of 1⅞ inches). This recommendation provides for the handling of potatoes within both the

Creamer size category (¾ inch to 1⅝ inch diameter) and the Size B category (1½ inch to 2¼ inch diameter), as well as the handling of small potato packs that may fall outside these categories. Prior to the effective date of this action, the handling regulation provided that Area No. 3 potatoes could not be handled unless U.S. No. 2 grade or better, 1⅞ inches minimum diameter or 4 ounces minimum weight, and Size B potatoes if U.S. No. 1 grade or better.

The Committee believes that in recent years consumer demand has been increasing for smaller potatoes which often command premium prices. The market for these smaller potatoes is currently being supplied by potato production areas outside Colorado Area No. 3. Having the ability to handle smaller potatoes enables the Colorado Area No. 3 potato industry to market a larger portion of its crop while satisfying consumer demand for smaller potatoes. This size relaxation is also expected to increase returns to producers.

The Committee believes that quality assurance is important to the industry and to consumers. Providing consistent, high quality potatoes is necessary to maintain consumer confidence. The Committee also believes that relaxing the size requirement for all varieties of U.S. No. 1 potatoes will preserve their commitment to quality while allowing the industry to respond to changing consumer preferences.

Initial Regulatory Flexibility Analysis

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

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

Based on Committee data, there are nine producers (eight of whom are also handlers) in the regulated area and nine handlers (eight of whom are also producers) subject to regulation under the order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those having annual receipts of less than $7,000,000.

According to the Committee, 825,617 hundredweight of Colorado Area No. 3 potatoes were produced for the fresh market during the 2007 season. Based on National Agricultural Statistics Service (NASS) data, the average producer price for Colorado summer potatoes for 2007 was $7.75 per hundredweight. The average annual producer revenue for the nine Colorado Area No. 3 potato producers is therefore calculated to be approximately $710,948. Using Committee data regarding each individual handler's total shipments during the 2007–2008 fiscal period and a Committee estimated average f.o.b. price for 2007 of $9.95 per hundredweight ($7.75 per hundredweight plus estimated packing and handling costs of $2.20 per hundredweight), none of the Colorado Area No. 3 potato handlers ship over $7,000,000 worth of potatoes. Thus, the majority of handlers and producers of Colorado Area No. 3 potatoes may be classified as small entities.

This rule provides for the handling of all varieties of potatoes with a minimum diameter of ¾ inch, if the potatoes otherwise meet the requirements of U.S. No. 1 grade. This change enables handlers to respond to consumer demand for small potatoes.

The authority for regulating grade and size is provided in § 948.22 of the order. Section 948.387(a) of the order's administrative rules and regulations prescribes the actual size requirements.

This rule is expected to have a beneficial impact on handlers and producers due to the increased volume of potatoes into the fresh market. There should be no extra cost to producers or handlers because current harvesting and handling methods can accommodate the sorting of these smaller potatoes. The size relaxation will result in a greater quantity of potatoes meeting the minimum requirements of the handling regulation. The Committee believes that this relaxation should translate into increased sales thus greater returns for handlers and producers.

Neither NASS nor the Committee compiles statistics relating to the production of potatoes measuring much less than 1⅞ inches in diameter. The Committee has relied on information provided by producers and handlers familiar with the small potato market for its recommendation.

As small potatoes have grown in popularity with consumers, the market demand has outpaced the quantity of small, high quality potatoes available from Colorado. The Committee believes that this regulatory relaxation will increase the available supply of small potatoes. The Committee also believes that these smaller potatoes will not compete directly with the market for larger fresh market potatoes and that this action will not adversely affect the overall Colorado potato market.

By providing Colorado Area No. 3 handlers the flexibility to pack smaller potatoes, the Committee believes the industry will remain competitive in the marketplace. The small potato market is a premium market and this action is expected to further increase sales of Colorado potatoes to benefit the Colorado potato industry. The benefits of this rule are not expected to be disproportionately greater or lesser for small entities than for large entities.

The Committee discussed alternatives to this recommendation, including not changing the minimum size requirement. Another alternative discussed was to use the term "Creamer" which is defined in the U.S. Standards for Grades of Potatoes as potatoes measuring from ¾ inches in diameter to 1⅝ inches in diameter. However, by not using either the terms "Creamer" and "Size B", or the resultant upper and lower size designations, the Committee intends handlers to have greater flexibility in marketing fresh potatoes. The Committee believes that this rule will benefit the industry by augmenting the developing market for small potatoes and enhancing returns to producers.

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

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

Further, the Committee's meeting was widely publicized throughout the Colorado potato industry and all interested persons were invited to participate in Committee deliberations. Like all Committee meetings, the June 4 and November 17, 2009, meetings were public meetings and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this interim rule, including the

regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/AMSv1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Antoinette Carter at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on a relaxation of the size requirement prescribed under the Colorado potato marketing order. Any comments received will be considered prior to finalization of this rule.

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

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) Any changes resulting from this rule should be effective as soon as practicable because the Colorado Area No. 3 potato shipping season began in July; (2) the Committee discussed and unanimously recommended these changes at public meetings and all interested parties had an opportunity to provide input; (3) handlers are aware of this action and want to take advantage of this relaxation as soon as possible; and (4) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 948 is amended as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

■ 1. The authority citation for 7 CFR part 948 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. In § 948.387, paragraph (a) is revised to read as follows:

§ 948.387 Handling regulation.

* * * * *

(a) *Grade and size requirements—All varieties.*

U.S. No. 2 or better grade, 1⅞ inches minimum diameter or 4 ounces minimum weight: *Provided* That the minimum size may be ¾ inch in diameter, if the potatoes otherwise meet U.S. No. 1 grade.

* * * * *

Dated: March 26, 2010.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2010–7564 Filed 4–2–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

10 CFR Part 431

[Docket Number EERE–2007–BT–STD–0007]

RIN 1904–AB70

Energy Conservation Program: Energy Conservation Standards for Small Electric Motors; Correction

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

ACTION: Final rule; technical correction.

SUMMARY: This document contains a technical correction to the final rule regarding the energy conservation standards for small electric motors, which was published on March 9, 2010. In that final rule, the U.S. Department of Energy (DOE) adopted regulations to establish energy conservation standards for small electric motors. Due to a drafting error, an incorrect compliance date for this equipment was inadvertently inserted into the regulation. This correction notice addresses the error.

DATES: This technical correction is effective April 8, 2010.

FOR FURTHER INFORMATION CONTACT:

James Raba, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–8654. *E-mail: Jim.Raba@ee.doe.gov.*

Michael Kido, U.S. Department of Energy, Office of the General Counsel, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–9507. *E-mail: Michael.Kido@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On March 9, 2010, the DOE's Office of Energy Efficiency and Renewable Energy published a final rule titled "Energy Conservation Standards for Small Electric Motors." 75 FR 10874. Since the publication of that rule, it has come to DOE's attention that, due to a technical oversight, a certain part of the final regulations inadvertently applied an incorrect date by which manufacturers would need to comply with the standards established by that rule. That section of the regulations, section 431.446(a) of Title 10 of the Code of Federal Regulations (10 CFR), Part 431, provides a date of February 28, 2015. 75 FR 10947. Instead, that date should be March 9, 2015, which is 60 months from the date of the final rule's publication in the **Federal Register,** and in the case of a small electric motor that requires listing or certification by a nationally recognized safety testing laboratory, March 9, 2017, 84 months after such date. Both of these dates are specified compliance dates for small electric motor standards under the Energy Policy and Conservation Act of 1975, as amended (EPCA). *See* 42 U.S.C. 6317(b)(3).

II. Need for Correction

As published, the final regulation contains an erroneous date that this document corrects. In light of the statutory requirement, the considerable amount of time before the compliance date and, in the case of the 2015 date, the small difference in the number of days at issue, the change addressed by today's document is technical in nature. Because these dates are specified by EPCA, DOE does not have the discretion to deviate from these statutorily-prescribed requirements. As such, DOE finds that there is good cause under 5 U.S.C. 553(b)(B) and that the issuance of a separate notice to solicit public comment on the changes contained in this notice is unnecessary. In FR Doc. 2010–4358, appearing in the document beginning on page 10947 in the **Federal Register** of Tuesday, March 9, 2010, the following correction is made:

§ 431.446 [Corrected]

■ 1. On page 10947, in the third column, under § 431.446, introductory paragraph (a) is corrected to read as follows:

§ 431.446 Small electric motors energy conservation standards and their effective dates.

(a) Each small electric motor manufactured (alone or as a component of another piece of non-covered equipment) after March 9, 2015, or in the case of a small electric motor which

requires listing or certification by a nationally recognized safety testing laboratory, after March 9, 2017, shall have an average full load efficiency of not less than the following:

* * *

* * * * *

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

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 2010–7642 Filed 4–2–10; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 918

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1261

RIN 2590–AA03, 2590–AA31 and 2590–AA34

Federal Home Loan Bank Directors' Eligibility, Elections, Compensation and Expenses

AGENCY: Federal Housing Finance Agency, Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: In this rulemaking, the Federal Housing Finance Agency (FHFA) is adopting a final rule that implements two separate proposed rules, which relate to Federal Home Loan Bank (Bank) director elections and director compensation, respectively. As to director elections, FHFA is amending its regulations relating to the process by which successor Bank directors are chosen after a directorship is redesignated to a new state prior to the end of the term as a result of the annual designation of Bank directorships. Under the final rule, the redesignation causes the original directorship to terminate and creates a new directorship that will be filled by an election of the members.

As to director compensation, FHFA is implementing section 1202 of the Housing and Economic Recovery Act of 2008 (HERA), which amended section 7(i) of the Federal Home Loan Bank Act (Bank Act) by repealing the statutory caps on the annual compensation that can be paid to Bank directors. This aspect of the final rule allows each Bank to pay its directors reasonable compensation and expenses, subject to the authority of the FHFA Director to object to, and to prohibit prospectively, compensation and/or expenses that the Director determines are not reasonable.

DATES: This rule is effective May 5, 2010.

FOR FURTHER INFORMATION CONTACT: Daniel Coates, Associate Director, Division of FHLBank Regulation, 202–408–2959, *daniel.coates@fhfa.gov* or Neil R. Crowley, Deputy General Counsel, 202–343–1316, *neil.crowley@fhfa.gov,* Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. In General

On July 30, 2008, HERA, Public Law 110–289, 122 Stat. 2654 (2008), became law and created FHFA as an independent agency of the Federal government. Among other things, HERA transferred to FHFA the supervisory and oversight responsibilities over the Banks that formerly had been vested in the now abolished Federal Housing Finance Board (Finance Board). The Banks continue to operate under regulations promulgated by the Finance Board until such time as the existing regulations are supplanted by regulations promulgated by FHFA.

Section 1202 of HERA amended section 7 of the Bank Act, which governs the eligibility, election, compensation and expenses of Bank directors. *See* 12 U.S.C. 1427. FHFA has implemented section 7 in part 1261 of its rules. 12 CFR part 1261.

Section 1201 of HERA (codified at 12 U.S.C. 4513(f)) requires the Director of FHFA to consider the differences between the Banks and the Enterprises with respect to the Banks' cooperative ownership structure, mission of providing liquidity to members, affordable housing and community development mission, capital structure, and joint and several liability, whenever promulgating regulations that affect the Banks. The Director may also consider any other differences that are deemed appropriate. In preparing this final rule, the Director considered the differences between the Banks and the Enterprises as they relate to the above factors and determined that the rule is appropriate, particularly because this final rule applies only to the Banks.

II. Bank Director Eligibility and Elections

In December 2009, FHFA published a proposed rule that would deem terminated a directorship that is redesignated to a new state prior to the end of its term as a result of the annual designation of Bank directorships, with a new directorship created for the new state. *See* 74 FR 62708 (Dec. 1, 2009). The new directorship would be filled by an election of the members. The proposal constituted a change from the current Finance Board rule, which deems the redesignation to create a vacancy on the board. Under the Bank Act, vacancies on the board are filled by the remaining directors. *See* 12 U.S.C. 1427(f)(2); 12 CFR 1261.3 and 1261.4.

FHFA received one comment on the proposed rule, which was from a Bank and related to an aspect of the term limit provisions. Section 1261.4(d)(2) implements the term limit provision of section 7(d) of the Bank Act. *See* 12 CFR 1261.4(d)(2); 12 U.S.C. 1427(d). The rule provides that a term adjusted after July 30, 2008 (the effective date of HERA) to a period of fewer than four years is not considered a full term for purposes of calculating term limits. *See* 12 CFR 1261.4(d)(2)(i). The Bank suggested that FHFA use the term "adjusted" in new paragraph 1261.3(e) to make clear that a newly created directorship with a term of less than four years as a result of a redesignation of directorships would not be a full term for purposes of the statutory term limit. FHFA agrees that this will clarify application of the rule and has made the change in the final rule. FHFA is adopting the remainder of the changes as proposed.

FHFA also is making a technical change to part 1261. It is creating a new subpart A, which contains definitions common to all subparts. These definitions include the terms Act, Bank, FHFA, and Director. These terms no longer will appear in other subparts of part 1261. The succeeding subparts will be redesignated subparts B (eligibility and elections), C (compensation and expenses), and D (reserved). In the newly redesignated subpart B, FHFA is renumbering §§ 1261.1 through 1261.7 as §§ 1261.2 through 1261.8, respectively. It is removing § 1261.8, which was reserved. FHFA is correcting the cross-references within subpart B to take into account the new numbering.

III. Bank Director Compensation and Expenses

In October 2009, FHFA published a proposed rule to address changes HERA section 1202 made to section 7(i) of the Bank Act. *See* 74 FR 54758 (Oct. 23, 2009). Among other things, section 1202 repealed the statutory caps on the annual compensation a Bank can pay to its directors, the effect of which was to authorize the Banks to pay reasonable compensation and expenses to their directors subject to FHFA approval. *See*

12 U.S.C. 1427(i). The proposed rule would implement the provisions of section 7(i) of the Bank Act in a manner that is consistent with the other authorities that the FHFA Director has over the compensation practices of the other regulated entities, *i.e.,* the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

FHFA received six public comments on the proposed rule, three from Banks, one from the Council of Banks, which is a trade group representing all twelve Banks, one from a trade association representing home builders, and one from a public interest group. All commenters generally supported the rule and the goal of increased transparency.

For aspects of the proposed rule with respect to which FHFA received no comments, FHFA is adopting those provisions as proposed, and they generally are not addressed in this preamble. One comment concerned provisions of part 1261 that were not the focus of this rulemaking, such as board diversity and differences between elected and independent Bank directors. Because those matters are beyond the scope of the proposed rules, FHFA is not addressing them in either the regulation or this supplementary information. FHFA discusses issues raised by the other comments in the analysis of the appropriate section of the final rule below.

A. Definitions—Section 1261.20

FHFA received no comments on the definition section. However, because the term "expense" is used throughout the subpart and because reimbursable expenses are described as part of proposed § 1261.24, FHFA has decided to relocate the substance of the description of reimbursable expenses into a new definition. The final rule adds the term "expenses" to the definition section without making any substantive changes from proposed § 1261.24, which is deleted from the final rule. FHFA received no comments on § 1261.24.

B. General—Section 1261.21

FHFA has separated proposed § 1261.21(b) into two parts—the first concerns annual reporting requirements relating to anticipated compensation for the coming year and the second concerns annual reporting requirements relating to compensation and expenses for the prior year. FHFA received comments on two aspects of the reporting requirements. The first comment concerned the report on compensation a Bank expects to pay in the upcoming year. A Bank suggested that FHFA change the due date for the report from December 1 to December 31 because some Banks address compensation issues at the last meeting of the year, which may occur later in December. FHFA has made this amendment in § 1261.21(b)(1).

The second group of comments concerned the reporting requirements for compensation and expenses that a Bank has paid in the prior year. In response to these comments, FHFA is making certain revisions to § 1261.21(b) and is deleting proposed § 1261.25, which would have required the Banks to disclose certain information about compensation practices in their annual reports to members. Finance Board regulations long had required the annual reports the Banks provide to their members to include certain information about the compensation and expenses paid to Bank directors. Section 1261.25 of the proposed rule would have expanded the elements a Bank had to include in the annual reports to provide members with additional information about director compensation, expenses, and meeting attendance. That proposal prompted comments questioning whether it effectively would require the Banks to include items in their filings with the U.S. Securities and Exchange Commission (SEC) that are not required by the federal securities laws. Since the Banks became registered with the SEC, they generally have ceased providing their members an annual report separate from the Form 10–K that they file with SEC, which includes information about director and officer compensation. FHFA agrees that the expanded provisions of § 1261.25 of the proposed rule could have the unintended consequence of requiring a Bank to include in its Form 10–K information that differs from what otherwise is required for SEC registrants, and has determined that the appropriate course is to delete from the final rule any requirements relating to the content of the Banks' annual reports.

Because FHFA needs information about director compensation and expenses for its own supervisory and regulatory purposes, *i.e.,* to assess the reasonableness of the compensation and to compile compensation information for its HERA-mandated annual report to Congress, it has decided to revise the final rule to require the Banks to report the information they would have provided in the annual reports to members to FHFA. Thus, § 1261.21(b)(2) of the final rule requires the Banks to report by the tenth day of the calendar year, seven categories of information relating to director compensation, expenses, and meeting attendance for the immediately preceding calendar year. Those categories relate to compensation and expenses paid to each director, compensation and expenses for all directors, group expenses, as well as the number of board and committee meetings held during the year and each director's attendance at those meetings. FHFA intends for these new reporting requirements to cover compensation, expenses, and meetings that occur in calendar year 2010.

FHFA received several comments about group expenses, such as dinners in conjunction with board or committee meetings that a Bank does not reimburse back to individual directors. Commenters suggested three different methods for dealing with group expenses: (1) Do not report it as an expense; (2) treat it as an aggregated expense that FHFA will review during exam process; or (3) aggregate it, with the average cost allocated back to each director. FHFA believes that these group expenses are "expenses" relating to the directors' attendance at board meetings, but agrees that allocating them among the attending directors might be burdensome. Therefore, FHFA has decided that the Banks need only provide an aggregate sum of group expenses as part of the report on prior year payments.

Several commenters asked FHFA to clarify that a director can attend a board or committee meeting either in person or through electronic means, such as video or teleconferencing. FHFA encourages in-person attendance by all directors, but will deem an individual director's participation in the entire meeting via video or teleconferencing as attendance solely for purposes of reporting that director's attendance under § 1261.21(b)(2)(vii). The board of directors is still required by § 1261.24(a) to hold a minimum of six in-person meetings each year, which requirement is separate from the reporting requirements of § 1261.21.

C. Director Disapproval—Section 1261.23

FHFA received several comments on proposed § 1261.23, which addresses the FHFA Director's authority to disapprove compensation arrangements that do not conform to the reasonableness standard imposed by section 7(i) of the Bank Act. One commenter asked FHFA to clarify that the prospective disapproval determination or order does not apply to earned but unpaid compensation and expenses incurred but not yet

reimbursed. FHFA has done so in the final rule.

Two commenters suggested that the final rule establish a formal process for any determinations of unreasonable director compensation and that the Director provide a written factual analysis to a Bank along with any order directing a Bank to cease further payments at that level. FHFA does not see the need to establish a formal process for reviewing the reasonableness of a Bank's compensation practices, since there are in place already certain requirements to ensure the Agency makes decisions in a responsible manner. Under the Bank Act and principles of administrative law, FHFA must act reasonably in all cases and must have a reasonable factual basis for any regulatory or supervisory actions it takes. In light of these statutory requirements, FHFA believes that it is not necessary to create an additional formal process or to treat decisions made on director compensation any differently from the many other supervisory determinations FHFA makes. While FHFA may not issue a formal written analysis to a Bank whenever the Director deems its compensation arrangements to be unreasonable, it will endeavor to ensure that it provides an opportunity for the Bank to provide its views. Further, the Agency will provide guidance and will advise generally on the aspects of the compensation practices deemed objectionable and suggest improvements. The guidance likely will be in the form of a dialogue with the Bank, much like FHFA staff already engages in with respect to other matters of supervisory concern.

D. Board Meetings—Section 1261.24

In § 1261.24 of the final rule, FHFA has combined two separate provisions of the proposed rule relating to board and committee meetings. Proposed § 1261.26, which concerned the number of board and committee meetings, now appears in § 1261.24(a) without substantive change. Proposed § 1261.27, which concerned the site of board and committee meetings, now appears in 1261.24(b) without substantive change. FHFA did not receive any comments on these sections.

IV. Paperwork Reduction Act

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

V. Regulatory Flexibility Act

The final rule applies only to the Banks, which do not come within the meaning of "small entities" for purposes of the Regulatory Flexibility Act (RFA). *See* 5 U.S.C. 601(6). Therefore, in accordance with section 605(b) of the RFA, 5 U.S.C. 605(b), the FHFA certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 12 CFR Parts 918 and 1261

Banks, Banking, Community development, Conflicts of interest, Credit, Elections, Ethical conduct, Federal home loan banks, Financial disclosure, Housing, Reporting and recordkeeping requirements, Wages.

■ For the reasons stated in the preamble, under the authority of 12 U.S.C. 4511 and 4526, FHFA hereby amends chapters IX and XII of title 12 of the Code of Federal Regulations as follows:

CHAPTER IX—FEDERAL HOUSING FINANCE BOARD

PART 918—[REMOVED]

■ 1. Remove 12 CFR part 918.

CHAPTER XII—FEDERAL HOUSING FINANCE AGENCY

PART 1261—FEDERAL HOME LOAN BANK DIRECTORS

■ 2. The authority citation for part 1261 continues to read as follows:

Authority: 12 U.S.C. 1426, 1427, 1432, 4511, and 4526.

■ 3. Redesignate subparts A, B, and C as subparts B, C, and D, respectively.

■ 4. Redesignate §§ 1261.1 through 1261.7 as §§ 1261.2 through 1261.8, respectively.

■ 5. Add a new Subpart A to read as follows:

Subpart A—Definitions

§ 1261.1 Definitions.

As used in this part:

Bank written in title case means a Federal Home Loan Bank established under section 12 of the Bank Act (12 U.S.C. 1432).

Bank Act means the Federal Home Loan Bank Act, as amended (12 U.S.C. 1421 through 1449).

Director means the Director of the Federal Housing Finance Agency.

FHFA means Federal Housing Finance Agency.

Subpart B—[Amended]

■ 6. Amend newly redesignated subpart B as follows:

■ a. Revise all references to "the Act" to read "the Bank Act"; and

■ b. Amend references as indicated in the table below:

Amend:	By removing the reference to:	And adding in its place:
Newly redesignated § 1261.2, definition of the term "Voting State".	12 CFR part 925	12 CFR part 1263.
Newly redesignated § 1261.4(a)(2)	12 CFR 925.20 and 925.22, or any successor provisions.	§§ 1263.20 and 1263.22 of this chapter.
Newly redesignated § 1261.4(b)	12 CFR 925.20 and 925.22, or any successor provisions.	§§ 1263.20 and 1263.22 of this chapter.
Newly redesignated § 1261.5(b)	§ 1261.3(c)	§ 1261.4(c).
Newly redesignated § 1261.5(e)(1)	§ 1261.3(c)	§ 1261.4(c).
Newly redesignated § 1261.6(b)	12 CFR 925.20 and 925.22, or any successor provisions.	§§ 1263.20 and 1263.22 of this chapter.
Newly redesignated § 1261.7(a)(4)	§ 1261.5	§ 1261.6.
Newly redesignated § 1261.8(a)	§ 1261.6(f)	§ 1261.7(f).
Newly redesignated § 1261.8(a)(iii)	§ 1261.6(e)	§ 1261.7(e).
Newly redesignated § 1261.8(b)	§ 1261.6(a)	§ 1261.7(a).
Newly redesignated § 1261.8(b)	§ 1261.6(a)(3)	§ 1261.7(a)(3).
Newly redesignated § 1261.8(d), introductory text.	§ 1261.5	§ 1261.6.
Newly redesignated § 1261.8(g)(2)	§ 1261.6(e)	§ 1261.7(e).
§ 1261.9(a)	§ 1261.6(a)	§ 1261.7(a).

Amend:	By removing the reference to:	And adding in its place:
§ 1261.14(b)	paragraphs (c) and (d) of § 1261.6	§ 1261.7(c) and (d).

■ 7. In newly redesignated § 1261.2 revise the introductory text to read as set forth below, and remove the definitions of the terms *Act, Bank, Director* and *FHFA*.

§ 1261.2 Definitions.

As used in this Subpart B:

* * * * *

■ 8. Amend newly redesignated § 1261.4 by revising paragraph (d) and adding new paragraph (e) to read as follows:

§ 1261.4 Designation of member directorships.

* * * * *

(d) *Notification.* On or before June 1 of each year, FHFA will notify each Bank in writing of the total number of directorships established for the Bank and the number of member directorships designated as representing the members in each voting state in the Bank district.

(e) *Change of state.* If the annual designation of member directorships results in an existing directorship being redesignated as representing members in a different State, that directorship shall be deemed to terminate in the previous State as of December 31 of that year, and a new directorship to begin in the succeeding State as of January 1 of the next year. The new directorship shall be filled by vote of the members in the succeeding State and, in order to maintain the staggered terms of directorships, shall be adjusted to a term equal to the remaining term of the previous directorship if it had not been redesignated to another State.

■ 9. Amend newly redesignated § 1261.5 by revising paragraph (e) to read as follows:

§ 1261.5 Director eligibility.

* * * * *

(e) *Loss of eligibility.* A director shall become ineligible to remain in office if, during his or her term of office, the directorship to which he or she has been elected is eliminated. The incumbent director shall become ineligible after the close of business on December 31 of the year in which the directorship is eliminated.

§ 1261.8 [Amended]

■ 10. Amend newly redesignated § 1261.8 by adding "(1)" after the "." at the end of the italicized heading of paragraph (a).

■ 11. Add subpart C to read as follows:

Subpart C—Federal Home Loan Bank Directors' Compensation and Expenses

Sec.
1261.20 Definitions.
1261.21 General.
1261.22 Directors' compensation policy.
1261.23 Director disapproval.
1261.24 Board meetings.

Subpart C—Federal Home Loan Bank Directors' Compensation and Expenses

§ 1261.20 Definitions.

As used in this subpart C:

Compensation means any payment of money or the provision of any other thing of current or potential value in connection with service as a director. Compensation includes all direct and indirect payments of benefits, both cash and non-cash, granted to or for the benefit of any director.

Expenses means necessary and reasonable travel, subsistence and other related expenses incurred in connection with the performance of official duties as are payable to senior officers of the Bank under the Bank's travel policy, except gift or entertainment expenses.

§ 1261.21 General.

(a) *Standard.* Each Bank may pay its directors reasonable compensation for the time required of them, and their necessary expenses, in the performance of their duties, as determined by a resolution adopted by the board of directors of the Bank and subject to the provisions of this subpart.

(b) *Reporting.* (1) *Following calendar year.* By December 31 of each calendar year, each Bank shall report to the Director the compensation it anticipates paying to its directors for the following calendar year.

(2) *Preceding calendar year.* No later than the tenth business day of each calendar year, each Bank shall report to the Director the following information relating to director compensation, expenses and meeting attendance for the immediately preceding calendar year:

(i) The total compensation paid to each director;

(ii) The total expenses paid to each director;

(iii) The total compensation paid to all directors;

(iv) The total expenses paid to all directors;

(v) The total of all expenses incurred at group functions that are not reimbursed to individual directors, such as the cost of group meals in connection with board and committee meetings;

(vi) The total number of meetings held by the board and its designated committees; and

(vii) The number of board and designated committee meetings each director attended in-person or through electronic means such as video or teleconferencing.

§ 1261.22 Directors' compensation policy.

(a) *General.* Each Bank's board of directors annually shall adopt a written compensation policy to provide for the payment of reasonable compensation and expenses to the directors for the time required of them in performing their duties as directors. Payments under the directors' compensation policy may be based on any factors that the board of directors determines reasonably to be appropriate, subject to the requirements in this subpart.

(b) *Minimum contents.* The compensation policy shall address the activities or functions for which director attendance or participation is necessary and which may be compensated, and shall explain and justify the methodology used to determine the amount of compensation to be paid to the Bank directors. The compensation policy shall require that any compensation paid to a director reflect the amount of time the director has spent on official Bank business, and shall require that compensation be reduced, as necessary to reflect lesser attendance or performance at board or committee meetings during a given year.

(c) *Prohibited payments.* A Bank shall not pay a director who regularly fails to attend board or committee meetings, and shall not pay fees to a director that do not reflect the director's performance of official Bank business conducted prior to the payment of such fees.

(d) *Submission requirements.* No later than the tenth business day after adopting its annual policy for director compensation and expenses, and at least 30 days prior to disbursing the first payment to any director, each Bank shall submit to the Director a copy of the policy, along with all studies or other supporting materials upon which the board relied in determining the level of compensation and expenses to pay to its directors.

§ 1261.23 Director disapproval.

The Director may determine, based upon his or her review of a Bank's

director compensation policy, methodology and/or other related materials, that the compensation and/or expenses to be paid to the directors are not reasonable. In such case, the Director may order the Bank to refrain from making any further payments under that compensation policy. Any such order shall apply prospectively only and will not affect either compensation or expenses that have been earned but not yet paid or reimbursed or payments that had been made prior to the date of the Director's determination and order.

§ 1261.24 Board meetings.

(a) *Number of meetings.* The board of directors of each Bank shall hold as many meetings each year as necessary and appropriate to carry out its fiduciary responsibilities with respect to the effective oversight of Bank management and such other duties and obligations as may be imposed by applicable laws, provided the board of directors of a Bank must hold a minimum of six in-person meetings in any year.

(b) *Site of meetings.* The bank usually should hold board of director and committee meetings within the district served by the Bank. The Bank shall not hold board of director or committee meetings in any location that is not within the United States, including its possessions and territories.

Dated: March 27, 2010.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2010–7418 Filed 4–2–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 27, 29, 91, 121, 125, and 135

[Docket No. FAA–2005–20245; Amendment No. 27–45, 29–52, 91–313, 121–349, 125–60 and 135–121]

RIN 2120–AJ65

Extension of the Compliance Date for Cockpit Voice Recorder and Digital Flight Data Recorder Regulations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: On March 7, 2008, the FAA published a final rule titled "Revisions to Cockpit Voice Recorder and Digital Flight Data Recorder Regulations." The rule required certain upgrades of cockpit voice recorder and digital flight data recorder equipment on certain aircraft beginning April 7, 2010. That compliance date is being changed for certain requirements on certain aircraft.

DATES: These amendments are effective April 5, 2010.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this final rule contact Timothy W. Shaver, Avionics Maintenance Branch, Flight Standards Service, AFS–360, Federal Aviation Administration, 950 L'Enfant Plaza, SW., Washington, DC 20024; telephone (202) 385–4292; facsimile (202) 385–4651; e-mail *tim.shaver@faa.gov*. For legal questions concerning this final rule contact Karen L. Petronis, Regulations Division, AGC–200, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3073; facsimile (202) 267–7971; e-mail *karen.petronis@faa.gov.*

SUPPLEMENTARY INFORMATION:

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. Under that section, the FAA is charged with prescribing regulations providing minimum standards for other practices, methods and procedures necessary for safety in air commerce. This regulation is within the scope of that authority since flight data recorders are the only means available to account for aircraft movement and flightcrew actions critical to finding the probable cause of incidents or accidents, including data that could prevent future incidents or accidents.

I. Background

A. History of the Regulatory Requirements

In February 2005, the FAA issued a notice of proposed rulemaking proposing to amend the digital flight data recorder (DFDR) and cockpit voice recorder (CVR) regulations for much of the U.S. fleet of aircraft (70 FR 9752; February 28, 2005). Some of the changes proposed were based on recommendations from the National Transportation Safety Board (NTSB or Board) that were issued as a result of the Board's investigations of several aircraft accidents and incidents. A full discussion of the NTSB's recommendations and the FAA's proposed changes can be found in the 2005 NPRM.

In March 2008, the FAA issued a final rule adopting many of those proposals (73 FR 12541; March 7, 2008). The requirements were adopted as aircraft certification or operating rules, some of which take effect on April 7, 2010, and include:

- The recording of datalink communications, when the communications equipment is installed on or after April 7, 2010;
- Wiring requirements related to single electrical failures and their effect on the DFDR and CVR systems;
- The addition of a 10-minute independent power source for the CVR;
- Requirements regarding the CVR location and housing;
- Requirements for the duration of DFDR recording;
- Requirements for the duration of CVR recording; and
- Increased sampling rates for certain DFDR parameters.

A detailed discussion of the individual requirements and where they appear in the regulations can be found in the preamble to the 2008 final rule, beginning at page 12556 (Section-By-Section Analysis). Some of the requirements were promulgated to be effective in two years, while others were required within four years of April 7, 2008.

Between May 1, 2009 and December 14, 2009, the FAA received seven petitions from aircraft manufacturers and two from industry associations requesting either that the effective dates in the regulations be changed or that other relief from several of the 2008 requirements be granted for aircraft manufactured on or after April 7, 2010.

In a notice of proposed rulemaking (NPRM) published on January 7, 2010 (75 FR 943), the FAA denied all of the petitions and instead proposed that some of the requirements for newly manufactured aircraft be extended from the April 7, 2010 compliance date. Specifically, the FAA proposed that:

1. For increased DFDR sampling rates, the compliance date for newly manufactured aircraft operated under part 121, 125, or 135 would be extended until December 6, 2010.

2. For the datalink recording requirements, the compliance date after which the installation of datalink communications must include recording equipment would be extended until December 6, 2010 for aircraft operating under part 121, 125, or 135.

3. For the ten-minute backup power source for CVRs, the compliance date for part 91 operators (only) would be extended to April 6, 2012.

4. For increased DFDR sampling rates, the compliance date for newly manufactured aircraft operated under part 91 would be extended until April 6, 2012.

5. For aircraft operating under part 91, datalink communications would have to be recorded when datalink communication equipment is installed on or after April 6, 2012.

These proposed changes were the ones the FAA found to be potentially justified by the petitions submitted. All other compliance dates in the 2008 final rule remained as adopted, including the wiring requirements for CVRs and DFDRs; 25-hour solid state memory DFDRs; two-hour solid state memory CVRs; the CVR and DFDR housing requirements; and the ten-minute backup power source for CVRs on aircraft operated under part 121, 125, or 135. A more complete discussion of the requests and the FAA's proposal can be found in the preamble to the NPRM.

B. General Response to the NPRM

In the NPRM, the FAA invited comment from manufacturers and affected operators that may not consider the proposed extension to be sufficient. The agency requested that comments include specific, detailed information regarding their actions toward compliance, and reasons (such as lack of equipment availability) that continue to affect timely compliance with the 2008 regulations.

The FAA received 14 comment documents to the NPRM, including five from airframe manufacturers, three from avionics equipment manufacturers, two from industry trade associations, three from air carriers, and from the NTSB. The comments generally supported the proposed changes, while three manufacturers requested further extension of the compliance dates based on continuing issues with compliance for certain models. One avionics equipment manufacturer stated that it had been ready to supply equipment and that an extension would serve as a reward to suppliers who did not provide compliant systems by the date required in the 2008 regulations.

The NTSB supported the FAA and stated that our proposed extension of certain compliance dates was "reasonable and realistic." The NTSB opposed any further delay that might be requested, and suggested that some of the original four-year compliance times could be shortened.

C. Aligning Requirements for Parts 91 and 135

The General Aviation Manufacturers Association (GAMA) and Bombardier, Inc. (Bombardier) each submitted a comment encouraging the FAA to extend the dates for part 135 operation compliance to match those proposed for part 91. Each of the commenters noted that it is common for a business aircraft to spend part of its time operating under the regulations of part 91, and part of its time operating under part 135.

The GAMA stated that the manufacturers of these aircraft have made significant progress toward compliance in the last 18 months, but that technical difficulties remain with full compliance. Since the manufacturers seek to deliver aircraft that meet their customers' need to change operating parts, it means that part 135 compliance is required, but that it cannot be integrated into the manufacturing process for deliveries made beginning April 8, 2010. The proposed part 91 compliance date extension would provide no relief for most of the aircraft they manufacture because of the dual operational use of the aircraft.

Bombardier noted that its primary avionics equipment suppliers focused on the commercial aircraft market (for parts 121 and 125) with their more generalized system architectures as their primary goal for 2010 compliance. Accordingly, Bombardier's aircraft produced for part 121 and 125 operators will meet the April 7, 2010, date without needing to make use of the proposed extension for those operations. But those compliance efforts have resulted in the engineering for Bombardier's business aircraft, which it describes as having "more exotic bus architectures and systems that * * * cannot be supported by other suppliers" remaining incomplete. Bombardier also noted that its Challenger aircraft model will need unanticipated hardware upgrades to meet the 8Hz sampling rates, and these costs and the underlying engineering were unanticipated in the 2008 final rule. This has taken the Challenger aircraft even further out of the normal manufacturing sequence and efforts to achieve compliance with the 2008 regulations. For its Challenger and BD–700 aircraft models, the proposed extension for increased sampling rates to December 2010 would decrease the number of noncompliant aircraft, but would not completely eliminate the need for exemptions to operate under part 135.

Honeywell Aerospace also recommended that part 135 operations be aligned with part 91 and the compliance date for them be extended to 2012, noting the crossover in operations and the lack of available compliant solutions for those aircraft. Gulfstream also requested that the proposed part 91 compliance extension be extended to part 135 operations for aircraft with a capacity of 19 or fewer passengers, but did not detail its specific equipment or certification issues.

The FAA disagrees that aircraft operated under part 135 should be treated the same as aircraft operated under part 91. It is true that the same aircraft may be used in both part 91 and part 135 operations. The FAA has addressed differing equipage and maintenance requirements in the past by requiring that the higher standard be met for all operations when there is mixed use. The agency sees no reason to change that practice in this instance.

The FAA considers part 135 operators more akin to those of part 121 than those of part 91, and proposed the same compliance date extension for both part 121 and 135. The general public, in purchasing air transportation, expects a level of equipage and safety that it would not necessarily expect to see in general aviation. The FAA has always maintained higher standards for aircraft operated for compensation or hire and sees no reason to change its position here. As a practical matter, the shorter compliance date will likely result in the aircraft used solely in part 91 operations complying before the April 2012 compliance date.

No changes are being adopted based on these comments. For part 135 airplanes, the installation of increased DFDR sampling rates and datalink recording equipment is extended until December 6, 2010, as proposed.

D. Rule Language Discrepancy

Several commenters, including the Boeing Company (Boeing), Airbus, and Avianca Airlines, identified a discrepancy between the text of current § 121.359(k) and the proposed rule text of § 121.359(j) regarding the datalink message set requirements in § 25.1457(a)(6).

The proposed rule text did contain an error. A similar error exists in other proposed operating rule sections. This final rule corrects the references in §§ 91.609(i), 121.359(j), 125.227(h), and 135.151(g)(1) and (g)(2) to indicate the correct compliance date for datalink recording requirements.

E. Miscellaneous Comments

Boeing noted that in July 2009, it had requested a one-year exemption for all of its production models from the requirement for a ten-minute CVR independent power source. Boeing indicated that it has made significant advancements toward compliance since its original request, and expects to achieve compliance for all models except the Boeing 737. Boeing requested that the compliance date for 737s be changed from April 7, 2010 to July 6, 2010, noting that about 15 aircraft are expected to be produced during that time, which is before the power source equipment can be certificated and installed.

The FAA will not extend the compliance date in the rule for a single model of aircraft. The agency appreciates Boeing's renewed efforts at timely compliance, and will address the need for individual model 737 aircraft to be granted temporary operating exemptions when requested by the operators taking delivery of the affected aircraft. Requests for exemption need to be filed by the affected operators under the procedures of 14 CFR part 11. Any aircraft granted an exemption will need to be retrofitted with the power source equipment before any granted exemption expires.

In its comment, Airbus included detailed descriptions of its efforts toward compliance since it filed a petition for exemption in June 2009 on behalf of affected operators of its aircraft. Airbus indicated that it cannot guarantee that design changes necessary to implement the increased DFDR sampling rates will be ready before the December 6, 2010 extension proposed in the NPRM, and renewed its request that the compliance date be extended a full year.

The FAA has determined that the compliance date for part 121, 125, and 135 aircraft DFDR sampling rates will be extended until December 6, 2010, as proposed. Operators that require relief for aircraft manufactured after that date may apply for temporary exemption relief under 14 CFR part 11.

Airbus also renewed its request to extend the compliance time for datalink recording by one year from the current rule, indicating that the alternative is to have inactive datalink communication equipment installed.

The FAA has again concluded that any future benefit of using datalink equipment alone is outweighed by the risk of not having the communications recorded. Once datalink equipment is installed and is in use for instructions that affect the movement of the aircraft, a record of those instructions becomes a critical element for post accident and incident investigation. The data provided by these and other recordings play a critical part in understanding the actions and events that lead up to the accident or incident. Once probable cause has been determined, actions can be taken to prevent future accidents of the same type from occurring. The elimination of voice communication and the requirements that it be recorded must be accomplished in a manner that maintains the integrity of the information, and that will occur when datalink communications are recorded. The implementation of the recording requirement cannot be further delayed in favor of some generalized benefit of lessened environmental operational impact and eventual international harmonization. The FAA notes that datalink communication remains optional under our regulations. But when chosen to be installed, the safety issues that attach to its use require that recordation of those communications not be delayed any further.

Nor does the FAA accept the argument that since some datalink communications are captured on the ground, it would be an acceptable alternative to onboard recordation. Such activities are not recognized by federal regulation and raise questions with regard to who intercepts and maintains the record of such communications and to whom they would be accessible. Nor are there any industry standards for the capture or maintenance of data recorded by ground-based systems. While such activities may become acceptable in the future as the technology advances, it does not change the need for recording datalink communications on board an aircraft now.

The Air Transport Association (ATA) commented on behalf of its member operators that the proposed extensions will reduce the number of airplanes that are unable to comply, but will not eliminate the potential need for temporary exemptions. The ATA also renewed its request for a change in the date after which in-service aircraft need to add datalink recording capability when new datalink equipment is installed.

The FAA understands that the compliance extensions for part 121, 125, and 135 operations adopted in this final rule may not capture every aircraft manufactured in 2010. As we noted in response to the Boeing 737 issue with the CVR independent power source, the FAA anticipates that some exemption requests will be filed. The FAA has found that the proposed compliance extension is appropriate under the circumstances described by the industry, but that further extension is not. The FAA notes that no matter how far in advance compliance dates are set, the agency is almost always faced with requests for temporary exemption as those dates approach. As indicated in the preamble to the proposed rule, the agency has not been persuaded that a different compliance time is either necessary or appropriate for in-service aircraft adding optional new datalink equipment. In response to industry inquiries, the FAA plans to publish on its Web site additional guidance on datalink recording compliance for upgrades to existing aircraft.

F. Rotorcraft Corrections

In the NPRM, we also proposed changes to the certification rules of parts 27 and 29 to correct references to airplanes that were inadvertently placed in the rotorcraft certification rules. No comments were received on these proposed changes and they are adopted as proposed.

G. Final Rule Summary

As compared with the final rule adopted in March 2008, this final rule adopts the following flight recorder equipment compliance times:

1. For the ten-minute backup power source for CVRs, the compliance date for newly manufactured aircraft operating under part 91 is April 6, 2012.
2. For increased DFDR sampling rates, the compliance date for newly manufactured aircraft operating under part 91 is April 6, 2012.
3. For increased DFDR sampling rates, the compliance date for newly manufactured aircraft operating under part 121, 125, or 135 is December 6, 2010.
4. For recordation of datalink communications, the compliance date after which newly installed datalink systems must include recording capability for aircraft operating under part 91 is April 6, 2012.
5. For recordation of datalink communications, the compliance date after which newly installed datalink systems must include recording capability for aircraft operating under part 121, 125, or 135 is December 6, 2010.

II. Regulatory Notice and Analysis

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 current

or new requirement for information collection associated with this amendment.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with 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 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, the 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 impacts of this 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 is to be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this rule. The reasoning for this determination follows:

In response to its 2010 NPRM, the FAA received several comments that generally supported the proposed compliance dates. As discussed in the NPRM, the FAA recognizes that technical difficulties have necessitated the extension of certain compliance dates. By extending the compliance dates, this rule will eliminate some retrofit and airplane downtime costs.

Some commenters requested that the proposed part 135 compliance date be aligned with the proposed part 91 compliance date because some newly manufactured airplanes will operate under both part 91 and part 135. The FAA has determined that part 135 operations are more like part 121 operations, and the same compliance date extension is being adopted for those two parts.

The FAA has determined that this rule is cost relieving, 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.

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.

The compliance dates extensions will reduce the costs by delaying the date after which certain production aircraft must record some parameters at a higher sampling rate. Since these aircraft would not have been able to comply with the original date, this final rule reduces some of these costs. The expected outcome will benefit small operators that purchase new aircraft.

Therefore, as the FAA Administrator, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39) prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this rule and has determined that it will reduce costs on both domestic and international entities and thus has a neutral trade impact.

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 $141.3 million in lieu of $100 million. This rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have federalism implications.

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the FAA, when modifying its regulations in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish appropriate regulatory distinctions. In the NPRM, we requested comments on whether the proposed rule should apply differently to intrastate operations in Alaska. We did not receive any

comments, and we have determined, based on the administrative record of this rulemaking, that there is no need to make any regulatory distinctions applicable to intrastate aviation in Alaska.

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 rulemaking action qualifies for the categorical exclusion identified in Chapter 3, paragraph 312f and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this final rule 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 because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

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 amendment number or docket number of this rulemaking.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://DocketsInfo.dot.gov.*

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. If you are a small entity and you have a question regarding this document, you may contact your local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. You can find out more about SBREFA on the Internet at *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

Good Cause

This final rule amends certain compliance dates in various operating regulations and provides relief to operators of certain aircraft manufactured on or after April 7, 2010. Since that date is less than 30 days from the publication of these amendments, the FAA has determined that good cause exists under 5 U.S.C. 553(d) to make this rule effective less than 30 days from publication.

List of Subjects in 14 CFR Parts 27, 29, 91, 121, 125, and 135

Air carriers, Air taxis, Aircraft, Aviation safety, Charter flights, Safety, Transportation.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends parts 27, 29, 91, 121, 125, and 135 of Title 14, Code of Federal Regulations, as follows:

PART 27—AIRWORTHINESS STANDARDS: NORMAL CATEGORY ROTORCRAFT

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

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

■ 2. Amend § 27.1457 by revising paragraph (d)(1)(ii) to read as follows:

§ 27.1457 Cockpit voice recorders.

* * * * *

(d) * * *

(1) * * *

(ii) It remains powered for as long as possible without jeopardizing emergency operation of the rotorcraft.

* * * * *

■ 3. Amend § 27.1459 by revising paragraph (a)(3)(ii) to read as follows:

§ 27.1459 Flight data recorders.

(a) * * *

(3) * * *

(ii) It remains powered for as long as possible without jeopardizing emergency operation of the rotorcraft.

* * * * *

PART 29—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY ROTORCRAFT

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

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

■ 5. Amend § 29.1457 by revising paragraph (d)(1)(ii) to read as follows:

§ 29.1457 Cockpit voice recorders.

* * * * *

(d) * * *

(1) * * *

(ii) It remains powered for as long as possible without jeopardizing emergency operation of the rotorcraft.

* * * * *

■ 6. Amend § 29.1459 by revising paragraph (a)(3)(ii) to read as follows:

§ 29.1459 Flight data recorders.

(a) * * *

(3) * * *

(ii) It remains powered for as long as possible without jeopardizing emergency operation of the rotorcraft.

* * * * *

PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 7. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat. 1180).

■ 8. Amend § 91.609 by revising paragraph (i)(1) adding new paragraph (i)(3) and revising paragraph (j) to read as follows:

§ 91.609 Flight data recorders and cockpit voice recorders.

* * * * *

(i) * * *

(1) Is installed in accordance with the requirements of § 23.1457 (except for paragraphs (a)(6) and (d)(5)); § 25.1457 (except for paragraphs (a)(6) and (d)(5)); § 27.1457 (except for paragraphs (a)(6) and (d)(5)); or § 29.1457 (except for paragraphs (a)(6) and (d)(5)) of this chapter, as applicable; and

* * * * *

(3) For all airplanes or rotorcraft manufactured on or after April 6, 2012,

also meets the requirements of
§ 23.1457(a)(6) and (d)(5);
§ 25.1457(a)(6) and (d)(5);
§ 27.1457(a)(6) and (d)(5); or
§ 29.1457(a)(6) and (d)(5) of this chapter, as applicable.

(j) All airplanes or rotorcraft required by this section to have a cockpit voice recorder and a flight data recorder, that install datalink communication equipment on or after April 6, 2012, must record all datalink messages as required by the certification rule applicable to the aircraft.

* * * * *

■ 9. Amend appendix E to part 91 by revising footnote 5 to read as follows:

Appendix E to Part 91—Airplane Flight Recorder Specifications

* * * * *

[5] For Pitch Control Position only, for all aircraft manufactured on or after April 6, 2012, the sampling interval (per second) is 8. Each input must be recorded at this rate. Alternately sampling inputs (interleaving) to meet this sampling interval is prohibited.

■ 10. Amend appendix F to part 91 by revising footnote 4 to read as follows:

Appendix F to Part 91—Helicopter Flight Recorder Specifications

* * * * *

[4] For all aircraft manufactured on or after April 6, 2012, the sampling interval per second is 4.

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

■ 11. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 46105.

■ 12. Amend § 121.359 by revising paragraphs (e)(1) and (j)(1), adding new paragraph (j)(4), and revising paragraph (k) to read as follows:

§ 121.359 Cockpit voice recorders.

* * * * *

(e) * * *

(1) Is installed in accordance with the requirements of § 23.1457 (except paragraphs (a)(6), (d)(1)(ii), (4), and (5)) or § 25.1457 (except paragraphs (a)(6), (d)(1)(ii), (4), and (5)) of this chapter, as applicable; and

* * * * *

(j) * * *

(1) Is installed in accordance with the requirements of § 23.1457 (except for paragraph (a)(6) or § 25.1457 (except for paragraph (a)(6)) of this chapter, as applicable;

* * * * *

(4) For all airplanes manufactured on or after December 6, 2010, also meets the requirements of § 23.1457(a)(6) or § 25.1457(a)(6) of this chapter, as applicable.

(k) All airplanes required by this part to have a cockpit voice recorder and a flight data recorder, that install datalink communication equipment on or after December 6, 2010, must record all datalink messages as required by the certification rule applicable to the airplane.

■ 13. Amend appendix M to part 121 by revising footnote 18, to read as follows:

Appendix M to Part 121—Airplane Flight Recorder Specifications

* * * * *

[18] For all aircraft manufactured on or after December 6, 2010, the seconds per sampling interval is 0.125. Each input must be recorded at this rate. Alternately sampling inputs (interleaving) to meet this sampling interval is prohibited.

* * * * *

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE; AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

■ 14. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44710–44711, 44713, 44716–44717, 44722.

■ 15. Amend § 125.227 by revising paragraph (h)(1), adding new paragraph (h)(4), and revising paragraph (i) to read as follows:

§ 125.227 Cockpit voice recorders.

* * * * *

(h) * * *

(1) Is installed in accordance with the requirements of § 25.1457 (except for paragraph (a)(6)) of this chapter;

* * * * *

(4) For all airplanes manufactured on or after December 6, 2010, also meets the requirements of § 25.1457(a)(6) of this chapter.

(i) All airplanes required by this part to have a cockpit voice recorder and a flight data recorder, that install datalink communication equipment on or after December 6, 2010, must record all datalink messages as required by the certification rule applicable to the airplane.

■ 16. Amend appendix E to part 125 by revising footnote 18, to read as follows:

Appendix E to Part 125—Airplane Flight Recorder Specifications

* * * * *

[18] For all aircraft manufactured on or after December 6, 2010, the seconds per sampling interval is 0.125. Each input must be recorded at this rate. Alternately sampling inputs (interleaving) to meet this sampling interval is prohibited.

* * * * *

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

■ 17. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 41706, 44113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

■ 18. Amend § 135.151 by revising paragraphs (b)(1), (g)(1)(i), (g)(2)(i), and (h) and by adding paragraphs (g)(1)(iv) and (g)(2)(iv) to read as follows:

§ 135.151 Cockpit voice recorders.

* * * * *

(b) * * *

(1) Is installed in accordance with the requirements of § 23.1457 (except paragraphs (a)(6), (d)(1)(ii), (4), and (5)); § 25.1457 (except paragraphs (a)(6), (d)(1)(ii), (4), and (5)); § 27.1457 (except paragraphs (a)(6), (d)(1)(ii), (4), and (5)); or § 29.1457 (except paragraphs (a)(6), (d)(1)(ii), (4), and (5)) of this chapter, as applicable; and

* * * * *

(g)(1) * * *

(i) Is installed in accordance with the requirements of § 23.1457 (except for paragraph (a)(6)); § 25.1457 (except for paragraph (a)(6)); § 27.1457 (except for paragraph (a)(6)); or § 29.1457 (except for paragraph (a)(6)) of this chapter, as applicable; and

* * * * *

(iv) For all airplanes or rotorcraft manufactured on or after December 6, 2010, also meets the requirements of § 23.1457(a)(6); § 25.1457(a)(6); § 27.1457(a)(6); or § 29.457(a)(6) of this chapter, as applicable.

(2) * * *

(i) Is installed in accordance with the requirements of § 23.1457 (except for paragraph (a)(6)); § 25.1457 (except for paragraph (a)(6)); § 27.1457 (except for paragraph (a)(6)); or § 29.1457 (except for paragraph (a)(6)) of this chapter, as applicable; and

* * * * *

(iv) For all airplanes or rotorcraft manufactured on or after December 6, 2010, also meets the requirements of § 23.1457(a)(6); § 25.1457(a)(6);

§ 27.1457(a)(6); or § 29.457(a)(6) of this chapter, as applicable.

(h) All airplanes or rotorcraft required by this part to have a cockpit voice recorder and a flight data recorder, that install datalink communication equipment on or after December 6, 2010, must record all datalink messages as required by the certification rule applicable to the aircraft.

■ 19. Amend appendix C to part 135 by revising footnote 4 to read as set forth below.

Appendix C to Part 135—Helicopter Flight Recorder Specifications

* * * * *

[4] For all aircraft manufactured on or after December 6, 2010, the sampling interval per second is 4.

■ 20. Amend appendix E to part 135 by revising footnote 3 to read as set forth below.

Appendix E to Part 135—Helicopter Flight Recorder Specifications

* * * * *

[3] For all aircraft manufactured on or after December 6, 2010, the sampling interval per second is 4.

■ 21. Amend appendix F to part 135 by revising footnote 18 to read as set forth below.

Appendix F to Part 135—Airplane Flight Recorder Specifications

* * * * *

[18] For all aircraft manufactured on or after December 6, 2010, the seconds per sampling interval is 0.125. Each input must be recorded at this rate. Alternately sampling inputs (interleaving) to meet this sampling interval is prohibited.

Issued in Washington, DC, on March 30, 2010.

J. Randolph Babbitt,

Administrator.

[FR Doc. 2010–7660 Filed 4–2–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 67

[Docket No. FAA–2009–0773

Special Issuance of Airman Medical Certificates to Applicants Being Treated With Certain Antidepressant Medications

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Policy statement; request for comment.

SUMMARY: This policy statement is intended to serve as notice that the Federal Aviation Administration (FAA) will consider for a special-issuance medical certificate applicants for first-, second-, and third-class airman medical certification who are being treated for depression with one of four antidepressant medications. The FAA will evaluate affected applicants on a case-by-case basis and will issue certificates based on a medical finding that an individual's use of such medication will not endanger public safety.

DATES: This policy goes into effect April 5, 2010. Comments must be submitted on or before May 5, 2010.

ADDRESSES: You may send comments identified by Docket Number FAA–2009–0773 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.

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, the 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: Judi Citrenbaum, Federal Air Surgeon's Office, Office of Aerospace Medicine, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–9689; facsimile (202) 267–5200, e-mail *Judi.M.Citrenbaum@faa.gov.*

SUPPLEMENTARY INFORMATION:

Availability of the Policy Statement: You can get an electronic copy of this document 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 number.

Background

Under Title 14 of the Code of Federal Regulations (14 CFR) 67.107(c), 67.207(c), and 67.307(c) and 67.113(c), 67.213(c) and 67.313 (c), the FAA generally considers a diagnosis of depression and use of psychotropic medication medically disqualifying for applicants for FAA medical certification. Disqualifying medication generally includes all sedatives, tranquilizers, antipsychotics, antidepressants (including selective serotonin reuptake inhibitors (SSRIs)), analeptics, anxiolytics, and hallucinogens. Aviation Medical Examiners (AMEs) defer medical certificate issuance for any applicant with a disqualifying medical condition, including any applicant who reveals on a medical certificate application usage of psychotropic medication for treatment of depression.

Under 14 CFR 67.401 the Federal Air Surgeon may, at his discretion, authorize special issuance of airman medical certificates to applicants who are disqualified under the certification standards set forth in subparts B, C, or D of part 67. The FAA, however, has long considered the use of a psychotropic medication for treatment of depression as a basis to deny a special-issuance medical certificate. Current FAA special-issuance practice has been to consider applicants who had taken psychotropic medication only if they had discontinued it for at least 3 months prior to application. Upon careful review and reconsideration, the FAA is modifying its long-standing, special-issuance practice. The FAA has determined that aviators diagnosed with depression taking one of four specific

SSRIs may be considered for special issuance of an airman medical certificate. Affected applicants will continue to be considered on a case-by-case basis and in keeping with the conditions and limitations announced in this policy statement.

As reported in the Federal Air Surgeon's Medical Bulletin, Vol. 42, No. 3, 2004–3 (article entitled "Depression and Use of SSRIs in Pilots"), since developed in the 1980s, SSRIs have been used successfully to treat many psychiatric disorders and medical conditions. Because SSRIs have been more effective and better tolerated (fewer side effects) than previous antidepressant medications, they soon became the most frequently prescribed medications for depression. Five of the top 40 medications prescribed in the United States are SSRIs and their usage is increasing.

Some civil aviation authorities have adopted more flexible policies to consider some applicants using SSRIs. Similarly, the International Civil Aviation Organization (ICAO), the aerospace medical community, and the aviation community at large have made recommendations that suggest more flexibility may be appropriate in some cases. These policies and recommendations may be summarized as follows:

- *Aerospace Medical Association:* In 2004, published a position paper recommending that the FAA allow usage of SSRIs.
- *Aircraft Owners and Pilots Association:* In 2006, proposed a change to policy and offered a protocol for allowing use of certain SSRIs in pilots.
- *Air Line Pilots Association Aeromedical Office:* In 2002, proposed a policy for granting Special-Issuance Medical Certificates for selected SSRIs and with ongoing medical monitoring.
- *Civil Aviation Safety Authority of Australia:* In 1987, allowed use of certain SSRIs. A 10-year follow-up study (1993–2004) of 481 pilots showed no increase in accidents.
- *ICAO:* In 2009, adopted a Recommended Practice that advises that signatory States may certificate applicants on a case-by-case basis who are prescribed (and are taking) an approved SSRI antidepressant medication for an established diagnosis of depression which is in remission.
- *Transport Canada:* In 2004, allowed (with no adverse affect on safety) six pilots holding first-class certificates and serving in multi-crew settings selected use of only three specific medications.
- *U.S. Army:* In 2005, offered a waiver for use of SSRIs in selected pilots.

In keeping with these recommendations and policies, broadening the current special-issuance policy on the use of psychotropic medication to allow certain antidepressants will provide the FAA latitude, on a case-by-case basis, to grant special-issuance medical certificates to applicants determined to be fit for flight. For the FAA, concern regarding applicants who may be reluctant to disclose or who may be masking a struggle with depression remains a safety concern that this policy will serve to address.

Policies and Recommendations the FAA Considered

In 2004, the Aerospace Medical Association (AsMA) [*see* the docketed copy of the article in the journal *Aviation, Space, and Environmental Medicine* entitled "Aeromedical Regulation of Aviators Using Selective Serotonin Reuptake Inhibitors for Depressive Disorders" (Vol 75, No. 5)] proposed that aeromedical certifying authorities remove the current absolute prohibition against pilots flying while taking SSRIs and adopt aeromedical protocols that include carefully controlled followup and review. According to AsMA: "Protocols designed to aggressively manage the full spectrum of adverse possibilities related to SSRI use may enable the safe use of SSRIs in formerly depressed aviators who suffer no aeromedically significant side effects. In these closely managed cases of depressive disorders, special issuances or waivers for SSRI use are justified."

In 2006, the Aircraft Owners and Pilots Association requested the FAA to reconsider its longstanding policy that disallows use of all antidepressant medication. In its request, AOPA states that the FAA should consider those pilots who have a "demonstrated history of continued stability and show no adverse symptoms while using psychotropic medications, specifically SSRIs for a special issuance of a third-class medical certificate."

AOPA indicates that the Civil Aviation Safety Authority of Australia (CASA) has allowed medical certification of aviators using antidepressants since 1989. "Although CASA's policy was not formalized until 2001, the compiled data of 481 cases did yield evidence suggesting that the use of antidepressants in carefully screened and well-monitored airmen can safely be undertaken without compromising aviation safety. A smaller study conducted by Transport Canada among military aviators reached a similar conclusion. The results of the Australian and Canadian experience and the conclusion of aviation medical experts clearly favor the use of SSRIs under controlled conditions. Because of these encouraging results, AOPA believes that this is an opportune time for the FAA to change its policy regarding the use of certain SSRIs."

An August 2007 research article published in the journal *Aviation, Space, and Environmental Medicine* (Vol. 78, No. 8) entitled "Antidepressant Use and Safety in Civil Aviation: A Case-Control Study of 10 Years of Australian Data" followed the impact of SSRI usage on aviation safety. (A copy of this article is placed in the docket.)

According to the article, the aim of the study was "to identify significant safety-related outcomes, such as aircraft accidents or incidents that may be related to the use of antidepressant medication in pilots and air traffic controllers." The study employed a matched cohort of all holders of Australian aviation medical certificates who were prescribed antidepressants during the period January 1, 1993 to June 30, 2004, and a matched comparison group. No significant differences between the two groups were found in any of the analyses. Provided specific criteria were met and maintained, no evidence of adverse safety outcomes was found arising from permitting individuals to operate as commercial or private aircrew or air traffic controllers while using antidepressants.

In November 2009, the International Civil Aviation Authority (ICAO) adopted a Recommended Practice that advises that signatory States may certificate applicants on a case-by-case basis who are prescribed (and are taking) an approved SSRI antidepressant medication for an established diagnosis of depression which is in remission. The recommendation reads as follows:

> *6.3.2.2.1, 6.4.2.2.1, 6.5.2.2.1 Recommendation.*—An applicant with depression, being treated with antidepressant medication, should be assessed as unfit unless the medical assessor, having access to the details of the case concerned, considers the applicant's condition as unlikely to interfere with the safe exercise of the applicant's license and rating privileges.

In guidelines provided for assessment of applicants treated with antidepressant medication in its Manual of Civil Aviation Medicine (Doc 8984), ICAO indicates: "Some of these [antidepressant] medications are sedating and some are not, thus offering a therapeutic choice in treating depressed patients who show psychomotor agitation or retardation. Fewer side effects generally result in

improved aeromedical safety. However, successful treatment of depression is a dynamic and complex process involving more than just writing a prescription, and the SSRIs can have some aeromedically significant side effects and withdrawal effects that are of little importance in ordinary clinical practice. Aeromedical policies that place an absolute prohibition on operating after a diagnosis of depression may also make it less likely that an aviator or air traffic controller will seek treatment or declare their illness to the licensing authority."

Forthcoming Notice Related to This Action

FAA studies have shown that certain antidepressants (SSRIs) were found in 61 pilot fatalities of civil aviation accidents that occurred during 1990–2001. (*See* copies of DOT/FAA/AM–07/19 and DOT/FAA/AM–03/7 placed in this docket.) In conducting these studies, researchers from the FAA Civil Aerospace Medical Institute retrieved medical information on 59 of the 61 pilots from the FAA Medical Certification Database and accident cause/factor information from the National Transportation Safety Board's Aviation Accident Database. (Information on two pilots was not available because one had no medical certificate and one held Canadian certification). Psychological conditions and/or the use of drugs were determined to be the cause or a factor in 19 (31%) of the 61 accidents. Study findings indicated that SSRIs were used by the aviators but were not reported in their aeromedical examinations. The FAA remains concerned that individuals seen in the study did not disclose a medical history of depression, a related medical condition, or SSRI usage.

According to a May 2004 report published in the journal *Aviation, Space, and Environmental Medicine (Vol 75, No. 5)* entitled "Aeromedical Regulation of Aviators Using Selective Serotonin Reuptake Inhibitors for Depressive Disorders," pilots would rather risk not taking prescribed antidepressant medication than be grounded. The report (placed in the docket) refers to information about the use of SSRIs available from the Aviation Medicine Advisory Service (AMAS) of Aurora, Colorado which provides consultation to various aviation organizations such as pilot unions and aerospace medicine specialists. This database includes information on approximately 68,000 pilots working at approximately 55 air carriers. According to the report:

AMAS reviewed its database of telephone inquiries from pilots between 1992 and 1997. It had received 1,200 telephone inquiries from pilots who had been diagnosed as having clinical depressions, and who had been advised by their physicians to take antidepressant medications. Under the current FAA policy, these pilots would spend about 9 mo (sic) off flying status. These pilots had called AMAS to discuss the aeromedical implications of their situations.

When advised of the FAA's policy, that each would be grounded until the depression had cleared and the medication had been discontinued for approximately 3 mo (sic), the pilots indicated their intended responses to the prospect of not flying for 9 mo (sic) or more. Of the 1,200 pilots, some 59% (710) told the AMAS that they would refuse the medication and continue to fly. About 15% (180) indicated an intention to take the medications and continue their flight duties without informing the FAA. The remaining 25% (300) said they would take sick leave, undergo the recommended treatment, and return to work when aeromedically cleared to do so.

Scenarios involving individuals who might risk flying while taking an antidepressant without medical oversight, or flying without taking an antidepressant when they need to be, are unacceptable. Without condoning what we regard as a serious violation of FAA regulations and a serious breach of the trust on which the aeromedical certification system depends, we want to encourage pilots who are suffering from depression or who are using antidepressants to report this information honestly. We want individuals to be forthcoming about depression and antidepressant usage. We plan, therefore, to announce in a separate **Federal Register** notice a one-time, limited opportunity to reveal previously undisclosed depression and use of antidepressant medications without being subject to FAA enforcement action. Our intent is to enhance safety by having those individuals suffering from depression and using antidepressants do so with appropriate aeromedical oversight.

Policy Statement

After careful consideration, the FAA has determined that selected individuals who are being treated for depression with one of four specific antidepressant medications may be considered for special issuance of a medical certificate. Individuals granted a special-issuance medical certificate under this policy may take only one type of antidepressant medication limited to the following four medications: Fluoxetine (Prozac), Sertraline (Zoloft), Citalopram (Celexa), or Escitalopram (Lexapro). All these medications are SSRIs, antidepressants that help restore the balance of serotonin, a naturally occurring chemical substance found in the brain.

The FAA is limiting consideration of special-issuance medical certificates to these four medications. Increasingly accepted and prevalently used, these four antidepressants may be used safely in appropriate cases with proper oversight and have fewer side effects than previous generations of antidepressants. While the focus of this policy statement is on individuals being treated for depression, the FAA realizes that these four medications may be used to treat conditions other than depression. It should be noted, therefore, that, in all instances, the FAA will continue to consider applicants and make determinations on a case-by-case basis under the special-issuance process just as it always has.

In addition to treating psychiatrists, AMEs who have specialized training under a program called the Human Intervention and Motivation Study (HIMS) also will assist the FAA by making recommendations about certification cases to be considered under this new policy. The HIMS program is a safety-critical aviation program established nearly 40 years ago. The program, developed specifically for commercial pilots, was designed as an alcohol and drug assistance program to coordinate the identification, assessment, treatment, and medical certification of pilots in need of help. Under HIMS, pilots who successfully meet rigorous FAA protocols may be returned to duty in accordance with 14 CFR 67.401. The FAA will apply the basic HIMS evaluation and monitoring approach to this new policy and HIMS AMEs will participate in a specialized training program tailored to evaluating and monitoring applicants who wish to be considered under this new policy.

No regulatory changes are being made under this policy. Further, the FAA continues to believe that applicants requiring use of multiple antidepressant medications or use of any other psychotropic medication in conjunction with any one of the four specified in this policy will not meet the criteria set forth under this policy. The use of psychotropic medication continues to be disqualifying under the medical standards and special-issuance certification will be granted only after thorough analysis of each individual case presented and only when appropriate conditions and limitations are in place so that the applicant may safely be permitted to operate an aircraft. It should be noted that as new information becomes available and recommendations from the medical

community change it may be necessary for the FAA to again revise its policy.

The FAA special-issuance policy will include consideration for depression treated with certain antidepressant medication under the guidance set forth as follows:

CONSIDERATION FOR SPECIAL ISSUANCE OF A MEDICAL CERTIFICATE WITH REGARD TO DEPRESSION TREATED WITH MEDICATION

This protocol applies to considerations for special-issuance medical certification for airmen requesting first-, second-, and third-class special-issuance medical certificates, for the exercise of privilege under 14 CFR parts 121, 135, or 91, who are being treated with certain antidepressant medications.

Criteria To Be Considered

Diagnoses

Mild to moderate depressive disorders, such as:

1. Major Depressive Disorder (mild to moderate) either single episode or recurrent episode
2. Dysthymic Disorder
3. Adjustment disorder with depressed mood

Pharmacologic Agents Considered (Single-Agent Use Only)

1. Fluoxetine (Prozac);
2. Sertraline (Zoloft);
3. Citalopram (Celexa); or
4. Escitalopram (Lexapro)

Specifically Unacceptable Diagnoses and or Symptoms

1. Psychosis
2. Suicidal ideation
3. History of electro convulsive therapy (ECT)
4. Treatment with multiple antidepressant medications concurrently
5. History of multi-agent drug protocol use (prior use of other psychiatric drugs in conjunction with antidepressant medications)

Psychiatric Status

1. All symptoms of the psychiatric condition for which treatment is indicated must be ameliorated by the single medication and the condition must be stable with no change in or exacerbation of symptoms for 12 months prior to certification;
2. Airman must be on a stable dosage of medication for a minimum of 12 months prior to certification; and
3. Airman must have no aeromedically significant side effects of prescribed medication.

Required Reports and Consultations (Initial Consideration)

1. A consultation status report (and follow-up reports as required) from a treating psychiatrist attesting to and describing the applicant's diagnosis, length and course of treatment, dosage of the antidepressant medication taken, and presence of any side effects from the antidepressant the applicant takes or has taken in the past;
2. A written statement prepared by the applicant describing his or her history of antidepressant usage and mental health status;
3. A report of the results of neurocognitive psychological tests with provision of the raw test data, including, but not limited to: COGSCREEN AE, Trails A/B; Stroop Test; CCPT, PASSAT, Wisconsin Card Sorting Test;
4. An evaluation and a written report from a HIMS-trained AME who has reviewed items 1., 2., and 3. above and who makes a recommendation for a special-issuance medical certificate; and
5. Any additional information the Federal Air Surgeon may require to make a determination.

Issued in Washington, DC on March 26, 2010.

Frederick E. Tilton,

Federal Air Surgeon.

[FR Doc. 2010–7527 Filed 4–2–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 234

[Docket No. DOT–OST–2010–0039]

RIN No. 2105–AE00

Enhancing Airline Passenger Protections: Extension of Compliance Date for Posting of Flight Delay Data on Web Sites

AGENCY: Office of the Secretary (OST), Department of Transportation (DOT).

ACTION: Final rule; extension of compliance date.

SUMMARY: The Department of Transportation is extending by 60 days, i.e., until June 29, 2010, the compliance date of the provision in its final rule entitled "Enhancing Airline Passenger Protections" that requires airlines to publish flight delay information on their Web sites. This extension is in response to requests by several carrier associations for an additional 90 days time for airlines to comply with the requirement to display flight delay data on Web sites in view of the extensive changes to carriers' reporting systems that are necessitated by the rule and their contention that completion of these tasks is not possible by April 29, 2010, the current effective date of the requirement. The Department agrees that additional time to comply with the posting of flight delay information on the carriers' Web sites is warranted to ensure the posting of complete and accurate information but has determined that 60 days is enough time for the carriers to do so. Therefore, this final rule extends the compliance date for the provision in question for an additional 60 days, from April 29, 2010, to June 29, 2010.

DATES: This amendment further amending the final rule published December 30, 2009 (74 FR 69002) is effective April 29, 2010.

FOR FURTHER INFORMATION CONTACT: Blane A. Workie or Daeleen M. Chesley, Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, U.S. Department of Transportation, 1200 New Jersey Ave., SE., Washington, DC 20590, 202–366–9342 (phone), 202–366–7152 (fax), *blane.workie@dot.gov* or *daeleen.chesley@dot.gov* (e-mail).

SUPPLEMENTARY INFORMATION: On March 10, 2010, the Department of Transportation published a notice of

proposed rulemaking (NPRM) in the **Federal Register** (75 FR 11075) proposing to extend for 45 days the compliance date of the provision in its final rule entitled "Enhancing Airline Passenger Protections," issued December 30, 2009, that requires certificated air carriers that account for at least 1 percent of domestic scheduled passenger revenues (reporting carriers) to provide certain flight delay data on their Web sites. Under that provision, a reporting carrier must display on its Web site flight delay information for each flight it operates and for each flight its U.S. code-share partners operate for which schedule information is available. More specifically, the provision requires that reporting carriers provide on their Web sites the following on-time performance information: (1) Percentage of arrivals that were on time—i.e., within 15 minutes of scheduled arrival time; (2) the percentage of arrivals that were more than 30 minutes late (including special highlighting if the flight was late more than 50 percent of the time); and (3) the percentage of flight cancellations if 5 percent or more of the flight's operations were canceled in the month covered. As published, the effective date of the rule is April 29, 2010.

The Department proposed this extension of time in response to requests by the Air Transport Association of America (ATA), the Regional Airline Association (RAA) and the Air Carrier Association of America (ACAA) that the Department of Transportation extend the compliance date for publishing flight delay information on airlines' Web sites by 90 days. The carrier associations stated that an additional 90 days time is needed for airlines to reprogram their computerized reporting systems and displays. Interested parties can read the carrier associations' requests to extend the compliance date in their entirety at DOT–OST–2010–0039. In the NPRM, the Department tentatively agreed that some extension of time in the compliance date for publishing flight delay data on airlines' Web sites may be warranted but was not persuaded that a 90-day extension is justified.

Comments and DOT's Response

The Department received a total of five comments on the NPRM. Two were from members of industry and the others came from consumers and consumer associations. On the consumer side, Flyersrights.org, a consumer advocacy organization, filed comments, as did two individuals. As for industry commenters, Flights Stats, a business that provides flight statistics data, and the Air Transport Association filed comments.

Of the individual comments, one states generally that the Department should not delay the implementation of any of the provisions in the passenger protection final rule. The second individual notes that carriers have developed and implemented more complex computer systems in shorter periods of time, and urges the Department to reject the "wholesale request of ATA" for an extension while supporting the consideration of individual airlines applying for an extension. Flyersrights.org, on the other hand, does not oppose the Department granting the requested extension and states that "airline passenger and their airlines share the objective of wanting accurate, verified information about the timeliness or cancellation rate of flight operations to be available to passengers." The organization notes that airlines should provide the required information on their Web sites as soon as accurate information is available to them, even if that is prior to any new compliance date granted by the Department.

It is not clear whether or not FlightStats supports the carrier associations' requests for an extension of the compliance date. It states that it is ready and able to help carriers fulfill the intention of the rule as it concerns flight performance data collection, processing and publishing, and can serve as a third party entity through which carrier and codeshare data can be secured. FlightStats also asserts that it can provide flight performance information to carriers in a form that enables them to easily display the required data on their Web sites but explains that it cannot assume the liability associated with data errors or omissions.

ATA states appreciation for the Department's recognition that carriers need additional time to comply with this requirement and also renews its request for a 90-day extension. ATA reiterates its concern that 45 days is not enough time for carriers to make the changes necessary to ensure compliance with the additional flight time disclosure requirements and again notes that compliance with this new regulation will require work in several company disciplines that must be completed in succession. Finally, ATA reminds the Department that it recognized the difficulty in modifying carrier reporting systems and the importance of ensuring data integrity in allowing longer periods of time for a carrier to comply with past changes to 14 CFR part 234.

After fully considering the comments received, the Department has determined that some extension of time in the compliance date for publishing flight delay data on airlines' Web sites is warranted. The Department is also persuaded that carriers need more than a 45-day extension. As such, the Department is revising 14 CFR 234.11 to extend the compliance date of sections 234.11(b) and (c) by an additional 60 days until June 29, 2010. We believe this revised compliance date, which affords carriers a total of 180 days time after issuance of the rule, provides the airlines adequate time to comply with the requirement to provide certain flight delay data on their Web sites. As noted in the NPRM, this extension of time is limited to the portion of our "Enhancing Airline Passenger Protections" rule described above dealing with publication on carrier Web sites of flight delay data and the compliance date for the other provisions is April 29, 2010.

We took a number of factors into consideration in deciding to extend until June 29, 2010, the compliance date for the requirements pertaining to publishing delay data on carriers' Web sites. We agree with Flyersrights.org, a major proponent of passengers' rights, that it is important that sufficient time be provided to carriers to enable them to post accurate information on their Web sites. The posting of flight delay data would not be beneficial to consumers if the carriers are not able to implement and design their systems to reflect accurate information. With respect to ATA's assertion that carriers need a 90-day extension in which to comply with this provision, the Department notes that at least one company, Flightstats, appears to have much of the required flight delay data available and states that the data can be made available to the carriers. Further, by extending the compliance date for the provision in the rule that requires airlines to publish detailed flight delay information on their Web site until June 29, 2010, carriers will have more than 80 days time after the original effective date of the rule to load the required flight delay information into their internal reservation systems. This is because the rule requires carriers to upload information into their internal reservation system between the 20th and 23rd day of the month after the month for which the information is being provided. By granting the carriers a 60-day extension in the compliance date of the provision in question (i.e., until June 29, 2010), carriers will have until between July 20 and 23, 2010, or at least 81 days after April 29, 2010, to

ensure compliance with the flight time disclosure requirements in the rule. Taking into consideration all the comments, including the fact that there are limited objections to ATA's request for an extension of time, the Department believes this timeline adequately balances the benefit of having accurate and complete flight delay data available to consumers with the capability of airlines to comply with the additional requirements being imposed upon them in a reasonable timeframe.

Regulatory Analyses and Notices

A. Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This final rule is not a significant regulatory action under Executive Order 12866 and the Department of Transportation's Regulatory Policies and Procedures. Accordingly, this final rule has not been reviewed by the Office of Management and Budget (OMB).

B. Regulatory Flexibility Act

Pursuant to section 605 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA), DOT certifies that this final rule does not have a significant impact on a substantial number of small entities. The final rule does not impose any duties or obligations on small entities.

C. Executive Order 13132 (Federalism)

This Final Rule does 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 does not have federalism implications.

D. Executive Order 13084

This Final Rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 ("Consultation and Coordination with Indian Tribal Governments"). Because the rule does not significantly or uniquely affect the communities of the Indian tribal governments or impose substantial direct compliance costs on them, the funding and consultation requirements of Executive Order 13084 do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) requires that DOT consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA section 3507(d), obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations. DOT has determined that there are no new information collection requirements associated with this final rule. The final rule allows an additional 60 days to comply with a regulatory provision whose paperwork impact has already been analyzed by the Department.

F. Unfunded Mandates Reform Act

The Department has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this Final Rule.

Issued this March 30, 2010, in Washington, DC.

Ray LaHood,

Secretary of Transportation.

List of Subjects in 14 CFR Part 234

Air carriers, Consumer protection, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Department further amends 14 CFR part 234 as amended in the final rule published December 30, 2009 (74 FR 69002), effective April 29, 2010, as follows:

PART 234—AIRLINE SERVICE QUALITY PERFORMANCE REPORTS

■ 1. The authority citation for Part 234 continues to read as follows:

Authority: 49 U.S.C. 329 and chapters 401 and 417.

■ 2. In § 234.11, as amended in the final rule published December 30, 2009 (74 FR 69002), effective April 29, 2010, add paragraph (d) to read as follows:

§ 234.11 Disclosure to consumers.

* * * * *

(d) A reporting carrier must meet the requirements of paragraphs (b) and (c) of this section by June 29, 2010.

[FR Doc. 2010–7627 Filed 4–2–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 740, 748, 750, and 762

[Docket No. 0907201151–0114–02]

RIN 0694–AE66

Issuance of Electronic Documents and Related Recordkeeping Requirements

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule enables BIS to eliminate the paper versions of most export and reexport licenses, notices of denial of license applications, notices of return of a license application without action, notices of results of classification requests, License Exception AGR notification results, and encryption review request results. This rule also changes certain recordkeeping requirements associated with the elimination of paper documents. BIS is making these changes to reduce mailing costs and to free up staff time currently devoted to mailing these documents for use in other tasks.

DATES: This rule is effective May 5, 2010.

FOR FURTHER INFORMATION CONTACT: Thomas Andrukonis, Office of Exporter Services, Bureau of Industry and Security, U.S. Department of Commerce at 202 482 6393 or e-mail *tandrukoi@bis.doc.gov*

SUPPLEMENTARY INFORMATION:

Background

The Bureau of Industry and Security administers an export licensing program pursuant to the Export Administration Regulations. As part of this program, BIS issues various documents in response to applications and notifications submitted to BIS by the public. Those documents include export licenses, reexport licenses, notices that an export or reexport license application has been denied, notices that an export or reexport license application is being returned to the applicant without action, responses to License Exception AGR notifications, notices of the results of classification requests, and notices of the results of encryption review requests. Collectively, these documents are referred to in this preamble as "license related documents."

Currently, BIS issues license related documents in two ways: Electronically in BIS's Simplified Network Application Processing Redesign system (SNAP–R) and on paper. Most license related documents are issued in both electronic and paper form. However, a few such documents are issued only on paper. On December 4, 2009, BIS issued a proposed rule that would allow it to eliminate the paper version of the license related documents that it currently issues both electronically in SNAP–R and on paper (74 FR 63685, December 4, 2009). The last day of the comment period for that proposed rule was February 2, 2010. BIS received no public comments on that proposed rule. Accordingly, this final rule adopts the

text of the proposed rule and makes one minor correction to pre-existing text.

The EAR require that export license applications, reexport license applications, License Exception AGR notifications, encryption review requests, and classification requests be submitted to BIS electronically using SNAP–R, except in individual instances where BIS authorizes a paper submission. The license related documents associated with a SNAP–R submission are issued on line in SNAP–R where the submitter may view, save, or print a copy. In addition, a paper version of each of those documents is mailed to the submitter. There are two situations in which BIS issues only a paper version of a license related document: When BIS authorized a paper submission, and when BIS must reissue the license related document because it reopened a matter previously considered to be completed. BIS does not intend to stop issuing paper license related documents in those two situations. BIS also does not intend to change its practices regarding issuance of Special Comprehensive Licenses or Special Iraq Reconstruction Licenses, both of which are paper-based processes. BIS intends to discontinue issuing paper documents in the situations where it currently issues both paper and electronic versions of license related documents. BIS is also making certain changes to the EAR recordkeeping requirements in connection with this change.

Specific Changes Made by This Rule

Clarification That Electronic Notification in SNAP–R Is Considered To Be, for Purposes of the EAR, Written Notification of the Results of a License Exception AGR Request

This rule revises § 740.18(c)(5) to state that BIS will issue confirmation in SNAP–R or via paper of the decision that no agency has objected to a party's proposed use of License Exception AGR. Previously, § 740.18(c)(5) merely stated that BIS will issue a written confirmation.

Removal of Requirement To Maintain a Log of Electronic Submissions

This rule removes the requirement previously found in § 748.7(c) of the EAR to maintain a log of electronic submissions. That requirement was established in connection with BIS's initial electronic application process, which was instituted in the 1980s. At that time, electronic submissions were facilitated by a number of private sector vendors and the logs may have been necessary for auditing purposes. However, the information required to be kept in the log duplicates information that parties are required to include in their SNAP–R submissions or that is automatically recorded by SNAP–R, making the information in the log redundant of information available to BIS in SNAP–R. The rule this log maintenance requirement by removing paragraph (c) of § 748.7 and redesignating existing paragraph (d) as paragraph (c).

Removal of Language Relating to "Computer Generated" Licenses, the Department of Commerce Seal and Attachments to Licenses

This rule revises § 750.7(b) to state that BIS may issue export and reexport licenses either electronically or on paper and that each license will bear a license number. Previous language regarding "computer generated" licenses, the Department of Commerce seal and attachments to licenses have been removed as has an explicit requirement that exporters use the license number when communicating with BIS about the license. The final rule language allows BIS to exercise discretion in deciding whether to issue a license electronically in SNAP–R or on paper. However, BIS expects that it will issue nearly all licenses electronically. Unless some exceptional circumstances exist, only licenses for which the applicant was authorized to file the application on paper and licenses that BIS cannot issue electronically (currently, only reopened licenses) will be issued on paper. BIS is making this change to reduce the costs of generating and mailing paper copies of licenses and to be able to assign to other tasks the staff that otherwise would be needed to handle paper licenses. Because no EAR provision previously addressed issuance of the other license related documents with the specificity with which § 750.7(b) addresses licenses, only § 750.7(b) must be modified to implement this change.

Removal of Requirement To Attach a Replacement License to the Original

This rule revises § 750.7(h)(4) to remove a requirement that the license holder attach a replacement license issued by BIS to the original license that it replaces. That requirement dates to an era in which electronic licenses did not exist and is impractical with electronic licenses issued in SNAP–R. This rule retains the requirement that the license holder keep both the original license and the replacement license.

Removal of Requirement To Retain Copies of Documents Submitted to BIS via the SNAP–R System

This rule exempts parties who submit documents to BIS via BIS's SNAP–R system from requirements to retain copies of documents so submitted even though those documents are "export control documents" as defined in part 772 of the EAR. BIS believes the reliability of the SNAP–R system provides adequate assurance that the documents received by BIS were submitted and that all submitted documents are received by BIS. This change would not preclude parties from storing copies of these documents.

Addition of Certain Documents To Recordkeeping Requirements in Part 762

This rule adds the following documents to the list of documents required to be kept as set forth in § 762.2(a)(10) required to be kept: Notification from BIS that an application is being returned without action; notification from BIS that an application is being denied; notification from BIS of the results of a commodity classification or encryption review request conducted by BIS. BIS believes that requiring recipients of these documents to retain them is needed to confirm receipt and to verify that the recipient received notice of the terms of the document. This rule does not require parties to retain requests for additional information concerning active matters that they receive from BIS.

Application of Original Document Retention Requirement to Documents Issued in SNAP–R

Parties who receive documents issued by BIS in SNAP–R may store the documents in two ways, and either would meet the requirement of § 762.5 that original documents be retained. The two ways are: Storage of complete documents issued by BIS in SNAP–R electronically in a format readable by software possessed by the recipient party; or storage of a complete printed paper copy of the document. Either way would provide an accurate representation of the contents of the record and, therefore, either should be treated as the equivalent of an original document. This final rule also makes one minor correction to the proposed rule text of § 762.4.

Section 762.4 consists of one paragraph. When stating that either storage method described in this paragraph would be deemed to be an original, the proposed rule text used the

phrase "for purposes of this paragraph." The final rule replaces the word "paragraph" in that phrase with the word "section" to be consistent with standard Code of Federal Regulations nomenclature practices.

Reasons for the Changes

BIS has been expending funds and staff time to mail to certain parties information that is entirely duplicative of information that BIS sends to those same parties electronically. The changes in this rule will help BIS to reduce its operating costs and free the staff time that otherwise would be devoted to mailing paper documents to be used for other purposes. BIS estimates that in recent years it has spent approximately $25,000 annually in direct mailing costs (envelopes, supplies and postage) to send out paper copies of licenses, responses to classification requests, responses to encryption review requests, and License Exception AGR notifications. BIS also has been spending about 1.5 hours of staff time daily in connection with mailing these documents.

Rulemaking Requirements

1. This rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor is subject to a penalty for failure to comply with, a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation contains a collection previously approved by OMB under control number 0694–0096 which carries a burden hour estimate of 58 minutes to prepare and submit form BIS–748. Miscellaneous and recordkeeping activities account for 12 minutes per submission. BIS believes that the changes implemented by this rule will not materially affect this burden. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Jasmeet Seehra, Office of Management and Budget (OMB), by e-mail to *jseehra@omb.eop.gov,* or by fax to (202) 395–7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, Room 2705, 14th Street and Pennsylvania Ave., NW., Washington, DC 20230.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The Chief Counsel for Regulations of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration at the proposed rule stage that this rule would not have a significant economic impact on a substantial number of small entities. The rationale for that certification was set forth in the preamble to the proposed rule (74 FR 63686, December 4, 2009). BIS received no comments on the certification. As a result, a final regulatory impact analysis is not required and none has been prepared.

List of Subjects

15 CFR Parts 740, 748, and 750

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

15 CFR Part 762

Administrative practice and procedure, Business and industry, Confidential business information, Exports, Reporting and recordkeeping requirements.

■ Accordingly, the Export Administration Regulations (15 CFR parts 730–774) are amended as follows:

PART 740—[AMENDED]

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

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 7201 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009).

■ 2. Section 740.18 is amended by revising the sixth sentence of paragraph (c)(5) to read as follows:

§ 740.18 Agricultural commodities (AGR).

* * * * *

(c) * * *

(5) * * * BIS will issue written confirmation electronically in SNAP–R or via paper. * * *

* * * * *

PART 748—[AMENDED]

■ 3. The authority citation for part 748 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009).

§ 748.7 [Amended]

■ 4. Section 748.7 is amended by removing paragraph (c) and redesignating paragraph (d) as paragraph (c).

PART 750—[AMENDED]

■ 5. The authority citation for part 750 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* Sec. 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009).

§ 750.7 [Amended]

■ 6. Section 750.7 is amended by removing the final sentence from paragraph (a) and by revising paragraph (b) and paragraph (h)(4) to read as follows:

§ 750.7 Issuance of licenses.

* * * * *

(b) *Issuance of a license.* BIS may issue a license electronically via its Simplified Network Application Processing (SNAP–R) system or via paper or both electronically and via paper. Each license has a license number that will be shown on the license.

* * * * *

(h) * * *

(4) *Replacement license.* If you have been issued a "replacement license" (for changes to your original license not covered in paragraph (c) of this section), you must retain both the original and the replacement license.

* * * * *

PART 762—[AMENDED]

■ 7. The authority citation for part 762 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009).

§ 762.2 [Amended]

■ 8. Section 762.2 is amended by:

■ a. Revising paragraph (a)(1),

■ b. Removing the comma and the word "and" from the end of paragraph (a)(9) and adding in their place, a semicolon,

■ c. Redesignating paragraph (a)(10) as paragraph (a)(11), and

■ d. Adding a new paragraph (a)(10) to read as follows:

§ 762.2 Records to be retained.

(a) * * *

(1) Export control documents as defined in part 772 of the EAR, except

parties submitting documents electronically to BIS via the SNAP–R system are not required to retain copies of documents so submitted;

* * * * *

(10) Notification from BIS of an application being returned without action; notification by BIS of an application being denied; notification by BIS of the results of a commodity classification or encryption review request conducted by BIS; and,

* * * * *

■ 9. Section 762.4 is amended by adding a sentence at the end of the section to read as follows:

§ 762.4 Original records required.

* * * With respect to documents that BIS issues to a party in SNAP–R, either an electronically stored copy in a format that makes the document readable with software possessed by that party or a paper print out of the complete document is deemed to be an original record for purposes of this section.

Dated: March 29, 2010.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2010–7639 Filed 4–2–10; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 090122043–0128–03]

RIN 0648–AX37

Gray's Reef National Marine Sanctuary Regulations on the Use of Spearfishing Gear; Correction

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

ACTION: Correcting amendment.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) published a document in the **Federal Register** on February 19, 2010 (75 FR 7361) on the use and possession of spearfishing gear in Gray's Reef National Marine Sanctuary. That document was inadvertently missing a word in § 922.92(a)(11)(iii). This document corrects the final regulations by revising that section.

DATES: *Effective Date:* April 5, 2010.

FOR FURTHER INFORMATION CONTACT: Resource Protection Coordinator Becky Shortland at (912) 598–2381.

SUPPLEMENTARY INFORMATION: NOAA issued final regulations, effective March 22, 2010, that included a description of new requirements on the use and possession of spearfishing gear in Gray's Reef National Marine Sanctuary (75 FR 7361). After the regulations were published NOAA became aware of a word that was inadvertently left out of the regulatory text. This notice corrects the grammatical error in Part 922.92 (a)(11)(iii) by adding the word "it" to the paragraph. The intent of the regulation is not affected by this correction.

Classification

A. Executive Order 12866: Regulatory Impact

This final rule has been determined to be not significant within the meaning of Executive Order 12866.

B. Administrative Procedure Act/ Regulatory Flexibility Act

The Acting Assistant Administrator finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive the notice and comment requirements because it is unnecessary. This rule corrects a grammatical error in the regulations that does not have substantive impacts. The intent of the regulation is not affected by the error. NOAA has decided to make this document effective immediately because public comment and delayed effective date are not necessary due to the minimal nature of the correcting amendment. This rule corrects a grammatical error in the regulations that does not have substantive impacts. For the reasons above, the Acting Assistant Administrator finds good cause to waive the 30-day delay in effectiveness.

C. Regulatory Flexibility Act

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 is not required and has not been prepared.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: March 31, 2010.

Holly Bamford,

Deputy Acting Assistant Administrator for Ocean Services and Coastal Zone Management.

■ Accordingly, for the reasons set forth above, 15 CFR part 922 is corrected by making the following correcting amendments:

PART 922—NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

■ 1. The authority citation for part 922 continues to read as follows:

Authority: 16 U.S.C. 1431 *et seq.*

■ 2. Amend § 922.92 by revising paragraph (a)(11)(iii) as follows:

§ 922.92 Prohibited or otherwise regulated activities.

(a) * * *

(11) * * *

(iii) Spearfishing gear provided that it is stowed on a vessel, not available for immediate use, and the vessel is passing through the Sanctuary without interruption; and

* * * * *

[FR Doc. 2010–7665 Filed 4–2–10; 8:45 am]

BILLING CODE 3510–NK–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 74 and 78

[ET Docket No. 03–254; FCC 10–15]

Coordination Between the Non-Geostationary and Geostationary Satellite Orbit

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document the Commission specifies rules and procedures to be used for frequency coordination between terrestrial Broadcast Auxiliary Service and Cable Television Relay Service (BAS/CARS) operations and geostationary satellite orbit (GSO) or non-geostationary satellite orbit (NGSO) fixed-satellite service (FSS) operations in the 6875–7075 MHz (7 GHz) and 12750–13250 MHz (13 GHz) bands. At this time the Commission did not adopt a "Growth Zone" proposal that would have supplemented our existing terrestrial coordination procedures between NGSO FSS space-to-Earth operations and existing fixed service (FS) operations in the 10.7–11.7 GHz (10 GHz) band, and will retain our existing coordination rules.

DATES: Effective May 5, 2010.

FOR FURTHER INFORMATION CONTACT: James Miller, (202) 418–7351, e-mail *James.Miller@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, ET Docket No. 03–254, FCC 10–15, adopted January 14, 2010, and

released January 20, 2010. The full text of the document is available on the Commission's Internet site at *http://www.fcc.gov.* It is also available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 12th St., SW., Washington, DC 20554. The full text may also be purchased from the Commission's duplication contractor, Best Copy and Printing Inc., Portals II, 445 12th St., SW., Room CY–B402, Washington, DC 20554, telephone (202) 488–5300; fax (202) 488–5563; e-mail *FCC@BCPIWEB.com.*

Summary of the Report and Order

1. In the *Report and Order (R&O),* the Commission specified rules and procedures to be used for frequency coordination between terrestrial Broadcast Auxiliary Service and Cable Television Relay Service (BAS/CARS) operations and geostationary satellite orbit (GSO) or non-geostationary satellite orbit (NGSO) fixed-satellite service (FSS) operations in the 6875–7075 MHz (7 GHz) and 12750–13250 MHz (13 GHz) bands. The Commission did not adopt at this time a "Growth Zone" proposal that would have supplemented our existing terrestrial coordination procedures between NGSO FSS space-to-Earth operations and existing fixed service (FS) operations in the 10.7–11.7 GHz (10 GHz) band, and will retain our existing coordination rules. The Commission decisions supports actions intended to allow new satellite services in frequency bands used by various fixed and mobile operations and addresses issues raised in the *Notice of Proposed Rulemaking (NPRM),* 69 FR 4908, February 2, 2004, in this proceeding. This action permits satellite and terrestrial services operating in these bands to continue to coordinate their spectrum use in an efficient manner.

2. Based on the record, the Commission requires the use of the "notice and response" prior coordination procedures for coordination between GSO or NGSO FSS and fixed BAS/CARS operations. The Commission concludes that requiring the use of these procedures for coordination of operations in these services will enable more efficient use of the 7 GHz and 13 GHz bands by permitting the different services to coordinate and operate on a cooperative basis. Moreover, as indicated in the *NPRM,* the Commission believes that uniform coordination procedures for similar services will simplify our rules and the frequency coordination process.

3. The Commission also requires GSO or NGSO FSS applicants to use the "notice and response" prior coordination procedures when they initiate coordination with mobile BAS/CARS licensees. The prior coordination process provides the opportunity for GSO or NGSO FSS applicants, prior to the licensing and operation of an earth station, to identify and implement measures to protect against potential harmful interference, and will facilitate sharing during mobile BAS/CARS service deployments. For example, FSS applicants can consider existing BAS/CARS receiver locations when making site selections, and can incorporate attenuation measures into their facility designs.

4. The Commission permits mobile BAS/CARS to coordinate with GSO or NGSO FSS entities under either the "notice and response" prior coordination procedures or the *ad hoc* coordination procedures discussed in further detail in the R&O. The record reflects that local broadcast coordinators should be able to assist in identifying mobile television pickup operations ("TVPU") receive sites for protection, thereby facilitating GSO or NGSO FSS coordination. Further, as noted by Boeing, GSO and NGSO FSS earth stations can work cooperatively with TVPU licensees regarding the specifics of sharing agreements pursuant to such coordination.

5. The Commission finds that the "notice and response" process in the prior coordination procedures will provide ample opportunity for fixed or mobile BAS/CARS incumbents to identify and provide details regarding potentially affected facilities when coordinating with GSO or NGSO FSS operators. The process provides sufficient flexibility for all affected parties to reach agreement concerning measures for reducing the likelihood of interference. The Commission recognizes that there are challenges inherent in coordination between a permanent fixed operation, such as GSO or NGSO FSS earth station, and temporary fixed or mobile BAS/CARS operations, such as those involving news gathering trucks or helicopters. Unlike coordination between one fixed operation and another fixed operation–a scenario to which "notice and response" prior coordination procedures typically apply, coordination between fixed operations and temporary fixed or mobile operations requires an anticipation of where the temporary fixed or mobile operations may occur at a future time beyond the coordination.

6. The Commission looks to the parties to exercise flexibility in order to ensure successful sharing through these procedures. For example, the Commission expects prospective FSS licensees to select sites sufficiently removed from typical mobile BAS/CARS areas of use to reasonably accommodate the frequencies and look angles for which the FSS licensees seek coordination. Moreover, because NGSO FSS use of the 7 GHz and 13 GHz bands is limited to feeder links, the Commission expects NGSO FSS licensees to seek coordination only for frequencies and look angles that they reasonably anticipate using over the life of the system. Similarly, while BAS and CARS licensees are often authorized to operate over a large geographic area, such as a metropolitan area, the Commission does not envision that they will object to prior coordination requests from FSS licensees on the sole basis that an earth station placed in or near their licensed area could impinge upon future deployment of temporary fixed or mobile BAS/CARS operations anywhere in that area. Rather, BAS/CARS licensees should object only where they anticipate interference into fixed receive sites used in conjunction with mobile BAS/CARS transmitters, or into areas in which they reasonably expect to operate. Such areas may include, for example, those in which they have operated on past occasions or which are likely to require coverage for news events in the future, such as convention centers, court houses, or sports venues. The Commission envisions that such coordination between FSS and BAS/CARS licensees in the band will lead to efficient shared use of the bands, including the availability of some spectrum for both FSS and BAS/CARS licensees in or near high-demand markets.

7. While the Commission sets forth expectations, it does not believe that it is necessary to modify the rules for "notice and response" prior coordination procedures in this regard. The Commission rejects SBE's suggestions for additional protection for BAS/CARS operations as "preclusion" or "keep away" areas, as the overall record generated in the proceeding offers no compelling reason for deviating from a "notice and response" coordination approach. Moreover, the Commission agrees with those commenting parties that argue that many of SBE's proposals would make the coordination process potentially more burdensome and complex with minimal benefit in return. Also, to the extent that SBE requests that the Commission revisit those rules relating to the scope of FSS operations in the band—such as limiting the coordination of earth stations to only the spectrum

and look angles to be put in use at the start of operations—the Commission agrees with other commenters that such matters have been fully considered and addressed in prior proceedings and see no need to revisit them here.

8. In the *NPRM,* the Commission expressed its belief that use of these criteria will be as successful for protecting fixed BAS/CARS receivers as they have proven to be for FS and other receivers. The Commission had sought comment as to whether or to what values the interference protection criteria contained in §§ 101.105(a), (b), and (c) should be amended in order to address the protection of mobile and fixed receivers used in conjunction with mobile BAS/CARS stations. Commenters provided no views on this matter.

9. Accordingly, the Commission extends the existing "notice and response" coordination procedures in §§ 25.203(c) and 25.251(a) to coordination of new GSO and NGSO FSS earth stations with fixed BAS/CARS stations in the 7 GHz and 13 GHz bands. For coordination of new fixed BAS/CARS stations with GSO or NGSO FSS earth stations, the Commission apply the coordination procedures set forth in § 101.103(d) by amending §§ 74.638(b) and 78.36(b) to reflect the part 101 procedures. The Commission adopted the approach described in the *NPRM,* and applies the existing FS interference protection criteria in §§ 101.105(a), (b), and (c) for the protection of fixed BAS/CARS receivers by new GSO or NGSO FSS earth stations. While the Commission recognizes that mobile BAS/CARS facilities have somewhat different characteristics from fixed facilities that can affect their potential to cause and receive interference, the Commission continues to believe that the overall structure of the Commission's existing prior coordination procedures provide sufficient flexibility for the parties to negotiate solutions that will reduce the likelihood of interference. As indicated in the *NPRM* and demonstrated by the success of its use with coordination of related services, the Commission believes that the approaches described for coordinating FSS (both NGSO and GSO) and BAS/CARS mobile operations achieve a balance between the needs of FSS licensees for certainty and reliability and the needs of BAS/CARS for flexibility. Thus, the Commission will apply the existing FS interference protection criteria in §§ 101.105(a), (b), and (c) for the protection of mobile BAS/CARS receivers by new GSO or NGSO FSS earth stations.

10. The Commission continues to believe that allowing BAS/CARS operators to choose between "notice and response" and *ad hoc* coordination will promote sharing in the 7 GHz and 13 GHz bands and minimize the coordination burdens and need for its regulatory oversight. The Commission notes that the *ad hoc* coordination process requires the cooperation of the affected parties, but affords mobile services maximum flexibility with regard to deployment. However, the more formal "notice and response" coordination procedures can provide GSO or NGSO FSS operators with additional certainty of protection from mobile BAS/CARS operations by providing the opportunity to identify potential sharing concerns and take appropriate action prior to licensing and operation. For example, the Commission notes that some of these decisions—such as site location and design—are most logically made before FSS operators begin operation; if later, a mobile BAS/CARS licensee opts to exercise *ad hoc* coordination, the Commission would expect the coordination process to be facilitated because those prior decisions promoted a more favorable overall sharing environment. Furthermore, as discussed in the *NPRM,* these two coordination approaches have been adequate to address sharing with BAS/CARS fixed operations and offer sufficient protection between mobile BAS/CARS and GSO or NGSO FSS operations while achieving an important goal of avoiding unnecessary burden and regulatory oversight.

11. For the foregoing reasons, the Commission allows mobile BAS/CARS entities initiating coordination to use either prior coordination or *ad hoc* procedures when coordinating with GSO or NGSO FSS operations in the 7 GHz and 13 GHz bands (as discussed, GSO or NGSO FSS and fixed BAS/CARS applicants must use the prior coordination rules). Accordingly, the Commission modifies its rules to clarify the bands in which applicants for mobile BAS/CARS have the flexibility to use either the informal *ad hoc* or more structured "notice and response" prior coordination procedures.

Growth Zones Proposal

12. In the *NPRM,* the Commission sought comment on a "Growth Zones" proposal that would change the NGSO FSS earth station siting rules in part 25 of the Commission rules to promote sharing between NGSO FSS and terrestrial fixed services in the 10 GHz band. The "Growth Zones" proposal was based on a pleading by SkyBridge L.L.C. ("SkyBridge"), an NGSO FSS applicant, and the Fixed Wireless Communications Coalition ("FWCC"), an association representing FS licensees in the 10 GHz band. The proposal was intended to modify and supplement the prior coordination procedures between NGSO FSS and FS operations in the band. The parties proposed a mechanism to identify counties where the growth of fixed point-to-point operations was likely (referred to as "growth zones"). Skybridge and FWCC proposed that siting of NGSO FSS earth stations in a growth zone be subject to a list of conditions in order to permit the siting of earth stations in areas of intense FS use while ensuring the deployment of future fixed service operations in those areas. The proposal was designed to address what was expected to be an imminent, substantial, and novel sharing scenario between the newly authorized NGSO FSS and terrestrial incumbents.

13. The Commission sought comment on the "Growth Zones" proposal offered by SkyBridge and FWCC. Subsequently, SkyBridge contacted the Commission and declined to accept its 10 GHz band NGSO FSS authorization. The only other remaining NGSO FSS licensee, Virtual Geosatellite LLC ("VirtualGeo"), subsequently surrendered its license. Thus, the imminent deployment of NGSO FSS earth stations in this band that was anticipated at the time of the *NPRM* is no longer at issue.

14. The Commission concludes that, given the developments with respect to the NGSO FSS applicants and licensees, the "Growth Zones" proposal is no longer ripe for consideration. The proposal was intended to address the needs and compromises reached by those specific parties. Now, with neither the original satellite proponent nor any other NGSO FSS applicant currently pursuing licensing in the 10 GHz band, it would be inappropriate to act on the proposal at this time, therefore, the Commission is not adopting the "Growth Zones" proposal. The Commission's decision not to adopt that plan is without prejudice to the merits of the proposal, and the Commission notes that parties are free to bring this matter before the Commission again if changing conditions warrant its consideration. Further, the prior coordination procedures between NGSO FSS and FS operations in the band that the Commission had previously adopted remain in effect.

Final Regulatory Flexibility Analysis

15. As required by the Regulatory Flexibility Act ("RFA"),[1] an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated in the *Notice of Proposed Rule Making* ("*NPRM*") in this proceeding. The Commission sought written comment on the proposals in the *NPRM,* including comments on the IRFA.[2] The present Final Regulatory Flexibility Analysis ("FRFA") conforms to the RFA.

A. Need for, and Objectives of, the Report and Order

16. By this action ("Report & Order"), the Commission modifies our frequency coordination rules to promote sharing between non-geostationary satellite orbit ("NGSO") and geostationary satellite orbit ("GSO") fixed-satellite service ("FSS") operations and various terrestrial services operating in several frequency bands. The Commission declined to adopt a joint proposal by SkyBridge L.L.C. and the Fixed Wireless Communications Coalition ("SkyBridge/FWCC Growth Zone Proposal") to supplement our existing coordination procedures to promote sharing between new NGSO FSS space-to-Earth ("downlink") operations and existing Fixed Service ("FS") operations in the 10.7–11.7 GHz ("10 GHz") band.[3] The Commission adopts such proposals for amending our frequency coordination rules to address situations where NGSO FSS and GSO FSS operations share spectrum with terrestrial operations in the FS, Broadcast Auxiliary Service ("BAS") and Cable Television Relay Service ("CARS") in various bands. Specifically, it:

- Apply the existing parts 25 and 101 "notice and response" coordination rules for coordination of new FSS (both NGSO and GSO) earth stations with mobile BAS/CARS operations in the 6875–7075 MHz ("7 GHz") and 12750–13250 MHz ("13 GHz") bands, and consider whether any additions or modifications to the rules are needed to address the operating characteristics of mobile services;
- Allow either the parts 74 and 78 informal *ad hoc* coordination rules or the part 101 "notice and response" coordination rules to be used for the coordination of mobile BAS/CARS operations with FSS (both NGSO and GSO) earth stations, in the 7 GHz and 13 GHz bands, and consider whether any additions or modifications of these rules are needed; and,
- Apply the existing parts 25 and 101 "notice and response" coordination rules for sharing between new NGSO FSS earth stations and fixed BAS/CARS operations in the 7 GHz and 13 GHz bands.

The Commission undertook this proceeding to facilitate the introduction of new satellite and terrestrial services while promoting interference protection among the various users in these bands.

B. Summary of Significant Issues Raised by Public Comments and Response to IRFA

17. There were no comments filed that specifically addressed the rules and policies proposed in the IRFA.

C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

18. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[4] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[5] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA").[6] A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[7] Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA.[8] A "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[9] Nationwide, as of 2002, there were approximately 1.6 million small organizations.[10] The term "small governmental jurisdiction" is defined generally as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."[11] Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.[12] We estimate that, of this total, 84,377 entities were "small governmental jurisdictions."[13] Thus, we estimate that most governmental jurisdictions are small.

19. *Cable Television Distribution Services.* Since 2007, these services have been newly defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies."[14] The SBA has developed an associated small business size standard for this category, and that is: All such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: All such firms having $13.5 million or less in annual receipts.[15] According to Census Bureau data for 2002, there were a total of 1,191

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1966 ("SBREFA"), Public Law No. 104–121, Title II, 110 Stat. 857 (1996).

[2] *NPRM,* 69 FR 4908 (Feb. 02, 2004), para. 64 and Appendix B.

[3] *Sky*Bridge/FWCC *Ex Parte* comments in ET Docket No. 98–206, filed December 8, 1999, at 3. These *ex parte* comments are included in the docket file for this proceeding. SkyBridge filed one of the petitions for rulemaking (RM–9147) to which ET Docket No. 98–206 responds and was one of four applicants for NGSO FSS satellite systems in the 10 GHz band. The FWCC is a coalition of microwave equipment manufacturers, licensees, and their associations, and communications service providers and their associations, interested in terrestrial fixed microwave communications.

[4] 5 U.S.C. 601(6).

[5] *See Id.* 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**." *Id.*

[6] *See* Small Business Act, 15 U.S.C. 632.

[7] 5 U.S.C. 601(4).

[8] *See* SBA, Office of Advocacy, "Frequently Asked Questions," *http://web.sba.gov/faqs/faqindex.cfm?areaID=24* (revised Sept. 2009).

[9] 5 U.S.C. 601(4).

[10] Independent Sector, The New Nonprofit Almanac & Desk Reference (2002).

[11] 5 U.S.C. 601(5).

[12] U.S. Census Bureau, Statistical Abstract of the United States: 2006, Section 8, page 272, Table 415.

[13] We assume that the villages, school districts, and special districts are small, and total 48,558. *See* U.S. Census Bureau, Statistical Abstract of the United States: 2006, section 8, page 273, Table 417. For 2002, Census Bureau data indicate that the total number of county, municipal, and township governments nationwide was 38,967, of which 35,819 were small. *Id.*

[14] U.S. Census Bureau, 2007 NAICS Definitions, "517110 Wired Telecommunications Carriers" (partial definition); *http://www.census.gov/naics/2007/def/ND517110.HTM#N517110.*

[15] 13 CFR 121.201, NAICS code 517110.

firms in this category that operated for the entire year.[16] Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million.[17] Thus, the majority of these cable firms can be considered to be small.

20. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers, nationwide.[18] Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.[19] In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.[20] Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000–19,999 subscribers.[21] Thus, under this second size standard, most cable systems are small.

21. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000." [22] The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate.[23] Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard.[24] We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million,[25] and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

22. *Satellite Telecommunications and All Other Telecommunications.* These two economic census categories address the satellite industry. The first category has a small business size standard of $15 million or less in average annual receipts, under SBA rules.[26] The second has a size standard of $25 million or less in annual receipts.[27] The most current Census Bureau data in this context, however, are from the (last) economic census of 2002, and we will use those figures to gauge the prevalence of small businesses in these categories.[28]

23. The category of Satellite Telecommunications "comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications." [29] For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year.[30] Of this total, 307 firms had annual receipts of under $10 million, and 26 firms had receipts of $10 million to $24,999,999.[31] Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

24. The second category of All Other Telecommunications comprises, *inter alia,* "establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems." [32] For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year.[33] Of this total, 303 firms had annual receipts of under $10 million and 15 firms had annual receipts of $10 million to $24,999,999.[34] Consequently, we estimate that the majority of All Other Telecommunications firms are small entities that might be affected by our action.

25. *Television Broadcasting.* This Economic Census category "comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public." [35] The SBA has created the following small business size standard for Television Broadcasting firms: Those having $14 million or less in annual receipts.[36] The Commission has estimated the number of licensed commercial television stations to be 1,379.[37] In addition, according to Commission staff review of the BIA Publications, Inc., Master Access Television Analyzer Database (BIA) on March 30, 2007, about 986 of an

[16] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005).

[17] *Id.* An additional 61 firms had annual receipts of $25 million or more.

[18] 47 CFR 76.901(e). The Commission determined that this size standard equates approximately to a size standard of $100 million or less in annual revenues. *Implementation of Sections of the 1992 Cable Act: Rate Regulation,* Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 (1995).

[19] These data are derived from: R.R. Bowker, Broadcasting & Cable Yearbook 2006, "Top 25 Cable/Satellite Operators," pages A–8 & C–2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006,* "Ownership of Cable Systems in the United States," pages D–1805 to D–1857.

[20] 47 CFR 76.901(c).

[21] Warren Communications News, *Television & Cable Factbook 2006,* "U.S. Cable Systems by Subscriber Size," page F–2 (data current as of Oct. 2005). The data do not include 718 systems for which classifying data were not available.

[22] 47 U.S.C. 543(m)(2); *see* 47 CFR 76.901(f) & nn. 1–3.

[23] 47 CFR 76.901(f); *see* Public Notice, *FCC Announces New Subscriber Count for the Definition of Small Cable Operator,* DA 01–158 (Cable Services Bureau, Jan. 24, 2001).

[24] These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006,* "Top 25 Cable/Satellite Operators," pages A–8 & C–2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006,* "Ownership of Cable Systems in the United States," pages D–1805 to D–1857.

[25] The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to 76.901(f) of the Commission's rules. *See* 47 CFR 76.909(b).

[26] 13 CFR 121.201, NAICS code 517410.

[27] 13 CFR 121.201, NAICS code 517919.

[28] 13 CFR 121.201, NAICS codes 517410 and 517910 (2002).

[29] U.S. Census Bureau, 2007 NAICS Definitions, "517410 Satellite Telecommunications"; *http://www.census.gov/naics/2007/def/ND517410.HTM.*

[30] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 517410 (issued Nov. 2005).

[31] *Id.* An additional 38 firms had annual receipts of $25 million or more.

[32] U.S. Census Bureau, 2007 NAICS Definitions, "517919 All Other Telecommunications"; *http://www.census.gov/naics/2007/def/ND517919.HTM#N517919.*

[33] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 517910 (issued Nov. 2005).

[34] *Id.* An additional 14 firms had annual receipts of $25 million or more.

[35] U.S. Census Bureau, 2007 NAICS Definitions, "515120 Television Broadcasting" (partial definition); *http://www.census.gov/naics/2007/def/ND515120.HTM#N515120.*

[36] 13 CFR 121.201, NAICS code 515120 (updated for inflation in 2008).

[37] *See FCC News Release,* "Broadcast Station Totals as of December 31, 2007," dated March 18, 2008; *http://www.fcc.gov/Daily_Releases/Daily_Business/2008/db0318/DOC-280836A1.pdf.*

estimated 1,374 commercial television stations (or approximately 72 percent) had revenues of $13 million or less.[38] The Commission therefore estimates that the majority of commercial television broadcasters are small entities.

26. The Commission notes, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations [39] must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of "small business" is that the entity not be dominant in its field of operation. The Commission is unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 380.[40] These stations are non-profit, and therefore considered to be small entities.[41] There are also 2,295 low power television stations (LPTV).[42] Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the above SBA small business size standard.

27. *Radio Stations.* This Economic Census category "comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources." [43] The SBA has established a small business size standard for this category, which is: Such firms having $7 million or less in annual receipts.[44] According to Commission staff review of BIA Publications, Inc.'s *Master Access Radio Analyzer Database* on March 31, 2005, about 10,840 (95%) of 11,410 commercial radio stations had revenues of $6 million or less. Therefore, the majority of such entities are small entities.

28. The Commission notes, however, that in assessing whether a business concern qualifies as small under the above size standard, business affiliations must be included.[45] In addition, to be determined to be a "small business," the entity may not be dominant in its field of operation.[46] It notes that it is difficult at times to assess these criteria in the context of media entities, and our estimate of small businesses may therefore be over-inclusive.

29. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category.[47] Prior to that time, such firms were within the now-superseded categories of "Paging" and "Cellular and Other Wireless Telecommunications." [48] Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.[49] Because Census Bureau data are not yet available for the new category, we will estimate small business prevalence using the prior categories and associated data. For the category of Paging, data for 2002 show that there were 807 firms that operated for the entire year.[50] Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.[51] For the category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year.[52] Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.[53] Thus, we estimate that the majority of wireless firms are small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

30. The Commission adopted changes to the parts 74 and 78 rules governing coordination between NGSO FSS and other terrestrial services. Generally our "notice and response" and *ad hoc* coordination rules will govern the use of shared frequencies between FSS and BAS/CARS terrestrial services in the 7 and 13 GHz bands.[54] As noted in the section titled "Need for, and Objectives of, the Proposed Rules," *supra,* in the 7 and 13 GHz bands, we are applying existing parts 25 and 101 "notice and response" coordination rules for coordination of new FSS earth stations with mobile BAS/CARS operations; allowing either existing part 74, and 78 *ad hoc* coordination rules or part 101 "notice and response" coordination rules for coordination of new BAS/CARS mobile operations with FSS earth stations; and applying existing parts 25 and 101 "notice and response" coordination rules for coordination of new FSS earth stations and new fixed BAS/CARS operations.[55]

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

31. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small

[38] We recognize that BIA's estimate differs slightly from the FCC total given *supra.*

[39] "[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both." 13 CFR 21.103(a)(1).

[40] *See* FCC News Release, "Broadcast Station Totals as of December 31, 2007," dated March 18, 2008; *http://www.fcc.gov/Daily_Releases/Daily_Business/2008/db0318/DOC-280836A1.pdf.*

[41] *See generally* 5 U.S.C. 601(4), (6).

[42] *See FCC News Release,* "Broadcast Station Totals as of December 31, 2007," dated March 18, 2008; *http://www.fcc.gov/Daily_Releases/Daily_Business/2008/db0318/DOC-280836A1.pdf.*

[43] U.S. Census Bureau, 2007 NAICS Definitions, "515112 Radio Stations"; *http://www.census.gov/naics/2007/def/ND515112.HTM#N515112.*

[44] 13 CFR 121.201, NAICS code 515112 (updated for inflation in 2008).

[45] "Concerns and entities are affiliates of each other when one controls or has the power to control the other, or a third party or parties controls or has the power to control both. It does not matter whether control is exercised, so long as the power to control exists." 13 CFR 121.103(a)(1) (an SBA regulation).

[46] 13 CFR 121.102(b) (an SBA regulation).

[47] U.S. Census Bureau, 2007 NAICS Definitions, "517210 Wireless Telecommunications Categories (Except Satellite)"; *http://www.census.gov/naics/2007/def/ND517210.HTM#N517210.*

[48] U.S. Census Bureau, 2002 NAICS Definitions, "517211 Paging"; *http://www.census.gov/epcd/naics02/def/NDEF517.HTM*; U.S. Census Bureau, 2002 NAICS Definitions, "517212 Cellular and Other Wireless Telecommunications"; *http://www.census.gov/epcd/naics02/def/NDEF517.HTM.*

[49] 13 CFR 121.201, NAICS code 517210 (2007 NAICS). The now-superseded, pre-2007 CFR citations were 13 CFR 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

[50] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 517211 (issued Nov. 2005).

[51] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

[52] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 517212 (issued Nov. 2005).

[53] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

[54] *See* NPRM paras. 11–14, *supra. See* list of obligations at Notice para. 9, *supra.*

[55] *See* NPRM paras. 22, 34.

entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities." [56]

32. The Commission adopted its proposals to provide adequate spectrum sharing criteria to minimize the potential for interference of these new NGSO FSS operations on incumbent operations, many of which qualify as small entities. Our coordination rules will ensure that BAS, CARS, and NGSO FSS services can operate sharing these bands without impacting other services' operations. We also note that, in the Discussion Section of the *NPRM,* the Commission requested comment from small businesses and other small entities concerning the alternatives proposed for our coordination rules.[57] The Commission also requested comment on our conclusions and any alternatives to our proposals that could minimize the impact of this action on small entities.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

33. None.

Report to Congress: The Commission will send a copy of this Report and Order, including this FRFA in a report to be sent to Congress pursuant to the Congressional Review Act.[58] In addition, the Commission will send a copy of the Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA.

Ordering Clauses

34. Pursuant to sections 4(i), 303(c), 303(f), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(c), 303(f), and 303(r), the Report and Order *is adopted* and that parts 74 and 78 of the Commission's rules *are amended* as specified in Appendix C, effective 30 days after publication in the **Federal Register.**

35. The Commission's Consumer Information and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

36. *It is further ordered* that ET Docket No. 03–254 *is terminated.*

[56] 5 U.S.C. 603(c)(1)–(c)(4).

[57] *See* NPRM para. 28, *supra.*

[58] *See* 5 U.S.C. 801(a)(1)(A).

List of Subjects

47 CFR Part 74

Communications equipment, Reporting and recordkeeping requirements, and Television.

47 CFR Part 78

Cable television, Communications equipment, and Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 74 and 78 as follows:

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTION SERVICES

■ 1. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 303,307, 336(f), 336(h) and 554.

■ 2. Section 74.638 is amended by revising paragraph (a), paragraph (b), the introductory text of paragraph (c), and paragraph (d) to read as follows:

§ 74.638 Frequency coordination.

(a) Coordination of all frequency assignments for fixed stations in all bands above 2110 MHz, and for mobile (temporary fixed) stations in the bands 6425–6525 MHz and 17.7–19.7 GHz, will be in accordance with the procedure established in paragraph (b) of this section, except that the prior coordination process for mobile (temporary fixed) assignments may be completed orally and the period allowed for response to a coordination notification may be less than 30 days if the parties agree. Coordination of all frequency assignments for all mobile (temporary fixed) stations in all bands above 2110 MHz, except the bands 6425–6525 MHz and 17.7–19.7 GHz, will be conducted in accordance with the procedure established in paragraph (b) of this section or with the procedure in paragraph (d) of this section. Coordination of all frequency assignments for all fixed stations in the band 1990–2110 MHz will be in accordance with the procedure established in paragraph (c) of this section. Coordination of all frequency assignments for all mobile (temporary fixed) stations in the band 1990–2110 MHz will be conducted in accordance with the procedure in paragraph (d) of this section.

(b) For each frequency coordinated under this paragraph, the interference protection criteria in 47 CFR 101.105(a), (b), and (c) and the frequency usage coordination procedures in 47 CFR 101.103(d) will apply.

(c) For each frequency coordinated under this paragraph, the following frequency usage coordination procedures will apply:

* * * * *

(d) For each frequency coordinated under this paragraph, applicants are responsible for selecting the frequency assignments that are least likely to result in mutual interference with other licensees in the same area. Applicants may consult local frequency coordination committees, where they exist, for information on frequencies available in the area. In selecting frequencies, consideration should be given to the relative location of receive points, normal transmission paths, and the nature of the contemplated operation.

PART 78—CABLE TELEVISION RELAY SERVICE

■ 3. The authority citation for part 78 continues to read as follows:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085; 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309.

■ 4. Section 78.36 is amended by revising paragraph (a), the introductory text of paragraph (b), paragraph (b)(1), the introductory text of paragraph (c), and paragraph (d) to read as follows:

§ 78.36 Frequency coordination.

(a) Coordination of all frequency assignments for fixed stations in all bands above 2110 MHz, and for mobile (temporary fixed) stations in the bands 6425–6525 MHz and 17.7–19.7 GHz, will be in accordance with the procedure established in paragraph (b) of this section, except that the prior coordination process for mobile (temporary fixed) assignments may be completed orally and the period allowed for response to a coordination notification may be less than 30 days if the parties agree. Coordination of all frequency assignments for all mobile (temporary fixed) stations in all bands above 2110 MHz, except the bands 6425–6525 MHz and 17.7–19.7 GHz, will be conducted in accordance with the procedure established in paragraph (b) of this section or with the procedure in paragraph (d) of this section. Coordination of all frequency

assignments for all fixed stations in the band 1990–2110 MHz will be in accordance with the procedure established in paragraph (c) of this section. Coordination of all frequency assignments for all mobile (temporary fixed) stations in the band 1990–2110 MHz will be conducted in accordance with the procedure in paragraph (d) of this section.

(b) For each frequency coordinated under this part, the interference protection criteria in 47 CFR 101.105(a), (b), and (c) and the following frequency usage coordination procedures will apply:

(1) *General requirements.* Proposed frequency usage must be prior coordinated with existing licensees, permittees, and applicants in the area, and other applicants with previously filed applications, whose facilities could affect or be affected by the new proposal in terms of frequency interference on active channels, applied-for channels, or channels coordinated for future growth. Coordination must be completed prior to filing an application for regular authorization, or a major amendment to a pending application, or any major modification to a license. In coordinating frequency usage with stations in the fixed satellite service, applicants must also comply with the requirements of 47 CFR 101.21(f). In engineering a system or modification thereto, the applicant must, by appropriate studies and analyses, select sites, transmitters, antennas and frequencies that will avoid interference in excess of permissible levels to other users. All applicants and licensees must cooperate fully and make reasonable efforts to resolve technical problems and conflicts that may inhibit the most effective and efficient use of the radio spectrum; however, the party being coordinated with is not obligated to suggest changes or re-engineer a proposal in cases involving conflicts. Applicants should make every reasonable effort to avoid blocking the growth of systems as prior coordinated. The applicant must identify in the application all entities with which the technical proposal was coordinated. In the event that technical problems are not resolved, an explanation must be submitted with the application. Where technical problems are resolved by an agreement or operating arrangement between the parties that would require special procedures be taken to reduce the likelihood of interference in excess of permissible levels (such as the use of artificial site shielding) or would result in a reduction of quality or capacity of either system, the details thereof may be contained in the application.

* * * * *

(c) For each frequency coordinated under this part, the following frequency usage coordination procedures will apply:

* * * * *

(d) For each frequency coordinated under this part, applicants are responsible for selecting the frequency assignments that are least likely to result in mutual interference with other licensees in the same area. Applicants may consult local frequency coordination committees, where they exist, for information on frequencies available in the area. In selecting frequencies, consideration should be given to the relative location of receive points, normal transmission paths, and the nature of the contemplated operation.

[FR Doc. 2010–7567 Filed 4–2–10; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R8-ES-2010-0016]
[MO 92210-0-0008-B2]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List Thorne's Hairstreak Butterfly as or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90–day finding on a petition to list Thorne's hairstreak butterfly (*Callophrys* [*Mitoura] grynea thornei* or *Callophrys* [*Mitoura] thornei*) as endangered under the Endangered Species Act of 1973, as amended and to designate critical habitat. We find the petition and information currently available in our records presents substantial scientific or commercial information indicating that listing Thorne's hairstreak butterfly may be warranted. Therefore, with the publication of this notice, we are initiating a status review to determine if the petitioned action is warranted. To ensure that the status review is comprehensive, we are requesting scientific and commercial data and other information regarding this species. Based on the status review, we will issue a 12–month finding on the petition, which will address whether the petitioned action is warranted, as provided in section 4(b)(3)(B) of the Act.

DATES: To allow us adequate time to conduct this review, we request that we receive information on or before June 4, 2010. After this date, you must submit information directly to the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section below). Please note that we may not be able to address or incorporate information that we receive after the above requested date.

ADDRESSES: You may submit comments by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Search for Docket No. FWS-R8-ES-2010-0016 and then follow the instructions for submitting comments.
- U.S. mail or hand-delivery: Public Comments Processing, Attn: FWS-R8-ES-2010-0016; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will post all information received on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the Information Requested section below for more details).

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 6010 Hidden Valley Road, Suite 101, Carlsbad, CA 92011; by telephone at 760–431–9440; or by facsimile to 760–431–9624. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Information Requested

When we make a finding that a petition presents substantial information indicating that listing a species may be warranted, we are required to promptly review the status of the species (status review). For the status review to be complete and based on the best available scientific and commercial information, we request information on the Thorne's hairstreak butterfly from governmental agencies, Native American Tribes, the scientific community, industry, and any other interested parties. We seek information on:

(1) The species' biology, range, and population trends, including:

(a) Habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species and/or its habitat or both.

(2) The factors that are the basis for making a listing/delisting/downlisting determination for a species under section 4(a) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), which are:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence.

(3) The historical and current status and distribution of the Thorne's hairstreak butterfly, its biology and ecology, and ongoing conservation measures for the species and its habitat in the United States and Mexico.

(4) Information on management programs for the conservation of the Thorne's hairstreak butterfly.

Please include sufficient information with your submission (such as full references) to allow us to verify any scientific or commercial information you include.

If, after the status review, we determine that listing the Thorne's hairstreak butterfly is warranted, we intend to propose critical habitat (see definition in section 3(5)(A) of the Act), in accordance with section 4 of the Act, to the maximum extent prudent and determinable at the time we propose to list the species. Therefore, within the geographical range currently occupied by the Thorne's hairstreak butterfly, we request data and information on:

(1) What may constitute "physical or biological features essential to the conservation of the species,"

(2) Where these features are currently found, and

(3) Whether any of these features may require special management considerations or protection.

In addition, we request data and information on "specific areas outside the geographical area occupied by the species" that are "essential to the conservation of the species." Please provide specific comments and information as to what, if any, critical habitat you think we should propose for designation if the species is proposed for listing, and why such habitat meets the requirements of section 4 of the Act.

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 Act directs that determinations as to whether any species is an endangered or threatened species must be made "solely on the basis of the best scientific and commercial data available."

You may submit your information concerning this status review by one of the methods listed in the **ADDRESSES** section. If you submit information via *http://www.regulations.gov*, your entire submission—including any personal identifying information—will be posted on the website. If you submit a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov*.

Information and supporting documentation that we received and used in preparing this finding, will be available for you to review at *http://www.regulations.gov*, or you may make an appointment during normal business hours at the U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the **Federal Register**.

Our standard for substantial scientific or commercial information within the Code of Federal Regulations (CFR) with regard to a 90–day petition finding is "that 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)). If we find that substantial scientific or commercial information was presented, we are required to promptly review the status of the species, which is subsequently summarized in our 12–month finding.

Previous Federal Actions

On August 8, 2006, we published 90–day findings for both the Thorne's hairstreak and the Hermes copper butterfly in the **Federal Register**. The findings concluded that the petitions and information in our files did not present substantial scientific or commercial information indicating that listing Thorne's hairstreak (71 FR 44980) or Hermes copper butterflies (71 FR 44966) was warranted. (For a detailed history of Federal actions involving the Thorne's hairstreak butterfly prior to the 2006 90–day finding, please see the August 8, 2006 **Federal Register** Notice (71 FR 44980)). On March 17, 2009, CBD and David Hogan filed a complaint for declaratory and injunctive relief challenging the Service's decision not to list the Thorne's hairstreak butterfly and the Hermes copper butterfly as threatened or endangered under the Act. In a settlement agreement dated October 23, 2009 (Case No. 09-0533 S.D. Cal.), the Service agreed to submit new 90–day petition findings to the **Federal Register** by April 2, 2010, for the Thorne's hairstreak butterfly, and by May 13, 2010, for the Hermes copper butterfly. As a part of the settlement agreement, we agreed to evaluate the October 25, 2004 petition filed by David Hogan and CBD, supporting information submitted with the petition, and information available in the Service's files, including information that has become available since the publication of the negative 90–day findings on August 8, 2006. If the 90–day findings determine that listing may be warranted, we agreed to submit a 12–month finding to the **Federal Register** by March 4, 2011, for the Thorne's hairstreak butterfly, and by April 15, 2011, for the Hermes copper butterfly.

This notice constitutes our 90–day finding on the petition to list Thorne's hairstreak butterfly under section 4(b)(1)(A) of the Act. We will publish the 90–day finding on the petition to list Hermes copper butterfly in a future **Federal Register** document.

Species Information

Taxonomy

Thorne's hairstreak butterfly was first described by John Brown (1983) based on a specimen collected by Fred Thorne in 1972. In this description, Brown placed the new species in the Lycaenidae family with the scientific name *Mitoura thornei*. The taxonomic ranking and placement of *Mitoura*

thornei was evaluated in 1999 by the Committee on Scientific Names of North American Butterflies and subsequently changed to a subspecies of *Callophrys gryneus* (Faulkner and Klein 2005, p. 31). As a result of this change, the species was renamed as *Callophrys gryneus thornei*. To validate this nomenclature change, the Service contracted Dr. Richard W. Van Bursick (2004) to review the Thorne's hairstreak butterfly's taxonomic status. This review concurred with the Committee on Scientific Names of North American Butterflies' (1999) decision and the Service currently recognizes Thorne's hairstreak butterfly as the subspecies *Callophrys gryneus thornei*. There has been significant discussion and disagreement by species experts on the taxonomic placement of this butterfly species (Faulkner and Klein 2005, p. 31), resulting in our receipt of new information from a species expert that disagrees with the previously cited taxonomic classification of Thorne's hairstreak butterfly (Klein 2009, pers. comm.). Due to the discrepancy over the taxonomic nomenclature of this species, we plan to re-evaluate Van Buskirk's (2004) review of taxonomic status for Thorne's hairstreak butterfly and will publish the results in the 12–month finding.

The host plant for Thorne's hairstreak butterfly larvae is *Hesperocyparis forbesii* (Tecate cypress). This species had been known for some time in the literature as *Cupressus forbesii*. *Cupressus forbesii*, and the rest of the Western Hemisphere taxa of *Cupressus* have been segregated as *Hesperocyparis* based on phylogenetic comparisons that support morphological evidence (Adams *et al.* 2009, pp. 160–185). *Hesperocyparis forbesii* will be the name recognized for the species in the upcoming revision of the Jepson Manual of the Flora of California. This name will used throughout this and all future documents referring to this species.

Species Status and Distribution

Thorne's hairstreak butterfly is endemic to San Diego County, and more specifically found exclusively in the Otay Mountain area (Faulkner and Klein 2005, p. 31). It is dependent on its larval host plant, *Hesperocyparis forbesii*, to complete its lifecycle (Brown 1983), and is the only plant known on which Thorne's hairstreak butterflies lay their eggs. Adults lay their eggs on *H. forbesii* stems where the eggs mature, subsequently hatch, and larvae feed until pupation occurs in the duff and leaf litter at the base of the plant. Thorne's hairstreak butterflies have two hatching or flight periods per year (termed bivoltine): the first flight period occurs in late March to early April and the second flight period occurs in September, which is thought to be dependent on the presence of summer rains (Faulkner and Klein 2005, p. 32). Adult Thorne's hairstreak butterflies are known to feed throughout the chaparral ecosystem on the nectar of *Eriogonum fasciculatum* (California buckwheat), *Ceanothus tomentosus* (Ramona lilac), and *Lotus scoparius* (deerweed) in the vicinity of stands of *H. forbesii* (Faulkner and Klein 2005, p. 33). We received new information as a result of a recent study indicating that *Asclepias fascicularis* (narrowleaf milkweed) is also used as an adult nectar source by Thorne's hairstreak butterfly throughout the species' range (Lucas 2009, pers. comm.). Confirmed observations of Thorne's hairstreak butterfly have been historically reported throughout the Otay Mountain area and have been repeatedly reported from O'Neill Canyon, Little Cedar Canyon, and Cedar Canyon, all of which are within the Otay Mountain wilderness (Betzler *et al.* 2003, pp. 13-14; Martin 2004, pers. comm.; Faulkner and Klein 2005, p. 32; Lucas 2009, unpublished data).

Habitat

Hesperocyparis forbesii, a species generally associated with chaparral, is a serotinous- (not opening on maturity) or closed-coned conifer. Typically,its cones do not open and disperse seed until after fire, which nearly always results in the death of the parent tree (Zedler 1977, p. 456). Cone production for *H. forbesii* begins around 10 years of age (Zedler 1977, p. 456). While Zedler (1977, p. 456) asserted that maximum production per tree is not achieved until individuals reach approximately 50 years of age, Dunn (1986, p. 371) concluded that a maximum level of cones per square meter of the cypress stand is attained at about 35 to 40 years of age. *Hesperocyparis forbesii*'s historical distribution on Otay Mountain was known to be approximately 7,500 acres (ac) (3,035 hectares (ha)) (CNDDB 2003).

Hesperocyparis forbesii persistence may be impacted by wildfires in the Otay Mountain area. Throughout the past 35 years, the Otay Mountain area has been subject to multiple fires of various levels of severity (Zedler 1977, p. 456; Keeley and Fotheringham 2003, pp. 242–243). Service GIS files indicate that the 2003 Otay/Mine fire footprint completely covered the known distribution of *H. forbesii* in the Otay Mountain area followed by the 2007 Harris fire that burned a substantial portion of this area again. Some researchers also postulated that an increase in frequency of fires in the area may: (1) Result in changing vegetation structure or type conversion (Zedler 1977, p. 457; Zedler *et al.* 1983, p. 817; Keeley and Fotheringham 2003, pp. 243–244), and (2) lead to significant declines or possible extinction of *H. forbesii* in the Otay Mountain area because adult *H. forbesii* will not have the opportunity to reach an age where reproductive output is high enough to sustain the population (Zedler 1977, p. 457). While Dunn (1985, p. 5) concluded that the Otay population was not in "immediate danger," he noted that "an increasing threat of development and its effects on fire frequency" affected this area. Nonetheless, de Gouvenain and Ansary (2006, pp. 451–452) reported that the Otay Mountain, Tecate Peak, and Guatay populations of *H. forbesii* "appeared to be stable or potentially increasing'' (i.e., the rate of population increase or $\lambda > 1$)." However, Markovchick-Nicholls (2007, p. 50) concluded that "[m]odel results utilizing available data and incorporating natural variation suggest that Tecate cypress [in the United States] will decline under most fire regime scenarios over the long-term, but that this trend may be difficult to detect in the short-term." Results from a recent study on the abundance of *H. forbesii* stands (individuals 3.3 ft (1 m) or higher) indicate there are approximately 454 ac (184 ha) located throughout the Otay Mountain area (Lucas 2009, unpublished data) and other burned areas contain small (less than 3.3 ft (1 m)) individuals that have sprouted since the 2003 and 2007 fires (Winchell, pers. obs. 2009). These surveys corroborated historical data (Betzler *et al.* 2003) that the oldest stands occur in Little Cedar Canyon and the largest stands occur in O'Neal Canyon (Lucas 2009, unpublished data); this survey information indicates that these stands have survived after repeated fire events. Additionally, Thorne's hairstreak butterfly has been observed perching on *H. forbesii* and nectaring on other chaparral plants during multiple survey periods between and following the 2003 and 2007 fires that occurred in the Otay Mountain area (Betzler *et al.* 2003, pp. 13-14; Martin 2004, pers. comm.; Faulkner and Klein 2005, p. 32; Lucas 2009, unpublished data).

For additional species information on Thorne's hairstreak butterfly, please refer to our previous 90–day finding, which published in the **Federal Register** on August 8, 2006 (71 FR 44980).

Evaluation of Information for this Finding

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations in the Code of Federal Regulations (CFR) at 50 CFR 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

In making this 90–day finding, we evaluated whether information on threats to Thorne's hairstreak butterfly, as presented in the 2004 petition and other information available in our files, is substantial, thereby indicating that the petitioned action may be warranted. In the sections that follow, we summarize information included in the 2004 petition and evaluate any new information in our files, including information that has become available since the publication of the not-substantial 90–day finding on August 8, 2006. For a detailed evaluation of threats listed in the petition, please refer to the previous 90–day finding that published in the **Federal Register** on August 8, 2006 (71 FR 44980).

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

The petition, its appendices, and referenced documents discuss the following threats that are grouped under Factor A: wildfire, prescribed burns, grazing, vehicle access and recreation, and habitat fragmentation.

Wildfire

Information Provided in the Petition

The petitioners assert that Thorne's hairstreak butterfly is vulnerable to extinction from wildfire, which can cause direct mortality of individual butterflies (see discussion under Factor E) and indirect mortality resulting from a loss of the species' larval host plant, *Hesperocyparis forbesii*. The petition further asserts that a single fire may threaten a significant portion of Thorne's hairstreak butterfly's range (such as the 2003 fire, as cited in Betzler *et al*. 2003, p. 13). Additionally, increased fire frequency throughout the species' range may result in an increase in the abundance or an expansion of highly flammable, invasive, nonnative plant species, or vegetation type conversion and the replacement of chaparral ecosystems with nonnative plant species, thereby impacting the habitat on which Thorne's hairstreak butterfly depends (Keeley and Fotheringham 2003, pp. 243-245; Brooks *et al*. 2004, pp. 677-688).

Evaluation of Information Provided in the Petition and Available in Service Files

Distribution of Thorne's hairstreak butterfly is limited to the Otay Mountain area (part of the San Ysidro Mountain range in southern San Diego County, California) and is dependent on the presence of *Hesperocyparis forebesii*, which is the butterfly's larval host plant (Brown 1983, pp. 245-254). The current distribution of *H. forbesii* in the Otay Mountain area encompasses 454 ac (183 ha) (Lucas 2009, unpublished data); however, historical records indicate that *H. forbesii* in the Otay Mountain area once covered approximately 7,500 ac (3,035 ha) (CNDDB 2003). Of the current 454 ac (183 ha) of *H. forbesii*, approximately 34.7 ac (14 ha) are privately owned, 7.6 ac (3 ha) are owned by California Department of Fish and Game, and 5.5 ac (2.2 ha) are owned by the City of Chula Vista. The remaining approximately 406 ac (164 ha) of *H. forbesii* habitat in the Otay Mountain area occurs within the Bureau of Land Management (BLM) Otay Mountain Wilderness (see Factor D for more information on the Otay Mountain Wilderness). Confirmed observations of Thorne's hairstreak butterfly have been reported throughout the Otay Mountain area, but primarily occur from two canyons: Little Cedar Canyon and Cedar Canyon both within the Otay Mountain Wilderness (Betzler *et al*. 2003, pp. 13-14). Thorne's hairstreak butterfly is a narrow endemic species with historically declining habitat throughout the Otay Mountain area (Brown 1983, pp. 245-254; BLM 2009(b), p. 3-59); Congedo and Williams 2009, p. 1).

Information in our files indicates that wildfires in 2003 and 2007 burned throughout the *Hesperocyparis forbesii* stands in the Otay Mountain area, which are known to be occupied by Thorne's hairstreak butterfly. The rapid reburning of this area (fire intervals less than 40 years) may have impacted mature *H. forbesii* by keeping them at a growth stage where reproductive output is not high enough to sustain the population of *H. forbesii* (de Gouvenain and Ansary 2006, pp. 447–448; Markovchick-Nicholls 2007, p. 7); therefore, the availability of larval habitat for Thorne's hairstreak butterfly may be reduced by wildfires. It is also possible that replacement of other chaparral species (i.e., nectar sources) may have occurred under this fire regime, thereby removing nectar sources necessary to support Thorne's hairstreak butterfly; however, we have no information to support the petitioners' claim, and we will investigate this in our status review of the species. It is likely that wildfires will occur within the range of this species in the future. Therefore, we find the petition and information in our files presents substantial information indicating that listing Thorne's hairstreak butterfly may be warranted due to the threat of short-return-interval wildfire.

Prescribed Burns

Information Provided in the Petition

The petitioners state that while prescribed burns do not appear to be planned by BLM for the San Ysidro Mountain range, any that do occur in the future could compound the threat of excessive fire to Thorne's hairstreak butterflies and *Hesperocyparis forbesii*.

Evaluation of Information Provided in the Petition and Available in Service Files

We did not find substantial information in the petition or in our files to indicate prescribed burns by BLM in the San Ysidro Mountain range may threaten Thorne's hairstreak butterfly. The species and its larval plant host, *Hesperocyparis forbesii*, occur almost exclusively (approximately 90 percent) in the Otay Mountain Wilderness (see also Factor D). BLM's South Coast Resource Management Plan (South Coast RMP) (BLM 1994) generally allows prescribed burns; however, the Otay Mountain Wilderness has been managed under a policy of complete fire suppression (Woychok 2006, pers. comm.). In the Cedar Canyon area, the South Coast RMP states that BLM will not consider prescribed burns until 2020 to minimize the risk of jeopardizing *H. forbesii* regeneration after fires (BLM 1994, p. 21). Additionally, BLM is currently drafting a revised South Coast RMP that includes no prescribed burns and follows fire suppression practices until *H. forbesii* returns to its historical fire cycle of 50 years (BLM 2009(b), pp. 4-171-4-172). After 50 years without fire in a give *H. forbesii* stand, BLM would allow prescribed burns up to 500 ac per year. However, this new South Coast RMP is

in an early draft stage and is not currently being implemented by BLM. The other locations in the Otay Mountain area that contain *H. forbesii* stands (approximately 10 percent) receive protection under the City of Chula Vista Subarea Plan or the County of San Diego Subarea Plan under the Multiple Species Conservation Program (MSCP). These subarea plans require the conservation of natural vegetation communities (including *H. forbesii* stands), and states that "a fire management program would be needed for prevention of catastrophic fires and long-term viability" of both Thorne's hairstreak butterfly and its larval host plant. Therefore, we find the petition and information in our files do not present substantial information indicating that listing Thorne's hairstreak butterfly may be warranted due to the threat of prescribed burns. However, we will further investigate the potential threat of prescribed burns in our status review for this species.

Grazing

Information Provided in the Petition

The petition states that grazing may harm Thorne's hairstreak butterfly and its larval host plant, *Hesperocyparis forbesii*, if grazing within the currently vacant Otay Grazing Allotment (approximately 5,522 ac (2,235 ha) (BLM 2009(b), p. 3-116) located on BLM lands on Otay Mountain) occurs in the future. The threat of grazing as it relates to direct mortality of individual butterflies is discussed under Factor E. The petitioners assert that the allotment is being considered for renewed grazing in the future and that cattle grazing will cause harm to the habitat (by trampling the larval host and through soil modification) and increase the occurrence of nonnative plants, thus leading to an increase in fire frequency, and resulting in loss of Thorne's hairstreak butterfly habitat.

Evaluation of Information Provided in the Petition and Available in Service Files

The petitioners state that the Otay Grazing Allotment is vacant. Information in our files indicates the allotment is leased but has been in a state of non-use since 2000 (BLM 2009(b), p. 3-120). The Otay Grazing Allotment is completely contained within the Otay Mountain Wilderness and encompasses suitable adult Thorne's hairstreak butterfly habitat (i.e., the host plant and other chaparral plants, which includes nectar sources for adults) (Lucas 2009, pers. comm.), including approximately 16 percent (75.2 ac (30.4 ha)) of the *Hesperocyparis forbesii* in the Otay Mountain area. The available adult and larval habitat for Thorne's hairstreak butterfly is currently not impacted by grazing and a large majority of the adult and larval habitat would remain unaffected if grazing resumed in the Otay Grazing Allotment in the future. Neither the petition nor other information in our files presents substantial information indicating that listing Thorne's hairstreak butterfly may be warranted due to the threat of grazing. However, we will further investigate the potential threat of grazing in our status review for this species.

Vehicle Access and Recreation

Information Provided in the Petition

The petitioners assert that vehicle access and recreation in the San Ysidro Mountain range will likely lead to increased fire frequency. Additionally, they state that certain roads were grandfathered into the Otay Mountain Wilderness designation and generally allow unrestricted public access to Thorne's hairstreak butterfly habitat.

Evaluation of Information Provided in the Petition and Available in Service Files

The Otay Mountain Wilderness Area allows public access; however, recreational use is considered light with no more than 1,000 visitor use days per year (BLM 2009(b), p. 3-103). Visitors are encouraged to be responsible and follow the BLM program called "Leave No Trace," which minimizes impacts from human uses. Motorized vehicle use is not permitted in the designated Wilderness Area with the exception of two pre-existing roads, and off-highway vehicles are completely excluded (BLM 2009(b), pp. 2-124-2-125). The majority of traffic through the area is concentrated on a few small roads used by border patrol agents. Border patrol vehicles may increase the risk of fire in this area, although fires are expected to be immediately reported (BLM 2009(b), p. 2-151).

Although light recreational use and minimal traffic associated with border patrol agents occurs in the Otay Mountain Wilderness, the information available to us does not indicate that recreation and vehicle use is a threat to Thorne's hairstreak butterfly. These two pre-existing roads within the Otay Mountain Wilderness extend outside of BLM property onto private lands; however, they are small, one-lane, remote, dirt roads that only pass near stands of *Hesperocyparis forbesii* and do not appear to be heavily used. We do not have information to support the claim that vehicle access would increase the fire frequency in the area. Additionally, we do not have information in our files and the petitioners did not present information to indicate that vehicle access and recreation are a threat to the species in the Otay Mountain Wilderness or in privately-owned areas. Therefore, we find the petition and information in our files do not present substantial information indicating that listing Thorne's hairstreak butterfly may be warranted due to the threat of vehicle access and recreation. However, we will further investigate the potential threat of recreation and vehicle access in our status review for this species.

Habitat Fragmentation

Information Provided in the Petition

The petitioners claim that both habitat fragmentation and habitat degradation pose a substantial threat to Thorne's hairstreak butterfly and its habitat through both habitat modification and fragmentation of butterfly populations. The petitioners assert that the habitat has been degraded and modified such that Thorne's hairstreak butterfly is unable to locate suitable habitat, which will likely impact the species throughout its geographical range. The impacts associated with Thorne's hairstreak butterfly population fragmentation are assessed under Factor E (see below).

Evaluation of Information Provided in the Petition and Available in Service Files

We agree that habitat for Thorne's hairstreak butterfly appears to have been fragmented or degraded by wildfire. The current distribution of *Hesperocyparis forbesii* in the Otay Mountain area encompasses 454 ac (183 ha) (Lucas 2009, unpublished data) and is distributed in patches across the landscape; however, historical records indicate that *H. forbesii* in the Otay Mountain area once covered approximately 7,500 ac (3,035 ha). Information in our files indicates that *H. forbesii* and other chaparral species are currently recovering after recent fires (Congedo and Williams 2009, p. 1; Lucas 2009, pers. comm.); however, we do not have information in our files that indicates whether the habitat has been impacted in a manner that would inhibit recovery to historical levels. We note that the amount of larval habitat has increased from 2004 to 2009 (Lucas 2009, unpublished data).

Zedler *et al.* (1983, pp. 809-818) describes vegetation type conversion

(also considered a type of habitat fragmentation) within the Otay Mountain area; however, information in our files describes recovering *H. forbesii* habitat and availability of various suitable nectar sources after the fires in 2003 and 2007, including one source that was previously unknown (Lucas 2009, pers. comm.).

Additionally, the petition cites roads as a mechanism of habitat fragmentation; however, roads are unlikely to cause habitat fragmentation to an extent that would impact Thorne's hairstreak butterfly population because the roads are small, one-lane, remote, dirt roads with little traffic. The Otay Mountain Wilderness, managed by the BLM, has only two main roads and a few other small roads that allow motorized vehicles (off-highway vehicle use is excluded throughout the Otay Mountain Wilderness); therefore, habitat fragmentation resulting from roads would be very minimal.

In summary, we evaluated the petition and information in our files and find that substantial information exists to indicate that listing Thorne's hairstreak butterfly may be warranted due to the present or threatened destruction, modification, or curtailment of the habitat or range of the species due to the threat of wildfires and the possibility that habitat fragmentation may be occurring as a result of wildfires. We will further investigate the potential threat of habitat fragmentation in our status review for this species.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Information Provided in the Petition

The petition does not present any information with respect to Factor B.

Evaluation of Information Provided in the Petition and Available in Service Files

The information in our files does not indicate any threat to Thorne's hairstreak butterfly due to overutilization for commercial, recreational, scientific, or education purposes. Therefore, we find that the petition and information in our files do not provide substantial information indicating listing Thorne's hairstreak butterfly may be warranted due to the overutilization for commercial, recreational, scientific, or education purposes. However, we will further investigate the potential threat of overutilization for commercial, recreational, scientific, or education purposes in our status review for this species.

C. Disease or Predation

Disease

Information Provided in the Petition

The petition does not present any information concerning threats from disease to Thorne's hairstreak butterfly.

Evaluation of Information Provided in the Petition and Available in Service Files

We have no information in our files to indicate any threat from disease to Thorne's hairstreak butterfly.

Predation

Information Provided in the Petition

The petitioners state that species experts (Klein (date not provided), pers. comm.) suspect that birds, predatory insects, parasitic insects, and spiders prey upon Thorne's hairstreak butterfly. Additionally, the petitioners assert that the harmful effects of otherwise normal predation or parasitism might be exacerbated by population reduction from excessive fires.

Evaluation of Information Provided in the Petition and Available in Service Files

Faulkner and Klein (2005, p. 34) state that birds may consume Thorne's hairstreak larvae; however, we are not aware of any data to support a theory of bird predation as a significant threat to Thorne's hairstreak butterflies. Brachonid wasps, which are parasitic insects, have been observed near the host plant, but there has been no documentation of parasitism to Thorne's hairstreak butterflies (Faulkner and Klein 2005, p. 34). The petitioners do not provide information to support their claim that predation or parasitism may exacerbate population reduction resulting from fires, nor do we have any information in our files to support this claim.

Neither the petition nor our files present substantial information that disease or predation pose significant threats to Thorne's hairstreak butterfly. Therefore, we find that the petition and information in our files do not provide substantial information indicating that listing Thorne's hairstreak butterfly may be warranted due to disease or predation. However, we will further investigate the potential threat of disease and predation in our status review for this species.

D. The Inadequacy of Existing Regulatory Mechanisms

The petition cites three regulatory mechanisms that may provide some, but not adequate, Thorne's hairstreak butterfly conservation, including:

(1) The Wilderness Act,

(2) BLM management activities, and

(3) The County of San Diego Subarea Plan under the Multiple Species Conservation Program (MSCP).

Information Provided in the Petition

The petitioners make the following statements concerning Thorne's hairstreak butterflies and the Wilderness Act, BLM management activities, and the County of San Diego Subarea Plan:

(1) The Wilderness Act does not provide significant protection for the species;

(2) BLM does not consider the species as "sensitive", so the species is not afforded sensitive species' protections within the agency's management plan (i.e., the South Coast RMP));

(3) BLM is not actively implementing conservation measures for the species;

(4) BLM is not pro-actively managing the private lands they have acquired; and

(5) Despite Thorne's hairstreak butterfly being recognized as a "covered species" under the County of San Diego Subarea Plan, that Plan does not provide sufficient protection for the species.

Evaluation of Information Provided in the Petition and Available in Service Files

Thorne's hairstreak butterfly larval habitat on Otay Mountain occurs almost entirely (92 percent) on publicly owned property (BLM, City of Chula Vista or California Department of Fish and Game). The following regulatory mechanisms and management actions apply to these public lands and protect Thorne's hairstreak butterfly and its habitat:

(1) The Otay Mountain Wilderness Act (1999) (Pub. L. 106-145) and BLM management policies provide protection for the vast majority of Thorne's hairstreak butterfly habitat. The Otay Mountain Wilderness Act provides that the Otay Mountain designated wilderness area (i.e., Otay Mountain Wilderness; 18,500 ac (7,486 ha)) will be managed in accordance with the provisions of the Wilderness Act of 1964 (16 U.S.C. 1131 *et seq.*). The Wilderness Act of 1964, in turn, strictly limits use of wilderness areas, imposing restrictions on vehicle use, new developments, chainsaws, mountain bikes, leasing, and mining in order to protect the natural habitats of the areas,

maintain species diversity, and enhance biological values. Finally, any lands acquired within the Otay Mountain Wilderness boundaries become part of the designated wilderness area and they are managed in accordance with all provisions of the Wilderness Act and applicable laws.

(2) Sensitive species, as defined by BLM, are those species that are not already designated as Federal- or State-listed species and occur on Bureau-administered lands for which BLM has the capability to significantly affect their conservation status through management. This BLM policy is intended to ensure that actions authorized, funded, or carried out by the BLM do not contribute to the need for these species to become listed as endangered or threatened under the Act (BLM 2009(b), p. 3-58). Currently, Thorne's hairstreak butterfly is not considered a sensitive species by BLM; however, BLM is currently collaborating with the Service to revise the South Coast RMP. In this draft revised plan, Thorne's hairstreak butterfly and *Hesperocyparis forbesii* are identified as sensitive species (BLM 2009(b), p. 3-59), and the draft revised plan specifically states the management of these species and their habitats are important because of their close association and the importance of fire cycles to their continued existence. Moreover, one of BLM's primary objectives in the draft revised plan is improved fire management and collaboration with local communities and agencies to prevent wildfires. Additionally, BLM intends to write a more specific plan for the Otay Mountain Wilderness that identifies management measures and actions that would benefit *H. forbesii* (Schlachter 2006, pers. comm.; BLM 2009(a), p. 1). BLM's future management plans appear to provide a significant amount of conservation and management measures, but they are currently not being implemented throughout the Otay Mountain Wilderness Area. As a result of wildfires on Otay Mountain there have likely been increases in nonnative species which increase fuels available for future fires. Furthermore, although the current fire suppression policy dictates all fires should be suppressed once ignited, this has not prevented recent wildlfires from burning through large areas of Thorne's hairstreak butterfly habitat. Therefore, it appears current regulations for Thorne's hairstreak butterfly and its habitat are not adequate to control the threat of increased wildfire frequency.

(3) The Memorandum of Understanding (MOU) on cooperation in habitat conservation planning and management issued by BLM in 1994 in conjunction with the development of the County of San Diego Subarea Plan (BLM 1994, pp. 1-8) applies to the Otay Mountain Wilderness because it falls entirely within the boundary of this subarea plan. The MOU details BLM's commitment to manage its lands in a manner that compliments the County of San Diego MSCP Subarea Plan, which in turn, requires protection of Thorne's hairstreak butterfly's larval host plant and local chaparral species used as nectar sources. Additionally, the MOU states that private lands acquired by BLM will be evaluated for inclusion within the designated wilderness area and if the lands do not meet wilderness qualifications they would be included in the region's habitat conservation system (BLM 1994, p. 3). Any existing conservation plans will be considered when managing these newly acquired lands (BLM 1994, p. 3; BLM 2009(b), pp. 2-74, N-1-2).

The draft revised South Coast RMP (see discussion in (2) above) , which covers the Otay Mountain Wilderness, does provide conservation measures for both Thorne's hairstreak butterfly and *Hesperocyparis forbesii*. The plan specifically includes a goal of restoring fire frequency to 50 years through fire prevention or suppression and prescribed burns; once an area has not burned for 50 years the plan allows for annual prescribed burning of up to 500 acres (202.3 ha) in the Otay Mountain Wilderness (BLM 2009(b), pp. 4-171-4-172). BLM's future management plans appear to provide conservation and management measures to assist with various threats to Thorne's hairstreak butterfly and its habitat, but they are currently not being implemented throughout the Otay Mountain Wilderness Area; therefore, it appears that current regulations for Thorne's hairstreak butterfly and its habitat are not adequate to control potential threats to this species, including the threat of increased wildfire frequency.

(4) Approximately 48 ac (19 ha) of *Hesperocyparis forbesii* habitat fall under the MSCP, which strives for fire management and prevention to restore the previous 25–year fire cycle and states that "a fire management program would be needed for prevention of catastrophic fires and long-term viability of its host plant." This shorter frequency of fire may have an impact on adult *H. forbesii* because they will not have the opportunity to reach an age (40 or more years) where reproductive output is high enough to sustain the population (de Gouvenain and Ansary 2006, pp. 447–448; Markovchick-Nicholls 2007, p. 7). Therefore, the fire management and prevention policies of the MSCP which strive to restore a 25 year fire cycle, may be inadequate to control the threat of wildfire to this species.

There appear to be a variety of future management actions that BLM couldimplement which may provide protection to Thorne's hairstreak butterfly and its habitat; however, current existing regulatory mechanisms by BLM and MSCP do not appear to be adequate to provide protection for Thorne's hairstreak butterfly or its habitat from the threat of increased wildfire frequency. Therefore, after our evaluation of the petition and information in our files, we find that substantial information exists to indicate that listing Thorne's hairstreak butterfly may be warranted due to the inadequacy of existing regulatory mechanisms.

E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

The petition, its appendices, and referenced documents discuss the following threats that are grouped under Factor E: wildfire, grazing, population fragmentation, vulnerability of small and isolated populations, and global climate change.

Wildfire

Information Provided in the Petition

The petitioners state that Thorne's hairstreak butterfly cannot escape fire. They stated that: (1) Pupae and larvae are likely killed when fire burns *Hesperocyparis forbesii* stands and nearby chaparral; (2) adults are likely killed by fire due to their habit of remaining close to their host plant; and (3) adults are likely outpaced by an approaching fire. The petition claims excessive fires over the last several decades have reduced Thorne's hairstreak butterfly population numbers and disrupted metapopulation dynamics and stability.

Evaluation of Information Provided in the Petition and Available in Service Files

We agree that the majority of Thorne's hairstreak butterfly individuals are likely killed when a fire passes through an occupied area. Moreover, researchers questioned the persistence of Thorne's hairstreak butterfly after the 2003 Otay/Mine fire because the fire footprint appeared to cover all areas known to be occupied by the species (IBAERT 2003, pp. 219-220; Betzler *et al.* 2003, p. 13). Although, adult Thorne's hairstreak butterflies were documented from four

unburned *Hesperocyparis forbesii* stands after the 2003 fire on the southwest slope of the Otay Mountain (Martin 2004, pers. comm.), surveyors in 2004 visiting the burned areas occupied prior to the 2003 fire, found evidence of new host plant growth but no adult Thorne's hairstreak butterflies (Faulkner and Klein 2005, pp. 32). This is likely due to the lack of available larval host plants and nectar sources on which Thorne's hairstreak butterfly relies one year after the fire.

Researchers have postulated that Thorne's hairstreak butterflies require mature host plants for reproduction (Faulkner and Klein 2005, p. 32); however, Thorne's hairstreak butterflies were observed in 2009 perching and feeding within re-growth areas burned in the 2003 and 2007 fires (Lucas 2009, pers. comm.). These observations in recently burned (younger) stands of *H. forbesii* support the theory that Thorne's hairstreak butterflies do not strictly require mature or adult trees as host plants.

Even with some post-fire adult observations, it is likely the majority of Thorne's hairstreak butterflies killed when habitat burns and populations are further adversely impacted by frequently recurring fires. Therefore, we find that the petition and information in our files do provide substantial information to indicate that listing Thorne's hairstreak butterfly may be warranted due to direct mortality from wildfire.

Grazing

Information Provided in the Petition

The petitioners assert that grazing practices may lead to trampling of eggs and larvae of Thorne's hairstreak butterfly.

Evaluation of Information Provided in the Petition and Available in Service Files

The Otay Grazing Allotment, which is the only place in the current range of the species that is grazed, is completely contained within the Otay Mountain Wilderness and has not been grazed since 2000 (Doran 2006, pers. comm.; BLM 2009(b), p. 3-120). Information in our files indicate that approximately 84 percent (378 ac (153 ha)) of the *Hesperocyparis forbesii* within the Otay Mountain area are outside of the Otay Grazing Allotment. The majority of the available habitat for Thorne's hairstreak butterfly is currently not affected by grazing (i.e., vegetation conditions are not favorable for grazing), and would not be affected by grazing within the Otay Grazing Allotment should grazing in the allotment resume in the future. Therefore, we find that the petition and information in our files do not provide substantial information to indicate that listing Thorne's hairstreak butterfly may be warranted due to mortality from grazing. However, we will further investigate in our status review for this species the potential threat of trampling mortality from grazing and the potential impact that grazing could have if it occurs in the future.

Population Fragmentation

Information Provided in the Petition

The petitioners state that fragmentation of Thorne's hairstreak butterfly populations through fire, habitat type conversion, and roads poses a significant threat to the species. The petitioners claim habitat fragmentation reduces the area of Thorne's hairstreak butterfly habitat and thereby threatens the species by isolating populations from one another. The petitioners also claim that because Thorne's hairstreak butterflies are habitat specialists, they have a higher risk of extinction due to population fragmentation than a habitat generalist. Additionally, the petitioners claim that habitat fragmentation expands edge habitat, resulting in further stress on fragmented or small populations, leading to isolation effects on the population.

Evaluation of Information Provided in the Petition and Available in Service Files

The petition describes the Thorne's hairstreak butterfly population as fragmented as a result of habitat fragmentation. *Hesperocyparis forbesii* and associated chaparral habitat has been disturbed by wildfire; however, this habitat is recovering and Thorne's hairstreak butterflies continue to occur throughout the burned area (Martin 2004, pers. comm.; Faulkner and Klein 2005, pp. 32-33; Congedo and Williams 2009, p. 1; Lucas 2009, pers. comm.). Even though movement dynamics have not been completely determined, information in our files indicates Thorne's hairstreak butterfly is capable of re-colonizing and utilizing immature *H. forbesii* stands in recently burned areas (Martin 2004, pers. comm.; Faulkner and Klein 2005, p. 32; Lucas 2009, pers. comm.). New information indicating that *Asclepias fascicularis*, a previously unknown nectar source (Lucas 2009, pers. comm.), is used by Thorne's hairstreak butterfly indicate that the butterfly's habitat requirements may not be as specialized as previously thought.

The petition states that individuals have been observed nectaring 0.25 mile (0.40 kilometer) away from their host plant, which suggests that individual butterflies are capable of moving at least this far to find suitable habitats or mates. However, information in our files indicates that the *H. forbesii* stands are patchily distributed and separated by distances greater than 0.25 mile (0.40 kilometer), which may contribute to population fragmentation. As a result of this information, we find that the petition and information in our files provides substantial information indicating listing Thorne's hairstreak butterfly may be warranted due to population fragmentation. We intend to further investigate and attempt to distinguish between habitat fragmentation and population fragmentation in our status review of the species.

Vulnerability of Small and Isolated Populations

Information Provided in the Petition

The petitioners assert that endemic taxa such as Thorne's hairstreak butterfly are considered more prone to extinction than widespread species due to their restricted geographical range. According to the petition, the common factors that increase the vulnerability of small and isolated populations to extinction are demographic fluctuations, environmental stochasticity (random events), and reduced genetic diversity.

Evaluation of Information Provided in the Petition and Available in Service Files

The fact that a species is characterized by populations that are few in number, small in size, or isolated does not necessarily mean the species is threatened. Typically, it is the combination of small size and number of populations and isolation of small populations in conjunction with other threats (such as the present or threatened destruction, modification, or curtailment of the species' habitat or range) that may pose a threat to a species. Thorne's hairstreak butterfly has always been endemic the Otay Mountains (Brown 1983; Beztler *et al.* 2003; Faulkner and Klein 2005). If occupied habitat is temporarily fragmented by fire, a fluctuation in Thorne's hairstreak butterfly numbers could make small populations more vulnerable to stochastic events. Small populations and the isolation of populations from one another could also subject Thorne's hairstreak butterfly to genetic drift and restrict gene flow that may decrease genetic variability over

time and could adversely affect the species' viability (Allee 1931, pp. 12-37; Stephens *et al.* 1999, pp. 185-190; Dennis 2002, pp. 389-401). Surveys conducted in 2009 (Lucas 2009, unpublished data) conclude that Thorne's hairstreak butterflies are still present in the *H. forbesii* stands on Otay Mountain. We have no quantitative survey information on population numbers, but historical larval habitat has been reduced from 7,500 ac (3,035 ha) to approximately 454 ac (see "*Habitat*" section above for more information). Since Thorne's hairstreak butterfly is dependent on *H. forbssi* to complete its lifecycle, available larval habitat is a proxy for population size. With this large reduction in available larval habitat we believe that the species' population distribution have been significantly reduced relative to historical levels resulting in an increased risk of extinction due to stochastic events such as wildfire. Therefore, we find that the petition and information in our files do provide substantial information indicating that listing Thorne's hairstreak butterfly may be warranted due to restricted geographic range.

Global Climate Change

Information Provided in the Petition

The petitioners assert that butterflies (in general) are threatened by global climate change and are sensitive to small changes in microclimates, such as fluctuations in moisture, temperature, or sunlight. According to the petition, studies of Edith's checkerspot butterfly *(Euphydryas editha*) have verified speculation that whole ecosystems may move northward or shift in elevation as the Earth's climate warms (Parmesan and Galbraith 2004, p. 9).

Evaluation of Information Provided in the Petition and Available in Service Files

We recognize recent evaluations by Parmesan and Galbraith (2004, pp. 1–2, 29–33) that indicate whole ecosystems may be shifting northward and upward in elevation, or are otherwise being altered by differing climate tolerance among species within a community. Parmesan's review (2006, pp. 637, 648–649, 653) indicates range-restricted mountaintop species (such as Thorne's hairstreak butterfly) typically experience range retractions. Additionally, we recognize that climate change is likely to cause changes in the arrangement of occupied habitat patches. Current climate change predictions for terrestrial areas in the Northern Hemisphere indicate warmer air temperatures, more intense precipitation events, and increased summer continental drying (Field *et al.* 1999, pp. 1–3; Hayhoe *et al.* 2004, p. 12422; Cayan *et al.* 2005, p. 6; Intergovernmental Panel on Climate Change 2007, p. 11). However, predictions of climatic conditions for smaller subregions such as California remain uncertain. It is unknown at this time if climate change in California will result in a warmer trend with localized drying, higher precipitation events, or other effects. Because, the information currently available on the effects of global climate change and microhabitat changes, such as increasing temperatures or moisture, does not make sufficiently precise estimates of the magnitude of the effects, we are unable to determine what impacts to Thorne's hairstreak butterfly may occur. Given this uncertainty, we find that the petition and information in our files do not provide substantial information to indicate that listing Thorne's hairstreak butterfly may be warranted do to global climate change. We will further investigate this potential threat to Thorne's hairstreak butterfly in our status review of the species.

In summary, we find that the petition and information in our files do provide substantial information indicating that listing Thorne's hairstreak butterfly may be warranted due to other natural or manmade factors affecting the species' continued existence. Specifically, we find that the effects of wildfire on individuals, population fragmentation, and restricted geographic range+may pose significant threats to the species.

Finding

On the basis of our determination under section 4(b)(3)(A) of the Act, we have determined that the petition presents substantial scientific or commercial information indicating that listing Thorne's hairstreak butterfly may be warranted. This finding is based on information provided under Factor A (present or threatened destruction, modification, or curtailment of the species' habitat or range), Factor D (the inadequacy of existing regulatory mechanisms) and Factor E (other natural or manmade factors affecting the species' continued existence). Because we have found that the petition presents substantial information indicating that listing Thorne's hairstreak butterfly may be warranted, we are initiating a status review to determine whether listing Thorne's hairstreak butterfly under the Act is warranted.

The "substantial information" standard for a 90–day finding differs from the Act's "best scientific and commercial data" standard that applies to a status review to determine whether a petitioned action is warranted. A 90–day finding does not constitute a status review under the Act. In a 12–month finding, we will determine whether a petitioned action is warranted after we have completed a thorough status review of the species, which is conducted following a substantial 90–day finding. Because the Act's standards for 90–day and 12–month findings are different, as described above, a substantial 90–day finding does not mean that the 12–month finding will result in a warranted finding.

The petitioners request that we designate critical habitat for this species. If we determine in our 12–month finding that listing Thorne's hairstreak butterfly is warranted, we will address the designation of critical habitat at the time of the proposed rulemaking. The proposed rulemaking may be published concurrently with the 12–month finding or at a later date.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary authors of this notice are staff members of the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: March 26, 2010.

Jeffrey L. Underwood,

Acting Director, Fish and Wildlife Service.

[FR Doc. 2010–7547 Filed 4–2–10; 8:45 am]

BILLING CODE 4310–55–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

RIN 0648–XU60

Fisheries in the Western Pacific; Hawaii Bottomfish and Seamount Groundfish Fisheries; Fishery Closure

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is closing the commercial and non-commercial fisheries in the Main Hawaiian Islands fishery for seven deepwater bottomfish species ("Deep 7" bottomfish) as a result of reaching the total allowable catch (TAC) for the 2009–10 fishing year.

DATES: Effective April 20, 2010, through August 31, 2010.

FOR FURTHER INFORMATION CONTACT: Jarad Makaiau, Sustainable Fisheries Division, NMFS Pacific Islands Region, 808–944–2108.

SUPPLEMENTARY INFORMATION: Bottomfish fishing in Hawaii is managed under the Fishery Ecosystem Plan for the Hawaiian Archipelago (Hawaii FEP), developed by the Western Pacific Fishery Management Council (Council) and implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the Hawaii FEP appear at 50 CFR part 665 and at subpart H of 50 CFR part 600.

The regulations at § 665.211 authorize NMFS and the Council to set a TAC limit for Deep 7 bottomfish for the fishing year, based on the best available scientific, commercial, and other information, and taking into account the associated risk of overfishing. The Deep 7 bottomfish are onaga (*Etelis coruscans*), ehu (*E. carbunculus*), gindai (*Pristipomoides zonatus*), kalekale (*P. sieboldii*), opakapaka (*P. filamentosus*), lehi (*Aphareus rutilans*), and hapu'upu'u (*Epinephelus quernus*).

When the TAC limit for the year is projected to be reached, the NMFS Regional Administrator is required to publish notification that the fishery will be closed beginning on a specified date, not earlier than 14 days after the date of filing the closure notice for public inspection at the Office of the **Federal Register**, until the end of the fishing year in which the TAC is reached. During the closure, no person may fish for, possess, or sell any Deep 7 bottomfish in the Main Hawaiian Islands, except as otherwise authorized by law. Specifically, fishing for, and the resultant possession or sale of, Deep 7 bottomfish by vessels legally permitted to fish in the Mau and Ho omalu Zones or Pacific Remote Island Areas, and conducted in compliance with all other laws and regulations, are not affected by this closure. There is no prohibition on fishing for or selling non-Deep 7 bottomfish species throughout the year.

The TAC limit for the 2009–10 fishing year was recommended by the Council, and specified by NMFS, as 254,050 lb (115,235 kg) of Deep 7 bottomfish (74 FR 48422; September 23, 2009). Progress toward the 2009–10 TAC was monitored using information reported by holders of State of Hawaii commercial marine licenses through monthly catch reports submitted to the State. Based on this information, the TAC for the 2009–10 fishing year is projected to be reached on or before April 20, 2010.

In accordance with § 665.211(c), this document serves as advance notification to fishermen, the fishing industry, and the general public that the Main Hawaiian Islands Deep 7 bottomfish fishery will be closed from April 20, 2010, through the remainder of the fishing year. The 2010–11 fishing year is scheduled to open on September 1, 2010. The proposed TAC for the 2010–11 fishing year will be published in the **Federal Register** by August 31, 2010.

This action is required by § 665.211(c) and is exempt from review under Executive Order 12866.

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

Dated: March 31, 2010.

James P. Burgess,

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

[FR Doc. 2010–7619 Filed 3–31–10; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 75, No. 64
Monday, April 5, 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 AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Doc. No. AMS–FV–09–0091; FV10–916/917–2 PR]

Nectarines and Peaches Grown in California; Increased Assessment Rates

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rates established for the Nectarine Administrative Committee and the Peach Commodity Committee (Committees) for the 2009–10 and subsequent fiscal periods from $0.0175 to $0.0280 per 25-pound container or container equivalent of nectarines handled, and from $0.0025 to $0.026 per 25-pound container or container equivalent of peaches handled. The Committees locally administer the marketing orders which regulate the handling of nectarines and peaches grown in California. Assessments upon nectarine and peach handlers are used by the Committees to fund reasonable and necessary expenses of the programs. The fiscal periods run from March 1 through the last day of February. The assessment rates would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by May 5, 2010.

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

FOR FURTHER INFORMATION CONTACT: Jerry L. Simmons, Marketing Specialist, or Kurt Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906; or E-mail: *Jerry.Simmons@ams.usda.gov* or *Kurt.Kimmel@ams.usda.gov.*

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order Nos. 916 and 917, both as amended (7 CFR parts 916 and 917), regulating the handling of nectarines and peaches grown in California, respectively, hereinafter referred to as the "orders." The orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing orders now in effect, California nectarine and peach handlers are subject to assessments. Funds to administer the orders are derived from such assessments. It is intended that the assessment rates as proposed herein would be applicable to all assessable nectarines and peaches beginning on March 1, 2010, and continue until amended, suspended, or terminated.

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

This rule would increase the assessment rates established for the Nectarine Administrative Committee (NAC) for the 2010–11 and subsequent fiscal periods from $0.0175 to $0.0280 per 25-pound container or container equivalent of nectarines and for the Peach Commodity Committee (PCC) for the 2010–11 and subsequent fiscal periods from $0.0025 to $0.026 per 25-pound container or container equivalent of peaches.

The nectarine and peach marketing orders provide authority for the Committees, with the approval of USDA, to formulate annual budgets of expenses and collect assessments from handlers to administer the programs. The members of NAC and PCC are producers of California nectarines and peaches, respectively. They are familiar with the Committees' needs, and with the costs for goods and services in their local area and are, therefore, in a position to formulate appropriate budgets and assessment rates. The assessment rates are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

NAC Assessment and Expenses

For the 2009–10 and subsequent fiscal periods, the NAC recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The NAC met on December 10, 2009, and unanimously recommended 2010–11 expenditures of $1,448,101 and an assessment rate of $0.0280 per 25-pound container or container equivalent of nectarines. In comparison, the budgeted expenditures for the 2009–10 fiscal period were $1,797,290. The assessment rate of $0.0280 per 25-pound container or container equivalent of nectarines is $0.0105 higher than the rate currently in effect. The NAC recommended a higher assessment rate because the 2009 crop was lower than expected due to a large number of tree pullouts and other economic factors.

The major expenditures recommended by the NAC for the 2010–11 fiscal period include $291,377 for administration, $157,016 for production research, and $999,708 for domestic and international programs. In comparison, budgeted expenses for these items in 2008–09 were $319,965.32 for administration, $349,447.55 for production research, and $1,127,877.33 for domestic and international programs.

The assessment rate recommended by the NAC was derived after considering anticipated fiscal year expenses; estimated assessable nectarines of 16,200,000 25-pound containers or container equivalents; the estimated income from other sources, such as interest; and the need for an adequate financial reserve to carry the NAC into the 2011–12 fiscal period. Therefore, the NAC recommended an assessment rate of $0.0280 per 25-pound container or container equivalent.

Combining expected assessment revenue of $453,600 with the $641,840 carryover available from the 2009–10 fiscal period and other income such as interest should be adequate to meet Committee needs. The assessment rate is also likely to provide a $116,486 reserve, which may be used to cover administrative expenses prior to the beginning of the 2011–12 shipping season as provided in the order (§ 916.42).

PCC Assessment and Expenses

For the 2009–10 and subsequent fiscal periods, the PCC recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The PCC met on December 10, 2009, and recommended 2010–11 expenditures of $1,839,651 and an assessment rate of $0.026 per 25-pound container or container equivalent of peaches. In comparison, budgeted expenditures for the 2009–10 fiscal period were $1,885,250. The assessment rate of $0.026 per 25-pound container or container equivalent of peaches is $0.0235 higher than the rate currently in effect. The PCC recommended a higher assessment rate because the 2009 crop was lower than expected due to a large number of tree pullouts and other economic factors.

The major expenditures recommended by the PCC for the 2010–11 fiscal period include $368,756 for administration, $199,662 for production research, and $1,271,233 for domestic and international programs. In comparison, budgeted expenses for these items in 2009–10 were $334,058 for administration, $366,920 for production research, and $1,184,272 for domestic and international programs.

The assessment rate recommended by the PCC was derived after considering anticipated fiscal year expenses; estimated assessable peaches of 20,600,000 25-pound containers or container equivalents; the estimated income from other sources, such as interest; and the need for an adequate financial reserve to carry the PCC into the 2011–12 fiscal period. Therefore, the PCC recommended an assessment rate of $0.026 per 25-pound container or container equivalent.

Combining expected assessment revenues of $535,600 with the $854,699 carryover available from the 2009–10 fiscal period and other income such as interest should be adequate to meet Committee needs. The assessment rate is also likely to provide a $147,502 reserve, which may be used to cover administrative expenses prior to the beginning of the 2011–12 shipping season as provided in the order (§ 917.38).

Continuance of Assessment Rates

The proposed assessment rates would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committees or other available information.

Although these assessment rates would be in effect for an indefinite period, the Committees will continue to meet prior to or during each fiscal period to recommend budgets of expenses and consider recommendations for modification of the assessment rates. The dates and times of Committee meetings are available from the Committees' Web site at *http://www.eatcaliforniafruit.com* or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate the Committees' recommendations and other available information to determine whether modification of the assessment rate for each Committee is needed. Further rulemaking would be undertaken as necessary. The Committees' 2010–11 fiscal period budgets and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

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

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

There are approximately 101 California nectarine and peach handlers subject to regulation under the orders covering nectarines and peaches grown in California, and about 475 producers of these fruits in California. Small agricultural service firms, which include handlers, are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. A majority of these handlers and producers may be classified as small entities.

The Committees' staff has estimated that there are fewer than 50 handlers in the industry who would not be considered small entities. For the 2009 season, the committees' staff estimated that the average handler price received was $11.50 per container or container equivalent of nectarines or peaches. A handler would have to ship at least 608,696 containers to have annual receipts of $7,000,000. Given data on shipments maintained by the committees' staff and the average handler price received during the 2009 season, the Committees' staff estimates that small handlers represent approximately 50 percent of all the handlers within the industry.

The Committees' staff has also estimated that fewer than 50 producers

in the industry would not be considered small entities. For the 2009 season, the Committees estimated the average producer price received was $6.50 per container or container equivalent for nectarines and peaches. A producer would have to produce at least 115,385 containers of nectarines and peaches to have annual receipts of $750,000. Given data maintained by the Committees' staff and the average producer price received during the 2009 season, the Committees' staff estimates that small producers represent more than 80 percent of the producers within the industry.

With an average producer price of $6.50 per container or container equivalent, and a combined packout of nectarines and peaches of 37,263,343 containers, the value of the 2009 packout is estimated to be $242,211,730. Dividing this total estimated grower revenue figure by the estimated number of producers (475) yields an estimate of average revenue per producer of about $509,919 from the sales of peaches and nectarines.

The nectarine and peach marketing orders provide authority for the Committees, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the programs. The members of the NAC and PCC are producers of California nectarines and peaches, respectively.

This rule would increase the assessment rates established for the NAC for the 2010–11 and subsequent fiscal periods from $0.0175 to $0.0280 per 25-pound container or container equivalent of nectarines and for the PCC for the 2010–11 and subsequent fiscal periods from $0.0025 to $0.026 per 25-pound container or container equivalent of peaches.

The NAC recommended 2010–11 fiscal period expenditures of $1,448,101 for nectarines and an assessment rate of $0.0280 per 25-pound container or container equivalent of nectarines. The assessment rate of $0.0280 is $0.0105 higher than the rate currently in effect. The PCC recommended 2010–11 fiscal period expenditures of $1,839,651 for peaches and an assessment rate of $0.026 per 25-pound container or container equivalent of peaches. The assessment rate of $0.026 is $0.0235 higher than the rate currently in effect.

Analysis of NAC Budget

The quantity of assessable nectarines for the 2010–11 fiscal period is estimated at 16,200,000 25-pound containers or container equivalents. Thus, the $0.0280 rate should provide $453,600 in assessment income. Income derived from handler assessments, along with income from other sources and funds from the NAC's reserve, would be adequate to cover budgeted expenses.

The major expenditures recommended by the NAC for the 2010–11 year include $291,377 for administration, $157,016 for production research, and $999,708 for domestic and international programs. Budgeted expenses in 2009–10 were $319,965.32 for administration, $349,447.55 for production research, and $1,127,877.33 for domestic and international programs.

The NAC recommended an increased 2010–11 fiscal period assessment rate because the 2009 crop was lower than expected due to a large number of tree pullouts and other economic factors. Income generated from the higher assessment rate combined with reserve funds should be adequate to cover anticipated 2010–11 expenses.

Analysis of PCC Budget

The quantity of assessable peaches for the 2010–11 fiscal year is estimated at 20,600,000 25-pound containers or container equivalents. Thus, the $0.026 rate should provide $535,600 in assessment income.

The major expenditures recommended by PCC for the 2010–11 year include $368,756 for administration, $199,662 for production research, and $1,271,233 for domestic and international programs. Budgeted expenses in 2009–10 were $334,058 for administration, $366,920 for production research, and $1,184,272 for domestic and international programs.

The PCC recommended an increased 2010–11 fiscal period assessment rate because the 2009 crop was lower than expected due to a large number of tree pullouts and other economic factors. Income generated from the higher assessment rate combined with reserve funds should be adequate to cover anticipated 2010–11 expenses.

Considerations in Determining Expenses and Assessment Rates

Prior to arriving at these budgets, the Committees considered alternative expenditure and assessment rate levels, but ultimately decided that the recommended levels were reasonable to properly administer the orders.

Each of the Committees then reviewed the proposed expenses; the total estimated assessable 25-pound containers or container equivalents; and the estimated income from other sources, such as interest income, prior to recommending a final assessment rate. The NAC decided that an assessment rate of $0.0280 per 25-pound container or container equivalent will allow it to meet its 2010–11 fiscal period expenses and carryover an operating reserve of about $116,486 which is in line with the Committee's financial needs. The PCC decided that an assessment rate of $0.026 per 25-pound container or container equivalent will allow it to meet its 2010–11 fiscal period expenses and carryover an operating reserve of $147,502. These assessment rates would allow them to meet their 2010–11 fiscal period expenses and carryover necessary reserves to finance operations before 2011–12 fiscal period assessments are collected.

A review of historical and preliminary information pertaining to the upcoming fiscal period indicates that the grower price for nectarines and peaches for the 2010–11 season could range between $6.00 and $8.00 per 25-pound container or container equivalent. Therefore, the estimated assessment revenue for the 2010–11 fiscal period as a percentage of total grower revenue could range between 0.33 and 0.47 percent.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Committees' meetings were widely publicized throughout the California nectarine and peach industries and all interested persons were invited to attend the meetings and were encouraged to participate in the Committees' deliberations on all issues. Like all Committee meetings, the December 10, 2009, meetings were public meetings and entities of all sizes were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

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

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/AMSv1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Antoinette Carter at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The 2010–11 fiscal period begins March 1, 2010, and the marketing orders require that the rates of assessment for each fiscal period apply to all assessable nectarines and peaches handled during such fiscal period; (2) the Committees need to have sufficient funds to pay its expenses which are incurred on a continuous basis; (3) handlers are aware of this action which was unanimously recommended by the Committees at public meetings and is similar to other assessment rate actions issued in past years.

List of Subjects

7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

7 CFR Part 917

Marketing agreements, Peaches, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 916 and 917 are proposed to be amended as follows:

1. The authority citation for 7 CFR parts 916 and 917 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 916—NECTARINES GROWN IN CALIFORNIA

2. Section 916.234 is revised to read as follows:

§ 916.234 Assessment rate.

On and after March 1, 2010, an assessment rate of $0.0280 per 25-pound container or container equivalent of nectarines is established for California nectarines.

PART 917—PEACHES GROWN IN CALIFORNIA

3. Section 917.258 is revised to read as follows:

§ 917.258 Assessment rate.

On and after March 1, 2010, an assessment rate of $0.026 per 25-pound container or container equivalent of peaches is established for California peaches.

Dated: March 30, 2010.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. 2010–7568 Filed 4–2–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE–2008–BT–TP–0020]

RIN 1904–AB89

Energy Conservation Program for Consumer Products: Test Procedures for Residential Furnaces and Boilers

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

ACTION: Supplemental notice of proposed rulemaking and solicitation of comments.

SUMMARY: In order to implement recent amendments to the Energy Policy and Conservation Act (EPCA) by the Energy Independence and Security Act of 2007 (EISA 2007), the U.S. Department of Energy (DOE) proposed amendments to its test procedures for residential furnaces and boilers to provide for measurement and incorporation of standby mode and off mode energy consumption. A public meeting on the proposed rule was held on August 18, 2009. This supplemental notice of proposed rulemaking (SNOPR) proposes an integrated efficiency descriptor that incorporates standby mode and off mode energy consumption into the statutorily identified efficiency descriptor, Annual Fuel Utilization Efficiency (AFUE).

DATES: DOE will accept comments, data, and information regarding the notice of proposed rulemaking (NOPR) no later than April 20, 2010. For details, see section V, "Public Participation," of this NOPR.

ADDRESSES: Any comments submitted must identify the SNOPR on Test Procedures for Residential Furnaces and Boilers, and provide the docket number EERE–2008–BT–TP–0020 and/or regulatory information number (RIN) 1904–AB89. Comments may be submitted using any of the following methods:

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

2. *E-mail: RFB–2008–TP–0020@ee.doe.gov.* Include docket number EERE–2008–BT–TP–0020 and/or RIN 1904–AB89 in the subject line of the message.

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

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 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, Resource Room of the Building Technologies Program, 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 the above telephone number for additional information about visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT:

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

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–9507. E-mail: *Eric.Stas@hq.doe.gov.*

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

SUPPLEMENTARY INFORMATION:

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I. Background and Authority

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," including residential furnaces and boilers (all of which are referenced below as "covered products").[1] (42 U.S.C. 6291(1)–(2) and 6292(a)(5)).

Under the Act, this program consists essentially of three parts: (1) Testing; (2) labeling; and (3) establishing Federal energy conservation standards. The testing requirements consist of test procedures that manufacturers of covered products must use as the basis for certifying to DOE that their products comply with applicable energy conservation standards adopted under EPCA and for representing the efficiency of those products. Similarly, DOE must use these test procedures to determine whether the products comply with standards adopted under EPCA. Under 42 U.S.C. 6293, EPCA sets forth criteria and procedures for DOE's adoption and amendment of such test procedures. EPCA provides that "[a]ny test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use, * * * or estimated annual operating cost of a covered product during a representative average use cycle or period of use, as determined by the Secretary [of Energy], and shall not be unduly burdensome to conduct." (42 U.S.C. 6293(b)(3)) In addition, if DOE determines that a test procedure amendment is warranted, it must publish proposed test procedures and offer the public an opportunity to present oral and written comments on them. (42 U.S.C. 6293(b)(2)) Finally, in any rulemaking to amend a test procedure, DOE must determine "to what extent, if any, the proposed test procedure would alter the measured energy efficiency * * * of any covered product as determined under the existing test procedure." (42 U.S.C. 6293(e)(1)) If DOE determines that the amended test procedure would alter the measured efficiency of a covered product, DOE must amend the applicable energy conservation standard accordingly. (42 U.S.C. 6293(e)(2))

On December 19, 2007, the Energy Independence and Security Act of 2007 (EISA 2007), Public Law 110–140, was enacted. The EISA 2007 amendments to EPCA, in relevant part, require DOE to amend the test procedures for all covered products to include measures of standby mode and off mode energy consumption. Specifically, section 310 of EISA 2007 provides definitions of "standby mode" and "off mode" (42 U.S.C. 6295(gg)(1)(A)) and permits DOE to amend these definitions in the context of a given product (42 U.S.C. 6295(gg)(1)(B)). The legislation requires integration of such energy consumption "into the overall energy efficiency, energy consumption, or other energy descriptor for each covered product, unless the Secretary determines that—

(i) The current test procedures for a covered product already fully account and incorporate the standby and off mode energy consumption of the covered product; or

(ii) Such an integrated test procedure is technically infeasible for a particular covered product, in which case the Secretary shall prescribe a separate standby mode and off mode energy use test procedure for the covered product, if technically feasible." (42 U.S.C. 6295(gg)(2)(A))

DOE's current test procedure for residential furnaces and boilers is found at 10 CFR part 430, subpart B, appendix N. DOE established its test procedures for furnaces and boilers in a final rule published in the **Federal Register** on May 12, 1997. 62 FR 26140. This procedure establishes a means for determining annual energy efficiency and annual energy consumption of gas-fired, oil-fired, and electric furnaces and boilers.

DOE notes that gas-fired and oil-fried furnaces and boilers consume both fossil fuel and electricity, while electric furnaces and boilers only consume electricity. The current test procedure accounts for all fossil-fuel energy consumption over a full-year cycle, thereby satisfying EISA 2007 requirements for fossil-fuel standby mode and off mode energy consumption. Electrical energy consumption in standby mode and off mode, however, is not accounted for in the current test procedure.

II. Summary of the Supplemental Proposed Rule

In the July 2007 NOPR, DOE proposed to add standby mode and off mode energy consumption measurement provisions utilizing the IEC 62301 standard. Standby and off mode electrical energy consumption would not, however, be integrated into AFUE. On further review, DOE has determined that integration of standby and off mode electrical energy consumption into AFUE is technically feasible. Accordingly, this notice proposes an integrated annual fuel utilization efficiency metric.

III. Discussion

A. Integrated Annual Fuel Utilization Efficiency ($AFUE_I$)

As mentioned above, DOE has determined that integration of standby mode and off mode electrical energy consumption into the AFUE efficiency descriptor is technically feasible. AFUE is the required energy efficiency descriptor for furnaces. (42 U.S.C. 6291(22)). EISA 2007 requires, if technically feasible, integration of standby energy consumption into the overall energy efficiency, energy consumption or other energy descriptor. Therefore, EISA 2007 requires an integrated AFUE that reflects standby mode and off mode energy consumption for both fossil fuel and electricity. This notice proposes such integration into the AFUE descriptor.

The proposed integrated annual fuel utilization efficiency ($AFUE_I$) would be the mathematical product of the current AFUE measure and an efficiency quotient that includes, as an addition to the denominator, the standby mode and off mode electricity consumption converted to Btu based on the point-of-use energy content of a kilowatt hour (3412 Btu). This addition would thereby reduce the numeric value of the efficiency quotient in proportion to the relative magnitude of such additional energy consumption. This mathematical form is consistent with how other products have addressed EISA 2007, in particular how the standby mode and off mode energy consumption is integrated into existing efficiency descriptors.

This proposed formula would use the point-of-use energy content of a kilowatt hour (3412 Btu) because the statute defines "energy use" as "the quantity of energy directly consumed by a consumer product at point of use" (42 U.S.C. 6291 (4)) DOE recognizes that combining fossil fuel (natural gas) and electricity consumption based on their point-of-use energy content tends to

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

understate the relative energy and economic impacts of the electricity use. However, DOE proposes an integrated metric given the statutory definition of energy use and the statutory mandate to establish an integrated measure of energy efficiency, if technically feasible. Furthermore, in this case, DOE expects that the possible distortions resulting from the combination of fossil fuel and electricity measures of point-of-use energy use are likely to be very small. DOE invites comment on this approach to combining the natural gas and electricity use of furnaces. DOE also invites comment on modifications that can be made to the adjustment factor that can more accurately characterize the relative impacts of electricity and fossil fuel use while maintaining consistency with existing statute.

Because there are some slight differences in the terminology and formulation used in the existing test procedure for electric furnaces and boilers as compared to fossil fueled furnaces and boilers, DOE discusses the proposed integrated $AFUE_I$ separately for each product in the following paragraphs.

For fossil fueled furnaces and boilers, the proposed integrated annual fuel utilization efficiency would be expressed as a function of the useful heat energy provided by the primary fuel divided by the sum of the primary fuel energy consumption and the standby mode and off mode energy consumption with all terms in equivalent energy units.

The mathematical form of the expression would be as follows:

$$AFUE_I = (AFUE * E_F)/(E_F + (3412 * E_{SO}))$$

Where:

AFUE = as stated in the existing test procedures.

E_F = Average annual fuel consumption (Btu).

3412 = conversion factor to express energy in Btu instead of kWh.

E_{SO} = Average annual electrical standby and off mode energy consumption (kWh).

For electric furnaces and boilers, the proposed integrated annual utilization efficiency would be presented as the useful heat provided by the annual total electrical energy minus the off mode annual energy consumption all divided by the annual total electrical consumption.

The mathematical form of the expression would be as follows:

$$AFUE_I = (AFUE * (E_E - (P_{OFF} * 4600))/(E_E))$$

Where:

AFUE = as stated in existing test procedure.

$(E_E - (P_{OFF} * 4600))$ = Average annual total electric consumption minus the average annual off mode electrical energy consumption defined as the product of the measured off mode power (P_{OFF}) and the average number of non-heating season hours per year.

E_E = Average annual total electrical consumption including standby mode and off mode consumption.

This integrated AFUE for electric furnaces and boilers, although seemingly different in mathematical form, is conceptually the same as the integrated AFUE for fossil fueled furnaces and boilers. Specifically, it is an integrated efficiency quotient that includes, as an addition to the denominator, the standby mode and off mode energy consumption. The differences result from the fact the there is no need for a conversion to equivalent energy units and the existing test procedure's energy consumption terms are structured differently for electric furnaces and boilers as compared to fossil fueled furnaces and boilers. The different structure results from the existing test procedure's assumption that auxiliary electrical energy consumption provides useful heat to the heated space. This assumption applies when one considers the standby mode but not off mode because the electric energy consumption during the non heating season is not considered useful heat. The proposed equation for electric furnaces and boilers recognizes this difference.

B. Proposed Amendments Relationship With Energy Conservation Standards

Today's proposal would integrate standby and off mode electrical energy use into the AFUE efficiency descriptor, as required by EPCA. (42 U.S.C. 6295(gg)(2)(A)) DOE will consider use of this proposed efficiency descriptor in any rulemaking procedure to prescribe standards for furnaces and boilers, again as required by EPCA. (42 U.S.C. 6295(gg)(3)).

C. Compliance With Other EPCA Requirements

EPCA requires that "[a]ny test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use * * * or estimated annual operating cost of a covered product during a representative average use cycle or period of use * * * and shall not be unduly burdensome to conduct." (42 U.S.C. 6293(b)(3))

Today's supplemental proposed amendments to the DOE test procedure would only add two new equations to the calculation section of the test procedure. These calculations utilize existing or proposed terms and, accordingly, pose no additional testing burden.

IV. Procedural Requirements

DOE has concluded that the determinations made pursuant to the various procedural requirements applicable to the July 27 NOPR remain unchanged for this SNOPR. These determinations are set forth in the July 27 NOPR. (74 FR 36959, 36966–68 July 27, 2009)

V. Public Participation

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. Stakeholders should avoid the use of special characters or any form of encryption, and wherever possible comments should include the electronic signature of the author. Comments, data, and information submitted to DOE via mail or hand delivery/courier should include one signed paper original. No telefacsimiles (faxes) will be accepted.

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

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

VI. Approval of the Office of the Secretary

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

List of Subjects in 10 CFR Part 430

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

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

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

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

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

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

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

2. Appendix N to subpart B of part 430 is amended by revising section 10.1 to read as follows:

Appendix N to Subpart B of Part 430–Uniform Test Method for Measuring the Energy Consumption of Furnaces and Boilers

* * * * *

10.1 Annual fuel utilization efficiency and integrated annual fuel utilization efficiency. The annual fuel utilization efficiency (AFUE) is as defined in sections 11.2.12 (non-condensing systems), 11.3.12 (condensing systems), 11.4.12 (non-condensing modulating systems) and 11.5.12 (condensing modulating systems) of ANSI/ASHRAE Standard 103–1993, (incorporated by reference; see § 430.3) except for the definition for the term $Effy_{HS}$ in the defining equation for AFUE. $Effy_{HS}$ is defined as: $Effy_{HS}$=heating seasonal efficiency as defined in sections 11.2.11 (non-condensing systems), 11.3.11 (condensing systems), 11.4.11 (non-condensing modulating systems) and 11.5.11 (condensing modulating systems) of ANSI/ASHRAE Standard 103–1993 and is based on the assumptions that all weatherized warm air furnaces or boilers are located out-of-doors, that warm air furnaces which are not weatherized are installed as isolated combustion systems, and that boilers which are not weatherized are installed indoors.

The integrated annual fuel utilization efficiency ($AFUE_I$) is defined as follows:

For fossil fueled furnaces and boilers:

$AFUE_I = (AFUE * E_F)/(E_F + (3412 * E_{SO}))$

Where:

AFUE = as defined above in this section.

E_F = Average annual fuel consumption defined in section 10.2.2.

3412 = conversion factor to express energy in Btu's instead of KWh.

E_{SO} = Average annual electrical standby and off mode energy consumption as defined in section 10.9.

For electric furnaces and boilers:

$AFUE_I = (AFUE * (E_E - (P_{OFF} * 4600))/(E_E))$

Where:

AFUE = as defined in section 10.3.

$(E_E - (P_{OFF} * 4600))$ = Average annual total electric consumption as defined in section 10.3 minus the average annual off mode electrical energy consumption defined as the product of the measured off mode power (P_{OFF}) from section 8.6 and the average number of non-heating season hours per year defined in section 10.9.

E_E = Average annual total electrical consumption including standby mode and off mode consumption as defined in section 10.3.

* * * * *

[FR Doc. 2010–7610 Filed 4–2–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

10 CFR Part 431

[Docket No. EERE–2007–BT–CRT–0009]

Agency Information Collection: Energy Conservation Program: Compliance and Certification Information Collection for Electric Motors

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

ACTION: Notice and request for comment.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the Paperwork Reduction Act of 1995, has initiated through the Office of Management and Budget (OMB) the mandatory Compliance Certification information collection request for certain 1 through 200 horsepower electric motors covered under the Energy Policy and Conservation Act (EPCA), as amended, Public Law 94–163, codified at, 42 U.S.C. 6291 *et seq.* Under EPCA, a manufacturer or private labeler must certify its compliance with energy efficiency standards for certain commercial and industrial electric motors. 42 U.S.C. 6316(c) and 10 CFR 431.36.

DATES: Comments regarding this collection must be received on or before May 5, 2010.

ADDRESSES: Comments must identify the information collection for electric motors and provide the docket number EERE–2007–BT–CRT–0009. In addition, comments must be submitted to: DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street, NW., Washington, DC 20503, and to DOE. Comments to DOE may be submitted using any of the following methods:

- Mr. James Raba, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Ave., SW., Washington, DC 20585–0121 (submit one signed copy) or by fax at (202) 586–4617 or by e-mail at *jim.raba@ee.doe.gov.*
- *E-mail: appliance.information@ee.doe.gov.* Include the docket number in the subject line of the message.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC 20024–2123. Telephone: (202) 586–2945. Please submit one signed original paper copy.
- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information or copies of the information collection instrument and instructions to Mr. James Raba, U.S. Department of Energy, Building Technologies Program (EE–2J), 950 L'Enfant Plaza, Washington, DC 20024–2123, (202) 586–8654, *jim.raba@ee.doe.gov.*

In the Office of the General Counsel, contact Ms. Francine Pinto or Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, GC–72, 1000 Independence Avenue, SW., Washington, DC 20085. Telephone: (202) 586–9507. E-mail: *Francine.Pinto@hq.doe.gov* or *Michael.Kido@hq.doe.gov.*

Background: EPCA establishes energy efficiency standards and test procedures for certain commercial and industrial equipment, including electric motors, 42 U.S.C. 6291 *et seq.,* and states in relevant part that, "the Secretary [of Energy] shall require manufacturers to certify" that each electric motor meets the applicable efficiency standards. (42 U.S.C. 6316(c)) To achieve this end, EPCA authorizes the Secretary to issue the necessary rules requiring each manufacturer or private labeler of covered electric motors to submit information and reports to ensure compliance. (42 U.S.C. 6316(a)) This directive is carried out under 10 CFR 431.36, Compliance Certification, which requires a manufacturer or private labeler to submit a compliance statement, as well as a certification report that provides energy efficiency information for each basic model of electric motor that it distributes in commerce in the United States.

In view of the above, the information to be collected is the same as the Compliance Certification information, at appendix C to subpart B of 10 CFR part 431, which provides a format for a manufacturer or private labeler to report the energy efficiency of its basic models of electric motors according to rated horsepower or kilowatts, number of poles, and open or enclosed construction. Further, it provides a means for a manufacturer or private labeler to certify compliance with the applicable energy efficiency standards prescribed under section 342(b)(1) of EPCA, codified at 42 U.S.C. 6313(b)(1), through an independent testing or certification program nationally recognized in the United States (section 345(c) of the EPCA, codified at 42 U.S.C. 6316(c)). The information contained in the Compliance Certification is a basis for the energy efficiency information marked on the permanent nameplate of an electric motor and thereby enables purchasers to compare the energy efficiencies of similar motors. 10 CFR 431.31. Compliance Certification information facilitates voluntary compliance with and enforcement of the energy efficiency standards established for electric motors under EPCA 342(b)(1), 42 U.S.C. 6313(b)(1).

SUPPLEMENTARY INFORMATION: (1) *OMB No.:* 1910–5104. (2) *Collection Title:* Title 10 of the Code of Federal Regulations, Part 431—Energy Efficiency Program for Certain Commercial and Industrial Equipment: Subpart B—Electric Motors: 10 CFR 431.36, Compliance Certification, "Certification of Compliance with Energy Efficiency Standards for Electric motors." Appendix C to Subpart B of Part 431—Compliance Certification. (3) *Type of Review:* Reinstatement, without change, of a previously approved collection for which approval has expired. (4) *Purpose:* The purpose of the collection is two-fold: (a) To require the manufacturer or private labeler of certain commercial or industrial electric motors subject to energy efficiency standards prescribed under section 342(b) of EPCA to establish, maintain, and retain records of its test data and subsequent verification of any alternative efficiency determination method used under part 431, *et seq.;* and (b) to preclude distribution in commerce of any basic model of commercial or industrial electric motor that is subject to an energy efficiency standard set forth under subpart B of part 431, unless the manufacturer or private labeler of that motor has submitted a Compliance Certification to DOE according to the provisions under 10 CFR 431.36, certifying that the basic model meets the requirements of the applicable standard. This information ensures compliance with the energy efficiency standards for certain commercial and industrial electric motors. (5) *Estimated Number of Respondents:* There are approximately 100 manufacturers and private labelers that distribute in commerce in the United States electric motors covered under 10 CFR part 431, *et seq.* (6) *Estimated Total Burden Hours:* There are approximately 300 total recordkeeping and reporting hours (3 hours per manufacturer or private labeler) at a total annualized cost of approximately $20,000 ($200 per manufacturer or private labeler). (7) *Number of Collections:* The request contains one information and recordkeeping requirement for all manufacturers or private labelers.

Statutory Authority: Part B of Title III of EPCA, Energy Conservation Program for Consumer Products Other than Automobiles, Public Law 94–163, as amended, and section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35).

Issued in Washington, DC on March 29, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 2010–7602 Filed 4–2–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

10 CFR Part 431

[Docket No. EERE–2009–BT–CRT–0029]

Agency Information Collection: Energy Conservation Program: Compliance and Certification Information Collection for Distribution Transformers

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

ACTION: Notice and request for comment.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the Paperwork Reduction Act of 1995, has initiated through the Office of Management and Budget (OMB) a three-year extension of its compliance certification information collection: Certification Report for Distribution Transformers, OMB Control Number 1910–5130. The information collection is used by manufacturers or private labelers to report on and certify compliance with energy efficiency standards for distribution transformers. The collection covers information necessary for the DOE and United States Customs Service officials to facilitate compliance with and enforcement of the energy conservation standards established for certain low-voltage dry-type, medium-voltage type, and liquid immersed distribution transformers.

DATES: Comments regarding this collection must be received on or before June 4, 2010.

ADDRESSES: Comments must identify the information collection for distribution transformers and provide the docket number EERE–2009–BT–CRT–0029. Comments may be submitted to DOE using any of the following methods:

- Mr. James Raba, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Ave., SW., Washington, DC 20585–0121 (submit one signed copy) or by fax at (202) 586–4617 or by e-mail at *jim.raba@ee.doe.gov.*
- *E-mail: appliance.information@ee.doe.gov*. Include the docket number in the subject line of the message.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC 20024–2123. Telephone: (202) 586–2945. Please submit one signed original paper copy.
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Ms. Brenda Edwards and Mr. James Raba at the address listed above in **ADDRESSES**.

In the Office of the General Counsel, contact Ms. Francine Pinto, U.S. Department of Energy, Office of the General Counsel, GC–762, 1000 Independence Avenue, SW., Washington, DC 20585. Telephone: (202) 586–9507. E-mail: *Francine.Pinto@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

Background: Section 325(y) of the Energy Policy and Conservation Act (EPCA), 42 U.S.C. 6295(y), establishes energy conservation standards for certain distribution transformers. On July 25, 2006, DOE published a Notice of Proposed Rulemaking (71 FR 42216) to set forth Compliance Certification requirements under 10 CFR 431.371(a)(6)(ii), (b)(1), and appendix C to subpart T. These requirements were finalized on January 5, 2010 (75 FR 652) and became effective February 4, 2010. The Compliance Certification reports on and certifies compliance with the

requirements for distribution transformers. It has two elements: a compliance statement that certifies compliance with the requirements contained in 10 CFR part 431 (Energy Conservation Program for Certain Commercial and Industrial Equipment), and a certification report that provides energy efficiency information for each basic model of distribution transformer that a manufacturer or private labeler distributes in commerce in the United States. It is the basis for the energy efficiency information marked on the permanent nameplate of a distribution transformer which enables purchasers to compare the energy efficiencies of similar distribution transformers. The information contained in the compliance statements and certification reports facilitates compliance with and enforcement of the energy efficiency standards established for distribution transformers under 325(y) of EPCA, 42 U.S.C. 6295(y).

(1) *OMB No.:* 1910–5130. (2) *Collection Title:* Title 10 of the Code of Federal Regulations, Part 431—Energy Efficiency Program for Certain Commercial and Industrial Equipment: Subpart K—Distribution Transformers: 10 CFR 431.197, Manufacturer's determination of efficiency for distribution transformers; Subpart T—Certification and Enforcement: 10 CFR 431.371(a)(6)(ii), (b)(1), Certification, and appendix C to subpart T—Certification Report for Distribution Transformers. (3) *Type of Review:* Extension of a currently approved collection. (4) *Purpose:* The purpose of the collection is two-fold. First, it requires the manufacturer or private labeler of certain commercial or industrial distribution transformers subject to energy efficiency standards prescribed under 10 CFR 431.196 to establish, maintain, and retain records of its test data and subsequent verification of any alternative efficiency determination method used under part 431, *et seq.* Second, it allows DOE to determine whether, for any basic model of commercial or industrial distribution transformer that is subject to an energy efficiency standard set forth under subpart K of part 431, the manufacturer or private labeler of that distribution transformer has submitted a Compliance Certification to DOE according to the provisions under 10 CFR 431.371(a)(6)(ii) and (b)(1). By its submission, the manufacturer or private labeler is certifying that the basic model meets the requirements of the applicable standard. This information ensures compliance with the energy efficiency standards for certain commercial and industrial distribution transformers. (5) *Estimated Number of Respondents:* There are approximately 100 manufacturers and private labelers that distribute in commerce in the United States distribution transformers covered under 10 CFR part 431, *et seq.* (6) *Estimated Total Burden Hours:* There are approximately 96 total recordkeeping and reporting hours per company per year at a total annualized cost of approximately $1,300 dollars per respondent. (7) *Number of Collections:* The request contains one information and recordkeeping requirement for all manufacturers or private labelers.

Statutory Authority: Paragraphs A and A–1, subchapter III of the Energy Policy and Conservation Act, 42 U.S.C. 6291–6317.

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

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 2010–7605 Filed 4–2–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

10 CFR Part 431

[Docket No. EERE–2008–BT–STD–0012]

RIN 1904–AB86

Energy Conservation Standards for Walk-in Coolers and Walk-in Freezers: Public Meeting and Availability of the Preliminary Technical Support Document

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

ACTION: Notice of public meeting and availability of preliminary technical support document.

SUMMARY: The U.S. Department of Energy (DOE) will hold a public meeting to discuss and receive comments on: The equipment classes that DOE plans to analyze for establishing energy conservation standards for walk-in coolers and walk-in freezers; the analytical framework, models, and tools that DOE is using to evaluate standards for this equipment; the results of preliminary analyses performed by DOE for this equipment; and the potential energy conservation standard levels derived from these analyses that DOE could consider for this equipment. In addition, DOE encourages written comments on these subjects. To inform interested parties and facilitate this process, DOE has prepared an agenda, a preliminary technical support document (preliminary TSD), and briefing materials, which are available at: *http://www1.eere.energy.gov/buildings/appliance_standards/commercial/wicf.html.*

DATES: DOE will hold a public meeting on Friday, May 14, 2010, from 9 a.m. to 5 p.m. in Washington, DC. Any person requesting to speak at the public meeting should submit such request, along with an electronic copy of the statement to be given at the public meeting, before 4 p.m., Friday, April 30, 2010. Written comments are welcome, especially following the public meeting, and should be submitted by May 20, 2010.

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. Please note that foreign nationals participating in the public meeting are subject to advance security screening procedures. If a foreign national wishes to participate in the public meeting, 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. Interested persons may submit comments, identified by docket number EERE–2008–BT–STD–0012, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov* Follow the instructions for submitting comments.
- *E-mail: Brenda.Edwards@ee.doe.gov;* Include EERE–2008–BT–STD–0012 in the subject line of the message.
- *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Public Meeting for Walk-in Coolers and Walk-in Freezers, EERE–2008–BT–STD–0012, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone (202) 586–2945. Please submit one signed paper original.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Sixth Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024. Telephone (202) 586–2945. Please submit one signed paper original.

Instructions: All submissions received must include the agency name and docket number.

Docket: For access to the docket to read background documents or a copy of the transcript of the public meeting or comments received, go to the U.S. Department of Energy, Sixth 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.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information to Mr. Charles Llenza, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–2192. E-mail: *Charles.Llenza@ee.doe.gov.* In the Office of General Counsel, contact Mr. Michael Kido, U.S. Department of Energy, Office of General Counsel, GC–71, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8145. E-mail: *Michael.Kido@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

A. Statutory Authority

Title III of the Energy Policy and Conservation Act of 1975, as amended, (EPCA or the Act) sets forth a variety of provisions designed to improve energy efficiency. Part B of Title III (42 U.S.C. 6291–6309) provides for the Energy Conservation Program for Consumer Products Other Than Automobiles. The National Energy Conservation Policy Act (NECPA), Public Law 95–619, amended EPCA to add Part C of Title III, which established an energy conservation program for certain industrial equipment. (42 U.S.C. 6311–6317) (For purposes of codification in Title 42 of the U.S. Code, these parts were subsequently redesignated as Parts A and A–1, respectively, for editorial reasons.) Section 312 of the Energy Independence and Security Act of 2007 (EISA 2007) further amended EPCA by adding certain equipment to this energy conservation program, including walk-in coolers and walk-in freezers (collectively "walk-in equipment" or "walk-ins"), which are the subject of this rulemaking. (42 U.S.C. 6311(1), (20), 6313(f) and 6314(a)(9))

DOE is required to design each standard for this equipment to: (1) Achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified, and (2) result in significant conservation of energy. (42 U.S.C. 6295(o)(2)(A) and (o)(3), 42 U.S.C. 6313(f)(4)(A); *see* 42 U.S.C. 6295(o)(2)(A) and (o)(3)(B)) To determine whether a proposed standard is economically justified, DOE will, after receiving comments on the proposed standard, determine whether the benefits of the standard exceed its burdens to the greatest extent practicable, considering the following seven factors:

1. The economic impact of the standard on manufacturers and consumers of equipment subject to the standard;
2. The savings in operating costs throughout the estimated average life of the covered equipment in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered equipment which are likely to result from the imposition of the standard;
3. The total projected amount of energy savings likely to result directly from the imposition of the standard;
4. Any lessening of the utility or the performance of the covered equipment likely to result from the imposition of the standard;
5. The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;
6. The need for national energy conservation; and
7. Other factors the Secretary [of Energy] considers relevant.

(*See* 42 U.S.C. 6295(o)(2)(B)(i); 6313(f)) For walk-ins, DOE is applying those factors in a manner consistent with its other energy conservation standards rulemakings to ascertain the maximum improvement in energy efficiency that is technologically feasible and economically justified for this equipment.

Prior to proposing a standard, DOE typically seeks public input on the analytical framework, models, and tools that DOE will use to evaluate standards for the product at issue; the results of preliminary analyses DOE performed for the product; and potential energy conservation standard levels derived from these analyses that DOE could consider. DOE is publishing this document to announce the availability of the preliminary technical support document (TSD), which details the preliminary analyses, discusses the comments on the framework document, and summarizes the preliminary results of DOE's analyses. In addition, DOE is announcing a public meeting to solicit feedback from interested parties on its analytical framework, models, and preliminary results.

B. History of Standards Rulemaking for Walk-In Coolers and Walk-In Freezers

1. Background

EPCA requires the Secretary to publish performance-based standards for walk-ins no later than January 1, 2012. The standards must apply to products manufactured beginning 3 years after the date the final rule is published unless DOE determines, by rule, that such period is inadequate. If DOE makes such a determination, DOE may establish a period of up to 5 years for the standards to become applicable. (42 U.S.C. 6313(f)(4)) To address this requirement, DOE is developing standards for walk-in coolers and walk-in freezers that achieve the maximum improvement in energy that is technologically feasible and economically justified.

In addition to requiring the promulgation of performance standards for walk-ins, EPCA also contains prescriptive standards (*i.e.,* design requirements) for walk-in coolers and walk-in freezers manufactured on or after January 1, 2009. (42 U.S.C. 6313(f)(1)–(3)) These prescriptive standards require that walk-ins have specific components or design characteristics, each of which is intended to reduce the energy use of the equipment. DOE is not proposing to amend these requirements, but rather to develop new standards that further improve the energy efficiency of the equipment by regulating its overall energy use (i.e., performance). Manufacturers would be permitted to meet the new standards with a variety of components or designs that satisfy the prescriptive standards mandated by EPCA. Accordingly, this rulemaking would not modify any of EPCA's prescriptive standards for walk-in equipment.

Further, EPCA directs the Secretary to establish a test procedure to measure the energy use of walk-in coolers and walk-in freezers. (42 U.S.C. 6314(a)(9)(B)(i)) DOE is conducting a separate rulemaking to develop this test procedure and published a notice of proposed rulemaking (NOPR) for the test procedure on January 4, 2010. In the test procedure NOPR, DOE proposed to consider the two components that comprise a walk-in—the insulated envelope and the refrigeration system—as two separate pieces of equipment, and proposed separate test procedures for each of these components. DOE considered this approach because it received comments from interested parties stating that the two components are often produced by different manufacturers and may be assembled by a third party, and for other reasons as well. 75 FR 186 (January 4, 2010)

DOE anticipated that it would take a similar approach to performance standards for walk-ins; that is, it would create separate standards for the envelope and the refrigeration system. Thus, the preliminary analyses reflect this approach. DOE explains the

approach further and addresses its implications in the preliminary TSD.

2. Current Rulemaking Process

To initiate this rulemaking, DOE prepared a framework document, "Rulemaking Framework for Walk-in Coolers and Walk-in Freezers," that describes the procedural and analytical approaches DOE anticipated using to evaluate the establishment of energy conservation standards for walk-ins. DOE published a notice that announced both the availability of the framework document and a public meeting to discuss the proposed analytical framework for the rulemaking, and that invited written comments on the conduct of the rulemaking. 74 FR 411 (January 6, 2009). The framework document is available at: *http://www1.eere.energy.gov/buildings/appliance_standards/commercial/wicf_framework_document.html.* DOE held the public meeting on February 4, 2009, at which it described the various rulemaking analyses DOE would conduct, such as the engineering analysis, the life-cycle cost (LCC) and payback period (PBP) analyses, and the national impact analysis (NIA); the methods for conducting them; and the relationship among the various analyses. Manufacturers, trade associations, and environmental advocates attended the meeting. The participants discussed the following major issues: Creation of separate standards for the insulated envelope and the refrigeration system of a walk-in; compliance, enforcement, and labeling provisions; test procedures; distribution channels; discount rates; monetization of emission reductions; and interpretation and enforcement of the EPCA's prescriptive requirements for walk-in equipment.

DOE developed two spreadsheets for analyzing the economic impacts of standard levels—one that calculates LCC and PBP, and one that calculates national impacts. (For the NOPR, DOE will also develop a spreadsheet that will evaluate the financial impacts on walk-in manufacturers that may result from a standard level.) DOE prepared an LCC and PBP spreadsheet that calculates results for each of the representative units analyzed. This spreadsheet includes equipment efficiency data that allows users to determine LCC savings and PBPs based on average values, and can be combined with Crystal Ball (a commercially available software program) to generate a Monte Carlo simulation, incorporating uncertainty and variability considerations. The second economic spreadsheet calculates the impacts of candidate standard levels on shipments and the national energy savings (NES) and net present value (NPV) at various standard levels. There is one national impact analysis spreadsheet for all walk-in coolers and walk-in freezers. DOE has posted both economic spreadsheets on its website for review and comment by interested parties.

Comments received since publication of the framework document have helped DOE identify and resolve issues involved in the preliminary analyses. Chapter 2 of the preliminary TSD, available at the Web link provided in the **SUMMARY** section of this notice, summarizes and addresses the comments received in response to the framework document.

C. Summary of the Analyses Performed by DOE

For the walk-in equipment currently under consideration, DOE conducted in-depth technical analyses in the following areas: (1) Engineering, (2) energy-use characterization, (3) markups to determine equipment price, (4) life-cycle cost and payback period, and (5) national impacts. These analyses resulted in a preliminary TSD that presents the methodology and results of each of these analyses. The preliminary TSD is available at the Web address given in the **SUMMARY** section of this notice. The analyses are described in more detail below.

DOE also conducted, and has included in the preliminary TSD, several other analyses that either support the five major analyses or are preliminary analyses that will be expanded in preparing the NOPR. These analyses include the market and technology assessment, the screening analysis, which contributes to the engineering analysis, and the shipments analysis, which contributes to the NIA. In addition to these analyses, DOE has begun some preliminary work on the manufacturer impact analysis and identified the methods to be used for the LCC subgroup analysis, the environmental assessment, the employment analysis, the regulatory impact analysis, and the utility impact analysis. DOE will expand on these analyses in the NOPR.

1. Engineering Analysis

The engineering analysis establishes the relationship between the manufacturer selling price and equipment efficiency DOE is evaluating for energy conservation standards. This relationship serves as the basis for cost-benefit calculations for individual consumers, manufacturers, and the nation. The engineering analysis identifies representative baseline equipment, which is the starting point for analyzing technologies that provide energy efficiency improvements. Baseline equipment refers to a model or models having features and technologies typically found in the minimum efficiency equipment currently offered for sale. The baseline model in each equipment class represents the characteristics of certain walk-in equipment. After identifying the baseline models, DOE estimated manufacturer selling prices by using a consistent methodology and pricing scheme including material and labor costs, cost of shipping and manufacturer's markups. In this way, DOE developed these so-called "manufacturer selling prices" for the baseline and more efficient designs. Later, in its Markups To Determine Installed Price analysis, DOE converts these manufacturer selling prices into installed prices. In the preliminary TSD, section 2.4 of chapter 2 and chapter 5 each provide detail on the engineering analysis and the derivation of the manufacturer selling prices.

2. Markups To Determine Installed Price

DOE derives the installed prices for equipment based on manufacturer markups, retailer markups, distributor markups, contractor markups, builder markups, and sales taxes. In deriving these markups, DOE has determined the distribution channels for equipment sales, the markup associated with each party in the distribution channels, and the existence and magnitude of differences between markups for baseline equipment (baseline markups) and for more-efficient equipment (incremental markups). DOE calculates both overall baseline and overall incremental markups based on the equipment markups at each step in the distribution channel. The overall incremental markup relates the change in the manufacturer sales price of higher efficiency models (the incremental cost increase) to the change in the retailer or distributor sales price. In the preliminary TSD, section 2.5 of chapter 2 and chapter 6 each provide detail on the estimation of markups.

3. Energy Use Characterization

The energy use characterization provides estimates of annual energy consumption for walk-in equipment, which DOE uses in the LCC and PBP analyses and the NIA. DOE developed energy consumption estimates for all of the equipment classes analyzed in the engineering analysis, as the basis for its energy use estimates. In the preliminary TSD, section 2.6 of chapter 2 and

chapter 7 each provide detail on the energy use characterization.

4. Life-Cycle Cost and Payback Period Analyses

The LCC and PBP analyses determine the economic impact of potential standards on individual consumers. The LCC is the total consumer expense for equipment over the life of the equipment. The LCC analysis compares the LCCs of equipment designed to meet possible energy conservation standards with the LCCs of the equipment likely to be installed in the absence of standards. DOE determines LCCs by considering (1) Total installed cost to the purchaser (which consists of manufacturer selling price, sales taxes, distribution chain markups, and installation cost); (2) the operating expenses of the equipment (energy use and maintenance); (3) equipment lifetime; and (4) a discount rate that reflects the real consumer cost of capital and puts the LCC in present-value terms. The PBP represents the number of years needed to recover the increase in purchase price (including installation cost) of more efficient equipment through savings in the operating cost of the equipment. It is the change in total installed cost due to increased efficiency divided by the change in annual operating cost from increased efficiency. In the preliminary TSD, section 2.7 of chapter 2 and chapter 8 each provide detail on the LCC and PBP analyses.

5. National Impact Analysis

The NIA estimates the NES and the NPV of total consumer costs and savings expected to result from new standards at specific efficiency levels (referred to as candidate standard levels). DOE calculated NES and NPV for each candidate standard level for walk-in equipment as the difference between a base-case forecast (without new standards) and the standards case forecast (with standards). DOE determined national annual energy consumption by multiplying the number of units in use (by vintage) by the average unit energy consumption (also by vintage). Cumulative energy savings are the sum of the annual NES determined from 2015–2045. The national NPV is the sum over time of the discounted net savings each year, which consists of the difference between total operating cost savings and increases in total installed costs. Critical inputs to this analysis include shipments projections, retirement rates (based on estimated equipment lifetimes), and estimates of changes in shipments and retirement rates in response to changes in equipment costs due to standards. In the preliminary TSD, section 2.8 of chapter 2 and chapter 10 each provide detail on the NIA.

DOE consulted with interested parties as part of its process for conducting all of the analyses and invites further input from the public on these topics. The preliminary analytical results are subject to revision following further review and input from the public. A complete and revised TSD will be made available upon issuance of a NOPR. The final rule will contain the final analysis results and be accompanied by a final rule TSD.

DOE encourages those who wish to participate in the public meeting to obtain the preliminary TSD from DOE's website and to be prepared to discuss its contents. A copy of the preliminary TSD is available at the Web address given in the **SUMMARY** section of this notice. However, public meeting participants need not limit their comments to the topics identified in the preliminary TSD. DOE is also interested in receiving views concerning other relevant issues that participants believe would affect energy conservation standards for this equipment or that DOE should address in the NOPR.

Furthermore, DOE welcomes all interested parties, regardless of whether they participate in the public meeting, to submit in writing by May 20, 2010, comments and information on matters addressed in the preliminary TSD and on other matters relevant to consideration of standards for walk-in equipment.

The public meeting will be conducted in an informal, conference style. A court reporter will be present to record the minutes of the meeting. There shall be no discussion of proprietary information, costs or prices, market shares, or other commercial matters regulated by United States antitrust laws.

After the public meeting and the expiration of the period for submitting written statements, DOE will consider all comments and additional information that is obtained from interested parties or through further analyses, and it will prepare a NOPR. The NOPR will include proposed energy conservation standards for the equipment covered by the rulemaking, and members of the public will be given an opportunity to submit written and oral comments on the proposed standards.

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

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 2010–7608 Filed 4–2–10; 8:45 am]

BILLING CODE 6450–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701, 708a, and 708b

Fiduciary Duties at Federal Credit Unions; Mergers and Conversions of Insured Credit Unions; Correction

AGENCY: National Credit Union Administration.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document corrects the preamble to a proposed rule published in the **Federal Register** of March 29, 2010, regarding fiduciary duties at Federal credit unions and mergers and conversions of insured credit unions. The proposed rule as published included an incorrect address for Web site comments and an incorrect subject line for e-mail comments in the **ADDRESSES** section of the preamble.

FOR FURTHER INFORMATION CONTACT: Paul Peterson, Director, Applications Section, Office of General Counsel; Elizabeth Wirick, Staff Attorney, Office of General Counsel; or Jacqueline Lussier, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518–6540.

Correction

In proposed rule FR Doc. 2010–6439, beginning on page 15574 in the issue of March 29, 2010, make the following corrections in the Addresses section.

1. On page 15574, in the first column, replace the bulleted paragraph headed "NCUA Web site:" with the following:

"*NCUA Web site: http://www.ncua.gov/Resources/RegulationsOpinionsLaws/ProposedRegulations.aspx.* Follow the instructions for submitting comments."

2. On page 15574, in the first column, replace the bulleted paragraph headed "E-mail:" with the following:

"*E-mail:* Address to *regcomments@ncua.gov*. Include "[Your name] Comments on Notice of Proposed Rulemaking (Fiduciary Duties at Federal Credit Unions; Mergers and Conversions of Insured Credit Unions) in the e-mail subject line."

Dated: March 31, 2010.

Mary Rupp,

Secretary of the Board.

[FR Doc. 2010–7655 Filed 4–2–10; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0308; Directorate Identifier 2010–NE–17–AD]

RIN 2120–AA64

Airworthiness Directives; Thielert Aircraft Engines GmbH (TAE) Model TAE 125–01 Reciprocating Engines

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) 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: Service has shown that the small outlet of the blow-by oil separators, part number 02–7250–18100R1; 02–7250–18100R2; 02–7250–18100R3; 02–7250–18100R4; 02–7250–18300R1; 02–7250–18300R2; 02–7250–18300R3; 02–7250–18300R4; or 02–7250–18300R5, may cause a blow-by gas pressure increase inside the crankcase of the engine in excess of the oil seal design pressure limits. Leaking engine oil may adversely affect the gearbox clutch or the engine lubrication system. This condition, if not corrected, could lead to in-flight cases of engine power loss or ultimately, shutdown. We are proposing this AD to prevent loss of engine power or uncommanded engine shutdown during flight due to excessive crankcase blow-by gas pressure.

DATES: We must receive comments on this proposed AD by May 20, 2010.

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

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

Contact Thielert Aircraft Engines GmbH, Platanenstrasse 14 D–09350, Lichtenstein, Germany, telephone: +49–37204–696–0; fax: +49–37204–696–55; e-mail: *info@centurion-engines.com* for the service information identified in this proposed AD.

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 (phone (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.

FOR FURTHER INFORMATION CONTACT: Tara Chaidez, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *tara.chaidez@faa.gov;* telephone (781) 238–7773; fax (781) 238–7199.

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–2010–0308; Directorate Identifier 2010–NE–17–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued AD 2010–0020, dated February 8, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> Service has shown that the small outlet of the blow-by separators, part number 02–7250–18100R1; 02–7250–18100R2; 02–7250–18100R3; 02–7250–18100R4; 02–7250–18300R1; 02–7250–18300R2; 02–7250–18300R3; 02–7250–18300R4; or 02–7250–18300R5, may cause a blow-by gas pressure increase inside the crankcase of the engine in excess of the oil seal design pressure limits. Leaking engine oil may adversely affect the gearbox clutch or the engine lubrication system. This condition, if not corrected, could lead to in-flight cases of engine power loss or ultimately, shutdown.

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

Relevant Service Information

TAE has issued Service Bulletin No. TM TAE 125–0019, Revision 1, dated March 5, 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 Germany and is approved for operation in the United States. Pursuant to our bilateral agreement with Germany, EASA has notified us of the unsafe condition described in the MCAI. We are proposing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design. This proposed AD would require removing from service certain part number blow-by oil separators, within the next 110 flight hours after the effective date of the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 250 engines installed on airplanes of U.S. registry. We also estimate that it would take about 1.5 work-hours per engine to comply with this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $1,500 per engine. Based on these figures, we

estimate the cost of the proposed AD on U.S. operators to be $406,875.

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:

Thielert Aircraft Engines GmbH: Docket No. FAA–2010–0308; Directorate Identifier 2010–NE–17–AD.

Comments Due Date

(a) We must receive comments by May 20, 2010.

Affected Airworthiness Directives (ADs)

(b) None.

Applicability

(c) This AD applies to Thielert Aircraft Engines GmbH (TAE) model TAE 125–01 reciprocating engines with any of the following part number blow-by oil separators installed:

TABLE 1—PART NUMBERS OF AFFECTED BLOW-BY OIL SEPARATORS

02–7250–18100R1	02–7250–18100R2	02–7250–18100R3.
02–7250–18100R4	02–7250–18300R1	02–7250–18300R2.
02–7250–18300R3	02–7250–18300R4	02–7250–18300R5.

These engines are installed in, but not limited to, Diamond Aircraft Industries Model DA 40, Piper PA–28–161 (Supplemental Type Certificate (STC) No. SA03303AT), and Cessna 172 (STC No. SA01303WI) airplanes.

Reason

(d) Service has shown that the small outlet of the blow-by oil separators, part number 02–7250–18100R1; 02–7250–18100R2; 02–7250–18100R3; 02–7250–18100R4; 02–7250–18300R1; 02–7250–18300R2; 02–7250–18300R3; 02–7250–18300R4; or 02–7250–18300R5, may cause a blow-by gas pressure increase inside the crankcase of the engine in excess of the oil seal design pressure limits. Leaking engine oil may adversely affect the gearbox clutch or the engine lubrication system. This condition, if not corrected, could lead to in-flight cases of engine power loss or ultimately, shutdown. 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. We are issuing this AD to prevent loss of engine power or uncommanded engine shutdown during flight due to excessive crankcase blow-by gas pressure.

Actions and Compliance

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

(1) Remove the blow-by oil separators listed by part number in Table 1 of this AD within the next 110 flight hours after the effective date of this AD.

(2) Use the Measures section of TAE Service Bulletin No. TM TAE 125–0019, Revision 1, dated March 5, 2009, to do the removal from service.

FAA AD Differences

(f) None.

Alternative Methods of Compliance (AMOCs)

(g) 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

(h) Refer to European Aviation Safety Agency AD 2010–0020, dated February 8, 2010, and TAE Service Bulletin No. TM TAE 125–0019, Revision 1, dated March 5, 2009, for related information. Contact Thielert Aircraft Engines GmbH, Platanenstrasse 14 D–09350, Lichtenstein, Germany, telephone: +49–37204–696–0; fax: +49–37204–696–55; e-mail: *info@centurion-engines.com,* for a copy of this service information.

(i) Contact Tara Chaidez, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *tara.chaidez@faa.gov;* telephone (781) 238–7773; fax (781) 238–7199, for more information about this AD.

Issued in Burlington, Massachusetts, on March 30, 2010.

Peter A. White,

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

[FR Doc. 2010–7590 Filed 4–2–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0276; Directorate Identifier 2009–NM–144–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above that would supersede an existing AD. 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: Three cases of in-flight loss of cabin pressurization have been reported, resulting from failure of a bulkhead check valve in combination with failure of an air supply duct. In addition to mandating inspection, rework and/or replacement of the air supply ducts, Airworthiness Directive (AD) CF–2003–05 (subsequently revised to CF–2003–05R1) [which corresponds to FAA AD 2004–22–08] mandated the incorporation of a 4000 flight-hour repetitive inspection task for bulkhead check valves, Part Numbers (P/N) 92E20–3 and 92E20–4, into the approved maintenance schedule. However, this repetitive inspection task has since been superseded by a 3000 flight-hour periodic discard task for these bulkhead check valves. This directive mandates revision of the approved maintenance schedule to incorporate the discard task for bulkhead check valves, P/N 92E20–3 and 92E20–4, and supersedes the instructions in Corrective Actions, Part A, of AD CF–2003–05R1, dated 7 February 2006. 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 20, 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 Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514 855–7401; e-mail *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Christopher Alfano, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7340; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0276; Directorate Identifier 2009–NM–144–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

On October 18, 2004, we issued AD 2004–22–08, Amendment 39–13836 (69 FR 62807, October 28, 2004). That AD required actions intended to address an unsafe condition on the products listed above.

Since we issued AD 2004–22–08, Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2009–31, dated July 8, 2009 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> Three cases of in-flight loss of cabin pressurization have been reported, resulting from failure of a bulkhead check valve in combination with failure of an air supply duct.
>
> In addition to mandating inspection, rework and/or replacement of the air supply ducts, Airworthiness Directive (AD) CF–2003–05 (subsequently revised to CF–2003–05R1) [which corresponds to FAA AD 2004–22–08] mandated the incorporation of a 4000 flight-hour repetitive inspection task for bulkhead check valves, Part Numbers (P/N) 92E20–3 and 92E20–4, into the approved maintenance schedule. However, this repetitive inspection task has since been superseded by a 3000 flight-hour periodic discard task for these bulkhead check valves.
>
> This directive mandates revision of the approved maintenance schedule to incorporate the discard task for bulkhead check valves, P/N 92E20–3 and 92E20–4, and supersedes the instructions in Corrective Actions, Part A, of AD CF–2003–05R1, dated 7 February 2006.

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

Relevant Service Information

Bombardier has issued Temporary Revision (TR) 1–2–39, dated December 12, 2008, to Section 2—Systems and Powerplant Program, of Part 1 of the Bombardier CL–600–2B19 Maintenance Requirements Manual (MRM) CSP A–053. 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.

Changes to Existing AD

This proposed AD would retain certain requirements of AD 2004–22–08. Since AD 2004–22–08 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 2004–22–08	Corresponding requirement in this proposed AD
paragraph (a)	paragraph (g)
paragraph (b)	paragraph (h)
paragraph (c)	paragraph (i)

We have removed the service bulletin definition paragraph from the restated requirements of AD 2004–22–08. (That paragraph was identified as paragraph (a)(1) in AD 2004–22–08.) Instead, we have provided the full service bulletin citations throughout this NPRM.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 644 products of U.S. registry.

The actions that are required by AD 2004–22–08 and retained in this proposed AD take about 15 work-hours per product, at an average labor rate of $85 per work hour. Required parts cost about $0 per product. Based on these figures, the estimated cost of the currently required actions is $1,869 per product.

We estimate that it would take about 1 work-hour per product to comply with the new requirement to revise the ALI. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this requirement of the proposed AD on U.S. operators to be $54,740, or $85 per product.

We estimate that it would take about 5 work-hours per product to comply with the new inspection requirement. The average labor rate is $85 per work-hour. Required parts would cost about $594 per product, per replacement cycle. 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 inspection requirements of the proposed AD on U.S. operators to be $656,236, or $1,019 per product, per replacement 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 determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–13836 (69 FR 62807, October 28, 2004) and adding the following new AD:

Bombardier, Inc.: Docket No. FAA–2010–0276; Directorate Identifier 2009–NM–144–AD.

Comments Due Date

(a) We must receive comments by May 20, 2010.

Affected ADs

(b) This AD supersedes AD 2004–22–08, Amendment 39–13836.

Applicability

(c) This AD applies to all Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, serial numbers 7003 and subsequent, certificated in any category.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this

situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (l) of this AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane.

Subject

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

Reason

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

Three cases of in-flight loss of cabin pressurization have been reported, resulting from failure of a bulkhead check valve in combination with failure of an air supply duct.

In addition to mandating inspection, rework and/or replacement of the air supply ducts, Airworthiness Directive (AD) CF–2003–05 (subsequently revised to CF–2003–05R1) [which corresponds to FAA AD 2004–22–08] mandated the incorporation of a 4,000 flight-hour repetitive inspection task for bulkhead check valves, Part Numbers (P/N) 92E20–3 and 92E20–4, into the approved maintenance schedule. However, this repetitive inspection task has since been superseded by a 3000 flight-hour periodic discard task for these bulkhead check valves.

This directive mandates revision of the approved maintenance schedule to incorporate the discard task for bulkhead check valves, P/N 92E20–3 and 92E20–4, and supersedes the instructions in Corrective Actions, Part A, of AD CF–2003–05R1, dated 7 February 2006.

Compliance

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

Restatement of Requirements of AD 2004–22–08

Service Information Clarifications

(g) Paragraphs (g)(1), (g)(2), and (g)(3) of this AD pertain to the service information referenced in this AD.

(1) Although Bombardier Alert Service Bulletin A601R–21–053, Revision 'A,' dated January 28, 2003; and Bombardier Alert Service Bulletin A601R–21–054, dated November 8, 2001; specify to submit certain information to the manufacturer, this AD does not include such a requirement.

(2) Bombardier Alert Service Bulletin A601R–21–054, dated November 8, 2001, recommends sending all damaged check valves to the manufacturer for analysis; however, this AD does not include that requirement.

(3) Accomplishment of the actions specified in Bombardier Alert Service Bulletin A601R–21–053, dated November 8, 2001, before December 2, 2004 (the effective date of AD 2004–22–08), is considered acceptable for compliance with the applicable actions specified in this AD.

Repetitive Inspections/Related Corrective Actions

(h) Within 500 flight hours after December 2, 2004: Do the detailed inspections and related corrective actions required by paragraphs (h)(1) and (h)(2) of this AD, per the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–21–053, Revision 'A,' dated January 28, 2003; and Bombardier Alert Service Bulletin A601R–21–054, dated November 8, 2001; as applicable.

(1) For airplanes having bulkhead check valves with part number (P/N) 92E20–3/–4, as identified in Bombardier Alert Service Bulletin A601R–21–054, dated November 8, 2001: Inspect the left- and right-hand bulkhead check valves for damage (cracking, breakage). If any damage is found, before further flight, replace the damaged valve. Repeat the inspection at intervals not to exceed 4,000 flight hours until the replacement required by paragraph (j) of this AD is done.

(2) For airplanes having serial numbers 7003 through 7067 inclusive, and 7069 through 7477 inclusive: Inspect the left- and right-hand air supply ducts of the rear bulkhead for damage (tearing, delamination, or cracking). If any damage is found, before further flight, either rework or replace the damaged air supply duct, which ends the inspections for that air supply duct only. If no damage is found, repeat the inspection thereafter at intervals not to exceed 500 flight hours until accomplishment of paragraph (i) of this AD.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Terminating Action for Repetitive Inspections of Air Supply Ducts

(i) Except as required by paragraph (h)(2) of this AD, for airplanes having serial numbers 7003 through 7067 inclusive, and 7069 through 7477 inclusive: Within 5,000 flight hours after December 2, 2004, either rework or replace the left- and right-hand air ducts, as applicable, per the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–21–053, Revision 'A,' dated January 28, 2003; and Bombardier Alert Service Bulletin A601R–21–054, dated November 8, 2001; as applicable. Accomplishment of this paragraph ends the repetitive inspections required by paragraph (h)(2) of this AD.

New Requirements of This AD

Actions and Compliance

(j) For airplanes having serial numbers 7003 and subsequent: Within 60 days after the effective date of this AD, revise the Airworthiness Limitations section of the Instructions for Continued Airworthiness to include the information in Bombardier Temporary Revision (TR) 1–2–39, dated December 12, 2008, to Section 2—Systems and Powerplant Program, Part 1 of the Bombardier CL–600–2B19 Maintenance Requirement Manual (MRM) CSP–053. This task requires replacement of the bulkhead check valves having P/N 92E20–3 or 92E20–4 at intervals not to exceed 3,000 flight hours. Operate the airplane thereafter according to the limitations and procedures in the TR.

(k) Thereafter, except as provided in paragraph (j) of this AD, no alternative replacement times or structural inspection intervals may be approved for this bulkhead check valve.

Note 3: The actions required by paragraph (j) of this AD may be done by inserting a copy of Bombardier TR 1–2–39, dated December 12, 2008, into the MRM, which introduces Task 21–51–21–13. When Bombardier Task 21–51–21–13 has been included in general revisions of the MRM, the general revisions may be inserted into the MRM, provided the relevant information in the general revision is identical to that in the TR.

FAA AD Differences

Note 4: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office, 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 516–7300; 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

(m) Refer to MCAI Canadian Airworthiness Directive CF–2009–31, dated July 8, 2009; and Bombardier TR 1–2–39, dated December 12, 2008, to Section 2—Systems and

Powerplant Program, Part 1 of the Bombardier CL–600–2B19 MRM CSP–053; for related information.

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

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–6850 Filed 4–2–10; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 312

Request for Public Comment on the Federal Trade Commission's Implementation of the Children's Online Privacy Protection Rule

AGENCY: Federal Trade Commission.

ACTION: Request for public comment.

SUMMARY: The Federal Trade Commission ("FTC" or "Commission") requests public comment on its implementation of the Children's Online Privacy Protection Act ("COPPA" or "the Act"), through the Children's Online Privacy Protection Rule ("COPPA Rule" or "the Rule"),. The Commission requests comment on the costs and benefits of the Rule, as well as on whether it, or certain sections, should be retained, eliminated, or modified. All interested persons are hereby given notice of the opportunity to submit written data, views, and arguments concerning the Rule.

DATES: Written comments must be received by June 30, 2010.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form, by following the instructions in the Invitation To Comment part of the "**SUPPLEMENTARY INFORMATION**" section below. Comments in electronic form should be submitted by using the following weblink: (*https://public.commentworks.com/ftc/2010copparulereview*) (and following the instructions on the web-based form). Comments in paper form should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex E), 600 Pennsylvania Avenue, NW, Washington, DC 20580, (202) 326-2252.

FOR FURTHER INFORMATION CONTACT: Phyllis Marcus, (202) 326-2854, or Mamie Kresses, (202) 326-2070, Attorneys, Federal Trade Commission, Division of Advertising Practices, Federal Trade Commission, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION:

Section I. Background

The COPPA Rule, issued pursuant to the Children's Online Privacy Protection Act, 15 U.S.C. § 6501, *et seq.*, became effective on April 21, 2000. The Rule imposes certain requirements on operators of websites or online services directed to children under 13 years of age, and on operators of other websites or online services that have actual knowledge that they are collecting personal information online from a child under 13 years of age (collectively, "operators").[1] Among other things, the Rule requires that operators provide notice to parents and obtain verifiable parental consent prior to collecting, using, or disclosing personal information from children under 13 years of age. The Rule also requires operators to keep secure the information they collect from children and prohibits them from conditioning children's participation in activities on the collection of more personal information than is reasonably necessary to participate in such activities. Further, the Rule contains a "safe harbor" provision enabling industry groups or others to submit to the Commission for approval self-regulatory guidelines that would implement the Rule's protections.[2]

Section II. Rule Review

COPPA and § 312.11 of the Rule required the Commission to initiate a review no later than five years after the Rule's effective date to evaluate the Rule's implementation. The Commission commenced this mandatory review on April 21, 2005. After receiving and considering extensive public comment on the Rule, the Commission determined in March 2006 to retain the COPPA Rule without change.[3] However, the Commission believes that changes to the online environment over the past five years, including but not limited to children's increasing use of mobile technology to access the Internet, warrant reexamining the Rule at this time.

In this notice, the Commission poses its standard regulatory review questions to determine whether the Rule should be retained, eliminated, or modified. In addition, the Commission identifies several areas where public comment would be especially useful. First, the Commission asks whether the Rule's current definitions are sufficiently clear and comprehensive, or whether they might warrant modification or expansion, consistent with the COPPA statute. Among other questions, the Commission asks for comment on the application of the definition of "Internet" to mobile communications, interactive television, interactive gaming, and similar activities. Further, the Commission asks whether the Rule's definition of "personal information" should be expanded to include other items of information that can be collected from children online and are not currently specified in the Rule, such as persistent IP addresses, mobile geolocation information, or information collected in connection with online behavioral advertising.

The Commission also seeks comment on the use of automated systems for reviewing children's web submissions (*e.g.*, those that filter out any personally identifiable information prior to posting). In addition, the Commission asks whether change is warranted as to the Rule provisions on protecting the confidentiality and security of personal information, the right of parents to review or delete personal information, and the prohibition against conditioning a child's participation on the collection of personal information. Finally, the Commission seeks comment about its role in administering the Rule's safe harbor provisions.

Section III. Questions Regarding the COPPA Rule

The Commission invites members of the public to comment on any issues or concerns they believe are relevant or appropriate to the Commission's review of the COPPA Rule, and to submit written data, views, facts, and arguments addressing the Rule. All comments should be filed as prescribed in the Invitation To Comment part of the "**SUPPLEMENTARY INFORMATION**" section below, and must be received by June 30, 2010. The Commission is particularly interested in comments addressing the following questions:

A. General Questions for Comment

1. Is there a continuing need for the Rule as currently promulgated? Why or why not?

a. Since the Rule was issued, have changes in technology, industry, or economic conditions affected the need for or effectiveness of the Rule?

b. What are the aggregate costs and benefits of the Rule?

c. Does the Rule include any provisions not mandated by the Act that are unnecessary or whose costs outweigh their benefits? If so, which ones and why?

[1] 16 CFR Part 312.

[2] *See* 16 CFR Part 312.10; 64 FR at 59906-59908, 59915.

[3] *See* 71 FR 13247 (Mar. 15, 2006).

2. What effect, if any, has the Rule had on children, parents, or other consumers?

a. Has the Rule benefitted children, parents, or other consumers? If so, how?

b. Has the Rule imposed any costs on children, parents, or other consumers? If so, what are these costs?

c. What changes, if any, should be made to the Rule to increase its benefits, consistent with the Act's requirements? What costs would these changes impose?

3. What impact, if any, has the Rule had on operators?

a. Has the Rule provided benefits to operators? If so, what are these benefits?

b. Has the Rule imposed costs on operators, including costs of compliance in time or monetary expenditures? If so, what are these costs?

c. What changes, if any, should be made to the Rule to reduce the costs imposed on operators, consistent with the Act's requirements? How would these changes affect the Rule's benefits?

4. How many small businesses are subject to the Rule? What costs (types and amounts) do small businesses incur in complying with the Rule? How has the Rule otherwise affected operators that are small businesses? Have the costs or benefits of the Rule changed over time with respect to small businesses? What regulatory alternatives, if any, would decrease the Rule's burden on small businesses, consistent with the Act's requirements?

5. Does the Rule overlap or conflict with any other federal, state, or local government laws or regulations? How should these overlaps or conflicts be resolved, consistent with the Act's requirements?

a. Are there any unnecessary regulatory burdens created by overlapping jurisdiction? If so, what can be done to ease the burdens, consistent with the Act's requirements?

b. Are there any gaps where no federal, state, or local government law or regulation has addressed a problematic practice relating to children's online privacy? Could or should any such gaps be remedied by a modification to the Rule?

B. Definitions

6. Do the definitions set forth in § 312.2 of the Rule accomplish COPPA's goal of protecting children's online privacy and safety?

7. Are the definitions in § 312.2 clear and appropriate? If not, how can they be improved, consistent with the Act's requirements?

8. Should the definitions of "collects or collection" and/or "disclosure" be modified in any way to take into account online technologies and/or Internet activities and features that have emerged since the Rule was enacted or that may emerge in the future? For instance, how will the use of centralized authentication methods (*e.g.*, OpenId) affect individual websites' COPPA compliance efforts?

9. The Rule considers personal information to have been "collected" where an operator enables children to make personal information publicly available through a chat room, message board, or other means, *except where* the operator "deletes" all individually identifiable information from postings by children before they are made public and deletes such information from the operator's records.

a. Are there circumstances in which an operator using an automated system of review and/or posting meets the deletion exception to the definition of collection?

b. Does the Rule's current definition of "delete" provide sufficient guidance to operators about how to handle the removal of personal information?

10. Should the definition of "collection" be modified or clarified to include other means of collection of personal information from children that are not specifically enumerated in the Rule's current definition?

11. What are the implications for COPPA enforcement raised by technologies such as mobile communications, interactive television, interactive gaming, or other similar interactive media, consistent with the Act's definition of "Internet"?

12. The Rule defines "personal information" as individually identifiable information about an individual collected online, and enumerates such items of information. Do the items currently enumerated as "personal information" need to be clarified or modified in any way, consistent with the Act?

13. Section 1302(8)(F) of the Act provides the Commission with discretion to include in the definition of "personal information" any identifier that it determines would permit the physical or online contacting of a specific individual.

a. Do operators, including network advertising companies, have the ability to contact a specific individual, either physically or online, using one or more pieces of information collected from children online, such as user or screen names and/or passwords, zip code, date of birth, gender, persistent IP addresses, mobile geolocation information, information collected in connection with online behavioral advertising, or other emerging categories of information? Are operators using such information to contact specific individuals?

b. Should the definition of "personal information" in the Rule be expanded to include any such information?

14. Are providers of downloadable software collecting information from children that permits the physical or online contacting of a specific individual?

15. Should the Rule define "the physical or online contacting of a specific individual," "website," "online service," or any other term not currently defined? If so, how should such terms be defined, consistent with the Act's requirements?

C. Notice

16. Section 312.4 of the Rule sets out the requirements for the content and delivery of operators' notices of their information practices with regard to children.

a. Are the requirements in this Part clear and appropriate? If not, how can they be improved?

b. Should the notice requirements be clarified or modified in any way to reflect changes in the types or uses of children's information collected by operators or changes in communications options available between operators and parents?

D. Parental Consent

17. Section 312.5 of the Rule requires operators to obtain verifiable parental consent before collecting, using, and/or disclosing personal information from children, including consent to any material change to practices to which the parent previously consented. This Part further requires operators to make reasonable efforts to obtain this consent, which efforts are reasonably calculated to ensure that the person providing consent is the child's parent, taking into consideration available technology.

a. Has the consent requirement been effective in protecting children's online privacy and safety?

b. What data exists on: (1) operators' use of parental consent mechanisms; (2) parents' awareness of the Rule's parental consent requirements; or (3) parents' response to operators' parental consent requests?

18. Section 312.5(b)(2) of the Rule provides a non-exhaustive list of approved methods to obtain verifiable parental consent, including: providing a consent form to be signed by the parent and returned to the operator; requiring a parent to use a credit card in connection with a transaction; having a parent call a toll-free number staffed by trained personnel; using a digital

certificate that uses public key technology; and using email accompanied by a PIN/password obtained through one of the other enumerated verification methods.

a. To what extent are operators using each of the enumerated methods? Please provide as much specific data as possible, including the costs and benefits associated with each method described.

b. Are there additional methods to obtain verifiable parental consent, based on current or emerging technological changes, that should be added to § 312.5 of the Rule? What are the costs and benefits of these additional methods?

c. Should any of the currently enumerated methods to obtain verifiable parental consent be removed from the Rule? If so, please explain which one(s) and why.

d. Are there methods for delivering a signed consent form, other than postal mail or facsimile, that would meet the Rule's standards for verifiable parental consent? Should these be specified in the Rule?

e. Are there current or emerging forms of payment, other than the use of a credit card in connection with a transaction, that would meet the Rule's standards for verifiable parental consent? Should these be specified in the Rule?

f. The Rule permits use of a credit card in connection with a transaction to serve as a form of verifiable parental consent. Is there data available on the proliferation of credit cards, debit cards, or gift cards among children under 13 years of age? What challenges, if any, does children's use of credit, debit, and/or gift cards pose for Rule compliance or enforcement?

g. Are there current or emerging forms of oral communication, other than the use of a toll-free telephone number staffed by trained personnel, that would meet the Rule's standards for verifiable parental consent? Should these be specified in the Rule?

19. Section 312.5(b)(2) also sets forth a mechanism that operators can use to obtain verifiable parental consent for uses of information other than "disclosures" (the "email plus mechanism"). The email plus mechanism permits the use of an email coupled with additional steps to provide assurances that the person providing consent is the parent, including sending a confirmatory email to the parent following receipt of consent or obtaining a postal address or telephone number from the parent and confirming the parent's consent by letter or telephone call. In 2006, the Commission announced that it would retain the email plus mechanism indefinitely. *See* (*http://www.ftc.gov/os/fedreg/2006/march/060315childrens-online-privacy-rule.pdf*).

a. Does the email plus mechanism remain a viable form of verifiable parental consent for operators' internal uses of information?

b. Are there other current or emerging forms of communications, not enumerated in § 312.5(b)(2), that would meet the Rule's standards for verifiable parental consent for operators' internal uses of information? Are any changes or modifications to this Part warranted?

E. Exceptions to Verifiable Parental Consent

20. COPPA and § 312.5(c) of the Rule set forth five exceptions to the prior parental consent requirement. Are the exceptions in § 312.5(c) clear? If not, how can they be improved, consistent with the Act's requirements?

21. Section 312.5(c)(3) of the Rule requires that operators who collect children's online contact information for the sole purpose of communicating directly with a child after the child has specifically requested such communication must provide parents with notice and the opportunity to opt-out of the operator's further use of the information (the "multiple contact" exception).

a. To what extent are operators using the multiple contact exception to communicate or engage with children on an ongoing basis? Are operators relying on the multiple contact exception to collect more than just online contact information from children?

b. Should the multiple contact exception be clarified or modified in any way, consistent with the Act's requirements, to take into account any changes in the manner in which operators communicate or engage with children?

c. Under this Part, acceptable notice mechanisms include sending the opt-out notice by postal mail or to the parent's email address. Should § 312.5(c)(3) be modified to remove postal mail as a means of delivering an opt-out notice to parents?

d. Should § 312.5(c)(3) be otherwise clarified or modified in any way to reflect current or emerging technological changes that have or may expand options for the online contacting of children or options for communications between operators and parents?

22. Section 312.5(c)(4) of the Rule requires an operator who collects a child's name and online contact information to the extent reasonably necessary to protect the safety of a child participant in the website or online service to use reasonable efforts to provide a parent notice and the opportunity to opt-out of the operator's use of such information. Such information must only be used to protect the child's safety, cannot be used to re-contact the child or any other purpose, and may not be disclosed.

a. To what extent, and under what circumstances, do operators use § 312.5(c)(4) to protect children's safety?

b. Are the requirements of § 312.5(c)(4) clear and appropriate? If not, how can they be improved, consistent with the Act's requirements?

23. Section 312.5(c)(5) of the Rule permits operators to collect a child's name and online contact information to protect the security or integrity of the site, take precautions against liability, respond to judicial process, or to provide information to law enforcement agencies or in connection with a public safety investigation.

a. To what extent, and under what circumstances, do operators use § 312.5(c)(5)?

b. Are the requirements of § 312.5(c)(5) clear and appropriate? If not, how can they be improved, consistent with the Act's requirements? For example, should § 312.5(c)(5) of the Rule be clarified to allow operators to collect and maintain a child's name and/or online contact information for the purpose of preventing future attempts at registration?

F. Right of a Parent to Review and/or Have Personal Information Deleted

24. Section 312.6(a) of the Rule requires operators to give parents, upon their request: (1) a description of the specific types of personal information collected from children; (2) the opportunity to refuse to permit the further use or collection of personal information from the child and to direct the deletion of the information; and (3) a means of reviewing any personal information collected from the child. In the case of a parent who wishes to review the personal information collected from the child, § 312.6(a)(3) of the Rule requires operators to provide a means of review that ensures that the requestor is a parent of that child (taking into account available technology) and is not unduly burdensome to the parent.

a. To what extent are parents exercising their rights under § 312.6(a)(1) to obtain from operators a description of the specific types of personal information collected from children?

b. To what extent are parents exercising their rights under § 312.6(a)(2) to refuse to permit the

further use or collection of personal information from the child and to direct the deletion of the information?

c. To what extent are parents exercising their rights under § 312.(a)(3) to review any personal information collected from the child?

d. Do the costs and burdens to operators or parents differ depending on whether a parent seeks a description of the information collected, access to the child's information, or to have the child's information deleted?

e. Is it difficult for operators to ensure, taking into account available technology, that a requester seeking to review the personal information collected from a child is a parent of that child?

f. Should § 312.6(a)(3) enumerate the methods an operator may use to ensure that a requestor seeking to review the personal information collected from a child is a parent of that child? Should these methods be consistent with the verification methods enumerated currently or in the future in § 312.5(b)(2) of the Rule?

g. Are the requirements of § 312.6 clear and appropriate? If not, how can they be improved, consistent with the Act's requirements?

G. Prohibition Against Conditioning a Child's Participation on Collection of Personal Information

25. COPPA and § 312.7 of the Rule prohibit operators from conditioning a child's participation in an activity on disclosing more personal information than is reasonably necessary to participate in such activity.

a. Do operators take this requirement into account when shaping their online offerings to children?

b. Has the prohibition been effective in protecting children's online privacy and safety?

c. Is § 312.7 of the Rule clear and adequate? If not, how could it be improved, consistent with the Act's requirements?

H. Confidentiality, Security and Integrity of Personal Information

26. Section 312.8 of the Rule requires operators to establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of personal information collected from a child.

a. Have operators implemented sufficient safeguards to protect the confidentiality, security, and integrity of personal information collected from a child?

b. Is § 312.8 of the Rule clear and adequate? If not, how could it be improved, consistent with the Act's requirements?

I. Safe Harbors

27. Section 312.10 of the Rule provides that an operator will be deemed in compliance with the Rule's requirements if the operator complies with Commission-approved self-regulatory guidelines (the "safe harbor" process).

a. Has the safe harbor process been effective in enhancing compliance with the Rule?

b. Should the criteria for Commission approval of a safe harbor program be modified in any way to strengthen the standards currently enumerated in § 312.10(b)?

c. Should § 312.10 be modified to include a requirement that approved safe harbor programs undergo periodic reassessment by the Commission? If so, how often should such assessments be required?

d. Should § 312.10(b)(4) of the Rule, regarding the Commission's discretion to initiate an investigation or bring an enforcement action against an operator participating in a safe harbor program, be clarified or modified in any way?

e. Should any other changes be made to the criteria for approval of self-regulatory guidelines, or to the safe harbor process, consistent with the Act's requirements?

J. Statutory Requirements

28. Does the commenter propose any modifications to the Rule that may conflict with the statutory provisions of the COPPA Act? For any such proposed modification, does the commenter propose seeking legislative changes to the Act?

Section IV. Invitation to Comment

All persons are hereby given notice of the opportunity to submit written data, views, facts, and arguments pertinent to this rule review. Written comments must be received on or before June 30, 2010, and may be submitted electronically or in paper form. Comments should refer to "COPPA Rule Review, P104503" to facilitate the organization of comments. Please note that your comment – including your name and your state – will be placed on the public record of this proceeding, including on the publicly accessible FTC website, at (*http://www.ftc.gov/os/publiccomments.shtm*).

Because comments will be made public, they should not include any sensitive personal information, such as any individual's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any "[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential. . . ," as provided in Section 6(f) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c), 16 CFR 4.9(c).[4]

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following weblink: (*https://public.commentworks.com/ftc/2010copparulereview*) (and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it at (*https://public.commentworks.com/ftc/2010copparulereview*). If this document appears at (*http://www.regulations.gov/search/Regs/home.html#home*), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC website at (*http://www.ftc.gov*) to read the document and the news release describing it.

A comment filed in paper form should include the "COPPA Rule Review, P104503" reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex E), 600 Pennsylvania Avenue, NW, Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to

[4] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 C.F.R. 4.9(c).

delay due to heightened security precautions.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at (*http://www.ftc.gov/os/publiccomments.shtm*). As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.shtm*).

Section V. Communications by Outside Parties to Commissioners or Their Advisors

Written communications and summaries of transcripts of oral communications respecting the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor will be placed on the public record.[5]

List of Subjects in 16 CFR Part 312

Children, Communications, Consumer protection, Electronic mail, E-mail, Internet, Online service, Privacy, Record retention, Safety, Science and technology, Trade practices, Website, Youth.

Authority: 15 U.S.C. §§ 6501-6508.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2010–7549 Filed 4–2–10; 10:31 am]

BILLING CODE 6750–01–S

[5] *See* 16 CFR Part 1.26(b)(5).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 882 and 890

[Docket No. FDA–2009–N–0493]

RIN 0910–ZA37

Neurological and Physical Medicine Devices; Designation of Special Controls for Certain Class II Devices and Exemption From Premarket Notification

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend certain neurological device and physical medicine device regulations to establish special controls for these class II devices and to exempt some of these devices from the premarket notification requirements of the Federal Food, Drug, and Cosmetic Act. Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice of availability of draft guidance documents that would serve as special controls for each of these devices if the rule is finalized.

DATES: Submit written or electronic comments by July 6, 2010. See section III of this document for the proposed effective date of a final rule based on this proposed rule.

ADDRESSES: You may submit comments, identified by Docket No. FDA–2009–N–0493 and/or RIN number 0910–ZA37, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

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

Written Submissions

Submit written submissions in the following ways:

- FAX: 301–827–6870.
- Mail/Hand delivery/Courier [for paper, disk, or CD–ROM submissions]: Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions must include the agency name and docket number and Regulatory Information Number (RIN) (if a RIN number has been assigned) for this rulemaking. All comments will be posted without change to *http://www.regulations.gov*, including any personal information provided. For additional information on submitting comments, see the "Comments" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Robert J. DeLuca, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. G214, Silver Spring, MD 20993–0002, e-mail: *Robert.DeLuca@fda.hhs.gov*, 301–796–6630.

SUPPLEMENTARY INFORMATION:

I. Regulatory Authority

The Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Public Law 94–295), the Safe Medical Device Amendments (SMDA) (Public Law 101–629), and the Food and Drug Administration Modernization Act (FDAMA) (Public Law 105–115) established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Most generic types of devices that were on the market before the date of the 1976 amendments (May 28, 1976) (generally referred to as preamendments devices) have been classified by FDA under the procedures set forth in section 513(c) and (d) of the act through the issuance of classification regulations into one of these three regulatory classes. Devices introduced into interstate commerce for the first time on or after May 28, 1976 (generally referred to as postamendments devices) are classified automatically by statute (section 513(f) of the act) into class III without any FDA rulemaking process. These devices remain in class III and require premarket approval, unless FDA initiates the following procedures: (1) FDA reclassifies the device into class I or II; (2) FDA issues an order classifying the device into class I or II in accordance with section 513(f)(2) of the

act; or (3) FDA issues an order finding the device to be substantially equivalent, under section 513(i) of the act, to a predicate device that is already legally marketed. The agency determines whether new devices are substantially equivalent to predicate devices through review of premarket notifications under section 510(k) of the act (21 U.S.C. 360(k)). Section 510(k) of the act and the implementing regulations, part 807 (21 CFR part 807), require persons who intend to market a new device to submit a premarket notification report (510(k)) containing information that allows FDA to determine whether the new device is "substantially equivalent" within the meaning of section 513(i) of the act to a legally marketed device that does not require premarket approval.

Section 510(m)(2) of the act provides that FDA may exempt a device from the premarket notification requirement on its own initiative or upon petition of an interested person, if FDA determines that a 510(k) is not necessary to provide reasonable assurance of the safety and effectiveness of the device. This section requires FDA to publish in the **Federal Register** a notice of intent to exempt a device, or of the petition, and to provide a 30-day comment period. Within 120 days of publication of this document, FDA must publish in the **Federal Register** its final determination regarding the exemption of the device that was the subject of the notice.

II. The Proposed Rule

A. Establishment of Special Controls

Under section 513(a)(1)(B) of the act, as amended by SMDA, class II devices are defined as devices for which general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but for which there is sufficient information to establish special controls to provide such assurance. Special controls may include the promulgation of performance standards, postmarket surveillance, patient registries, development and dissemination of guidelines, recommendations, and other appropriate actions the agency deems necessary to provide such assurance (21 CFR 860.3(c)(2)).

Consistent with this authority, FDA is proposing to amend the neurological devices regulations to establish special controls for electroconductive media (§ 882.1275 (21 CFR 882.1275)) and the cutaneous electrode (§ 882.1320 (21 CFR 882.1320)). FDA is also proposing to amend the neurological devices regulation at § 882.5890 (21 CFR 882.5890) to add paragraphs for the transcutaneous electrical nerve stimulator for pain relief (§ 882.5890(a)), the transcutaneous electrical nerve stimulator for pain relief intended for over the counter use (§ 882.5890(b)), the transcutaneous electrical nerve stimulator with limited output for pain relief (§ 882.5890(c)), the percutaneous electrical nerve stimulator for pain relief (§ 882.5890(d)), the transcutaneous electrical stimulator for aesthetic purposes (§ 882.5890(e)), and the transcutaneous electrical stimulator with limited output for aesthetic purposes (§ 882.5890(f)).

Similarly, FDA is proposing to amend the physical medicine devices regulation at § 890.5850 (21 CFR 890.5850) to add paragraphs for the powered muscle stimulator for rehabilitation (§ 890.5850(a)), the powered muscle stimulator with limited output for rehabilitation (§ 890.5850(b)), the powered muscle stimulator for muscle conditioning (§ 890.5850(c)), and the powered muscle stimulator with limited output for muscle conditioning (§ 890.5850(d)). FDA believes that subdividing the classification regulations for each of these device types would provide clarity for persons referencing the classification regulation.

FDA is also proposing to establish special controls for each of these device types. Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice of availability of the following draft guidance documents that would serve as special controls:

(1) Draft Guidance for Industry and FDA Staff; Class II Special Controls Guidance Document: Electroconductive Media;

(2) Draft Guidance for Industry and FDA Staff; Class II Special Controls Guidance Document: Cutaneous Electrode;

(3) Draft Guidance for Industry and FDA Staff; Class II Special Controls Guidance Document: Transcutaneous Electrical Nerve Stimulator for Pain Relief;

(4) Draft Guidance for Industry and FDA Staff; Class II Special Controls Guidance Document: Transcutaneous Electrical Nerve Stimulator for Pain Relief Intended for Over the Counter Use;

(5) Draft Guidance for Industry and FDA Staff; Class II Special Controls Guidance Document: Transcutaneous Electrical Nerve Stimulator with Limited Output for Pain Relief;

(6) Draft Guidance for Industry and FDA Staff; Class II Special Controls Guidance Document: Transcutaneous Electrical Stimulator for Aesthetic Purposes;

(7) Draft Guidance for Industry and FDA Staff; Class II Special Controls Guidance Document: Transcutaneous Electrical Stimulator with Limited Output for Aesthetic Purposes;

(8) Draft Guidance for Industry and FDA Staff; Class II Special Controls Guidance Document: Powered Muscle Stimulator for Rehabilitation;

(9) Draft Guidance for Industry and FDA Staff; Class II Special Controls Guidance Document: Powered Muscle Stimulator with Limited Output for Rehabilitation;

(10) Draft Guidance for Industry and FDA Staff; Class II Special Controls Guidance Document: Powered Muscle Stimulator for Muscle Conditioning; and

(11) Draft Guidance for Industry and FDA Staff; Class II Special Controls Guidance Document: Powered Muscle Stimulator with Limited Output for Muscle Conditioning.

The agency believes that the applicable special controls and general controls will provide reasonable assurance of the safety and effectiveness for each of the foregoing device types.

B. Exemption From Premarket Notification Requirements

Together with the establishment of special controls, FDA, on its own initiative, is also proposing to exempt some of these device types from premarket notification, subject to limitations. FDA may consider a number of factors in determining whether premarket notification is necessary to provide reasonable assurance of the safety and effectiveness of a class II device. These factors are discussed in the guidance the agency issued on February 19, 1998, entitled "Procedures for Class II Device Exemptions from Premarket Notification, Guidance for Industry and CDRH Staff." The guidance can be obtained electronically at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/ucm080198.htm*.

FDA believes that the following class II devices are appropriate for exemption from premarket notification, subject to the limitations of exemptions identified in §§ 882.9 and 890.9 (21 CFR 882.9 and 890.9), because the applicable special controls and general controls provide reasonable assurance of safety and effectiveness if device manufacturers follow the special controls guidances' recommendations and, for the transcutaneous electrical nerve stimulator with limited output for pain relief and the powered muscle stimulator with limited output for rehabilitation, if the devices are also restricted to sale, distribution, and use

in accordance with the prescription device requirements in § 801.109 (21 CFR 801.109):

- Electroconductive media (§ 882.1275);
- Cutaneous electrode (§ 882.1320);
- Transcutaneous electrical nerve stimulator with limited output for pain relief (§ 882.5890(c));
- Transcutaneous electrical stimulator with limited output for aesthetic purposes (§ 882.5890(e));
- Powered muscle stimulator with limited output for rehabilitation (§ 890.5850(b)); and
- Powered muscle stimulator with limited output for muscle conditioning (§ 890.5850(d)).

FDA is inviting comment on these proposed exemptions.

FDA advises that exemption from the requirement of premarket notification does not mean that these devices would be exempt from any other statutory or regulatory requirements, unless such exemption is explicitly provided by order or regulation. Indeed, FDA's proposal to exempt these device types from the requirement of premarket notification is based, in part, on the assurance of safety and effectiveness that other regulatory controls, such as current good manufacturing practice requirements (21 CFR part 820), provide.

III. Proposed Effective Date

FDA proposes that any final rule that may issue based on this proposal become effective 30 days after its date of publication in the **Federal Register**. If finalized, following the effective date of a final rule, any firm intending to market the applicable device types will need to address the issues covered in the respective special controls guidances. Unless otherwise exempt, the firm must show in its 510(k) that its device meets the requirements of § 807.87 and complies with the special controls.

As discussed previously in this document, if the rule is finalized, for six of the device types, manufacturers who follow the specific measures recommended to address the issues identified in the special controls guidances would be able to market their devices without being subject to the premarket notification requirements of section 510(k) of the act, subject to the limitations of §§ 882.9 and 890.9. Manufacturers of two of these six device types, transcutaneous electrical nerve stimulator with limited output for pain relief and powered muscle stimulator with limited output for rehabilitation, would also be restricted to sale, distribution, and use in accordance with the prescription device requirements in § 801.109 in order to be able to market their devices without being subject to premarket notification. Manufacturers who choose alternative means to address one or more of the issues identified in the applicable special controls guidance would remain subject to the premarket notification requirements of section 510(k) and would need to obtain marketing clearance for their device.

IV. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is not a significant regulatory action as defined by the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Classification of the devices discussed in this proposed rule into class II with special controls will simplify the process of bringing these devices to market. In addition, exemption from the premarket notification requirements for six of these devices would reduce the costs associated with bringing the devices to market. Thus, the agency proposes to certify that the final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing "any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year." The current threshold after adjustment for inflation is $133 million, using the most current (2008) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this proposed rule to result in any 1-year expenditure that would meet or exceed this amount.

The special controls required by this proposed rule for the 11 listed devices do not impose significant costs because they do not add new regulatory requirements. Instead, the special controls clarify FDA expectations and should shorten the time to market for some new or modified devices. Manufacturers of devices exempt from the premarket notification requirements would no longer have to wait until they receive a substantial equivalence determination from FDA before marketing the device. For manufacturers of devices that still require premarket notification, the special controls clarify FDA's expectations making compliance with the general and special controls more straightforward and should shorten the time to prepare a submission and for FDA review. Moreover, manufacturers of devices that become exempt from the premarket notification requirement would also benefit from the elimination of application preparation time and of paper, copying, and mailing costs by not having to prepare and submit 510(k)s. These application savings are negligible, however, relative to the total cost of bringing a medical device to market.

The sector of the device industry covered by the proposed rule is part of the Electromedical and Electrotherapeutic Apparatus Manufacturing sector, NAICS code 334510. The Small Business Administration classifies firms in this sector as small if they have fewer than 500 employees. About 90 percent of firms in this sector are small, employing about 25 percent of the sector's work force. Table 1 lists the number of manufacturers for the different types of devices, an estimate of the number of 510(k)s submitted each year (based on historical ranges), and our best estimate of the percentage of new devices that would be exempt from the premarket notification requirement for each type of device.

TABLE 1.—NUMBER OF MANUFACTURERS AND 510(K)S PER YEAR

Device Type	No. of Manufacturers[1]	No. of 510(k)s per Year[2]	Percentage Exempt
Electroconductive media	21	0-5	>90%
Cutaneous electrode	76	5-15	>90%
Transcutaneous electrical nerve stimulator for pain relief	110	15-25	60%
Transcutaneous electrical stimulator for aesthetic purposes	4	0-5	60%
Powered muscle stimulator for rehabilitation	81	10-20	50%
Powered muscle stimulator for muscle conditioning	12	0-8	50%

[1] Manufacturers make multiple device types.
[2] Data from 2000–2009.

The potential impact on small firms would be to reduce the cost of entry by shortening the time to market for those firms who plan to market these devices. It will impose no additional regulatory burden on small entities, and it may permit some small potential competitors to enter the marketplace by lowering their costs. Therefore the agency proposes to certify that the final rule will not have a significant economic impact on a substantial number of small entities.

VI. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. Section 4(a) of the Executive order requires agencies to "construe * * * a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State law conflicts with the exercise of Federal authority under the Federal statute." Federal law includes an express preemption provision that preempts certain state requirements "different from or in addition to" certain federal requirements applicable to devices (21 U.S.C. 360k; See *Medtronic* v. *Lohr*, 518 U.S. 470 (1996); *Riegel* v. *Medtronic*, 128 S. Ct. 999 (2008)). If this proposed rule is made final, the special controls established by the final rule would create "requirements" for specific medical devices under 21 U.S.C. 360k, even though product sponsors have some flexibility in how they meet those requirements (*Papike* v. *Tambrands, Inc.*, 107 F.3d 737, 740–742 (9th Cir. 1997)).

VII. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no new collection of information; however, consistent with the regulatory impact analysis in section V of this document, we anticipate that the exemption of 6 devices types from the premarket notification requirements of the act will result in a reduction in burden to existing collections of information currently approved under OMB control number 0910–0120.

Accordingly, with respect to the collection of information discussed below, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

This proposed rule designates guidance documents and other special controls for certain neurological and physical medicine devices and exempts certain of these devices from premarket notification requirements. FDA expects an overall reduction in burden hours for manufacturers of the six device types that FDA is proposing to exempt from the premarket notification reporting requirements. The current burden associated with submitting a premarket notification submission under part 807, subpart E is 79 hours per submission at a cost of $100 per hour resulting in a total cost of $7,900 per submission. As identified elsewhere in this document, the six device types being exempted from the premarket notification requirements of the act will no longer be subject to this burden. Based on FDA's estimates of annual premarket notifications submitted for the exempted device types (table 2 of this document), FDA estimates a total burden reduction of 34.25 annual premarket notification submissions (90% of 2.5)+(90% of 10)+(60% of 20)+(60% of 2.5)+(50% of 15)+(50% of 4)), 2,706 hours (34.25 submissions x 79 hours), and $270,600 (2,706 hours x $100 hourly rate).

TABLE 2.—AVERAGE NUMBER OF MANUFACTURERS AND PREMARKET NOTIFICATIONS (510(K)S) PER YEAR FOR PROPOSED EXEMPT DEVICE TYPES

Device Type	No. of Manufacturers[1]	No. of 510(k)s per Year[2]	Percentage Exempt
Electroconductive media	21	2.5	> 90%
Cutaneous electrode	76	10	> 90%
Transcutaneous electrical nerve stimulator for pain relief	110	20	60%
Transcutaneous electrical stimulator for aesthetic purposes	4	2.5	60%

TABLE 2.—AVERAGE NUMBER OF MANUFACTURERS AND PREMARKET NOTIFICATIONS (510(K)S) PER YEAR FOR PROPOSED EXEMPT DEVICE TYPES—Continued

Device Type	No. of Manufacturers[1]	No. of 510(k)s per Year[2]	Percentage Exempt
Powered muscle stimulator for rehabilitation	81	15	50%
Powered muscle stimulator for muscle conditioning	12	4	50%

[1]Manufacturers make multiple device types.
[2]Data averaged from 2000–2009.

The guidance documents designated as special controls for each of these 11 device types do not impose significant costs because they do not add new regulatory requirements. Instead, the special controls clarify FDA expectations and should shorten the time to market for some new or modified devices. For manufacturers of devices that still require premarket notification, the special controls clarify FDA's expectations making compliance with the general and special controls more straightforward and should shorten the time to prepare a submission and for FDA review. While this clarification in expectations may reduce the actual burden associated with submitting a premarket notification submission for these specific device types, this reduction is negligible when accounting for the size of entire premarket notification program. Accordingly, FDA will not be adjusting the per submission burden estimate of 79 hours for premarket notification submissions accounted for under OMB control number 0910–0120.

VIII. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one 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.

List of Subjects

21 CFR Part 882

Medical devices, Neurological devices.

21 CFR Part 890

Medical devices, Physical medicine devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 882 and 890 be amended as follows:

PART 882—NEUROLOGICAL DEVICES

1. The authority citation for 21 CFR part 882 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 882.1275 is amended by revising paragraph (b) to read as follows:

§ 882.1275 Electroconductive media.

* * * * *

(b) *Classification*. Class II (special controls). The special control for this device is the FDA guidance document entitled "Class II Special Controls Guidance Document: Electroconductive Media." See § 882.1(e) for the availability of this guidance document. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter, subject to the limitations in § 882.9, when it follows the recommendations of the special controls guidance.

3. Section 882.1320 is amended by revising paragraph (b) to read as follows:

§ 882.1320 Cutaneous electrode.

* * * * *

(b) *Classification*. Class II (special controls). The special control for this device is the FDA guidance document entitled "Class II Special Controls Guidance Document: Cutaneous Electrode." See § 882.1(e) for the availability of this guidance document. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter, subject to the limitations in § 882.9, when it follows the recommendations of the special controls guidance.

4. Section 882.5890 is revised to read as follows:

§ 882.5890 Transcutaneous electrical nerve stimulator for pain relief.

(a) *Transcutaneous electrical nerve stimulator for pain relief*—(1) *Identification*. A transcutaneous electrical nerve stimulator for pain relief is an electrically powered device used to apply an electrical current to electrodes on a patient's skin to relieve pain. This does not include the device types classified in paragraphs (b) through (f) of this section.

(2) *Classification*. Class II (special controls). The special controls for this device are:

(i) The FDA guidance document entitled "Class II Special Controls Guidance Document: Transcutaneous Electrical Nerve Stimulator for Pain Relief." See § 882.1(e) for the availability of this guidance document; and

(ii) Sale, distribution, and use are restricted to prescription use in accordance with the prescription device requirements in § 801.109 of this chapter.

(b) *Transcutaneous electrical nerve stimulator for pain relief intended for over-the-counter use*—(1) *Identification*. A transcutaneous electrical nerve stimulator for pain relief intended for over-the-counter use is an electrically powered device intended for over-the-counter use and used to apply an electrical current to electrodes on a patient's skin to relieve pain. This does not include the device types classified in paragraphs (a) and (c) through (f) of this section.

(2) *Classification*. Class II (special controls). The special control for this device is the FDA guidance document entitled "Class II Special Controls Guidance Document: Transcutaneous Electrical Nerve Stimulator for Pain Relief Intended for Over the Counter Use." See § 882.1(e) for the availability of this guidance document.

(c) *Transcutaneous electrical nerve stimulator with limited output for pain relief*—(1) *Identification*. A transcutaneous electrical nerve stimulator with limited output for pain relief is an electrically powered device that is used to apply an electrical current to electrodes on a patient's skin to relieve pain. This does not include the device types classified in paragraphs (a) through (b) and (d) through (f) of this section. The device utilizes a stimulus generator that delivers, into a resistive load, which represents the worse case of either 500 ohms or the typical load expected during normal conditions of use, the following:

(i) A maximum charge per phase that does not exceed Q, where Q = 20 +

(28)(t) microcoulombs (and where t is the phase duration expressed in milliseconds and measured at 50 percent of the phase amplitude);

(ii) A maximum average current that does not exceed 10 milliamperes (average absolute value);

(iii) A maximum primary (depolarizing) phase duration that does not exceed 500 microseconds;

(iv) An average direct current (dc) that does not exceed 100 microamperes when no pulses are being applied, or if the device fails;

(v) A maximum current density that does not exceed 2 milliamperes root mean square (rms) per square centimeter of electrode conductive surface area; and

(vi) A maximum average power density that does not exceed 0.25 watts per square centimeter of electrode conductive surface area.

(2) *Classification.* Class II (special controls). The special controls for this device are:

(i) The FDA guidance document entitled "Class II Special Controls Guidance Document: Transcutaneous Electrical Nerve Stimulator with Limited Output for Pain Relief." See § 882.1(e) for the availability of this guidance document; and

(ii) Sale, distribution, and use are restricted to prescription use in accordance with the prescription device requirements in § 801.109 of this chapter. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter, subject to the limitations of exemptions in § 882.9, when it follows the recommendations of the special controls guidance and its sale, distribution, and use are restricted to prescription use in accordance with the prescription device requirements in § 801.109 of this chapter.

(d) *Percutaneous electrical nerve stimulator for pain relief*—(1) *Identification.* A percutaneous electrical nerve stimulator for pain relief is an electrically powered device used to apply an electrical current to electrodes that pass through a patient's skin to relieve pain. This does not include the device types classified in paragraphs (a) through (c) and (e) through (f) of this section.

(2) *Classification.* Class II (special controls). The special control for this device is restriction of sale, distribution, and use to prescription use in accordance with the prescription device requirements in § 801.109 of this chapter.

(e) *Transcutaneous electrical stimulator for aesthetic purposes*—(1) *Identification.* A transcutaneous electrical stimulator for aesthetic purposes is an electrically powered device applied externally to the body surface using cutaneous electrodes to deliver electrical current into the body, and is intended to achieve aesthetic effects through physical change to the structure of the body. This does not include the device types classified in paragraphs (a) through (d) and (f) of this section.

(2) *Classification.* Class II (special controls). The special control for this device is the FDA guidance document entitled "Class II Special Controls Guidance Document: Transcutaneous Electrical Stimulator for Aesthetic Purposes." See § 882.1(e) for the availability of this guidance document.

(f) *Transcutaneous electrical stimulator with limited output for aesthetic purposes*—(1) *Identification.* A transcutaneous electrical stimulator with limited output for aesthetic purposes is an electrically powered device that is applied externally to the body surface using cutaneous electrodes to deliver electrical current into the body, and is intended to achieve aesthetic effects through physical change to the structure of the body. This does not include the device types classified in paragraphs (a) through (e) of this section. The device utilizes a stimulus generator that delivers, into a resistive load, which represents the worse case of either 500 ohms or the typical load expected during normal conditions of use, the following:

(i) A maximum charge per phase that does not exceed Q, where Q = 20 + (28)(t) microcoulombs (and where t is the phase duration expressed in milliseconds and measured at 50 percent of the phase amplitude);

(ii) A maximum average current that does not exceed 10 milliamperes (average absolute value);

(iii) A maximum primary (depolarizing) phase duration that does not exceed 500 microseconds;

(iv) An average dc that does not exceed 100 microamperes when no pulses are being applied, or if the device fails;

(v) A maximum current density that does not exceed 2 milliamperes rms per square centimeter of electrode conductive surface area; and

(vi) A maximum average power density that does not exceed 0.25 watts per square centimeter of electrode conductive surface area.

(2) *Classification.* Class II (special controls). The special control for this device is the FDA guidance document entitled "Class II Special Controls Guidance Document: Transcutaneous Electrical Stimulator with Limited Output for Aesthetic Purposes." See § 882.1(e) for the availability of this guidance document. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter, subject to the limitations of exemptions in § 882.9, when it follows the recommendations of the special controls guidance.

PART 890—PHYSICAL MEDICINE DEVICES

5. The authority citation for 21 CFR part 890 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

6. Section 890.5850 is revised to read as follows:

§ 890.5850 Powered muscle stimulator.

(a) *Powered muscle stimulator for rehabilitation*—(1) *Identification.* A powered muscle stimulator for rehabilitation is an electrically powered device intended for medical purposes that repeatedly contracts muscles by passing pulsed electrical current through cutaneous electrodes contacting the affected body area. This does not include the powered muscle stimulators classified in paragraphs (b) through (d) of this section.

(2) *Classification.* Class II (special controls). The special controls for this device are:

(i) The FDA guidance document entitled "Class II Special Controls Guidance Document: Powered Muscle Stimulator for Rehabilitation." See § 890.1(e) for the availability of this guidance document; and

(ii) Sale, distribution, and use are restricted to prescription use in accordance with the prescription device requirements in § 801.109 of this chapter.

(b) *Powered muscle stimulator with limited output for rehabilitation*—(1) *Identification.* A powered muscle stimulator with limited output for rehabilitation is an electrically powered device that is intended for medical purposes, and repeatedly contracts muscles by passing pulsed electrical current through cutaneous electrodes contacting the affected body area. This does not include the powered muscle stimulators classified in paragraphs (a), (c), and (d) of this section. The device utilizes a stimulus generator that delivers, into a resistive load, which represents the worse case of either 500 ohms or the typical load expected during normal conditions of use, the following:

(i) A maximum charge per phase that does not exceed Q, where Q = 20 + (28)(t) microcoulombs (and where t is

the phase duration expressed in milliseconds and measured at 50 percent of the phase amplitude);

(ii) A maximum average current that does not exceed 10 milliamperes (average absolute value);

(iii) A maximum primary (depolarizing) phase duration that does not exceed 500 microseconds;

(iv) An average direct current (dc) that does not exceed 100 microamperes when no pulses are being applied, or if the device fails;

(v) A maximum current density that does not exceed 2 milliamperes root mean square (rms) per square centimeter of electrode conductive surface area; and

(vi) A maximum average power density that does not exceed 0.25 watts per square centimeter of electrode conductive surface area.

(2) *Classification*. Class II (special controls). The special controls for this device are:

(i) The FDA guidance document entitled "Class II Special Controls Guidance Document: Powered Muscle Stimulator with Limited Output for Rehabilitation." See § 890.1(e) for the availability of this guidance document; and

(ii) Sale, distribution, and use are restricted to prescription use in accordance with the prescription device requirements in § 801.109 of this chapter. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter, subject to the limitations of exemptions in § 890.9, when it follows the recommendations of the special controls guidance and its sale, distribution, and use are restricted to prescription use in accordance with the prescription device requirements in § 801.109 of this chapter.

(c) *Powered muscle stimulator for muscle conditioning*—(1) *Identification*. A powered muscle stimulator for muscle conditioning is an electrically powered device that repeatedly contracts muscles by passing pulsed electrical current through cutaneous electrodes and into the body, thereby temporarily affecting the stimulated muscles' contractile properties, force output, and/or fatigue resistance. This does not include the powered muscle stimulators classified in paragraphs (a), (b), and (d) of this section.

(2) *Classification*. Class II (special controls.) The special control for this device is the FDA guidance document entitled "Class II Special Controls Guidance Document: Powered Muscle Stimulator for Muscle Conditioning." See § 890.1(e) for the availability of this guidance document.

(d) *Powered muscle stimulator with limited output for muscle conditioning*—(1) *Identification*. A powered muscle stimulator with limited output for muscle conditioning is an electrically powered device that repeatedly contracts muscles by passing pulsed electrical current through cutaneous electrodes and into the body, thereby temporarily affecting the stimulated muscles' contractile properties, force output, and/or fatigue resistance. This does not include the powered muscle stimulators classified in paragraphs (a) through (c) of this section. The device utilizes a stimulus generator that delivers, into a resistive load, which represents the worse case of either 500 ohms or the typical load expected during normal conditions of use, the following:

(i) A maximum charge per phase that does not exceed Q, where Q = 20 + (28)(t) microcoulombs (and where t is the phase duration expressed in milliseconds and measured at 50 percent of the phase amplitude);

(ii) A maximum average current that does not exceed 10 milliamperes (average absolute value);

(iii) A maximum primary (depolarizing) phase duration that does not exceed 500 microseconds;

(iv) An average dc that does not exceed 100 microamperes when no pulses are being applied, or if the device fails;

(v) A maximum current density that does not exceed 2 milliamperes rms per square centimeter of electrode conductive surface area; and

(vi) A maximum average power density that does not exceed 0.25 watts per square centimeter of electrode conductive surface area.

(2) *Classification*. Class II (special controls). The special control for this device is the FDA guidance document entitled "Class II Special Controls Guidance Document: Powered Muscle Stimulator with Limited Output for Muscle Conditioning." See § 890.1(e) for the availability of this guidance document. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter, subject to the limitations of exemptions in § 890.9, when it follows the recommendations of the special controls guidance.

Dated: March 24, 2010.

Jeffrey Shuren,

Director, Center for Devices and Radiological Health.

[FR Doc. 2010–7637 Filed 4–2–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2010–0180]

RIN 1625–AA08

Special Local Regulation for Marine Event; Temporary Change of Dates for Recurring Marine Event in Fifth Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to temporarily change the enforcement period of special local regulations for recurring marine events in Fifth Coast Guard District. The regulation applies to one recurring marine event that establishes two spectator vessel anchorage areas and restricts vessel traffic. Special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of the Hampton River, Hampton, VA, and Sunset Creek, Hampton, VA during the event.

DATES: Comments and related material must be received by the Coast Guard on or before May 5, 2010.

ADDRESSES: You may submit comments identified by docket number USCG–2010–0180 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 LT Tiffany Duffy, Project Manager, Sector Hampton Roads, Waterways Management Division, Coast Guard; telephone 757–668–5580, e-mail

Tiffany.A.Duffy@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–2010–0180), 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 deliver, 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–2010–0180" 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–2010–0180 and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

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

Public Meeting

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

Background and Purpose

Marine events are frequently held on the navigable waters within the boundary of Fifth Coast Guard District. The water activities that typically comprise marine events include sailing regattas, powerboat races, swim races and holiday parades. For a description of the geographical area of the Coast Guard Sector Hampton Roads Captain of the Port Zone, please see 33 CFR 3.25–10.

This regulation proposes to temporarily change the enforcement period of special local regulations for recurring marine events within Fifth Coast Guard District. This proposed regulation applies to one marine event in 33 CFR 100.501, Table to § 100.501.

On July 9, 10, and 11, 2010, the City of Hampton and The Virginia Air and Space Museum will sponsor the "11th Hampton Blackbeard Festival," a historic festival on the waters of the Hampton River near Hampton, Virginia. The regulation at 33 CFR 100.501 is effective annually for this marine event. The event will consist of three replica pirate ships conducting a simulated wartime demonstration on July 10, 2010 from 11:30 a.m. to 2:30 p.m. and July 11, 2010 from 12:30 p.m. to 1:30 p.m. on the Hampton River in the vicinity of Mill Point Park, Hampton, Virginia. The event will also consist of a fireworks display on July 10, 2010 from 9 p.m to 10 p.m over the Hampton River in the vicinity of Mill Point Park, Hampton, Virginia. A fleet of spectator vessels is expected to gather near the event site to view the simulated wartime demonstration and fireworks display. To provide for the safety of participants, spectators, support and transiting vessels, the Coast Guard will temporarily restrict vessel traffic in the event area during the demonstration and fireworks display. The regulation at 33 CFR 100.501 would be enforced for the duration of the event. Under provisions of 33 CFR 100.501, from 11:30 a.m. to 2:30 p.m. and 9 p.m. to 10 p.m. on July 10, 2010, and from 12:30 p.m. to 1:30 p.m. on July 11, 2010, vessels may not enter the regulated area unless they receive permission from the Coast Guard Patrol Commander.

Discussion of Proposed Rule

The Coast Guard proposes to temporarily suspend the regulations at 33 CFR 100.501 by changing the date of enforcement in the table to § 100.501. The Coast Guard proposes to temporarily change the enforcement period of special local regulations for recurring marine events within Fifth Coast Guard District. This regulation applies to only one marine event listed as number 36 in the Table to § 100.501.

Hampton River, Hampton, VA

The Table to § 100.501, event No. 36 establishes the enforcement date for the "11th Hampton Blackbeard Festival". This regulation proposes to temporarily change the enforcement date from "May—last Friday, Saturday and Sunday or June—1st Friday, Saturday, and Sunday" to the second Friday, Saturday and Sunday in July, holding the event on July 9, 10, and 11, 2010. The temporary special local regulations will be enforced from 11:30 a.m. to 2:30 p.m. and 9 p.m. to 10 p.m. on July 10, 2010, and from 12:30 p.m. to 1:30 p.m. on July 11, 2010 and will restrict general navigation in the regulated area during the event. The City of Hampton and The Virginia Air and Space Museum which is the sponsor for this event intends to hold this event annually; however, they have requested to change the date of the

event for 2010 so that it is outside the scope of the existing enforcement period. Except for participants and vessels authorized by the Coast Guard Patrol Commander, no person or vessel will be allowed to enter or remain in the regulated area. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

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.

Although this proposed rule prevents traffic from transiting a portion of certain waterways during specified events, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via marine information broadcasts, local radio stations and area newspapers so mariners can adjust their plans accordingly. Additionally, this rulemaking does not change the permanent regulated area that was published in 33 CFR 100.501, Table to § 100.501. In some cases vessel traffic may be able to transit the regulated area when the Coast Guard Patrol Commander deems it is safe to do so.

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 would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in the areas where marine events are being held. This regulation will not have a significant impact on a substantial number of small entities because it will be enforced only during marine events that have been permitted by the Coast Guard Captain of the Port. The Captain of the Port will ensure that small entities are able to operate in the areas where events are occurring when it is safe to do so. In some cases, vessels will be able to safely transit around the regulated area at various times, and, with the permission of the Patrol Commander, vessels may transit through the regulated area. Before the enforcement period, the Coast Guard will issue maritime advisories so mariners can adjust their plans accordingly.

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 the Sector Hampton Roads Project Officer listed under **FOR FURTHER INFORMATION CONTACT** at the beginning of this rule. 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 an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect 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. This rule involves implementation of regulations within 33 CFR Part 100 that apply to organized marine events on the navigable waters of the United States that may have potential for negative impact on the safety or other interest of waterway users and shore side activities in the event area. The category of water activities includes but is not limited to sail boat regattas, boat parades, power boat racing, swimming events, crew racing, and sail board racing. Under figure 2–1, paragraph (34)(h), of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are not required for this rule. 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. In § 100.501, suspend from July 1, 2010 until July 31, 2010, line No. 36 in the Table to § 100.501.

3. In § 100.501, from July 1, 2010 until July 31, 2010, add line No. 61 in Table to § 100.501; to read as follows:

§ 100.501–T05–0180 Special Local Regulations; Recurring Marine Event in the Fifth Coast Guard District.

Table To § 100.501.—All coordinates listed in the Table to § 100.501 reference Datum NAD 1983.

COAST GUARD SECTOR HAMPTON ROADS—COTP ZONE

Number	Date	Event	Sponsor	Location
*	*	*	*	* * * *
61	July 9–July 11, 2010.	Blackbeard Festival.	City of Hampton and The Virginia Air and Space Center.	The waters of Sunset Creek and Hampton River shore to shore bounded to the north by the C & O Railroad Bridge and to the south by a line drawn from Hampton River Channel Light 16 (LL 5715), located at latitude 37°01′03.0″ N, longitude 76°20′26.0″ W, to the finger pier across the river at Fisherman's Wharf, located at latitude 37°01′01.5″ N, longitude 76°20′32.0″ W. Spectator Vessel Anchorage Areas—Area A: Located in the upper reaches of the Hampton River, bounded to the south by a line drawn from the western shore at latitude 37°01′48.0″ N, longitude 76°20′22.0″ W, across the river to the eastern shore at latitude 37°01′44.0″ N, longitude 76°20′13.0″ W, and to the north by the C & O Railroad Bridge. The anchorage area will be marked by orange buoys. Area B: Located on the eastern side of the channel, in the Hampton River, south of the Queen Street Bridge, near the Riverside Health Center. Bounded by the shoreline and a line drawn between the following points: Latitude 37°01′26.0″ N, longitude 76°20′24.0″ W, latitude 37°01′22.0″ N, longitude 76°20′26.0″ W, and latitude 37°01′22.0″ N, longitude 76°20′23.0″ W. The anchorage area will be marked by orange buoys.

Dated: March 23, 2010.

M.S. Ogle,

Captain, U.S. Coast Guard, Captain of the Port, Hampton Roads.

[FR Doc. 2010–7571 Filed 4–2–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2010–0113]

RIN 1625–AA08

Special Local Regulation for Marine Event; Temporary Change of Dates for Recurring Marine Event in the Fifth Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to temporarily change the enforcement period of special local regulations for recurring marine event in the Fifth Coast Guard District. These regulations apply to only one recurring marine event that conducts swimming competitions. Special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in a portion of the Chester River, near Chestertown, MD during the event.

DATES: Comments and related material must be received by the Coast Guard on or before May 5, 2010.

ADDRESSES: You may submit comments identified by docket number USCG–2010–0113 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 Mr. Ronald L. Houck, Project Manager, Coast Guard Sector Baltimore Waterways Management Division, at 410–576–2674 or e-mail at *Ronald.L.Houck@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–2010–0113), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand delivery, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG–2010–0113" 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–2010–0113 and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

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

Public Meeting

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

Background and Purpose

Marine events are frequently held on the navigable waters within the boundary of the Fifth Coast Guard District. The on water activities that typically comprise marine events include sailing regattas, power boat races, swim races and holiday parades. For a description of the geographical area of each Coast Guard Sector—Captain of the Port Zone, please see 33 CFR 3.25.

This regulation proposes to temporarily change the enforcement period of special local regulations for recurring marine events within the Fifth Coast Guard District. This proposed regulation applies to one marine event

previously published at 33 CFR 100.501, Table to § 100.501.

Annually, the District of Columbia Aquatics Club sponsors the "Maryland Swim for Life", on the waters of the Chester River near Chestertown, MD. The regulation at 33 CFR 100.501 is effective annually for the Maryland Swim for Life marine event. The event is an open water swimming competition held on the waters of the Chester River, near Chestertown, Maryland. Approximately 150 swimmers will start from Rolph's Wharf and swim up-river 2.5 miles then swim down-river returning back to Rolph's Wharf. A large fleet of support vessels accompany the swimmers. Therefore, to ensure the safety of participants and support vessels, 33 CFR 100.501 would be enforced for the duration of the event. Under provisions of 33 CFR 100.501, from 5:30 a.m. to 2:30 p.m. on July 10, 2010, vessels may not enter the regulated area unless they receive permission from the Coast Guard Patrol Commander. Vessel traffic may be allowed to transit the regulated area only when the Patrol Commander determines it is safe to do so.

Discussion of Proposed Rule

The Coast Guard proposes to temporarily amend the regulations at 33 CFR 100.501 by changing the date of enforcement for an event in the table to § 100.501. To do this, the Coast Guard proposes to temporarily suspend even number 21 and add a temporary event number 60 with the same event name, sponsor and location, but a different date. The event being changed is the annual "Maryland Swim for Life," described below.

Chester River, Chestertown, MD

The Table to § 100.501, event No. 21 establishes the enforcement date for the Maryland Swim for Life. This regulation proposes to temporarily change the enforcement date from "June—3rd Saturday or July—3rd Saturday" to the second Saturday in July, holding this year's marine event on July 10, 2010. The District of Columbia Aquatics Club, which is the sponsor for this event, intends to hold this event annually; however, they have changed the date of the event for 2010 so that it is outside the scope of the existing enforcement period. Due to the need for vessel control while swimmers are in the water along the Chester River, vessel traffic would be temporarily restricted to provide for the safety of participants, spectators and transiting vessels.

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.

Although this proposed rule prevents traffic from transiting a portion of certain waterways during specified events, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via marine information broadcasts, so mariners can adjust their plans accordingly. Additionally, this rulemaking does not change the permanent regulated areas that have been published in 33 CFR 100.501, Table to § 100.501. In some cases vessel traffic may be able to transit the regulated area when the Coast Guard Patrol Commander deems it is safe to do so.

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 would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in the area where the marine event is being held. This regulation will not have a significant impact on a substantial number of small entities because it will be enforced only during marine events that have been permitted by the Coast Guard Captain of the Port. The Captain of the Port will ensure that small entities are able to operate in the areas where events are occurring when it is safe to do so. In some cases, vessels will be able to safely transit around the regulated area at various times, and, with the permission of the Patrol Commander, vessels may transit through the regulated area. Before the enforcement period, the Coast Guard will issue maritime advisories so mariners can adjust their plans accordingly.

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 the individual listed under **FOR FURTHER INFORMATION CONTACT** at the beginning of this rule. 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 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 effect 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. This rule involves implementation of regulations within 33 CFR part 100 that apply to organized marine events on the navigable waters of the United States that may have potential for negative impact on the safety or other interest of waterway users and shore side activities in the event area. The category of water activities includes but is not limited to sail boat regattas, boat parades, power boat racing, swimming events, crew racing, and sail board racing. Under figure 2–1, paragraph (34)(h), of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are not required for this rule. 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. In § 100.501, suspend line No. 21 in the Table to § 100.501 from July 1, 2010 until September 1, 2010.

3. In § 100.501, from July 1, 2010 to July 20, 2010, add line No. 60 in Table to § 100.501; to read as follows:

§ 100.501–T05–0113 Special Local Regulations; Recurring Marine Event in the Fifth Coast Guard District.

* * * * *

Table to § 100.501—All coordinates listed in the Table to § 100.501 reference Datum NAD 1983.

COAST GUARD SECTOR BALTIMORE—COTP ZONE

Number	Date	Event	Sponsor	Location
*	*	*	*	* * *
60	July 10, 2010	Maryland Swim for Life.	District of Columbia Aquatics Club.	The waters of the Chester River from shoreline to shoreline, bounded on the south by a line drawn at latitude 39°10′16″ N, near the Chester River Channel Buoy 35 (LLN–26795) and bounded on the north at latitude 39°12′30″ N by the Maryland S.R. 213 Highway Bridge.

* * * * *

Dated: February 26, 2010.

Mark P. O'Malley,

Captain, U.S. Coast Guard, Captain of the Port Baltimore, MD.

[FR Doc. 2010–7573 Filed 4–2–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0174]

RIN 1625–AA00

Safety Zone; Red Bull Air Race, Detroit River, Detroit, MI

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes establishing a temporary safety zone on the Detroit River, Detroit, Michigan. This zone is intended to restrict vessels from portions of the Detroit River during the Red Bull Air Race. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with air races.

DATES: Comments and related material must be received by the Coast Guard on or before May 5, 2010.

ADDRESSES: You may submit comments identified by docket number USCG–2010–0174 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 CDR Joseph Snowden, Prevention Department, Sector Detroit, Coast Guard; telephone (313) 568–9580, e-mail *Joseph.H.Snowden@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–2010–0174), 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. A comment submitted online via *http://www.regulations.gov* will be considered received by the Coast Guard when the comment is successfully transmitted; a comment submitted via fax, hand delivery, or mail, will be considered as having been received by the Coast Guard when the comment 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–2010–0174" 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 we 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–2010–0174" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

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

Public Meeting

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

Background and Purpose

This temporary safety zone is necessary to ensure the safety of vessels and the public from hazards associated with an air race. The Captain of the Port Detroit has determined air races in close proximity to watercraft and infrastructure pose a significant risk to public safety and property. The likely combination of large numbers of recreational vessels, airplanes traveling at high speeds and performing aerial acrobatics, and large numbers of spectators in close proximity on the water could easily result in serious injuries or fatalities. Establishing a safety zone around the location of the race's course will help ensure the safety of persons and property at these events and help minimize the associated risks.

Discussion of Proposed Rule

This proposed rule is intended to ensure safety of the public and vessels

during the setup, course familiarization, time trials and race in conjunction with the Red Bull Air Race. The safety zone will be in effect from 9 a.m. June 3, 2010 through 6:30 p.m. June 6, 2010, to accommodate for the air race and its associated set-up and removal. During that period, the safety zone will be enforced daily from 9 a.m. to 6:30 p.m., June 3rd through 6th, 2010. Specifically, on June 5th and 6th, 2010, the river closure will be enforced during any air race activities. Vessels seeking to transit the zone should contact the Captain of the Port's on-scene representative. The on-scene representative may permit vessels to transit the area when no air race activity is occurring. On June 5, 2010, the river closure will total no more than 5 hours between the hours of 9 a.m. to 6:30 p.m. On June 6, 2010, the river closure will total no more than 6 hours between the hours of 9 a.m. to 6:30 p.m. The Coast Guard expects to have additional information from the event organizer before publication of the final rule and may adjust the hours of enforcement for each day. The Coast Guard also expects the temporary final rule will be effective less than 30 days after publication in the **Federal Register** because delaying the effective date would be contrary to the public interest due to the need to protect the public from the dangers associated with air racing.

The temporary safety zone will encompass all navigable waters of the United States on the Detroit River, Detroit, MI, bound by a line extending from a point on land southwest of Joe Louis Arena at position 42°19.4′ N; 083°3.3′ W, northeast along the Detroit shoreline to a point on land at position 42°20.0′ N; 083°1.2′ W, southeast to the international border with Canada at position 42°19.8′ N; 083°1.0′ W, southwest along the international border to position 42°19.2′N; 083°3.3′ W, and northwest to the point of origin at position 42°19.4′ N; 083°3.3′ W. (DATUM: NAD 83).

The Captain of the Port will cause notice of enforcement of the safety zone established by this section to be made by all appropriate means to the affected segments of the public. Such means of notification will include, but is not limited to, Broadcast Notice to Mariners and Local Notice to Mariners. Likewise, the Windsor Port Authority intends to restrict vessel movement on the Canadian side of the Detroit River. The exclusionary area on the Canadian side will be aligned with the east and west borders of the U.S. safety zone and will extend to the shoreline along Windsor, ON. The Captain of the Port will issue a broadcast Notice to Mariners notifying the public when enforcement of the safety zone is terminated.

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.

Although this proposed rule restricts access to the safety zone, the effect of this rule will not be significant because: (i) The safety zone will be in effect for a limited duration; (ii) zone is an area where the Coast Guard expects minimal adverse impact to mariners from the zone's activation; and (iii) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

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 might be small entities: The owners or operators of vessels intending to transit or anchor in the portion of the Detroit River discussed above between 9 a.m. and 6 p.m. on June 3, through June 6, 2010.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: this safety zone will be subject to enforcement for a short duration of approximately six hours each day of its effective period. Additionally, small entities such as passenger vessels have been involved in the planning stages of this event and have had opportunities to make alternate arrangements with regards to mooring positions and business operations during the hours this safety zone will be in effect. Furthermore, prior to the event local sailing and yacht clubs will be provided with information by Coast Guard Station Belle Isle on what to expect during the event. Station Bell Isle will do this in order to minimize interruptions in the normal business practices of local sailing and yacht clubs. In the event that this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of the Port Detroit to transit through the safety zone. The Coast Guard will give notice to the public via a Broadcast Notice to Mariners that the regulation is in effect. Additionally, the COTP will suspend enforcement of the safety zone if the event for which the zone is established ends earlier than the expected time.

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 CDR Joseph Snowden, Prevention Department, Sector Detroit, Coast Guard; telephone (313) 568–9580, e-mail *Joseph.H.Snowden@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 (adjusted for inflation) or more 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 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. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

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 involves the establishment of a temporary safety zone. Based on our preliminary determination, there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 figure 2–1, paragraph (34)(g) of the Instruction and neither an environmental assessment nor a environmental impact statement is 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 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(g), 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.T09–0174 to read as follows:

§ 165.T09–0174 Safety Zone; Red Bull Air Race, Detroit River, Detroit, MI.

(a) *Location.* The following area is a temporary safety zone: all U.S. waters of the Detroit River, Detroit, MI, bound by a line extending from a point on land southwest of Joe Louis Arena at position 42°19.4′ N; 083°3.3′ W, northeast along the Detroit shoreline to a point on land at position 42°20.0′ N; 083°1.2′ W, southeast to the international border with Canada at position 42°19.8′ N 083°1.0′ W, southwest along the international border to position 42°19.2′ N; 083°3.3′ W, and northwest to the point of origin at position 42°19.4′ N; 083°3.3′ W. (DATUM: NAD 83).

(b) *Effective Period.* This regulation is effective from 9 a.m. June 3, 2010 through 6:30 p.m. June 6, 2010. The safety zone will be enforced daily from 9 a.m. to 6:30 p.m. on June 3, 2010 through June 6, 2010.

(c) *Regulations.* (1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Detroit, or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Detroit or his designated on-scene representative.

(3) The "on-scene representative" of the Captain of the Port is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port or his

designated on scene representative may be contacted via VHF Channel 16.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Detroit or his on-scene representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port or his on-scene representative.

Dated: March 19, 2010.

F.M. Midgette,

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

[FR Doc. 2010–7689 Filed 4–1–10; 11:15 am]

BILLING CODE 9110–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 36

[CC Docket No. 80–286; FCC 10–47]

Jurisdictional Separations and Referral to the Federal-State Joint Board

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Jurisdictional separations is the process by which incumbent local exchange carriers (incumbent LECs) apportion regulated costs between the intrastate and interstate jurisdictions. In this document, the Commission seeks comment on extending until June 30, 2011 the current freeze of part 36 category relationships and jurisdictional cost allocation factors used in jurisdictional separations, which freeze would otherwise expire on June 30, 2010. Extending the freeze would allow the Commission to provide stability for, and avoid imposing undue burdens on, carriers that must comply with the Commission's separations rules while the Commission considers issues relating to comprehensive reform of the jurisdictional separations process.

DATES: Comments on extending the freeze of part 36 category relationships and jurisdictional cost allocation factors are due on or before April 19, 2010. Reply comments on extending the freeze of part 36 category relationships and jurisdictional cost allocation factors are due on or before April 26, 2010.

ADDRESSES: You may submit comments, identified by WC Docket No. 80–286, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- *E-mail: ecfs@fcc.gov,* and include the following words in the body of the message, "get form." A sample form and directions will be sent in response. Include the docket number in the subject line of the message.
- *Mail:* Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, *etc.*) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Daniel Ball, Attorney Advisor, at 202–418–1577, Pricing Policy Division, Wireline Competition Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) in CC Docket No. 80–286, FCC 10–47, released on March 29, 2010. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554.

Background

1. Jurisdictional separations is the process by which incumbent LECs apportion regulated costs between the intrastate and interstate jurisdictions. The NPRM proposes extending the current freeze of part 36 category relationships and jurisdictional cost allocation factors used in jurisdictional separations, which freeze would otherwise expire on June 30, 2010, until June 30, 2011. Extending the freeze will allow the Commission to provide stability for, and avoid imposing undue burdens on, carriers that must comply with the Commission's separations rules while the Commission considers issues relating to comprehensive separations reform.

2. The 2001 Separations Freeze Order, 66 FR 33202, June 21, 2001, froze all part 36 category relationships and allocation factors for price cap carriers and all allocation factors for rate-of-return carriers. Rate-of-return carriers had the option to freeze their category relationships at the outset of the freeze. The freeze was originally established July 1, 2001 for a period of five years, or until the Commission completed separations reform, whichever occurred first. The 2006 Separations Freeze Extension Order, 71 FR 29843, May 24, 2006, extended the freeze for three years or until the Commission completed separations reform, whichever occurred first, and the 2009 Separations Freeze Extension Order, 74 FR 23955, May 22, 2009, extended the freeze until June 30, 2010.

3. In this NPRM the Commission seeks comment on extending the freeze for one year, until June 30, 2011. The proposed extension would allow the Commission to continue to work with the Federal-State Joint Board on Separations to achieve comprehensive separations reform. Pending comprehensive reform, the Commission tentatively concludes that the existing freeze should be extended on an interim basis to avoid the imposition of undue administrative burdens on incumbent LECs. The Commission asks commenters to consider how costly and burdensome an extension of the freeze, or a reversion to the pre-freeze part 36 rules, would be for small incumbent LECs, and whether an extension would disproportionately affect specific types of carriers or ratepayers. Incumbent LECs have not been required to utilize the programs and expertise necessary to prepare separations information since the inception of the freeze almost nine years ago. If the Commission does not extend the separations freeze, and instead allows the earlier separations rules to return to force, incumbent LECs would be required to reinstitute their separations processes. Given the imminent expiration of the current separations freeze, it is unlikely that incumbent LECs would have sufficient time to reinstitute the separations processes necessary to comply with the earlier separations rules.

4. The extended freeze would be implemented as described in the 2001 Separations Freeze Order. Specifically, price-cap carriers would use the same relationships between categories of investment and expenses within part 32 accounts and the same jurisdictional allocation factors that have been in place since the inception of the current freeze on July 1, 2001. Rate-of-return carriers would use the same frozen jurisdictional allocation factors, and would use the same frozen category relationships if they had opted previously to freeze those as well.

Comment Filing Procedures

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file

comments and reply comments on or before the dates indicated in the **DATES** section of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS); (2) the Federal Government's eRulemaking Portal; or (3) by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

• *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments.

• For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov,* and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

• *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

• Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

• All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW–A325, Washington, DC 20554. The filing hours are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

• Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

• U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Ex Parte Requirements

This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules. *See* 47 CFR 1.1200, 1.1206. Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented generally is required. *See* 47 CFR 1.1206(b). Other rules pertaining to oral and written ex parte presentations in permit-but-disclose proceedings are set forth in section 1.1206(b) of the Commission's rules. 47 CFR 1.1206(b).

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this NPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). *See* 5 U.S.C. 603(a).

Need for, and Objectives of, the Proposed Rules

In the *1997 Separations NPRM,* the Commission noted that the network infrastructure by that time had become vastly different from the network and services used to define the cost categories appearing in the Commission's part 36 jurisdictional separations rules, and that the separations process codified in part 36 was developed during a time when common carrier regulation presumed that interstate and intrastate telecommunications service must be provided through a regulated monopoly. Thus, the Commission initiated a proceeding with the goal of reviewing comprehensively the Commission's part 36 procedures to ensure that they meet the objectives of the 1996 Act. The Commission sought comment on the extent to which legislative changes, technological changes, and market changes might warrant comprehensive reform of the separations process. Because over twelve years have elapsed since the closing of the comment cycle on the *1997 Separations NPRM,* and over eight years have elapsed since the imposition of the freeze, and because the industry has experienced myriad changes during that time, we ask that commenters, in their comments on the present NPRM, comment on the impact of a further extension of the freeze.

The purpose of proposed extension of the freeze is to ensure that the Commission's separations rules meet the objectives of the 1996 Act, and to allow the Commission additional time to consider changes that may need to be made to the separations process in light of changes in the law, technology, and market structure of the telecommunications industry.

Legal Basis

The legal basis for the NPRM is contained in sections 1, 2, 4, 201–205, 215, 218, 220, 229, 254, and 410 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154, 201–205, 215, 218, 220, 229, 254 and 410, and 1.1200–1.1216 of the Commission's rules, 47 CFR 1.1, 1.411–1.429, 1.1200–1.1216.

Description and Estimate of the Number of Small Entities To Which Rules May Apply

The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under section 3 of the Small Business Act. Under the Small Business Act, a "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

We have included small incumbent LECs in this RFA analysis. As noted above, a "small business" under the RFA

is one that, inter alia, meets the pertinent small business size standard established by the SBA, and is not dominant in its field of operation. Section 121.201 of the SBA regulations defines a small wireline telecommunications business as one with 1,500 or fewer employees. In addition, the SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. Because our proposals concerning the part 36 separations process will affect all incumbent LECs providing interstate services, some entities employing 1500 or fewer employees may be affected by the proposals made in this NPRM. We therefore have included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on the Commission's analyses and determinations in other, non-RFA contexts. Neither the Commission nor the SBA has developed a small business size standard specifically for providers of incumbent local exchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under the SBA definition, a carrier is small if it has 1,500 or fewer employees. According to the FCC's Telephone Trends Report data, 1,311 incumbent LECs reported that they were engaged in the provision of local exchange services. Of these 1,311 carriers, an estimated 1,024 have 1,500 or fewer employees and 287 have more than 1,500 employees. Consequently, the Commission estimates that most incumbent LECs are small entities that may be affected by the rules and policies adopted herein.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

None.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance and reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or part thereof, for small entities.

As described above, seven years have elapsed since the imposition of the freeze, thus, we ask commenters, in their comments on the present NPRM, address the impact of a further extension of the freeze. We seek comment on the effects our proposals would have on small entities, and whether any rules that we adopt should apply differently to small entities. We direct commenters to consider the costs and burdens of an extension on small incumbent LECs and whether the extension would disproportionately affect specific types of carriers or ratepayers.

Implementation of the proposed freeze extension would ease the administrative burden of regulatory compliance for LECs, including small incumbent LECs. The freeze has eliminated the need for all incumbent LECs, including incumbent LECs with 1500 employees or fewer, to complete certain annual studies formerly required by the Commission's rules. If an extension of the freeze can be said to have any affect under the RFA, it is to reduce a regulatory compliance burden for small incumbent LECs, by abating the aforementioned separations studies and providing these carriers with greater regulatory certainty.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

Paperwork Reduction Act

The NPRM does not propose any new or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new, modified, or proposed "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, 44 U.S.C. 3506(c)(4).

List of Subjects in 47 CFR Part 36

Communications common carriers, Reporting and recordkeeping requirements, Telephone, and Uniform System of Accounts.

Marlene H. Dortch,

Secretary, Federal Communications Commission.

Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 36 as follows:

PART 36—JURISDICTIONAL SEPARATIONS PROCEDURES; STANDARD PROCEDURES FOR SEPARATING TELECOMMUNICATIONS PROPERTY COSTS, REVENUES, EXPENSES, TAXES AND RESERVES FOR TELECOMMUNICATIONS COMPANIES

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

Authority: 47 U.S.C. 151, 154 (i) and (j), 205, 221(c), 254, 403, and 410.

2. In 47 CFR part 36 remove the words "June 30, 2010" and add, in their place, the words "June 30, 2011" in the following places:

a. Section 36.3(a), (b), (c), (d), and (e);
b. Section 36.123(a)(5) and (a)(6);
c. Section 36.124(c) and (d);
d. Section 36.125(h), (i), and (j);
e. Section 36.126(b)(5), (c)(4), (e)(4), and (f)(2);
f. Section 36.141(c);
g. Section 36.142(c);
h. Section 36.152(d);
i. Section 36.154(g);
j. Section 36.155(b);
k. Section 36.156(c);
l. Section 36.157(b);
m. Section 36.191(d);
n. Section 36.212(c);
o. Section 36.214(a);
p. Section 36.372;
q. Section 36.374(b) and (d);
r. Section 36.375(b)(4) and (b)(5);
s. Section 36.377(a), (a)(1)(ix), (a)(2)(vii), (a)(3)(vii), (a)(4)(vii), (a)(5)(vii), and (a)(6)(vii);
t. Section 36.378(b)(1);
u. Section 36.379(b)(1) and (b)(2);
v. Section 36.380(d) and (e);
w. Section 36.381(c) and (d); and
x. Section 36.382(a).

[FR Doc. 2010–7565 Filed 4–2–10; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 172, 173, and 176

[Docket No. PHMSA–2009–0241 (HM–242)

RIN 2137–AE52

Hazardous Materials Regulations: Combustible Liquids

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: PHMSA is considering amendments to the Hazardous Materials Regulations (HMR) as they apply to the transportation of combustible liquids. Specifically, we are considering whether to harmonize the domestic regulations applicable to the transportation of combustible liquids with international transportation standards. In addition, we are examining ways to revise, clarify, or relax certain regulatory requirements to facilitate the transportation of these materials while maintaining an adequate level of safety. The intent of this ANPRM is to invite public comments on how to accomplish these goals, provide an opportunity for comment on amendments PHMSA is considering, and present a forum for the public to offer additional recommendations for the safe transportation of combustible liquids.

DATES: Comments must be received by July 6, 2010. To the extent possible, we will consider late-filed comments as we consider the next action. You may submit comments by any of the following methods:

- *Web Site: http://dms/dot/gov*. Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.
- *Hand Delivery:* To the Docket Management System; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001 between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

Instructions: You must include the agency name and docket number PHMSA–2009–0241 (HM–242) or the Regulatory Identification Number (RIN) 2137–AE52 for this notice at the beginning of your comment. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. Persons wishing to receive confirmation of receipt of their comments must include a self-addressed stamped postcard or access our Web site at *http://dms.dot.gov.*

Docket: For access to the docket to read background documents and comments received, go to *http://dms.dot.gov* at any time or to U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Helen L. Engrum, Office of Hazardous Materials Standards, telephone (202) 366–8553, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., East Building, 2nd Floor, PHH–10, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Overview of the Hazardous Materials Regulations

The Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) govern the safe transportation of hazardous materials. The HMR are designed to achieve three goals:

1. To ensure that hazardous materials are packaged and handled safely and securely during transportation;
2. To provide effective communication to transportation workers and emergency responders of the hazards of the materials being transported; and
3. To minimize the consequences of an incident should one occur.

The hazardous material regulatory system is a risk management system that is prevention-oriented and focused on identifying a safety or security hazard and reducing the probability and quantity of a hazardous material release. Under the HMR, hazardous materials are categorized by analysis and experience into hazard classes and packing groups based upon the risks they present during transportation. The HMR specify appropriate packaging and handling requirements for hazardous materials, and require a shipper to communicate the material's hazards through use of shipping papers, package marking and labeling, and vehicle placarding. The HMR require shippers to provide emergency response information applicable to the specific hazard or hazards of the material being transported. The HMR mandate training requirements for persons who prepare hazardous materials for shipment or who transport hazardous materials in commerce. Finally, the HMR include operational requirements applicable to each mode of transportation.

PHMSA reviews the HMR on a continuing basis to determine whether revisions or amendments are necessary to ensure a high level of safety for the safe transportation of hazardous materials in commerce. During our regulatory review process, we look for opportunities that may exist to enhance safety, such as by minimizing misunderstanding of regulatory requirements for the transportation of hazardous materials and, where opportunities exist, to reduce the regulatory burden on industry while maintaining a high level of safety. We believe opportunities exist to clarify and simplify current requirements in the HMR applicable to the transportation of combustible liquids, thereby reducing compliance burdens on shippers and carriers while facilitating movement of these materials in domestic and international commerce. This initiative is based on our ongoing review process, input from the regulated community, review of requests for letters of interpretation and clarification concerning combustible liquids, and written and oral questions pertaining to combustible liquids that have been presented to PHMSA's Hazardous Materials Information Center.

II. Background of Class 3 Flammable Liquids and Combustible Liquids

On February 27, 1968, the Hazardous Materials Regulation Board—the predecessor agency to the Research and Special Programs Administration (RSPA) and, subsequently, the Pipeline and Hazardous Materials Safety Administration (PHMSA)—published a notice of proposed rulemaking (NPRM) under Docket No. HM–3 (33 FR 3382) proposing to re-define the term "flammable liquid," in order to harmonize the definition with international standards and better address the risks such materials present in transportation. On February 21, 1970, the Board published an NPRM under Docket No. HM–42 (35 FR 3298) proposing to create and define a new class of materials identified as "combustible liquids" to address a lack of hazard warning communication concerning these materials, and the hazards posed by transportation of these materials at temperatures equal to or exceeding their flash points. Liquids in this higher flash point range (80 °F to 200 °F) include kerosene, fuel oil, turpentine and certain alcohols, all of which present fire hazards during transportation, and are referred to generically as "combustible liquids." The 200 °F upper limit is commonly used by industry, government, and the National Fire Protection Association (NFPA) as the regulatory limit for defining flammable/combustible liquids.

On December 5, 1970, the Board published an NPRM under Docket No. HM–67 (35 FR 18534) proposing to change the method of determining the flash point of materials from the Tagliabue open-cup test method to the Tagliabue closed-cup test method in an effort to establish a more accurate flash point of materials.

The issues addressed in these three notices were consolidated under Docket HM–102 and published as an NPRM on

June 15, 1972 (37 FR 11898). The NPRM included proposals for a new definition for the class of materials identified as "flammable liquid" and created and defined a new class of materials identified as "combustible liquid," in addition to modifying the definition for pyrophoric liquids within the flammable liquid hazard class.

On January 24, 1974, the Hazardous Materials Regulation Board published a final rule under Docket HM–102 (39 FR 2768) that, among other issues, (1) Specified a new definition for the class of materials identified as "flammable liquid;" (2) created and defined a new class of materials identified as "combustible liquids;" (3) modified the definition for "pyrophoric liquid" within the flammable liquid class; and (4) set forth the requirements for the materials that were covered by these new definitions.

The final rule defined these hazard classes as follows:

1. A "flammable liquid" is any liquid having a flash point below 100 °F (37.8 °C) that does not meet one of the definitions specified under then § 173.300 (i.e., materials defined as compressed gases).

2. A "combustible liquid" is any liquid having a flash point at or above 100 °F (37.8 °C), and below 200 °F (93.3 °C).

3. A "pyrophoric liquid" is "any liquid that ignites spontaneously in dry or moist air at or below 130 °F (54.5 °C).

In following years, the agency published additional notices proposing revisions to the provisions for flammable and combustible materials, culminating in the publication of a final rule on December 21, 1990 under Docket HM–181 (55 FR 52402). Generally, this rule comprehensively revised the HMR with respect to hazard communication, classification, and packaging requirements to enhance safety through better classification and performance-oriented, risk based packaging, and to promote flexibility and technological innovation in packaging, reduce the need for special permits (formerly "exemptions"), and facilitate international commerce. The final rule adopted international standards (United Nations Recommendations on the Transport of Dangerous Goods or "UN Recommendations") for defining flammable liquids and retained a domestic exception for flammable liquids reclassed as combustible liquids. The upper flash point range for flammable liquids was subsequently extended to meet the UN standard of 60 °C (140 °F) for flammable liquids. The definition for combustible liquids under the HMR was retained both as a domestic classification option for liquids with flash points between 38 °C (100 °F) and 60 °C (140 °F) and as a requirement for liquids with flash points between 60 °C (140 °F) and below 93 °C (200 °F). The classification system in the UN Recommendations has no combustible liquid category or hazard class.

Commenters to the HM–181 rulemaking asserted that the exceptions provided in the HMR for the transportation of combustible liquids create an unnecessary variance between domestic and international transportation and increase the potential for non-compliance. For instance, commenters stated the domestic exception would lead to identical materials being classified differently, and would result in confusion among transportation, enforcement, and emergency response personnel. At the time, we disagreed with these commenters and stated that although different classifications for the same materials could occur under this exception, we anticipated little or no confusion on the part of shippers already dealing with a dual packaging and marking system, i.e., differing requirements for domestic and international transportation. We also stated that the exception for combustible liquids would not hamper enforcement or emergency response personnel who are trained in the use of the HMR, UN identification numbers, the identification of materials using DOT's placarding system, and DOT's Emergency Response Guidebook.

This issue was raised again in a subsequent HM–181 final rule published on December 20, 1991 (56 FR 66124) that responded to petitions for reconsideration of certain aspects of the rule. Several petitioners urged the agency to remove the combustible liquid class definition and the reclassification option. The petitioners stated that the domestic combustible liquid classification introduced unneeded regulatory complexity and violated the stated aims of HM–181 to simplify the HMR. This being both a safety and economic issue, we disagreed with the petitioners who would eliminate the combustible liquid class altogether, believing that the significant number of domestically regulated materials with flash points between 38 °C (100 °F) and 93 °C (200 °F) pose risks in transportation that cannot be ignored.

Under HM–181, we revised the HMR to clarify that only flammable liquids that do not meet the definition of any other hazard class may be reclassed as combustible liquids. This revision was intended to prevent reclassification of materials that meet the definition of a hazardous substance or hazardous waste and, thus, meet the definition for a Class 9 (Miscellaneous) material. We also narrowed the provisions to generally prohibit reclassification for materials offered for air or vessel transportation, with certain exceptions. The phrase "except Class 9" was subsequently removed from §§ 173.120(b)(1) and (b)(2), and 173.150 under the Docket HM–181 Correction/Response final rule published on October 1, 1992 (57 FR 45446), in which the Class 9 definition was clarified to state that a material which meets the definition of another hazard class, but also falls within one of the Class 9 criteria (*e.g.,* hazardous substance) does not meet the definition of Class 9.

Section 173.120 of the HMR currently defines a "flammable liquid" as a liquid having a flash point of not more than 60 °C (140 °F), or any material in a liquid phase with a flash point at or above 38 °C (100 °F) that is intentionally heated and offered for transportation or transported at or above its flash point in a bulk packaging, with some exceptions for liquids that also meet the definition for Division 2.1 (Flammable gas), 2.2 (Non-flammable gas), or 2.3 (Poisonous gas) materials, as defined in § 173.115; mixtures that are not offered for transportation at or above their flash points; liquids with a flash point greater than 35 °C (95 °F) that do not sustain combustion; liquids with a flash point greater than 35 °C (95 °F) and with a fire point (the temperature at which the liquid will continue to burn after ignition) greater than 100 °C (212 °F); and liquids with a flash point greater than 35 °C (95 °F) which is in a water-miscible solution with a water content of more than 90 percent by mass.

In addition, § 173.120 of the HMR defines a "combustible liquid" as any liquid that does not meet the definition of any other hazard class specified in this subchapter and has a flash point above 60 °C (140 °F) and below 93 °C (200 °F). Further, in domestic transportation, a flammable liquid with a flash point at or above 38 °C (100 °F) that does not meet the definition of any other hazard class may be reclassed as a combustible liquid. This provision does not apply to transportation by vessel or aircraft, except where other means of transportation is impracticable. An elevated temperature material that meets the definition of a Class 3 (Flammable liquid) material because it is intentionally heated and offered for transportation or transported at or above its flash point may not be reclassed as a combustible liquid.

A flash point is the minimum temperature at which a liquid gives off vapor within a test vessel in sufficient concentration to form an ignitable mixture with air near the surface of the liquid. Materials with higher flashpoints are thus less likely to ignite than materials with lower flash points. Because of their higher flash points, combustible liquids do not pose as great a risk in transportation as flammable liquids. Therefore, the regulatory requirements applicable to their transportation are less stringent than those for flammable liquids. For example, combustible liquids transported in non-bulk packagings are excepted from all HMR requirements, unless the combustible liquid also meets the definition for a hazardous substance, hazardous waste, or marine pollutant. In addition, combustible liquids may be transported in non-specification bulk packagings. A combustible liquid that is not a hazardous substance, a hazardous waste, or a marine pollutant is not subject to HMR requirements if it is a mixture of one or more components that has a flash point at or above 93 °C (200 °F), comprises at least 99 percent of the volume of the mixture, and is not transported as a liquid at a temperature at or above its flash point. Also, a combustible liquid that does not sustain combustion is not subject to the requirements of the HMR as a combustible liquid. Either the test method specified in ASTM D 4206 or the procedure in appendix H of part 173 may be used to determine if a material sustains combustion when heated under test conditions and exposed to an external source of flame.

The HMR provide additional exceptions for flammable (Class 3) and combustible liquids under § 173.150. Limited quantities of flammable and combustible liquids are excepted from labeling requirements, unless the material also meets the definition of Division 6.1 (Poison) or is offered for transportation or transported by aircraft, and the specification packaging requirements of the HMR when packaged in combination packagings, each not exceeding 30 kg (66 pounds) gross weight, in accordance with this section. In addition, shipments of limited quantities are not subject to placarding. A limited quantity of a flammable or combustible liquid may be reclassed and renamed as a "consumer commodity" as defined in § 171.8 of the HMR. An aqueous solution containing 24 percent or less alcohol by volume and no other hazardous material may be reclassed as a combustible liquid, and is not subject to the HMR requirements if it contains no less than 50 percent water.

III. Petitions for Rulemaking

In this ANPRM, PHMSA is soliciting comments on issues related to the transportation of combustible liquids in both domestic and international commerce. We have received two petitions for rulemaking suggesting that domestic requirements for the transportation of combustible liquids should be harmonized with international standards. In addition, we have received a petition for rulemaking suggesting that the HMR should include more expansive domestic exceptions for shipments of combustible liquids. The petitions are described below.

A. VOHMA Petition for Rulemaking

The International Vessel Operators Hazardous Materials Association (VOHMA) submitted a petition for rulemaking [P–1498; PHMSA–2007–28238] concerning differing domestic and international requirements for the transportation of combustible liquids. As indicated above, the UN Recommendations do not include a definition or classification for combustible liquids. The UN Recommendations are not regulations, but rather are recommended standards issued by the UN Sub-Committee of Experts on the Transport of Dangerous Goods. These recommendations are amended and updated biennially and serve as the basis for many national, regional and international modal regulations, including the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions) and the International Maritime Dangerous Goods (IMDG) Code.

In the UN Recommendations on the Transport of Dangerous Goods (Model Regulations), 15th Revised Edition, Chapter 2.3; Section 2.3.1.2, "*Flammable liquids*" are defined as liquids, or mixtures of liquids, or liquids containing solids in solution or suspension (for example, paints, varnishes, lacquers, etc., but not including substances otherwise classified on account of their dangerous characteristics) which give off a flammable vapor at temperatures of not more than 60 °C (140 °F), closed-cup test, or not more than 65.6 °C (150.08 °F), open-cup test, normally referred to as the flash point. This class also includes:

a. Liquids offered for transport at temperatures at or above their flash point; and

b. Substances that are transported or offered for transport at elevated temperatures in a liquid state and which give off a flammable vapor at a temperature at or below the maximum transport temperature.

Note: Since the results of open-cup tests and of closed-cup tests are not strictly comparable and even individual results by the same test are often variable, regulations varying from the above figures to make allowance for such differences would be within the spirit of this definition.

Liquid desensitized explosives (*see* 2.3.1.4) are also included in the Class 3 hazard class. Liquid desensitized explosives are explosive substances which are dissolved or suspended in water or other liquid substances, to form a homogeneous liquid mixture to suppress their explosive properties (2.1.3.6.3). Entries in the Dangerous Goods List for liquid desensitized explosives are: UN1204, UN 2059 UN 3064, UN 3343, UN 3357 and UN 3379.

Liquids meeting the definition in Chapter 2.3; Section 2.3.1.3 with a flash point of more than 35 °C (95 °F) which do not sustain combustion are not considered hazardous materials for purposes of the UN Recommendations, the ICAO Technical Instructions, or the IMDG Code. Liquids are considered to be unable to sustain combustion for the purposes of these Regulations (i.e., they do not sustain combustion under defined test conditions) if:

a. They have passed a suitable combustibility test (*see* SUSTAINED COMBUSTIBILITY TEST prescribed in the *Manual of Tests and Criteria,* Part III, sub-section 32.5.2;

b. Their fire point according to ISO 2592:2000 is greater than 100 °C (212 °F); or

c. They are water miscible solutions with a water content of more than 90% by mass.

In its petition, VOHMA notes that the differing domestic and international requirements for combustible liquids has resulted in conflicting and confusing hazard communication requirements with the result that international shipments may be frustrated as foreign authorities attempt to reconcile HMR hazard communication schemes with international regulations. For example, VOHMA notes that many paints, inks, adhesives, solvents, and petroleum products have flash points between 60 °C (140 °F) and 93 °C (200 °F) and are offered for transportation as combustible liquids within the United States. However, the HMR permit such shipments to be described on a shipping paper and to display markings, labels, and placards in the same manner as

shipments of flammable liquids with flash points of less than 60 °C (140 °F). When these shipments are destined for export to a jurisdiction outside the United States, foreign inspectors, stowage planners, interlining carriers, and intermodal feeder companies may become confused by the display of a UN identification number of a material that is not regulated in international commerce and thus may delay forwarding the shipments until the confusion is resolved. We agree with VOHMA that these frustrated shipments impede commerce and may also result in additional risks in the ports and terminals where they are held.

In its petition, VOHMA also expresses concern that HMR provisions that permit reclassification of flammable liquids with a flash point at or above 38 °C (100 °F) as combustible liquids could result in the movement of undeclared shipments in international commerce. Reclassed combustible liquids are excepted from the HMR when transported in non-bulk packagings such as one-gallon cans, five-gallon jerricans, or 55-gallon drums. However, materials with flash points between 38 °C (100 °F) and 60 °C (140 °F) are fully regulated as Class 3 materials in international commerce. We agree with VOHMA that unmarked and unlabeled packages of reclassed combustible liquids may find their way into international distribution with the result that the shipments are not declared as dangerous goods and will not be appropriately handled and stowed in international transportation.

To address these problems, VOHMA asks PHMSA to use the "Combustible liquid, n.o.s." proper shipping name entry in the Hazardous Materials Table (HMT), with an associated technical name in parentheses, when the material is reclassified in accordance with § 173.150(f) and is intended for rail or highway transportation only, or has a flash point above 60 °C (140 °F) but below 93 °C (200 °F). This would serve to distinguish shipments regulated only in the United States from shipments regulated in international commerce.

B. DGAC Petition for Rulemaking

The Dangerous Goods Advisory Council (DGAC) also submitted a petition for rulemaking [P–1531; PHMSA–2008–0303] for amendment of the requirements for combustible liquids in bulk packagings in order to reduce port congestion and improve transportation efficiency in port areas. A bulk packaging is defined in § 171.8 as a packaging, other than a vessel or barge, including a transport vehicle or freight container, in which hazardous materials are loaded with no intermediate form of containment *and* that has: (1) A maximum capacity greater than 450 L (119 gallons) as a receptacle for a liquid; (2) a maximum net mass greater than 400 kg (882 pounds) and a maximum capacity greater than 450 L (119 gallons) as a receptacle for a solid; or (3) a water capacity greater than 454 kg (1000 pounds) as a receptacle for a gas as defined in § 173.115 of the HMR. The DGAC petition highlights many of the issues identified by VOHMA in its petition, with a particular focus on problems encountered in international transportation for shipments of materials DGAC terms "high flash point combustible liquids"—that is, combustible liquids with flashpoints between 60 °C (140 °F) and 93 °C (200 °F). DGAC suggests that the regulatory differences between the HMR and international regulatory requirements for these combustible liquids are disruptive to the flow of goods in port areas and contribute to port congestion. According to DGAC, imported bulk shipments of high flash point combustible liquids arriving in U.S. ports must be marked and placarded in accordance with HMR requirements. Similarly, the marks and placards that are applied to bulk shipments of such combustible liquids for U.S. transportation must be removed in the port prior to export. DGAC estimates that export shipments are delayed for an average of three days awaiting removal of HMR-required marks and placards and import shipments are delayed an average of five days awaiting application of HMR-required marks and placards. To alleviate this problem, DGAC requests that PHMSA except high flash point combustible liquids from all HMR requirements when transported in specification packages of less than 3000 liters capacity, (the upper capacity limit for intermediate bulk containers (IBCs), or when in an ISO (UN) portable tank in international commerce.

C. U.S. Custom Harvesters Petition for Rulemaking

U. S. Custom Harvesters, Inc. (Custom Harvesters) also submitted a petition for rulemaking [P–1536; PHMSA–2009–0099] requesting modification of current requirements applicable to combustible liquids. According to the petition, a custom harvester has invested in the equipment (which includes grain harvesting combines, silage harvesters, grain trucks, tractors and grain carts) necessary to harvest wheat, corn, corn silage and cotton. The custom harvester industry replaces the farmer in the field during harvest.

Custom Harvesters is concerned that current requirements applicable to bulk shipments of combustible liquids inhibit the industry's ability to hire seasonal workers to transport the diesel fuel necessary to re-fuel harvesting equipment in the fields. Because the diesel fuel is typically transported from a local service station or farm cooperative in tanks with capacities greater than 450 L (119 gallons) (i.e., in bulk quantities), the commercial motor vehicles transporting the diesel fuel must be operated by a driver with a commercial driver license with a hazmat endorsement. (In accordance with 49 CFR part 383, a hazmat endorsement is required for drivers of commercial motor vehicles that transport placarded amounts of hazardous materials. Bulk shipments of combustible liquids must be placarded.) Custom Harvesters asks us to consider an exception from placarding for combustible liquids transported in quantities that do not exceed 3785 L (1,000 gallons) in a single packaging.

Approximately 100 persons submitted comments in support of the U.S. Custom Harvesters' petition. The commenters stress the difficulty of hiring seasonal, foreign workers who may not be able to obtain a CDL with a hazmat endorsement in a timely fashion.

IV. Comments Requested

Based on the petitions for rulemaking described in the previous section of this preamble and our own review of domestic and international regulations applicable to the transportation of combustible liquids, we have identified a number of issues that we may wish to address through rulemaking, including: (1) Harmonizing the HMR definitions and requirements for combustible liquids with international standards; (2) modifying HMR requirements for marking and placarding shipments of combustible liquids to eliminate confusion that occurs when shipments marked and placarded for domestic transportation are transported in international commerce; and (3) expanding current HMR exceptions for combustible liquids to accommodate unique operational requirements. These issues are discussed in more detail below.

A. International Harmonization

Because there is no provision in the UN Recommendations, the International Civil Aviation Organization's (ICAO) Technical Instructions for the Safe Transport of Dangerous Goods by Aircraft, or the International Maritime

Dangerous Goods (IMDG) Code for flammable liquids to be reclassed as combustible liquids and, indeed, no international regulation of liquids with a flash point over 60 °C (140 °F), we recognize that the HMR provisions for the transportation of combustible liquids may potentially be confusing to both domestic and international shippers and carriers of flammable and combustible liquid shipments. We also recognize this lack of clarity may present a tangible safety concern, such as the mishandling or misidentification of these shipments in transportation, or the transportation of undeclared shipments. Further, in addition to our primary focus on the safe transportation of hazardous materials, one of our associated goals is to facilitate international commerce through harmonization with international standards, to the extent that harmonization does not compromise our safety objectives. Therefore, we are considering a proposal to eliminate the current domestic exception that allows the reclassification of high flash point flammable liquids (i.e., those with a flash point at or above 38 °C (100 °F)) as combustible liquids. This potential revision would establish a uniform definition for a flammable liquid as a liquid having a flash point of not more than 60 °C (140 °F), for both domestic and international transportation. Non-bulk shipments of these materials could then be consistently transported as flammable liquids in the United States and abroad, thereby reducing the possibility for the frustration or unsafe handling of shipments whether transported within or outside the United States and the problem of differing marking, labeling and placarding requirements for domestic and international shipments.

However, to the extent there is justification for providing relief from some, if not all, provisions of the HMR applicable to high flash point flammable liquids, we may want to consider a revision to the HMR that would include the current domestic exceptions for high-flash point flammable liquids in non-bulk packagings in a revised set of requirements for Class 3 materials, thereby eliminating the necessity to reclass these materials as combustible liquids to utilize the exceptions. We believe this alternative could be less cumbersome and could facilitate a clearer understanding of the regulations.

B. Unique Identifiers for Combustible Liquid Shipments

In addition to considering harmonizing the HMR definitions and requirements for flammable liquids with international standards, we are considering whether utilization of unique identifiers for combustible liquid shipments could help to eliminate the confusion that currently results when shipments of reclassed combustible liquids or combustible liquid shipments regulated under the HMR but not regulated under international standards are transported to or from the United States.

As VOHMA notes in its petition, the HMR currently permit reclassed combustible liquids in bulk packagings to be described on a shipping paper (except the hazard class must be modified to read "Combustible liquid") and marked and placarded in the same manner as materials with flash points under 60 °C (140 °F). Thus, a shipment of paint reclassed as a combustible liquid would be described on a shipping paper as "UN1263, Paint, Combustible Liquid, III" and placarded with a Class 3 placard (without text) displaying the UN identification number "1263". Even though these shipments are not regulated for international transportation, the shipping paper entries and placards suggest that this is a fully regulated shipment. As VOHMA suggests, we could require shippers who reclass flammable liquids as combustible liquids to utilize the domestic identification number NA1993, the proper shipping name "Combustible liquid, n.o.s.," followed by the technical name for the material, as listed in the § 172.101 HMT, in parentheses (for example, "NA1993, Combustible liquid, n.o.s. (paint), III). Bulk packagings containing reclassed combustible liquids would be marked COMBUSTIBLE LIQUID and placarded with the COMBUSTIBLE placard and the domestic identification number NA1993.

For international shipments of materials regulated as combustible liquids under the HMR but not regulated as hazardous materials under international regulations, we could develop a hazard communication scheme that would clearly identify these shipments when transported in the United States, but that would not be confusing to foreign officials and transport personnel when transported in international commerce. For example, we could except such shipments from placarding requirements and instead require bulk packages containing combustible liquids to be marked COMBUSTIBLE LIQUID and NA1993 (the domestic identification number). These identifiers are not recognized internationally and so may be less likely to cause confusion or shipment delays overseas. Alternatively, we could adopt DGAC's suggestion and provide an exception from marking and placarding requirements for high flash point combustible liquids.

C. Expanded Exceptions for Domestic Transportation

As the petition from the U. S. Custom Harvesters suggests, there are situations where current HMR requirements for the transportation of combustible liquids create an operational burden for those who use combustible liquids in agricultural and similar operations. Moreover, the HMR exception from regulation for combustible liquids in non-bulk packagings may lead shippers and users of combustible liquids to use less efficient transportation methods—such as utilizing several non-bulk packagings rather than a single bulk packaging or making multiple trips using non-bulk packagings—to avoid the regulatory costs associated with fully regulated bulk shipments. Less efficient transport methods may also be less safe transport methods if they increase the number of trips necessary to deliver the materials and the number of times the material must be handled before it is delivered to its destination.

We are considering expanding current exceptions applicable to the transportation of combustible liquids to accommodate unique operational requirements or needs. For example, as the U. S. Custom Harvesters petition suggests, we are considering whether to expand current exceptions applicable to non-bulk shipments of combustible liquids to shipments of less than a threshold amount, such as 3,785 L (1,000 gallons). Alternatively, we may wish to consider expanding current exceptions for hazardous materials that are transported in support of agricultural operations as specified in § 173.5, to include activities such as the harvesting operations described in the U. S. Custom Harvesters petition. For liquids, the maximum quantity authorized in § 173.5(b) is currently 1,900 L (502 gallons). Or we may wish to consider expanding the current materials of trade (MOTs) exceptions in § 173.6 to incorporate an exception for combustible liquids transported in bulk up to a maximum quantity, such as 1,500 L (400 gallons) as currently authorized for certain Class 9 mixtures or 3,785 L (1000 gallons) as requested by the U.S. Custom Harvesters, in support of refueling operations or as a general exception for all combustible liquids.

D. Combustible Liquids in Non-Bulk Packaging

Currently, § 173.150(f)(2) specifies that the requirements of the HMR do not

apply to a material classed as a combustible liquid in a non-bulk packaging unless the combustible liquid is a hazardous substance, a hazardous waste, or a marine pollutant. Simply put, under these specific conditions, a combustible liquid in a non-bulk packaging is not subject to the HMR. Section 173.140 of the HMR defines a Class 9 miscellaneous hazardous material as a material which presents a hazard during transportation but which does not meet the definition of any other hazard class. Class 9 materials include any material which has an anesthetic, noxious or other similar property which could cause extreme annoyance or discomfort to a flight crew member so as to prevent the correct performance of assigned duties. It also includes any material that meets the definition in § 171.8 of the HMR for an elevated temperature material, a hazardous substance, a hazardous waste, or a marine pollutant.

Applied together, these two sections of the HMR indicate that a flammable liquid in a non-bulk packaging and reclassed as a combustible liquid, is not subject to the HMR, but could, nonetheless, be regulated under the HMR when it meets the criteria for Class 9 material, i.e., a marine pollutant. To illustrate, a material that is a marine pollutant, does not meet any other hazard class definition, and has a flashpoint between 140 °F and 200 °F, is classed as a Class 9 material under the IMDG Code and may be transported under the provision of §§ 171.22 and 171.23 (formerly § 171.12) as a Class 9 material. However, this same material could be classed as a combustible liquid under the HMR. Likewise, a material that is an excepted package for limited quantities for Class 7 (radioactive materials) could be transported as a combustible liquid because of similar language under the exception criteria for Class 7 (radioactive materials) found in §§ 173.421 and 173.422.

We believe there are instances when a shipment transported both domestically and internationally under these scenarios could cause confusion or undue hardship, may frustrate shipments, or could create an unnecessary risk along the transportation cycle. As previously noted, one of our objectives in reviewing the HMR is to increase international harmonization without sacrificing our safety goals. We believe an alternative may exist to maintain an acceptable level of safety in the transportation of hazardous substances and hazardous wastes as Class 9 materials, without their inclusion under the current combustible liquids definition or Class 7 (radioactive materials) exceptions. Therefore, we are considering a proposal to remove the phrase "which does not meet the definition of any other hazard class" from the definitions of combustible liquids and Class 9 materials. In addition, we are considering listing "stand-alone" restrictions for each of these materials, and would rely on the Precedence of Hazard Table under § 173.2a for the proper classification of materials having more than one hazard. Because the section in the HMR regarding excepted packages for limited quantities of Class 7 (radioactive materials) also contains similar wording to the two classes noted above, we are also considering a revision to remove the phrase "meet the definition of a hazardous substance or hazardous waste" from § 173.422 and § 173.424.

These revisions may more clearly indicate that if a shipment of a material is a Class 9 or Class 7 material in a non-bulk packaging, it would be transported as a Class 9 or Class 7 material, respectively, and not a combustible liquid. We believe such revisions could reduce undue burden on the regulated community, mitigate the potential for the inaccurate or contradictory classification of Class 7 (radioactive materials), Class 9, and combustible liquid materials, and increase the level of safety during the transportation of these materials.

V. Questions

PHMSA invites commenters to submit comments based on the above discussion and the following questions:

1. Should the HMR continue to apply to materials with a flashpoint above 60° C (140° F) and below 93° C (200° F)? What benefits would result from de-regulation of combustible liquids? What are the safety implications of such de-regulation? How would such de-regulation affect emergency response?

2. Should the HMR continue to permit Class 3 materials with flashpoints between 38° C (100° F) and 60° C (140° F) to be reclassed and transported as combustible liquids? What are the benefits of eliminating this reclassification exception? Would there be costs associated with eliminating this reclassification exception? What are the safety implications of eliminating the reclassification exception? How would elimination of the reclassification exception affect emergency response?

3. Should the HMR provide expanded exceptions for the transportation of combustible liquids? For example, should the HMR except combustible liquids below a certain threshold (e.g., not more than 1,893 L (500 gallons), 3000 L (793 gallons), 3,785 L (1,000 gallons), or 13,249 L (3,500 gallons) from packaging, hazard communication, or other requirements? What are the potential impacts on hazard communication and emergency response notification of such changes?

4. Should the HMR include expanded exceptions for farm operations or agribusinesses? Should the HMR include expanded materials of trade exceptions for persons who transport combustible liquids? What are the potential impacts on hazard communication and emergency response notification of such changes? Are there additional exceptions that should be considered?

5. Should the HMR continue to permit combustible liquids to be described using shipping names and identification numbers applicable to Class 3 materials? Should PHMSA adopt a requirement for all combustible liquids to be described as "Combustible liquid, n.o.s."? For example, for hazardous material shipping names currently in the § 172.101 HMT, such as Paint, Diesel fuel, Fuel oil, Kerosene, Turpentine, Methallyl alcohol, etc. What safety benefits would result from the use of shipping descriptions unique to combustible liquid materials? How would such a change affect emergency response?

6. Should the HMR provide for use of a unique combustible liquid marking (e.g., the words "COMBUSTIBLE" or "COMBUSTIBLE LIQUID" in red letters on a white background) in place of COMBUSTIBLE placards and other hazard communication for bulk shipments of combustible liquids? Should the HMR provide for use of the domestic identification number, NA1993, on bulk packages utilizing a combustible liquid marking? What are the potential impacts on hazard communication and emergency response notification of such a change? Are there other practical alternatives to use of COMBUSTIBLE placards for bulk shipments?

VI. Additional Issues

PHMSA will base any future proposal for changes on the suggestions and comments provided by interested parties and our own initiatives. Additionally, any proposals would include the analyses required under the following statutes and executive orders in the event we determine that rulemaking is appropriate:

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order (E.O.) 12866 requires agencies to regulate in the "most cost-

effective manner," to make a "reasoned determination that the benefits of the intended regulation justify its costs," and to develop regulations that "impose the least burden on society." We therefore request comments, including specific data if possible, concerning the costs and benefits that may be associated with revisions to the HMR based on the issues presented in this notice. A rule that is considered significant under E.O. 12866 must be reviewed and cleared by the Office of Management and Budget before it can be issued.

B. Executive Order 13132

E.O. 13132 requires agencies to assure meaningful and timely input by state and local officials in the development of regulatory policies that may 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. We invite state and local governments with an interest in this rulemaking to comment on any effect that revisions to the HMR relative to the transportation of combustible liquids may cause.

C. Executive Order 13175

E.O. 13175 requires agencies to assure meaningful and timely input from Indian tribal government representatives in the development of rules that "significantly or uniquely affect" Indian communities and that impose "substantial and direct compliance costs" on such communities. We invite Indian tribal governments to provide comments if they believe there will be an impact.

D. Regulatory Flexibility Act, Executive Order 13272, and DOT Policies and Procedures

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), we must consider whether a proposed rule would have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000. If you believe that revisions to the HMR relative to the transportation of combustible liquids would have a significant economic impact on small entities, please provide information on such impacts.

Any future proposed rule would be developed in accordance with Executive Order 13272 ("Proper Consideration of Small Entities in Agency Rulemaking") and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts on small entities of a regulatory action are properly considered.

E. Paperwork Reduction Act

Section 1320.8(d), Title 5, Code of Federal Regulations requires that PHMSA provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. It is possible that new or revised information collection requirements could occur as a result of any future rulemaking action.

F. Environmental Assessment

The National Environmental Policy Act, 42 U.S.C. 4321–4375, requires Federal agencies to analyze proposed actions to determine whether the action will have a significant impact on the human environment. The Counsel on Environmental Quality (CEQ) regulations order federal agencies to conduct an environmental review considering (1) The need for the proposed action, (2) alternatives to the proposed action, (3) probable environmental impacts of the proposed action and alternatives, and (4) the agencies and persons consulted during the consideration process. 40 CFR 1508.9(b). PHMSA welcomes any data or information related to environmental impacts that may result from a future rulemaking addressing the transportation of combustible liquids.

G. Privacy Act

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://www.dot.gov/privacy.html*.

H. International Trade Analysis

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements 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. For purposes of these requirements, Federal agencies may participate in the establishment of international standards, so long as the standards have a legitimate domestic objective, such as providing for safety, and do not operate to exclude 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. PHMSA participates in the establishment of international standards in order to protect the safety of the American public, and we would assess the effects of any rule to ensure that it does not exclude imports that meet this objective. Accordingly, any proposals would be consistent with PHMSA's obligations under the Trade Agreement Act, as amended.

I. Statutory/Legal Authority for this Rulemaking

1. 49 U.S.C. 5103(b) authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous materials in intrastate, interstate, and foreign commerce.

2. 49 U.S.C. 5120(b) authorizes the Secretary of Transportation to ensure that, to the extent practicable, regulations governing the transportation of hazardous materials in commerce are consistent with standards adopted by international authorities. This notice considers potential amendments to the HMR that would maintain alignment with international standards by incorporating various amendments. The continually increasing amount of hazardous materials transported in international commerce warrants the harmonization of domestic and international requirements to the greatest extent * * * The majority of amendments in any harmonization rule should result in cost savings and ease the regulatory compliance burden for shippers engaged in domestic and international commerce, including trans-border shipments within North America.

J. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

Issued in Washington, DC, under authority delegated in 49 CFR part 106.

Magdy El-Sibaie,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 2010–7544 Filed 4–2–10; 8:45 am]

BILLING CODE 4910–60–P

Notices

Federal Register

Vol. 75, No. 64

Monday, April 5, 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

Agricultural Marketing Service

[Doc. No. AMS–PY–09–0046]

Notice of Request for an Extension of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–20), this notice announces the intention of the Agricultural Marketing Service (AMS) to request an extension for and revision to a currently approved information collection in support of the Regulations for Voluntary Grading of Poultry Products and Rabbit Products.

DATES: Comments on this notice must be received by May 5, 2010.

ADDITIONAL INFORMATION OR COMMENTS: Interested parties are invited to submit written comments on the Internet at *http://www.regulations.gov* or to David Bowden, Jr., Chief, Standards, Promotion, & Technology Branch; Poultry Programs, AMS, U.S. Department of Agriculture; 1400 Independence Avenue, SW., Stop 0259; Washington, DC 20250–0259; fax (202) 720–2930. Comments should reference the docket number and the date and page number of this issue of the **Federal Register**. Comments will be available for public inspection at the above address during regular business hours, or can be viewed at: *http://www.regulations.gov.* All comments received will be posted without change, including any personal information provided.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Sara Lutton, Standards, Promotion, & Technology Branch; Poultry Programs, AMS, U.S. Department of Agriculture; 1400 Independence Avenue, SW., Stop 0259; Washington, DC 20250–0259; phone (202) 720–0976; fax (202) 720–2930.

SUPPLEMENTARY INFORMATION:

Title: Regulations for Voluntary Grading of Poultry Products and Rabbit Products—7 CFR Part 70.

OMB Number: 0581–0127.

Expiration Date, as approved by OMB: November 30, 2010.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The Agricultural Marketing Act of 1946 (60 Stat. 1087–1091, as amended; 7 U.S.C. 1621–1627) (AMA) directs and authorizes the Department of Agriculture (USDA) to develop standards of quality, grades, grading programs, and services, which facilitate trading of agricultural products and assure consumers of quality products that are graded and identified under USDA programs.

To provide programs and services, section 203(h) of the AMA (7 U.S.C. 1622(h)) directs and authorizes the Secretary of Agriculture to inspect, certify, and identify the grade, class, quality, quantity, and condition of agricultural products under such rules and regulations as the Secretary may prescribe, including assessment and collection of fees for the cost of service.

The regulations in 7 CFR Part 70 provide a voluntary program for grading poultry and rabbit products on the basis of U.S. standards and grades. AMS also provides other types of voluntary services under the regulations, *e.g.,* contract and specification acceptance services and certification of quantity. All of the voluntary grading services are available on a resident basis or lot-fee basis. Respondents may request resident service on a continuous or temporary basis. The service is paid for by the user (user-fee).

Because this is a voluntary program, respondents need to request or apply for the specific service they wish, and in doing so, they provide information. Since the AMA requires that the cost of service be assessed and collected, information is collected to establish the Agency's cost.

The information collection requirements in this request are essential to carry out the intent of the AMA, to provide the respondents the type of service they request, and to administer the program.

The information collected is used only by authorized representatives of the USDA (AMS, Poultry Programs' national staff; regional directors and their staffs; Federal-State supervisors and their staffs; and resident Federal-State graders, which includes State agencies). The information is used to administer and conduct grading services requested by respondents. The Agency is the primary user of the information. Information is also used by each authorized State agency that has a cooperative agreement with AMS.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.08 hours per response.

Respondents: State or local governments, businesses or other for-profits, Federal agencies or employees, small businesses or organizations.

Estimated Number of Respondents: 370.

Estimated Number of Responses: 23,812.

Estimated Number of Responses per Respondent: 64.36.

Estimated Total Annual Burden on Respondents: 1,862 hours.

Send comments regarding, but not limited to, the following: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Dated: March 30, 2010.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. 2010–7570 Filed 4–2–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–PY–10–0009]

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the intention of Agricultural Marketing Service (AMS) to request an extension from the Office of Management and Budget (OMB), for a currently approved information collection in support of Poultry Market News Programs.

DATES: Comments received by June 4, 2010 will be considered.

ADDRESSES: Interested persons are invited to submit written comments on the Internet at *http://www.regulations.gov* or to: Sara Lutton, Standards, Promotion, & Technology Branch; Poultry Programs, AMS, U.S. Department of Agriculture; 1400 Independence Avenue, SW., Stop 0259; Washington, DC 20250–0259; fax (202) 720–2930. Comments should reference the docket number and the date and page number of this issue of the **Federal Register**. Comments will be available for public inspection at the above address during regular business hours, or can be viewed at *http://www.regulations.gov.* All comments received will be posted without change, including any personal information provided. The identity of anyone submitting comments will also be made public.

Additional Information: Additional information regarding this notice is available by contacting Sara Lutton, Standards, Promotion, & Technology Branch; Poultry Programs, AMS, U.S. Department of Agriculture; 1400 Independence Avenue, SW., Stop 0259; Washington, DC 20250–0259; fax (202) 720–2930.

SUPPLEMENTARY INFORMATION:

Title: Poultry Market News Reports.

OMB Number: 0581–0033.

Expiration Date of Approval: November 30, 2010.

Type of Request: Extension of a currently approved information collection.

Abstract: Under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), the Poultry Market News and Analysis Branch provides up-to-the-minute nationwide coverage of prices, supply, demand, trends, movement, and other pertinent information affecting the trading of poultry and eggs, and their respective products. The market reports compiled and disseminated by Market News provide current, unbiased, factual information to all members of the Nation's agricultural industry, from farm to retailer. These market reports assist producers, processors, wholesalers, retailers, and others in making informed production, purchasing, and sales decisions and promote orderly marketing by placing buyers and sellers on a more equal negotiating basis.

Market news reporters communicate with buyers and sellers of egg and poultry commodities on a daily basis in order to accomplish the Program's mission. This communication and information gathering is accomplished through the use of telephone conversations, facsimile transmissions, and electronic mail messages. Market News uses one OMB approved form, PY–90: Monthly Dried Egg Solids Stocks Report, to collect inventory information from commercial dried egg products plants throughout the U.S. Cooperating firms voluntarily submit this form to Market News primarily via electronic mail and facsimile transmissions.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.083 hours (5 minutes) per response.

Respondents: Producers, processors, brokers, distributors, retailers and commercial dried egg products plants.

Estimated Number of Respondents: 1,743.

Estimated Total Annual Responses: 216,858.

Estimated Number of Responses per Respondent: 137.

Estimated Total Annual Burden on Respondents: 17,999 hours.

Copies of this information collection may be obtained from Sara Lutton, Standards, Promotion, & Technology Branch, at (202) 720–0976.

Comments are invited on: (1) 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) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Interested persons are invited to submit written comments on the Internet at *http://www.regulations.gov* or to: Sara Lutton, Standards, Promotion, & Technology Branch; Poultry Programs, AMS, U.S. Department of Agriculture; 1400 Independence Avenue, SW., Stop 0259; Washington, DC 20250–0259; fax (202) 720–2930. All comments received will be available for public inspection during regular business hours at the above address, or can be viewed at *http://www.regulations.gov.*

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: March 30, 2010.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. 2010–7572 Filed 4–2–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Rural Business—Cooperative Service

Inviting Applications for Rural Business Opportunity Grants; Correction

AGENCY: Rural Business—Cooperative Service, USDA.

ACTION: Notice; correction.

SUMMARY: The Rural Business—Cooperative Service published a document in the **Federal Register** of March 29, 2010, inviting applications for Rural Business Opportunity Grants. The document contained incorrect award information.

FOR FURTHER INFORMATION CONTACT: Andy Jermolowicz, 202–720–8460.

Correction

In the **Federal Register** of March 29, 2010, in FR Doc. 2010–6860, on page 15410, in the first column, under "Award Information" correct the "Total Funding" amount to read:

Total Funding: $2.48 million.

Dated: March 29, 2010.

Judith A. Canales,

Administrator, Rural Business—Cooperative Service.

[FR Doc. 2010–7566 Filed 4–2–10; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: 2011 New York City Housing and Vacancy Survey.

OMB Control Number: 0607–0757.

Form Number(s): H–100, H–108, H–100L, H–100(L)A.

Type of Request: Revision of a currently approved collection.

Burden Hours: 9,364.

Number of Respondents: 18,750.

Average Hours per Response: 27 minutes.

Needs and Uses: The U.S. Census Bureau requests approval to conduct the 2011 New York City Housing and Vacancy Survey (NYCHVS). The Census Bureau will conduct this survey for the New York City Department of Housing Preservation and Development (NYCHPD). Pursuant to the Local Emergency Housing Rent Control Act (Chapter 8603, Laws of New York, 1963, as amended by Chapter 657, Laws of New York, 1967) and sections 26–414 and 26–415 of the Administrative Code of the City, a survey is required in order to determine the supply, condition, and vacancy rate of housing in the city. The NYCHPD must take this survey every three years. The Census Bureau has conducted this survey for the city since 1962, most recently in 2008.

Census Bureau field representatives will conduct personal visit interviews for a sample of housing units in the City, the vast majority of which are rental units in multi-unit rental structures (apartment buildings). Single-family rental or owner-occupied units (houses), however, are not excluded from the sample. We will interview residents (occupied units) or other knowledgeable people such as a building manager, superintendent, or rental or real estate agent (vacant units) to gather information on vacancy rates, housing costs, and the income of residents. About ten percent of the sample will be reinterviewed for quality control purposes.

The 2011 NYCHVS will be an up-to-date and comprehensive data source required by rent regulation laws as well as a source of data needed to evaluate the city's housing policies. Specifically, the city will look to the 2011 survey to provide accurate and reliable estimates of the rental and homeowner vacancy rates, to measure improvements in housing and neighborhood conditions, and to provide data on low-income, doubled-up, and crowded households at risk of becoming homeless. The city will use the results to develop programs and policies that aim to improve housing conditions.

Affected Public: Individuals or households, Business or other for-profit.

Frequency: Every three years.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., section 8b.

OMB Desk Officer: Brian Harris-Kojetin, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Brian Harris-Kojetin, OMB Desk Officer either by fax (202–395–7245) or e-mail (*bharrisk@omb.eop.gov*).

Dated: March 31, 2010.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–7597 Filed 4–2–10; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–822]

Stainless Steel Sheet and Strip in Coils from Mexico; Notice of Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 5, 2010.

FOR FURTHER INFORMATION CONTACT: Patrick Edwards, Brian Davis, or Angelica Mendoza, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–8029, (202) 482–7924, and (202) 482–3019, respectively.

SUPPLEMENTARY INFORMATION:

Amendment to the Final Results

In accordance with sections 751(a) and 777(i)(1) of the Tariff Act of 1930, as amended, (the Act), on February 3, 2010, the Department issued its final results in the administrative review of the antidumping duty order on stainless steel sheet and strip in coils (S4 in coils) from Mexico, covering the period July 1, 2007, to June 30, 2008. The final results were subsequently released to all parties in the proceeding, and published in the **Federal Register** on February 10, 2010. *See Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review*, 75 FR 6627 (February 10, 2010) (*S4 from Mexico 2007–2008 Final Results*). On February 24, 2010, and pursuant to 19 CFR 351.224(c)(2), we received a timely–filed allegation from the respondents in this administrative review, ThyssenKrupp Mexinox S.A. de C.V. (Mexinox SA) and Mexinox USA, Inc. (Mexinox USA) (collectively referred to as Mexinox), that the Department made ministerial errors with respect to the calculation of Mexinox's importer–specific assessment rate. *See* Letter from Mexinox to the Department of Commerce, regarding "Ministerial Error Comments," dated February 24, 2010 (Mexinox Ministerial Letter). On March 1, 2010, we received comments from Allegheny Ludlum Corporation, AK Steel Corporation, and North American Stainless (collectively referred to as petitioners) regarding the ministerial errors alleged by Mexinox. *See* Letter from petitioners to the Department of Commerce, regarding "Response to Mexinox's Ministerial Error Allegations," dated March 1, 2010 (Petitioners' Response Letter). For a discussion of the Department's analysis of the allegations in the Mexinox Ministerial Letter and rebuttal comments in the Petitioners' Response Letter, *see* Memorandum from Patrick Edwards and Brian Davis, Case Analysts, through Angelica Mendoza, Program Manager, to Richard Weible, Office Director, entitled, "Ministerial Errors Allegation in the Final Results of the Antidumping Duty Administrative Review of Stainless Steel Sheet and Strip in Coils from Mexico: ThyssenKrupp Mexinox S.A. de C.V.," dated March 23, 2010 (Ministerial Error Allegation Memo).

A ministerial error, as defined at section 751(h) of the Act, includes "errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which {the Department} considers ministerial." *See*

also 19 CFR 351.224(f). In its Ministerial Letter, Mexinox alleges that the Department made two ministerial errors in calculating Mexinox's importer–specific assessment rate for the final results of this administrative review. First, Mexinox alleges that the Department made a ministerial error by calculating a per–unit, rather than *ad valorem*, assessment rate. Additionally, Mexinox argues that the Department neglected to account for the entered value for material sold outside the United States in its assessment rate calculation. Petitioners contend that the Department's calculation of a per–unit assessment rate is not a clerical error and argue that the Department should not make the revision suggested by Mexinox because the admissions and statements in Mexinox's Ministerial Letter confirm that the Department's calculation of a per–unit assessment rate was not a ministerial error. Petitioner also argues that there is no basis for Mexinox's claim that the per–unit assessment is inherently unreasonable and that the Department normally calculates *ad valorem* rates where a respondent has reported an entered value for all of its sales. Petitioners did not comment on Mexinox's allegation that the Department neglected to account for the entered value for material sold outside the United States in its assessment duty rate calculation.

After analyzing Mexinox's ministerial error comments and petitioners' rebuttal comments, we have determined, in accordance with 19 CFR 351.224(e), that we made a ministerial error with respect to our final importer–specific assessment rate calculation for Mexinox USA, where the Department inadvertently neglected to account for the entered value for material sold outside the United States. *See* Mexinox's Ministerial Letter; *see also* Memorandum to the File, "Antidumping Duty Administrative Review of Stainless Steel Sheet and Strip in Coils from Mexico " Amended Final Results Analysis Memorandum for ThyssenKrupp Mexinox S.A. de C.V.," dated March 29, 2010 (2007–2008 S4 from Mexico Amended Final Results Analysis Memorandum), at pages 2 through 3, for a further discussion. Therefore, the Department has corrected both the U.S. Margin Program and the Macros Program and adjusted the assessment rate for the entered value of merchandise sold outside the United States, as originally intended by the Department.

With respect to Mexinox's allegation that the Department made a ministerial error by calculating a per–unit, rather than an *ad valorem*, assessment rate, we find that the alleged error does not meet the definition of a ministerial error in this case, pursuant to 19 CFR 351.224(f). Rather, Mexinox's disagreement over the calculated assessment rate is methodological in nature. The Department followed its normal practice of calculating a per–unit, rather than an *ad valorem*, assessment rate as it does in cases where a respondent failed to provide the Department with complete and accurate information regarding entered values. *See* Memorandum to the File, "Analysis of Data Submitted by ThyssenKrupp Mexinox S.A. de C.V. for the Final Results of the Antidumping Duty Administrative Review of Stainless Steel Sheet and Strip in Coils from Mexico (A–201–822)," dated February 3, 2010 (2007–2008 S4 from Mexico Final Results Analysis Memorandum), at pages 7 through 9; *see also* the Department's Ministerial Error Allegation Memo at pages 2 through 8 for a further discussion. As a result, we have not changed our assessment rate calculation based on this allegation.

Therefore, in accordance with 19 CFR 351.224(e), we are amending the final results in this antidumping duty administrative review of S4 in coils from Mexico. After correcting the ministerial error with respect to entered value for material sold outside the United States, the amended final weighted–average dumping margin remains unchanged:

Manufacturer/Exporter	Final Results Weighted–Average Margin Percentage	Amended Final Weighted-Average Margin Percentage
ThyssenKrupp Mexinox S.A. de C.V.	4.48 percent	4.48 percent[1]

[1] We note that correcting for this ministerial error did not change Mexinox's weighted-average margin calculated in the *S4 from Mexico 2007-2008 Final Results*.

Assessment Rates

The Department will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries, pursuant to section 751(a)(1) of the Act, and 19 CFR 351.212(b). Where entered values are missing for some sales and reported for others, the Department calculates a per–unit assessment rate on an importer–specific basis. The Department calculated an importer–specific per–unit duty assessment rate by aggregating the total amount of antidumping duties calculated for the examined sales and dividing this amount by the total quantity of those sales.[2] Where the duty assessment rates are above *de minimis*, we will instruct CBP to assess duties on all entries of subject merchandise by that importer in accordance with the requirements set forth in 19 CFR 351.106(c)(2).

Upon issuance of the amended final results of this review, for any importer–specific assessment rates calculated in the amended final results that are above *de minimis* (*i.e.*, at or above 0.50 percent), we will issue appraisement instructions directly to CBP to assess antidumping duties on appropriate entries by applying the per–unit dollar amount against each unit of merchandise on each of that importer's entries during the review period. See 19 CFR 351.212(b)(1). Pursuant to 19 CFR 356.8(a), the Department intends to issue assessment instructions to CBP 41 days after the date of publication of these amended final results of review.

The Department clarified its "automatic assessment" regulation on

[2] We note that 19 CFR 351.212(b)(1) states that "the Secretary normally will calculate an assessment rate for each importer of subject merchandise covered by the review." It is Department practice to calculate multiple importer-specific assessment rates in cases where respondents have reported multiple importers and a single importer-specific rate where respondents reported only one importer. *See, e.g.*, *Stainless Steel Sheet and Strip in Coils from Japan: Final Results of Antidumping Duty Administrative Review*, 75 FR 6631 (February 10, 2010) and *Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 52065 (September 12, 2007) (the Department calculated an assessment rate for each importer of subject merchandise covered by the review); *Polyethylene Retail Carrier Bags from Thailand: Final Results of Antidumping Duty Administrative Review*, 74 FR 65751 (December 11, 2009) and *Stainless Steel Wire Rods from India: Final Results of Antidumping Duty Administrative Review and Notice of Rescission of Antidumping Duty Administrative Review in Part*, 72 FR 68123 (December 4, 2007) (the Department calculated a single per unit assessment rate for a single importer). In the above mentioned cases that involved multiple importers, we have calculated an *ad valorem* assessment rate for one importer while calculating a per-unit assessment rate for another importer. However, in the instant case, Mexinox has not reported multiple importers and, therefore, the Department has calculated one importer-specific assessment rate.

May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the POR produced by Mexinox for which Mexinox did not know the merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the 30.69 percent all–others rate if there is no company–specific rate for an intermediary involved in the transaction.

Cash Deposit Requirements

The following deposit requirements continue to be effective on any entries made on or after February 10, 2010, the date of publication of the *S4 from Mexico 2007–2008 Final Results*, for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption as provided by section 751(a)(2)(C) of the Act: (1) for Mexinox, which has a separate rate, the cash deposit rate will be the company–specific rate shown above; (2) for previously reviewed or investigated companies not listed above that have a separate rate, the cash deposit rate will continue to be the company–specific rate published for the most recent period; (3) the cash deposit rate for all other Mexican exporters will be 30.69 percent, the current Mexico–wide rate; and (4) the cash deposit rate for all non–Mexican exporters will be the rate applicable to the Mexican exporter that supplied that exporter. These cash deposit requirements continue to remain in effect until further notice.

Notifications of Interested Parties

This notice also 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. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation that is subject to sanction.

We are issuing and publishing these amended final results of review and notice in accordance with sections 751(a) and 777(i) of the Act.

Dated: March 29, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–7676 Filed 4–2–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–059]

Pressure Sensitive Plastic Tape from Italy: Notice of Continuation of Antidumping Duty Finding

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the Department of Commerce (the Department) and the International Trade Commission (ITC) that revocation of the antidumping duty finding on pressure sensitive plastic tape (PSP Tape) from Italy would be likely to lead to continuation or recurrence of dumping and of material injury to an industry in the United States within a reasonably foreseeable time, the Department is publishing notice of the continuation of this antidumping duty finding.

EFFECTIVE DATE: April 5, 2010.

FOR FURTHER INFORMATION CONTACT: Terre Keaton Stefanova or Brandon Farlander, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1280 or (202) 482–0182, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 1, 2009, the Department initiated and the ITC instituted a sunset review of the antidumping duty finding on PSP Tape from Italy, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). *See Initiation of Five–Year Sunset Review*, 74 FR 20286 (May 1, 2009).

The Department conducted an expedited sunset review of this finding. As a result of its review, the Department found that revocation of the antidumping duty finding would be likely to lead to continuation or recurrence of dumping and notified the ITC of the magnitude of the margins likely to prevail were the finding to be revoked. *See Pressure Sensitive Plastic Tape from Italy: Final Results of Expedited Sunset Review*, 74 FR 40811 (August 13, 2009) (*Final Results*).[1]

On March 26, 2010, the ITC published its determination pursuant to section 751(c) of the Act that revocation of the antidumping duty finding on PSP Tape from Italy would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Pressure Sensitive Plastic Tape from Italy; Determination*, 75 FR 14628 (March 26, 2010).

Scope of the Finding

The products covered in this review are shipments of PSP Tape measuring over one and three–eighths inches in width and not exceeding four mils in thickness. The above described PSP Tape is classified under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 3919.10.20 and 3919.90.50. The HTS subheadings are provided for convenience and for customs purposes. The written description remains dispositive.

Continuation of the Finding

As a result of the determinations by the Department and the ITC that revocation of the antidumping duty finding would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty finding on PSP Tape from Italy.

U.S. Customs and Border Protection will continue to collect antidumping duty cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of continuation of this finding will be the date of publication in the **Federal Register** of this Notice of Continuation. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next five–year review of this finding not later than March 2015.

This five–year (sunset) review and this notice are in accordance with

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[1] On October 26, 2009, the Department placed on the record a memorandum regarding corrections to the scope language contained in the *Final Results*. (*See* October 26, 2009, Memorandum to The File regarding "Corrections to Scope Language").

sections 751(c) and 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: March 29, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–7659 Filed 4–2–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–909]

Certain Steel Nails from the People's Republic of China: Extension of Time Limit for the Preliminary Results of the New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 5, 2010.

FOR FURTHER INFORMATION CONTACT: Matthew Renkey, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2312.

SUPPLEMENTARY INFORMATION:

Background

The notice announcing the antidumping duty order on certain steel nails from the People's Republic of China ("PRC") was published in the **Federal Register** on August 1, 2008. *See Notice of Antidumping Duty Order: Certain Steel Nails From the People's Republic of China*, 73 FR 44961 (August 1, 2008) ("*Antidumping Duty Order*"). On August 24, 2009, we received a timely request for a new shipper review ("NSR") from Maanshan Leader Metal Products Co., Ltd. ("Maanshan Leader") in accordance with 19 CFR 351.214(c) and 351.214(d)(2). On September 25, 2009, the Department of Commerce ("Department") published a notice of initiation of a NSR of certain steel nails from the People's Republic of China covering the period of January 23, 2008, through July 31, 2009. *See Certain Steel Nails from the People's Republic of China: Initiation of Antidumping Duty New Shipper Review*, 74 FR 48907, (September 25, 2009). On February 16, 2010, the Department issued a memorandum that tolled the deadlines for all Import Administration cases by seven calendar days due to the recent Federal Government closure. *See* Memorandum for the Record from Ronald Lorentzen, DAS for Import Administration, Tolling of Administrative Deadlines as a Result of the Government Closure During the Recent Snowstorm, dated February 12, 2010. As a result, the preliminary results are currently due on March 29, 2010.

Extension of Time Limits for Preliminary Results

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended ("Act"), provides that the Department will issue the preliminary results of a NSR of an antidumping duty order within 180 days after the day on which the review was initiated. *See also* 19 CFR 351.214 (i)(1). The Act further provides that the Department may extend that 180–day period to 300 days if it determines that the case is extraordinarily complicated. *See also* 19 CFR 351.214 (i)(2).

The Department is extending the deadline because we determine that this NSR involves extraordinarily complicated issues, such as an evaluation of the *bona fide* nature of the company's sale and whether the company is in fact eligible for a NSR. Additionally, the Department requires further time to issue and receive responses to supplemental questionnaires as well as to receive and analyze surrogate country and surrogate value comments. We are therefore extending the time for the completion of the preliminary results of this review by 120 days, to July 27, 2010. The final results continue to be due 90 days after the publication of the preliminary results.

We are issuing and publishing this notice in accordance with sections 751(a)(2)(B)(iv) and 777(i) of the Act.

Dated: March 24, 2010.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–7512 Filed 4–2–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Docket 4–2010]

Foreign–Trade Zone 113—Ellis County, Texas, Application for Reorganization under Alternative Site Framework, Extension of Comment Period

The comment period for the application to reorganize FTZ 113 under the alternative site framework, submitted by the Ellis County Trade Zone Corporation (75 FR 3705, 1/22/2010), is being extended to April 29, 2010 to allow interested parties additional time in which to comment. Rebuttal comments may be submitted during the subsequent 15-day period until May 14, 2010. Submissions (original and one electronic copy) shall be addressed to the Board's Executive Secretary at: Foreign–Trade Zones Board, U.S. Department of Commerce, Room 2111, 1401 Constitution Avenue NW, Washington, DC 20230.

For further information, contact Camille Evans at Camille.Evans@trade.gov or (202) 482–2350.

Dated: March 25, 2010.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–7514 Filed 4–2–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Docket 23–2010]

Foreign–Trade Zone 157—Casper, Wyoming, Application for Expansion

An application has been submitted to the Foreign–Trade Zones Board (the Board) by the Casper/Natrona County International Airport, grantee of FTZ 157, requesting authority to expand FTZ 157 to include a site in Casper, Wyoming. The application was submitted pursuant to the provisions of the Foreign–Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on March 29, 2010.

FTZ 157 was approved on January 19, 1989 (Board Order 426, 54 F.R. 5532, 02/03/1989). The zone currently consists of one site (492 acres): *Site 1* (492 acres) is located at the Casper/Natrona County International Airport, 8500 Airport Parkway, Casper.

The applicant is requesting authority to expand the zone to include a site in Casper (Natrona County): Proposed Site 2 (984 acres) Casper Logistics Hub, located adjacent to and northeast of the airport at 6 Mile Road and Morgan Street, Casper. The proposed site includes parcels owned by the applicant, Bishop Industrial Ranch, LLC and the Casper Logistics Hub. The site will be used to provide logistics, warehousing and distribution services to area businesses. No specific manufacturing authority is being requested at this time. Such requests would be made to the Board on a case–by-case basis.

In accordance with the Board's regulations, Christopher Kemp of the

FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is June 4, 2010. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to June 21, 2010.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign–Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230–0002, and in the "Reading Room" section of the Board's website, which is accessible via www.trade.gov/ftz.

For further information, contact Christopher Kemp at Christopher.Kemp@trade.gov/ftz or (202) 482–0862.

Dated: March 29, 2010.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–7664 Filed 4–2–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Docket 22–2010]

Foreign–Trade Zone 26—Atlanta, Georgia, Application for Expansion and Reorganization under Alternative Site Framework

An application has been submitted to the Foreign–Trade Zones (FTZ) Board (the Board) by the Georgia Foreign–Trade Zone, Inc. (GFTZ), grantee of FTZ 26, requesting authority to expand the zone and reorganize under the alternative site framework (ASF) adopted by the Board (74 FR 1170, 01/12/09; correction 74 FR 3987, 01/22/09). The ASF is an option for grantees for the establishment or reorganization of general–purpose zones and can permit significantly greater flexibility in the designation of new "usage–driven" FTZ sites for operators/users located within a grantee's "service area" in the context of the Board's standard 2,000–acre activation limit for a general–purpose zone project. The application was submitted pursuant to the provisions of the Foreign–Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on March 25, 2010.

The grantee's proposed service area under the ASF would include the following counties in Georgia: Haralson, Paulding, Polk, Bartow, Floyd, Chattooga, Gordon, Pickens, Gilmer, Fannin, Murray, Whitfield, Catoosa, Walker, Dade, Forsyth, Dawson, Hall, Lumpkin, Union, White, Habersham, Banks, Franklin (in part), Cherokee, Gwinnett, Fulton, Clayton, Fayette, Henry, Cobb, Douglas, DeKalb, Rockdale, Spalding, Troup, Coweta, Carroll, Heard, Meriwether, Pike, Lamar, Butts, Upson, Newton, Jasper, Morgan, Walton, Barrow, Oconee, Clarke, Greene, Oglethorpe, Madison, Jackson, Monroe, Bibb, Putnam, Jones, Baldwin, Crawford, Peach, Wilkinson (in part), Twiggs (in part), Houston (in part), Muscogee, Harris, Talbot, Taylor, Marion (in part) and Richmond. If approved, the grantee would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The proposed service area is adjacent to or within the Atlanta Customs and Border Protection port of entry with the exception of Richmond County, which is adjacent to the Colombia, South Carolina Customs and Border Protection port of entry.

FTZ 26 was approved by the Board on January 17, 1977 (Board Order 115, 42 FR 4186, 01/24/77); reorganized on April 18, 1988 (Board Order 381, 53 FR 15254, 04/28/88); and, expanded on April 29, 1996 (Board Order 820, 61 FR 21156, 05/09/96), on March 19, 1999 (Board Order 1033, 64 FR 16421, 4/5/99, on June 21, 2000 (Board Order 1105, 65 FR 39865, 6/28/00), on July 8, 2005 (Board Order 1401, 70 FR 41201, 7/18/05), on August 7, 2009 (Board Order 1638, 74 FR 42052, 8/20/09) and on March 12, 2010 (Board Order 1670). The general–purpose zone currently consists of the following sites: *Site 1* (287 acres) -- adjacent to the Hartsfield–Jackson Atlanta International Airport in Clayton and Fulton Counties including jet fuel storage and distribution facilities and including 2 acres located at 561 Airport Parkway, Atlanta (expires 1/31/12); *Site 2* (1,436 acres) -- Peachtree City Industrial Park, Highway 74 South, Peachtree City (Fayette County); *Site 3* (85 acres) -- Canton–Cherokee County Business and Industrial Park, Brown Industrial Boulevard, Canton (Cherokee County); *Site 4* (1,152 acres) -- within the 2,124–acre Muscogee Technology Park, located at the intersection of Georgia Highway 22 and State Route 80, Columbus (Muscogee County); *Site 5* (49 acres) -- at the Corporate Ridge/Columbus East Industrial Park, located at the intersection of Schatulga Road and Cargo Drive, Columbus (Muscogee County); *Site 6* (394 acres) -- within the 411–acre Green Valley Industrial Park, located at the intersection of Green Valley Road and State Route 16, Griffin (Spalding County); *Site 7* (64 acres) -- at the Hudson Industrial Park, located at the intersections of Hudson Industrial Drive, Green Valley Road and Futral Road, Griffin (Spalding County); *Site 9* (321 acres) -- at the Hamilton Mill Business Center, located at the intersection of Hamilton Mill Road and Interstate 985, Buford (Gwinnett County); *Site 10* (212 acres) -- at the ProLogis Park Greenwood, located just west of Interstate 75 at the Georgia State Highway 155 ''diamond'' interchange, McDonough (Henry County); *Site 11* (1,544 acres) -- West Point Economic Development, located at the intersection of Interstate 85 and Webb Road, West Point (Troup County); *Site 12* (241 acres) -- within the 1,800–acre Callaway South Industrial Park, located at Pegasus Parkway and South Loop Extension off of Interstate 85, LaGrange (Troup County); *Site 13* (184 acres) -- within the 541–acre Sofkee Industrial Park, 5898 Hawkinsville Road, Macon (Bibb County); *Site 14* (230 acres) -- Airport East Industrial Park, 8222 Hawkinsville Road, Macon (Bibb County); *Site 15* (207 acres) -- within the 715–acre Twiggs County Industrial Park, located at Interstate 16 and State Route 96, Jeffersonville (Twiggs County); *Site 16* (308 acres) -- Meridian 75 Logistics Center, located at Interstate 75 and Rumble Road, Forsyth (Monroe County); *Site 17* (193 acres) -- Majestic Airport Center III, located at Interstate 85 and Jonesboro Road (Highway 138), Union City (Fulton County); *Site 18* (195 acres) -- South Fulton Parkway Corporate Center, located at South Fulton Parkway and Derrick Road, Union City (Fulton County); and, *Site 19* (7 acres) -- located at Southpoint Business Park, Building B, Forest Park (Fulton County). Site 8 has expired. Sites 11–17 are subject to a sunset provision that would terminate authority on August 31, 2014, and Site 18 is subject to a sunset provision that would terminate authority on March 31, 2015, where no activity has occurred under FTZ procedures before those dates.

The applicant is requesting to include Sites 1–18 as "magnet" sites. The applicant is also requesting to include Site 19 as a "usage–driven" site.

In accordance with the Board's regulations, Kathleen Boyce of the FTZ staff is designated examiner to evaluate and analyze the facts and information presented in the application and case

record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address listed below. The closing period for their receipt is June 4, 2010. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to June 21, 2010).

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign–Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230–0002, and in the "Reading Room" section of the Board's website, which is accessible via www.trade.gov/ftz. For further information, contact Kathleen Boyce at Kathleen.Boyce@trade.gov or (202) 482–1346.

Dated: March 25, 2010.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–7669 Filed 4–2–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–894]

Certain Tissue Paper Products from the People's Republic of China: Notice of Initiation of Anti–circumvention Inquiry

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from Seaman Paper Company of Massachusetts, Inc. (the petitioner), the Department of Commerce (the Department) is initiating an anti–circumvention inquiry to determine whether certain imports of tissue paper from Vietnam are circumventing the antidumping duty order on certain tissue paper products (tissue paper) from the People's Republic of China (PRC). *See Notice of Amended Final Determination of Sales at Less than Fair Value and Antidumping Duty Order: Certain Tissue Paper Products from the People's Republic of China*, 70 FR 16223 (March 30, 2005) (Tissue Paper Order).

EFFECTIVE DATE: April 5, 2010.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Gemal Brangman, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1766 or (202) 482–3773, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 18, 2010, the petitioner submitted a letter requesting that the Department initiate and conduct an anti–circumvention inquiry, pursuant to section 781(b) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.225(h), to determine whether imports of tissue paper from Vietnam which the petitioner alleges Max Fortune (Vietnam) Paper Products Company Limited (Max Fortune Vietnam) made from jumbo rolls and cut sheets of tissue paper produced in the PRC are circumventing the antidumping duty order on tissue paper from the PRC. Specifically, the petitioner alleges that Max Fortune Vietnam is importing into Vietnam PRC–produced jumbo rolls and cut sheets of tissue paper for completion or assembly into merchandise of the same class or kind as that covered by the antidumping duty order on tissue paper from the PRC prior to exporting that merchandise to the United States; and that such activity on the part of Max Fortune Vietnam constitutes circumvention of the PRC tissue paper order.

On February 24, 2010, the Department requested that the petitioner provide additional information pertinent to its anti–circumvention inquiry request. *See* Letter to Seaman Paper Company of Massachusetts, Inc., dated February 24, 2010. The petitioner provided the requested information on March 1, 2010.

On March 10, 2010, Department officials spoke with the foreign market researcher who provided certain information contained in the anti–circumvention inquiry request. *See* memorandum to the file entitled, "Telephone Conversation with Foreign Market Researcher," dated March 17, 2010.

On March 16, 2010, Max Fortune Vietnam responded to the petitioner's circumvention allegation. In its submission, Max Fortune Vietnam asserts, among other things, that it has never imported raw tissue paper from the PRC, and that its tissue paper production and processing operations in Vietnam are significant. Therefore, Max Fortune Vietnam requests that the Department reject the petitioner's request to initiate an anti–circumvention inquiry with respect to its operations.

Scope of the Order

The tissue paper products subject to order are cut–to-length sheets of tissue paper having a basis weight not exceeding 29 grams per square meter. Tissue paper products subject to this order may or may not be bleached, dye–colored, surface–colored, glazed, surface decorated or printed, sequined, crinkled, embossed, and/or die cut. The tissue paper subject to this order is in the form of cut–to-length sheets of tissue paper with a width equal to or greater than one–half (0.5) inch. Subject tissue paper may be flat or folded, and may be packaged by banding or wrapping with paper or film, by placing in plastic or film bags, and/or by placing in boxes for distribution and use by the ultimate consumer. Packages of tissue paper subject to this order may consist solely of tissue paper of one color and/or style, or may contain multiple colors and/or styles.

Tissue paper products subject to this order do not have specific classification numbers assigned to them under the Harmonized Tariff Schedule of the United States (HTSUS) and appear to be imported under one or more of the several different "basket" categories, including but not necessarily limited to the following subheadings: HTSUS 4802.30, HTSUS 4802.54, HTSUS 4802.61, HTSUS 4802.62, HTSUS 4802.69, HTSUS 4804.39, HTSUS 4806.40, HTSUS 4808.30, HTSUS 4808.90, HTSUS 4811.90, HTSUS 4823.90, HTSUS 9505.90.40.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

Excluded from the scope of the order are the following tissue paper products: (1) tissue paper products that are coated in wax, paraffin, or polymers, of a kind used in floral and food service applications; (2) tissue paper products that have been perforated, embossed, or die–cut to the shape of a toilet seat, i.e., disposable sanitary covers for toilet seats; and (3) toilet or facial tissue stock, towel or napkin stock, paper of a kind used for household or sanitary purposes, cellulose wadding, and webs of cellulose fibers (HTSUS 4803.00.20.00 and 4803.00.40.00).

Initiation of Anti–circumvention Proceeding

Applicable Statute

Section 781(b) of the Act provides that the Department may find circumvention of an antidumping duty order when merchandise of the same class or kind subject to the order is completed or assembled in a foreign

country other than the country to which the order applies. In conducting anti–circumvention inquiries under section 781(b) of the Act, the Department relies upon the following criteria: (A) merchandise imported into the United States is of the same class or kind as any merchandise produced in a foreign country that is subject to an antidumping duty order; (B) before importation into the United States, such imported merchandise is completed or assembled in another foreign country from merchandise which is subject to the order or produced in the foreign country that is subject to the order; (C) the process of assembly or completion in the foreign country referred to in (B) is minor or insignificant; (D) the value of the merchandise produced in the foreign country to which the antidumping duty order applies is a significant portion of the total value of the merchandise exported to the United States; and (E) the administering authority determines that action is appropriate to prevent evasion of such order or finding. As discussed below, the petitioner presented evidence with respect to these criteria.

A. Merchandise of the Same Class or Kind

The petitioner claims that the tissue paper from Vietnam, which it alleges Max Fortune Vietnam completes or assembles (*i.e.*, by cutting to length if necessary, folding, and packaging) in Vietnam before exporting it to the United States, is produced from jumbo rolls and sheets of PRC–origin tissue paper obtained from Max Fortune Vietnam's affiliate in the PRC, Fuzhou Tian Jun Trading Co. Ltd., (Tian Jun), and other Chinese sources, and is physically identical to the subject merchandise cut–to-length tissue paper from the PRC. The petitioner states that its claim is supported by the fact that Max Fortune Industrial Limited (Max Fortune), which wholly owns Max Fortune Vietnam and exports the subject merchandise to the United States, has consistently stated in its questionnaire responses submitted to the Department in past and ongoing administrative reviews of the antidumping duty order on tissue paper from the PRC, that the tissue paper Max Fortune Vietnam exports to the United States is of the same class or kind of merchandise as that covered by the antidumping duty order. *See* February 18, 2010, anti–circumvention inquiry request at pages 11–12. Accordingly, pursuant to section 781(b)(1)(A)(i) of the Act, the petitioner claims that the tissue paper from Max Fortune Vietnam is of the same class or kind as the tissue paper produced in the PRC, which is subject to the antidumping duty order.

B. Completion of Merchandise in a Foreign Country

The petitioner alleges that the tissue paper that is the subject of the anti–circumvention inquiry request is made from jumbo rolls and sheets of tissue paper produced in the PRC which are completed or assembled (*i.e.*, cut–to-length (if starting from jumbo rolls), folded, and packaged) into finished tissue paper products in Vietnam for export to the United States. Based largely on information obtained from a foreign market researcher, the petitioner asserts that: 1) Max Fortune Vietnam has been importing significant amounts of tissue paper jumbo rolls and sheets since the company was established in 2004 (shortly after the original less–than-fair–value (LTFV) investigation segment of this proceeding was initiated) from Tian Jun and other Chinese sources; 2) Max Fortune Vietnam has been exporting significant quantities of tissue paper products to the United States since 2005; and 3) Max Fortune's facility in Vietnam performs labor–intensive converting operations (*i.e.*, cutting, folding and packing activities), rather than capital–intensive papermaking operations. *See* February 18, 2010, anti–circumvention inquiry request at pages 12–21, and Exhibits 1, 13 and 14; and the March 1, 2010, supplemental submission. Based on this information, the petitioner concludes that, pursuant to section 781(b)(1)(B)(ii) of the Act, Max Fortune Vietnam's tissue paper products are completed or assembled in another foreign country (Vietnam) from merchandise (tissue paper sheets or jumbo rolls) which is produced in the foreign country (the PRC) that is subject to the antidumping duty order.

C. Minor or Insignificant Process

The petitioner maintains that for the purpose of section 781(b)(1)(C) of the Act, conversion of jumbo rolls and/or sheets of tissue paper produced in the PRC into cut–to-length tissue paper in Vietnam is a "minor or insignificant process" as defined by the Act. According to the petitioner, the record evidence in the PRC tissue paper proceeding demonstrates that converting jumbo rolls and sheets of tissue paper is a minor or insignificant process. The petitioner states that cutting, folding and packaging tissue paper are operations that merely impart the final sheet size and form in which the product is delivered to the ultimate customer. The petitioner also states that the most fundamental aspects of the merchandise, such as the basis weight, texture, quality, and other special characteristics that may be required if the paper is intended for printing, are established when the paper is produced. Furthermore, the petitioner claims that the types of minor assembly operations described above (and below) with respect to converting jumbo rolls and sheets of tissue paper is consistent with the information its foreign market researcher obtained with respect to the operations of Max Fortune Vietnam's facility in Vietnam. *See* February 18, 2010, anti–circumvention inquiry request at pages 22–26, and Exhibits 1 and 2.

The petitioner states that converting jumbo rolls and pre–cut sheets of tissue paper involves two to three minor processes typically performed by hand in Vietnam: cutting the tissue to a specific size (if starting from jumbo rolls), folding it (by hand typically) and packaging it for export (by hand). The petitioner contends that, based on the information obtained from its foreign market researcher, Max Fortune Vietnam only performs labor–intensive converting operations in Vietnam (*i.e.*, cutting, folding and packing activities), which are minor or insignificant processes in the overall production of tissue paper products, not capital–intensive papermaking operations. *See* February 18, 2010, anti–circumvention inquiry request at Exhibit 1.

The petitioner argues that an analysis of the relevant statutory factors of section 781(b)(2) of the Act further supports its conclusion that the processing in Vietnam is "minor or insignificant." These factors include: (1) the level of investment in the foreign country; (2) the level of research and development in the foreign country; (3) the nature of the production process in the foreign country; (4) the extent of production facilities in the foreign country; and (5) whether the value of the processing performed in the foreign country represents a small proportion of the value of the merchandise imported into the United States.

The petitioner argues that the processing in Vietnam is "minor and insignificant" as the term is defined in section 781(b)(2) of the Act when compared to the complex and capital–intensive processes involved in producing lightweight tissue paper from pulp, chemicals, and dyes. The petitioner's analysis of the statutory factors follows below.

(1) Level of Investment

The petitioner claims that available information concerning Max Fortune Vietnam's operations indicates that the

level of investment is minor or insignificant. According to the petitioner, Max Fortune Vietnam's production model (*i.e.*, importing jumbo rolls and cut–to-length sheets from Tian Jun and other companies in China, cutting to length if necessary and using manual labor to hand–fold and package the tissue paper before export to the United States) requires at most paper cutting machines, table chairs and lights, and the investment associated with this equipment is not significant. The petitioner states that its claim is supported by data obtained from its foreign market researcher. *See* February 18, 2010, anti–circumvention inquiry request at pages 27–28, and Exhibit 1. Accordingly, the petitioner concludes that the level of investment in Max Fortune Vietnam's processing facility is low.

(2) Level of Research and Development

The petitioner maintains that the evidence reasonably available indicates that no research and development (R&D) is taking place in Vietnam. The petitioner states that because Max Fortune Vietnam is wholly–owned by Max Fortune, it is reasonable to presume that any R&D efforts would originate with Max Fortune's affiliated tissue paper supplier in the PRC. Furthermore, the petitioner states that tissue paper production involves mature technologies and processes, and any technical developments are refinements rather than new technologies. Converting operations also reflect mature technologies, according to the petitioner, and the Vietnamese converting operations involve hand–folding and packaging, which are inherently mature processes. *See* February 18, 2010, anti–circumvention inquiry request at pages 29 and 30, and Exhibit 1.

(3) Nature of the Production Process in Vietnam

The petitioner states that its research indicates that Max Fortune Vietnam's operations in Vietnam are limited to PRC–origin jumbo rolls and sheets being cut to size (if necessary), and folded and packed by hand prior to export. As such, they involve unskilled manual labor in contrast to skilled labor required for papermaking. While cutting jumbo rolls into sheets of tissue paper may involve some skill and machinery, according to the petitioner, the nature of this activity is not complex. Therefore, the petitioner contends that Max Fortune Vietnam's "production process" is minor or insignificant. *See* February 18, 2010, anti–circumvention inquiry request at page 30–32.

(4) Extent of Production Facilities in Vietnam

The petitioner asserts, based on information obtained from its foreign market researcher, that Max Fortune Vietnam's facility is relying on significant amounts of PRC tissue paper in its operations. According to the petitioner, Max Fortune Vietnam has imported converting equipment from Tian Jun and employs unskilled labor to convert the tissue paper it imports from the PRC. Therefore, the petitioner concludes that Max Fortune Vietnam's production facility in Vietnam is minimal. *See* February 18, 2010, anti–circumvention inquiry request at pages 32–33, and Exhibit 1A; and the March 1, 2010 supplemental submission at pages 10–11, and Exhibit Supp–6.

(5) Value of Processing in Vietnam Compared to Value of Tissue Paper Imported Into United States

The petitioner states that it does not have access to information concerning the value of the jumbo rolls and sheets of tissue paper exported from the PRC to Max Fortune Vietnam, or the value associated with Max Fortune Vietnam's converting operations performed in Vietnam; however, it contends that data (*i.e.*, Max Fortune Vietnam's parent company's factors of production and usage rates) from the record of the 2007–2008 administrative review of the antidumping duty order on tissue paper from the PRC support a determination that the value of processing performed in Vietnam represents a small portion of the value of the merchandise imported into the United States. *See* February 18, 2010, anti–circumvention inquiry request at pages 34–35, and Exhibit 16.

In addition, the petitioner contends that data from the record of a prior anti–circumvention inquiry regarding tissue paper exports from Vietnam support a determination that the value of processing performed in Vietnam represents a small portion of the value of the merchandise imported into the United States. Specifically, in the prior anti–circumvention inquiry, the Department determined that the same type of conversion processes were minor or insignificant for purposes of the statute, and that inclusion of the resulting tissue paper in the order was appropriate to avoid circumvention of the order. *See Certain Tissue Paper Products From the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order and Extension of Final Determination*, 73 FR 21580 (April 22, 2008) (which was upheld in *Certain Tissue Paper Products From the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 73 FR 57591 (October 3, 2008)). In fact, the petitioner notes that in the prior anti–circumvention inquiry, the activities performed by the Vietnamese entity at issue included more involved forms of processing (such as dip–dying), which would add greater amounts of value than merely converting jumbo rolls and sheets. In contrast, the petitioner contends that Max Fortune Vietnam is only converting the imported jumbo rolls and sheets without performing additional processing (such as dip–dying). *See* February 18, 2010, anti–circumvention inquiry request at page 35.

D. Value of Merchandise Produced in PRC

For the reasons stated in section C.5. above and for the purpose of section 781(b)(1)(D) of the Act, the petitioner contends that the value of the processing performed by Max Fortune Vietnam is a minor portion of the value of the completed merchandise. According to the petitioner, in this case, that analysis necessarily implies that the value of the PRC–origin jumbo rolls and cut–to-length sheets used by Max Fortune Vietnam is a significant portion of the total value of the merchandise exported to the United States, because there are no other operations or components to take into account. In addition, the petitioner states that the factors of production data reported in the 2007–2008 administrative review of tissue paper from the PRC by Max Fortune Vietnam's parent company demonstrates that the value of the converting portion of the tissue paper production process is only a small proportion of the value of the merchandise exported to the United States. *See* February 18, 2010, anti–circumvention inquiry request at page 36, and Exhibit 16.

E. Factors To Consider in Determining Whether Action Is Necessary

The petitioner states that, pursuant to sections 781(b)(1)(E) and (b)(3), additional factors must be considered in the Department's decision to issue a finding of circumvention regarding imports of tissue paper from Vietnam. These factors are discussed below.

Pattern of Trade

The petitioner states that section 781(b)(3)(A) of the Act directs the Department to take into account patterns of trade when making a decision in an anti–circumvention case. According to the petitioner, at the time

the PRC tissue paper petition was filed in February 2004, the only source of imports of tissue paper products was the PRC. Based on publicly available ship manifest (PIERS) data and foreign market research, the petitioner contends that a few months after the petition was filed, Max Fortune established Max Fortune Vietnam with the intention of using it to fold and pack PRC–origin tissue paper to be exported to the United States; and in 2005, Max Fortune Vietnam began commercial shipments. Subsequently, the petitioner asserts, Vietnam rapidly emerged as a source of substantial U.S. imports of tissue paper. *See* February 18, 2010, anti–circumvention inquiry request at pages 37- 40, and Exhibits 3 and 13B.

Affiliation

The petitioner states that section 781(b)(3)(B) of the Act directs the Department to take into account whether the manufacturer or exporter of the merchandise is affiliated with the person who uses the merchandise to assemble or complete in the foreign country that is subsequently imported into the United States when making a decision in an anti–circumvention case. The petitioner points out that Max Fortune has stated on the records of past segments of the PRC tissue paper proceeding that it is affiliated with Max Fortune Vietnam. The petitioner also points out that information obtained from its foreign market researcher indicates that Tian Jun is affiliated with Max Fortune, that Tian Jun has exported tissue paper from the PRC to Max Fortune Vietnam, and that all of Max Fortune Vietnam's sourcing and sales decisions are made by Max Fortune. *See* February 18, 2010, anti–circumvention inquiry request at Exhibit 1. The petitioner argues that the affiliation between Max Fortune Vietnam, Tian Jun and Max Fortune, and the timing of Max Fortune Vietnam's establishment and export shipments, coupled with Max Fortune Vietnam's complete lack of independent decision–making, makes it clear that Max Fortune controls all aspects of Max Fortune Vietnam's operations. *See* February 18, 2010, anti–circumvention request at page 41.

Subsequent Import Volume

The petitioner states that section 781(b)(3)(C) of the Act directs the Department to take into account whether imports of the merchandise into the foreign country have increased after the initiation of the investigation, which resulted in the issuance of the order, when making a decision in an anti–circumvention case. According to the petitioner, given that Vietnam was not a source of tissue paper products at the time the LTFV investigation of tissue paper from the PRC was initiated, it is reasonable to infer that jumbo rolls and cut–to-length sheets of tissue paper were not being shipped to Vietnam for completion or assembly into finished tissue paper products because Chinese producers and exporters had no restrictions on their imports into the United States. In addition, the petitioner notes that Max Fortune Vietnam did not exist at the time the original investigation was initiated. Therefore, before that time, Max Fortune Vietnam could not have imported tissue paper jumbo rolls and sheets from the PRC. However, since its creation in September 2004, Max Fortune Vietnam has directly imported significant quantities of jumbo rolls and cut–to-length sheets of tissue paper from the PRC. *See* February 18, 2010, anti–circumvention inquiry request at page 42 and Exhibit 13C.

Furthermore, the petitioner points out that while the data from foreign market research indicate that Max Fortune Vietnam's direct imports of tissue paper declined after 2007, this does not mean that Max Fortune Vietnam has ceased sourcing PRC jumbo rolls and sheets and converting them, because the data do not capture shipments of PRC tissue paper that were imported into Vietnam by third parties. Additionally, the petitioner points out that the reduction in trade volume in 2008 and 2009 must be viewed in the context of the overall reduction of global trade caused by recent economic events. The petitioner maintains that as the U.S. economy improves and in the event Max Fortune's ability to ship from the PRC is further impaired by increases to its dumping margin, Max Fortune will most certainly return to shipping large volumes of its tissue paper to Max Fortune Vietnam for completion or assembly into finished tissue paper products and subsequent export to the United States. *See* February 18, 2010, anti–circumvention inquiry request at pages 42 and 43.

Analysis

Based on our analysis of the petitioner's February 18, 2010, anti–circumvention inquiry request, the Department determines that a formal anti–circumvention inquiry is warranted. In accordance with 19 CFR 351.225(e), if the Department finds that the issue of whether a product is included within the scope of an order cannot be determined based solely upon the request and the descriptions of the merchandise, the Department will notify by mail all parties on the Department's scope service list of the initiation of a scope inquiry, including an anti–circumvention inquiry. In addition, in accordance with 19 CFR 351.225(f)(1), a notice of the initiation of an anti–circumvention inquiry issued under 19 CFR 351.225(e) will include a description of the product that is the subject of the anti–circumvention inquiry -- in this case, cut–to-length tissue paper that has the characteristics identified in the scope of the order, as provided above -- and an explanation of the reasons for the Department's decision to initiate an anti–circumvention inquiry, as provided below.

With regard to whether the merchandise from Vietnam is of the same class or kind as the merchandise produced in the PRC, the petitioner has presented information indicating that the merchandise being imported from Vietnam is of the same class or kind as the tissue paper produced in the PRC, which is subject to the antidumping duty order. The merchandise from Vietnam shares physical characteristics with the merchandise covered by the antidumping duty order.

With regard to completion of merchandise in a foreign country, the petitioner has also presented information that the tissue paper exported from Vietnam is tissue paper of PRC origin which is further processed in Vietnam.

With regard to whether the conversion of PRC jumbo rolls and/or sheets of tissue paper into cut–to-length tissue paper from Vietnam is a "minor or insignificant process," the petitioner addressed the relevant statutory factors used to determine whether the processing of jumbo rolls and sheets of tissue paper is minor or insignificant with the best information available to it at the time of its anti–circumvention inquiry request. The petitioner relied on information obtained primarily from its foreign market researcher for this purpose. *See* February 18, 2010, anti–circumvention inquiry request at Exhibit 1.

Having established through direct contact the reliability of the data presented by the foreign market researcher in Exhibit 1, we find that the information presented by the petitioner supports its request to initiate an anti–circumvention inquiry. In particular, the petitioner provided evidence for each of the criteria enumerated in the statute, including the following: (1) the nature of Max Fortune Vietnam's operations (*i.e.*, limited to converting operations) suggest little investment has been made in Max Fortune Vietnam; (2) because Max Fortune has a fully integrated

production facility in the PRC and is affiliated with Max Fortune Vietnam, it is reasonable to infer that R&D takes place in the PRC; (3) the cutting, folding and packaging activities (*i.e.*, the converting process) performed by Max Fortune Vietnam do not alter the fundamental characteristics of the tissue paper, and therefore, reflect a production process which is minor or insignificant; (4) Max Fortune Vietnam's labor–intensive converting operations suggest a significantly lower level of investment in production assets than that required by the capital–intensive nature of the papermaking process; and 5) Max Fortune Vietnam's limited operations suggest that converting tissue paper adds little value to the merchandise imported into the United States.

With respect to the value of the merchandise produced in the PRC, the petitioner relied on the information and arguments in the "minor or insignificant process" portion of its anti–circumvention request to indicate that the value of the PRC jumbo rolls and sheets of tissue paper is significant relative to the total value of finished merchandise exported to the United States. We find that this information adequately meets the requirements of this factor, as discussed above.

Finally, the petitioner argued that the Department should also consider the pattern of trade, affiliation, and subsequent import volume as factors in determining whether to initiate the anti–circumvention inquiry. The import information submitted by the petitioner indicates that Vietnamese imports of tissue paper from the PRC and U.S. imports of tissue paper from Vietnam rose significantly after the initiation of the investigation and the establishment of Max Fortune Vietnam. In addition, the petitioner provides information suggesting that Max Fortune Vietnam's affiliation with a known producer of the subject merchandise in the PRC, the timing of Max Fortune Vietnam's establishment, and the nature of Max Fortune Vietnam's operations reflect an intention to shift completion of merchandise subject to the PRC tissue paper order from the PRC to Vietnam.

Accordingly, we are initiating a formal anti–circumvention inquiry concerning the antidumping duty order on certain tissue paper products from the PRC, pursuant to section 781(b) of the Act. In accordance with 19 CFR 351.225(l)(2), if the Department issues a preliminary affirmative determination, we will then instruct U.S. Customs and Border Protection to suspend liquidation and require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the merchandise at issue, entered or withdrawn from warehouse for consumption on or after the date of initiation of the inquiry.

The Department is focusing its analysis of the significance of the production process in Vietnam on the single company identified by the petitioner, namely Max Fortune Vietnam, in its February 18, 2010, anti–circumvention inquiry request and about which sufficient information to initiate an anti–circumvention inquiry has been provided. If the Department receives a formal request from an interested party regarding potential circumvention by other Vietnamese companies involved in processing PRC jumbo rolls and/or sheets for export to the United States within sufficient time, we will consider conducting the inquiries concurrently.

The Department will, following consultation with interested parties, establish a schedule for questionnaires and comments on the issues. The Department intends to issue its final determination within 300 days of the date of publication of this initiation consistent with the language of section 781(f) of the Act.

This notice is published in accordance with 19 CFR 351.225(f).

Dated: March 29, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–7662 Filed 4–2–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV14

Pacific Halibut Fishery; Guideline Harvest Levels for the Charter Vessel Fishery for Pacific Halibut in International Pacific Halibut Commission Areas 2C and 3A

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

ACTION: Notice of guideline harvest level.

SUMMARY: NMFS provides notice of the 2010 Pacific halibut guideline harvest levels (GHLs) for the charter vessel fishery in International Pacific Halibut Commission (IPHC) regulatory areas (Area) 2C and 3A. This notice is necessary to meet the regulatory requirement to publish notice announcing the GHLs and to inform the public about the 2010 GHLs for the charter vessel fishery for halibut. The GHLs are benchmark harvest levels for participants in the charter vessel fishery. The 2010 GHLs remain the same as the 2009 GHLs; the Area 2C GHL is 788,000 lb (357.4 mt), and the Area 3A GHL is 3,650,000 lb (1,655.6 mt).

DATES: The GHLs are effective beginning February 1, 2010, through December 31, 2010. This period is specified by IPHC as the sport fishing season in all waters in and off Alaska.

FOR FURTHER INFORMATION CONTACT: Peggy Murphy, (907) 586–7228.

SUPPLEMENTARY INFORMATION:

Background

In 2003, NMFS implemented a final rule (68 FR 47256, August 8, 2003) to establish GHLs for Pacific halibut (*Hippoglossus stenolepis*) harvested by the charter vessel fishery in IPHC regulatory area (Area) 2C and Area 3A. Regulations implementing the GHLs have been amended twice. In 2008, the GHL table was corrected at 50 CFR 300.65(c)(1) (73 FR 30504, May 28, 2008). In 2009, regulatory provisions were amended for NMFS' annual publication of the GHL notice and to clarify NMFS' authority to take action at any time to limit the charter vessel angler catch to the GHL (74 FR 21194, May 6, 2009).

This notice is consistent with § 300.65(c) and announces the 2010 GHLs for the charter vessel fishery for halibut in IPHC Areas 2C and 3A. Regulations at § 300.65(c)(1) specify the GHLs based on the total constant exploitation yield (CEY) that is established annually by the IPHC. The total CEY for 2010 is 5,020,000 lb (2,277 mt) in Area 2C, and 26,192,000 lb (11,880 mt) in Area 3A. The corresponding GHLs are 788,000 lb (357.4 mt) in Area 2C, and 3,650,000 lb (1,655.6 mt) in Area 3A. The GHLs in Areas 2C and 3A did not change from the 2009 level. NMFS may take action at any time to limit the charter halibut harvest to as close to the GHL as practicable (50 CFR 300.65 (c)(3)).

NMFS is in the process of implementing a new limited entry system for charter vessels in the guided sport fishery for halibut in Areas 2C and 3A. Beginning in 2011, the limited access system limits the number of charter vessels that may participate in the fishery to qualified business owners (75 FR 554, January 5, 2010). The North Pacific Fishery Management Council also has proposed alternative management measures to allocate an annual halibut catch limit established

by the IPHC between the commercial and charter vessel fisheries. If approved by the Secretary of Commerce, this new allocation program would not be effective before 2012.

Authority: 16 U.S.C. 773 *et seq.*

Dated: March 30, 2010.

Emily H. Menashes,

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

[FR Doc. 2010–7626 Filed 4–2–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and opportunity for public comment.

Pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. EDA has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT

[3/23/2010 through 3/30/2010]

Firm	Address	Date accepted for filing	Products
Mansfield Plumbing Products, LLC	150 E. 1st St., Perrysville, OH 44864.	3/23/2010	Sinks and lavatories made of porcelain or china.
Hurst Manufacturing	1551 East Broadway, Princeton, NJ 47670.	3/24/2010	Electric Motors, Brushless DC, AC Induction, Stepper and Synchronous.
Adams USA, Inc	610 S Jefferson Avenue, Cookeville, TN 38501.	3/25/2010	The firm produces sporting goods equipment; primary materials include plastic and fabric.
Bailey Knit Corporation	1606 Sanders Ave, NE., Fort Payne, AL 35967.	3/25/2010	The firm produces socks; primary materials include cotton and synthetic fibers.
Development Associates, Inc	300 Old Baptist Road, North Kingston, RI 02852.	3/25/2010	Development Associates manufactures polyurethane Resin, clear polyurethane resin—auto grade, non-yellowing, uv stable, mercury free, urethane Adhesive, epoxy primer, wire and cable coating.
Hawaiian Sun Products, Inc	259 Sand Island Access, Honolulu, HI 96819.	3/25/2010	Hawaiian Sun produces tropical fruit juices, preserves, chocolate covered food products, macadamia nuts, and a variety of other food products.
Pierce Aluminum Company, Inc	34 Forge Park, Franklin, MA 02038.	3/25/2010	Pierce Aluminum specializes in aluminum products for use in the marine, transportation, defense, Architectural, and general manufacturing. They also provide finished aluminum products for first line production capabilities for the same industries.
Alpha Machining & Manufacturing, Inc.	1604 N. 161st East Avenue, Tulsa, OK 74116.	3/29/2010	Machined parts for the aircraft industry.

Any party having a substantial interest in these proceedings may request a public hearing on the matter.

A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room 7106, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice.

Please follow the procedures set forth in section 315.9 of EDA's final rule (71 FR 56704) for procedures for requesting a public hearing. The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: March 30, 2010.

Bryan Borlik,

Program Director.

[FR Doc. 2010–7587 Filed 4–2–10; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for Hurricane and Storm Damage Reduction for South Ponte Vedra Beach, Vilano Beach, and Summer Haven Beach Reaches, St. Johns County, FL

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers, Jacksonville District, intends to prepare a Draft Environmental Impact Statement (DEIS) for evaluation of the feasibility of providing hurricane and storm damage reduction (HSDR), and related purposes to the shores of St. Johns County, Florida. In cooperation with St. Johns County, the study will evaluate alternatives that will maximize HSDR while minimizing environmental impacts within three reaches designated critically eroded by Florida Department of Environmental Protection (FDEP): (1) South Ponte Vedra Beach (R84–R110/5 miles), (2) Vilano Beach (R110–R122/2.5 miles) and (3) Summer Haven Beach (R197–R209/2.3 miles).

ADDRESSES: U.S. Army Corps of Engineers, Planning Division, Environmental Branch, P.O. Box 4970, Jacksonville, FL 32232–0019.

FOR FURTHER INFORMATION CONTACT: Mr. Paul M. DeMarco, by e-mail *Paul.M.DeMarco@usace.army.mil* or by telephone at 904–232–1897.

SUPPLEMENTARY INFORMATION:

a. *Proposed Action.* The Rivers and Harbors Act of 1962 gave the Secretary of the Army broad authorization to survey coastal areas of the United States and its possessions in the interest of beach erosion control, hurricane protection and related purposes, provided that surveys of particular areas would be authorized by appropriate resolutions (Pub. L. 87–874, Section 110). As a result, portions of the St. Johns County shoreline experiencing severe erosion were studied extensively. The St. Johns County, Florida General Reevaluation Report (GRR) (USACE 1998), recommended beach nourishment along St. Augustine Beach. Initial fill was completed in January 2003.

Authority for the proposed study is House Resolution 2646 adopted June 21, 2000. A Reconnaissance Report completed in March 2004, by the Corps, concluded based on preliminary findings, there was a federal interest in pursuing HSDR for the Vilano Beach and Summer Haven Beach reaches. Subsequent to the completion of that report, South Ponte Vedra Beach experienced severe erosion, was designated as a critically eroded beach by FDEP, and therefore added to the scope of the Federal study.

b. *Alternatives.* Project's alternatives include no action and various levels of protection along approximately 9.8 miles of coastal shoreline along three reaches designated as critically eroded areas. In addition to various levels of beach nourishment and periodic renourishment, the Corps will consider other management measures such as nearshore placement of sand, breakwaters, submerged artificial reef, groins, revetments, seawalls, dunes/vegetation, change to the Coastal Construction Control Line, relocation of structures, moratorium on construction, establish a no-growth program, relocation of structures, flood proofing of structures, and condemnation of structures with land acquisition.

c. *Scoping Process.* The scoping process as outlined by the Council on Environmental Quality has been and will continue to be utilized to involve Federal, State, and local agencies, affected Indian tribes, and other interested persons and organizations. Scoping letters were sent to the appropriate parties requesting their comments and concerns on August 17, 2005, for the Summer Haven and Vilano Beach reaches of the study area. After that time, FDEP designated the South Ponte Vedra Reach as critically eroding. A second scoping letter was sent out on September 16, 2008, to include the South Ponte Vedra Reach in the study area. Initial comments and concerns have been received. Any additional persons and organizations wishing to participate in the scoping process should contact the U.S. Army Corps of Engineers at the above address.

Significant issues to be analyzed in the DEIS would include effects on Federally listed threatened and endangered species, and Essential Fish Habitat. Other issues would be health and safety, water quality, aesthetics and recreation, fish and wildlife resources, cultural resources, and socio-economic resources. Issues identified through scoping and public involvement thus far include loss of land and property due to erosion, lack of protection from hurricanes, loss of recreational beach, concern over impacts to sea turtles and shore birds from renourishment, concern over impacts to benthic organisms from mining and fill, concern over protecting surfing spots and the revenue they generate, concern over wasting Federal tax dollars, too much time since the first studies without positive results, and concern that revetments and seawalls harm sea turtle nesting.

Any proposed action would be coordinated with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (NMFS) pursuant to Section 7 of the Endangered Species Act, and with the State Historic Preservation Officer. The NMFS Habitat Conservation Division (HCD) has accepted cooperating agency status on the study.

Any proposed action would also involve evaluation for compliance with guidelines pursuant to section 404(b) of the Clean Water Act; application (to the State of Florida) for Water Quality Certification pursuant to section 401 of the Clean Water Act; certification of state lands, easements, and rights of way; and determination of Coastal Zone Management Act consistency. The FDEP Bureau of Beaches and Coastal Systems (BBCS) has also accepted cooperating agency status on the study.

The U.S. Army Corps of Engineers and the non-Federal sponsor, St. Johns County, would provide extensive information and assistance on the resources to be impacted and alternatives.

d. *Scoping Meetings.* Public scoping meetings could be held. Exact dates, times, and locations would be published in local papers.

e. *Agency Role.* As the cooperating agency, NMFS HCD and FDEP BBCS will provide information and assistance on the resources to be impacted, mitigation measures and alternatives. Other agencies having either regulatory authority or special expertise may also be invited to become a cooperating agency in preparation of the EIS. Specifically, as a Federal agency with jurisdiction to manage resources available on the Outer Continental Shelf (OCS), the U.S. Minerals Management Service would be invited should potential borrow areas be identified within Federal waters (outside the 3-mile State statutory limit).

f. *Draft Environmental Impact Statement Availability.* The study schedule is dependent upon Congressional funding and the current estimate is for the Draft Environmental Impact Statement to be available on or after 2012.

Dated: March 25, 2010.

Eric P. Summa,

Chief, Environmental Branch.

[FR Doc. 2010–7598 Filed 4–2–10; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army

Draft Environmental Impact Statement (DEIS) for Training Range and Garrison Support Facilities Construction and Operation at Fort Stewart, GA

AGENCY: Department of the Army, DoD.

ACTION: Notice of Availability (NOA).

SUMMARY: The Department of the Army has prepared a DEIS to analyze the environmental and socioeconomic impacts resulting from the proposed construction of 12 range projects and 2 garrison support facilities at Fort Stewart, Georgia. Completion of these projects will better allow the Army to support Soldier training requirements and will support Fort Stewart's existing and future units. Construction of these projects will help to ensure Fort Stewart can meet unit training requirements if and when the pace of operational deployments slows.

DATES: The public comment period will end 45 days after the publication of an NOA in the **Federal Register** by the U.S. Environmental Protection Agency.

ADDRESSES: For further information regarding the EIS, please contact Mr. Charles Walden, Project Manager, Directorate of Public Works, Prevention and Compliance Branch, Environmental Division, 1550 Frank Cochran Drive, Building 1137–A, Fort Stewart, Georgia

31314–4928. Written comments may be mailed to this address or e-mailed to *Charles.Walden4@us.army.mil*.

FOR FURTHER INFORMATION CONTACT: Ms. Dina McKain, Public Affairs Office, at (912) 435–9874 during normal business hours.

SUPPLEMENTARY INFORMATION: To meet the needs of the Soldiers at Fort Stewart, additional ranges and garrison support facilities are required. This DEIS examines the potential environmental and socioeconomic impacts of the construction and operation of 12 ranges and 2 garrison support facilities to be constructed over a 4-year time period. It also examines potential impacts to surrounding lands and/or local communities.

The DEIS evaluates the following: A Multipurpose Machine Gun Range, an Infantry Platoon Battle Course, a Known Distance Range, two Modified Record Fire Ranges, a Qualification Training Range, an Infantry Squad Battle Course, a Fire and Movement Range, a Digital Multipurpose Training Range, a 25 Meter Zero Range, a Combat Pistol Range, and a Convoy Live-Fire Course and associated engagement boxes. The Garrison Support Facilities are a Sky Warrior Unmanned Aerial System (UAS) facility and a 10th Engineering Battalion Complex, which would be constructed in the cantonment area.

Three alternatives are considered: Alternative A—No Action, and two action alternatives (Alternatives B and C). The No Action Alternative is to continue the current mission and support activities already occurring at Fort Stewart. The action alternatives would greatly enhance Soldier training and overall unit readiness. Alternatives B and C offer different sitings for the ranges and garrison support facilities. Specified screening criteria were applied to each alternative to ascertain and rate the impact, from both an environmental and an operational perspective. Where possible, Alternative B sites tend to utilize footprints of existing ranges, limit the isolation of useful maneuver terrain, be located in relative close proximity to the cantonment area for operational tempo, and utilize the existing impact area without creating any new impact areas. Alternative C sites tend to locate ranges on new ground where there has not been a range in the past. Alternative C sites also have a greater impact on training, range operation, off-site noise, and environmental resources. Overall, Alternative B will not have as severe an environmental impact as Alternative C, although some individual sites may. After consideration of all anticipated operational and environmental impacts, Alternative B is the Army's preferred alternative.

Impacts are analyzed for a wide range of environmental resource areas including, but not limited to, air quality, noise, water resources, biological resources (to include protected species), cultural resources, socioeconomics, infrastructure (utilities and transportation), land use, solid and hazardous materials/waste, and cumulative environmental effects. No significant impacts are anticipated on any of these environmental resources.

The Army invites the public to comment on the DEIS and to participate in public meetings which will be announced in local news media. The DEIS is available at local libraries surrounding Fort Stewart and the document may also be accessed at *http://www.Fortstewart-mmp.eis.com*. Comments from the public will be considered before any decision is made regarding implementing the proposed action at Fort Stewart.

Dated: March 19, 2010.

Addison D. Davis, IV,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health).

[FR Doc. 2010–7452 Filed 4–2–10; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for the Broward County Shore Protection Project, North County Line to Hillsboro Inlet (Segment I) General Reevaluation Report, Located in Broward County, FL

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (Corps), Jacksonville District, intends to prepare a Draft Supplemental Environmental Impact Statement (DSEIS) for the Broward County Shore Protection Project(Segment I) General Re-Evaluation Report. The project is being sponsored locally by the city of Deerfield Beach.

ADDRESSES: U.S. Army Corps of Engineers, Planning Division, Environmental Branch, P.O. Box 4970, Jacksonville, FL 32232–0019.

FOR FURTHER INFORMATION CONTACT: Mr. Pat Griffin, by email *Patrick.M.Griffin@usace.army.mil* or by telephone at (904) 232–2286.

SUPPLEMENTARY INFORMATION:

a. The city of Deerfield Beach has secured the appropriation of Federal funds from Congress in the FY 03 and FY 04 Energy and Water Resources Development Act appropriations, respectively, for the USACE to initiate the preparation of the General Reevaluation Report (GRR). Preparation of a GRR for Segment I was authorized by the Conference Report for FY 2003 Appropriations (H.R. 108–10 pg. 808). The initial authorization for the overall project provided for construction by the local sponsor with reimbursement of the Federal share of eligible costs. This authorization was provided in House Document No. 91/89 dated February 18, 1965, as described in the Chief's Report dated June 15,1964.

b. *Objectives.* As the local sponsor for this study, it is the city of Deerfield Beach's expectation and desire that the USACE will in a cost effective manner conduct the GRR and the NEPA document for Segment I (north county line to Hillsboro Inlet), Broward County, FL and associated studies on behalf of the communities of Deerfield Beach and the Town of Hillsboro Beach and citizens of Broward County, FL. The city anticipates that the study will provide valuable economic, hurricane, storm and erosion data and related environmental and biological information regarding Deerfield's beaches and those in Segment I. This information will assist the city in its on-going efforts to provide a healthy and sustainable beach to residents and visitors. Additionally, the city expects the GRR and associated studies will provide in-depth analysis on the condition of the beaches within the study area and a determination as to whether or not the beaches within Segment I are eligible to receive Federal funding assistance for on-going and routine beach nourishment and to provide the recommended and appropriate levels and schedule necessary to conduct activities which will maintain a healthy beach profile.

c. *Alternatives.* Alternatives will be developed during this scoping period. Information on the proposed alternatives will be included in future documents and will be available for review during public meetings and document comment periods. Ideas on potential alternatives are welcome and will be considered.

d. *Issues.* The DEIS will consider the possible effects of placing compatible material on the beaches located within the boundaries of Segment I, impacts of dredging materials from an offshore borrow area, coral reefs and other hardbottom communities, as well as

other project related impacts on protected species, water quality, fish and wildlife resources, cultural resources, essential fish habitat, socio-economic resources, coastal processes, aesthetics and recreation, cumulative impacts, and other impacts identified through scoping, public involvement, and agency coordination.

e. *Scoping Process.* The scoping process as outlined by the Council on Environmental Quality would be utilized to involve Federal, State, and local agencies, and other interested persons and organizations. A scoping letter would be sent to the appropriate parties requesting comments and concerns regarding issues to consider during the study. Public scoping meetings would be held. Exact dates, times, and locations would be published in local papers.

f. *Coordination.* The proposed action is being coordinated with the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service under Section 7 of the Endangered Species Act, with the FWS under the Fish and Wildlife Coordination Act, and with the State Historic Preservation Officer.

g. *Other Environmental Review and Consultation.* The proposed action would involve evaluation for compliance with guidelines pursuant to section 404(b) of the Clean Water Act; application (to the State of Florida) for Water Quality Certification pursuant to section 401 of the Clean Water Act; certification of state lands, easements, and rights of way; Essential Fish Habitat with National Marine Fisheries Service; and determination of Coastal Zone Management Act consistency.

h. *Agency Role.* The non-Federal sponsor (city of Deerfield Beach) will provide extensive information and assistance on the resources to be impacted, mitigation measures if warranted, and alternatives.

i. *DSEIS Preparation.* It is estimated that the DEIS will be available to the public on or about May 2012.

Dated: March 24, 2010.

Eric P. Summa,

Chief, Environmental Branch.

[FR Doc. 2010–7599 Filed 4–2–10; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 4, 2010.

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.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 30, 2010.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Planning, Evaluation and Policy Development

Type of Review: Revision.

Title: Evaluation of the Teacher Incentive Fund (TIF) Program.

Frequency: On Occasion.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs

Reporting and Recordkeeping Hour Burden:

Responses: 2,841.

Burden Hours: 2,044.

Abstract: In 2006, the U.S. Department of Education launched the Teacher Incentive Fund (TIF), which awards competitive grants to develop and implement performance-based compensation systems in high-need schools. The purpose of the evaluation is to describe the implementation of the program and its relationship to any increases in recruitment and retention of effective teachers and principals. If feasible, this evaluation will also seek to analyze TIF's relationship to increasing student achievement.

This evaluation of the TIF program includes an implementation study of the Cohort 1 and 2 TIF grantees. The implementation study will describe the central features of the local TIF performance-pay programs, the implementation of the programs, and similarities and differences in performance pay programs. Data collection activities will be iterative, beginning with telephone interviews of key stakeholders in all the TIF sites (completed winter 2010), followed by two rounds of more in-depth case studies in a sample of sites. Representative surveys of principals and teachers will also be conducted to represent the full range of program knowledge and experiences in each grantee program. The implementation study may be used in conjunction with outcomes data (if the Department exercises optional outcomes tasks) to help explain the relationship between program characteristics and system supports and program outcomes.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4249. 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 *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. 2010–7638 Filed 4–2–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 4, 2010.

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.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 31, 2010.

James Hyler,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.

Title: Annual Performance Reporting (APR) Forms for NIDRR Grantees.

Frequency: Annually.

Affected Public: Businesses or other for-profit; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 276.

Burden Hours: 14,352.

Abstract: The Annual Performance Reporting Forms (APRs) are completed via the Internet. Data collected through these forms will be used to: (a) Facilitate program planning and management; (b) respond to Education Department General Administrative Regulations (EDGAR) requirements; and (c) respond to the reporting requirements of the Government Performance and Results Act (GPRA) of 1993 (Pub. L. 103–62).

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4263. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *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. 2010–7641 Filed 4–2–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

March 24, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–503–000.
Applicants: CenterPoint Energy Gas Transmission Company.
Description: CenterPoint Energy Gas Transmission Company submits Twenty-Fourth Revised Sheet 17 *et al.* to its FERC Gas Tariff, Sixth Revised Volume 1 to be effective 5/1/10.
Filed Date: 03/19/2010.
Accession Number: 20100319–0215.
Comment Date: 5 p.m. Eastern Time on Wednesday, March 31, 2010.

Docket Numbers: RP10–504–000.
Applicants: National Fuel Gas Supply Corporation.
Description: National Fuel Gas Supply Corporation submits Eleventh Revised Sheet 2 *et al.* to its FERC Gas Tariff, Fourth Revised Volume 1 to be effective 4/12/10.
Filed Date: 03/22/2010.
Accession Number: 20100322–0208.
Comment Date: 5 p.m. Eastern Time on Monday, April 5, 2010.

Docket Numbers: RP10–505–000.
Applicants: Empire Pipeline, Inc.
Description: Empire Pipeline, Inc submits First Revised Sheet 2 *et al.* to its FERC Gas Tariff, Original Volume 1 effective 3/22/10.
Filed Date: 03/22/2010.
Accession Number: 20100322–0211.
Comment Date: 5 p.m. Eastern Time on Monday, April 5, 2010.

Docket Numbers: RP10–506–000.
Applicants: Rockies Express Pipeline LLC.
Description: Rockies Express Pipeline LLC Annual Incidental Purchases and Sales Report.
Filed Date: 03/22/2010.
Accession Number: 20100322–5079.
Comment Date: 5 p.m. Eastern Time on Monday, April 5, 2010.

Docket Numbers: RP10–507–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: Transcontinental Gas Pipe Line Company, LLC submits eight executed amendments to previously filed service agreements under Rate Schedule FT.
Filed Date: 03/23/2010.
Accession Number: 20100324–0203.
Comment Date: 5 p.m. Eastern Time on Monday, April 5, 2010.

Any person desiring to intervene or to protest in any of the above proceedings

must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

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. 2010–7537 Filed 4–2–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 2

March 16, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–360–001.

Applicants: Texas Gas Transmission, LLC.

Description: Texas Gas Transmission, LLC submits Sub Original Sheet No. 650 to FERC Gas Tariff, Third Revised Volume No. 1.

Filed Date: 03/10/2010.

Accession Number: 20100311–0011.

Comment Date: 5 p.m. Eastern Time on Monday, March 22, 2010.

Docket Numbers: RP09–185–002.

Applicants: MoGas Pipeline LLC.

Description: MoGas Pipeline, LLC submits Third Revised Sheet 58 et al. to its FERC Gas Tariff, First Revised Volume 1.

Filed Date: 03/09/2010.

Accession Number: 20100310–0231.

Comment Date: 5 p.m. Eastern Time on Monday, March 22, 2010.

Docket Numbers: RP10–434–001.

Applicants: Columbia Gas Transmission, LLC.

Description: Columbia Gas Transmission, LLC submits Fifth Revised Sheet 503.01 to its FERC Gas Tariff, Third Revised Volume 1, to be effective 4/1/10.

Filed Date: 03/09/2010.

Accession Number: 20100310–0228.

Comment Date: 5 p.m. Eastern Time on Monday, March 22, 2010.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed on or before 5 p.m. Eastern time on the specified comment date. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary

[FR Doc. 2010–7538 Filed 4–2–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 1

March 16, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–489–000.

Applicants: Iroquois Gas Transmission System, LP.

Description: Iroquois Gas Transmission System, LP submits Second Revised Sheet 3 *et al.* of its FERC Gas Tariff, First Revised Volume 1, to be effective 4/15/2010.

Filed Date: 03/15/2010.

Accession Number: 20100315–0132.

Comment Date: 5 p.m. Eastern Time on Monday, March 29, 2010.

Docket Numbers: RP10–490–000.

Applicants: Gas Transmission Northwest Corporation.

Description: Gas Transmission Northwest Corporation submits Twenty-Second Revised Sheet No. 24 *et al.* to FERC Gas Tariff, Third Revised Volume No. 1–A, to be effective 3/9/10.

Filed Date: 03/12/2010.

Accession Number: 20100315–0133.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 24, 2010.

Docket Numbers: RP10–491–000.

Applicants: Wyoming Interstate Company, LLC.

Description: Wyoming Interstate Company, LLC submits Third Revised Sheet 0 *et al.* to Second Revised Volume 2, to be effective 4/12/10.

Filed Date: 03/12/2010.

Accession Number: 20100315–0135.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 24, 2010.

Docket Numbers: RP10–493–000.

Applicants: American Midstream (AlaTenn), LLC.

Description: American Midstream (AlaTenn), LLC submits Original Sheet

No. 1 *et al.* to FERC Gas Tariff, Fifth Revised Volume No. 1.

Filed Date: 03/15/2010.

Accession Number: 20100315–0159.

Comment Date: 5 p.m. Eastern Time on Monday, March 29, 2010.

Docket Numbers: RP10–494–000.

Applicants: Columbia Gas Transmission, LLC.

Description: Columbia Gas Transmission, LLC submits its FTS Service Agreement 15244 to FERC Gas Tariff, Third Revised Volume 1 with Aurora Services, Inc. dated 4/1/10.

Filed Date: 03/15/2010.

Accession Number: 20100316–0201.

Comment Date: 5 p.m. Eastern Time on Monday, March 29, 2010.

Docket Numbers: RP10–495–000.

Applicants: Columbia Gas Transmission, LLC.

Description: Columbia Gas Transmission, LLC submits FTS Service Agreement 14028 to FERC Gas Tariff, Third Revised Volume 1 with Anadarko Energy Services Company dated 2/26/10.

Filed Date: 03/15/2010.

Accession Number: 20100316–0202.

Comment Date: 5 p.m. Eastern Time on Monday, March 29, 2010.

Docket Numbers: RP10–496–000.

Applicants: Total Gas & Power North America, Inc.

Description: Total Gas & Power North America, Inc. *et al.* submits Joint Petition of for Temporary Waivers of Capacity Release Regulations and Related Pipeline Tariff Provisions.

Filed Date: 03/15/2010.

Accession Number: 20100316–0203.

Comment Date: 5 p.m. Eastern Time on Monday, March 29, 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. 2010–7540 Filed 4–2–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

March 26, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–508–000.

Applicants: Kinder Morgan Interstate Gas Trans. LLC.

Description: Kinder Morgan Interstate Gas Transmission, LLC submits Eleventh Revised Sheet 4G.02 to its FERC Gas Tariff, Fourth Revised Volume 1A to be effective 4/1/10.

Filed Date: 03/24/2010.

Accession Number: 20100324–0216.

Comment Date: 5 p.m. Eastern Time on Monday, April 05, 2010.

Docket Numbers: RP10–509–000.

Applicants: CenterPoint Energy Gas Transmission Company.

Description: CenterPoint Energy Gas Transmission Company submits Twenty-Fifth Revised Sheet 17 *et al.* to FERC Gas Tariff, Sixth Revised Volume 1.

Filed Date: 03/25/2010.

Accession Number: 20100325–0205.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 06, 2010.

Docket Numbers: RP10–510–000.

Applicants: North Baja Pipeline, LLC.

Description: North Baja Pipeline, LLC submits First Revised Sheet 0 *et al.* of its FERC Gas Tariff, Original Volume 1 effective 4/24/10.

Filed Date: 03/25/2010.

Accession Number: 20100325–0204.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 06, 2010.

Docket Numbers: RP10–511–000.

Applicants: Gas Transmission Northwest Corporation.

Description: Gas Transmission Northwest Corporation submits Forty-Eighth Revised Sheet 15 *et al.*

Filed Date: 03/25/2010.

Accession Number: 20100325–0203.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 06, 2010.

Docket Numbers: RP10–512–000.

Applicants: Gulf South Pipeline Company, LP.

Description: Gulf South Pipeline Company, LP submits negotiated rates letter agreements executed.

Filed Date: 03/25/2010.

Accession Number: 20100325–0226.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 06, 2010.

Docket Numbers: RP10–513–000.

Applicants: Pine Needle LNG Company, LLC.

Description: Pine Needle LNG Company, LLC submits Nineteenth Revised Sheet 4 to its FERC Gas Tariff, Original Volume 1, to be effective 5/1/10.

Filed Date: 03/25/2010.

Accession Number: 20100326–0201.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 06, 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. 2010–7541 Filed 4–2–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

March 18, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–497–000.

Applicants: Maritimes & Northeast Pipeline, L.L.C.

Description: Maritimes & Northeast Pipeline, LLC submits Fourth Revised Sheet 5 to FERC Gas Tariff, First Revised Volume 1, to be effective 4/15/10.

Filed Date: 03/16/2010.

Accession Number: 20100317–0214.

Comment Date: 5 p.m. Eastern Time on Monday, March 29, 2010.

Docket Numbers: RP10–498–000.

Applicants: Steckman Ridge, LP.

Description: Steckman Ridge, LP submits First Revised Sheet 222A to its FERC Gas Tariff, Original Volume 1, to be effective 4/1/10.

Filed Date: 03/16/2010.

Accession Number: 20100317–0215.

Comment Date: 5 p.m. Eastern Time on Monday, March 29, 2010.

Docket Numbers: RP10–499–000.

Applicants: Chandeleur Pipe Line Company.

Description: Chandeleur Pipe Line Company submits Seventh Revised Sheet 18 *et al.* of its FERC Gas Tariff, Second Revised Volume 1, to be effective 5/1/10.

Filed Date: 03/16/2010.

Accession Number: 20100317–0216.

Comment Date: 5 p.m. Eastern Time on Monday, March 29, 2010.

Docket Numbers: RP10–500–000.

Applicants: Transcontinental Gas Pipe Line Company,

Description: Transcontinental Gas Pipe Line Company submits a firm transportation service agreement under Rate Schedule FT dated 9/11/00 that contains negotiated rates and non-conforming language.

Filed Date: 03/17/2010.

Accession Number: 20100317–0233.

Comment Date: 5 p.m. Eastern Time on Monday, March 29, 2010.

Docket Numbers: RP10–501–000.

Applicants: Northern Natural Gas Company.

Description: Northern Natural Gas Company submits 12 Revised Sheet 135 *et al.* to its FERC Gas Tariff, Fifth Revised Volume 1, to be effective 4/17/10.

Filed Date: 03/17/2010.

Accession Number: 20100317–0234.

Comment Date: 5 p.m. Eastern Time on Monday, March 29, 2010.

Docket Numbers: RP10–502–000.

Applicants: Northern Natural Gas Company.

Description: Northern Natural Gas Company submits Second Revised Sheet 21 *et al.* of its FERC Gas Tariff, Fifth Revised Volume 1, to be effective 4/17/2010.

Filed Date: 03/17/2010.

Accession Number: 20100317–0235.

Comment Date: 5 p.m. Eastern Time on Monday, March 29, 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. 2010–7539 Filed 4–2–10; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9133–8]

Proposed CERCLA Section 122(h) Cost Recovery Settlement for the Kentucky Avenue Wellfield Superfund Site, Town of Horseheads and Village of Horseheads, Chemung County, NY

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42

U.S.C. 9622(i), notice is hereby given by the U.S. Environmental Protection Agency ("EPA"), Region II, of a proposed cost recovery settlement agreement pursuant to Section 122(h) of CERCLA, 42 U.S.C. 9622(h), with CBS Corporation (the "Settling Party") for the Kentucky Avenue Wellfield Superfund Site ("Site") in the Town of Horseheads and the Village of Horseheads in Chemung County, New York. The Settling Party agrees to pay EPA $82,000 in reimbursement of certain response costs related to the performance of the work incurred by EPA at the Site.

The settlement includes a covenant by EPA not to sue or to take administrative action against the settling party pursuant to sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), with regard to the response costs related to the work enumerated in the settlement agreement which was performed at the Site. For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the settlement. EPA will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations that indicate that the proposed settlement is inappropriate, improper or inadequate. EPA's response to any comments received will be available for public inspection at EPA Region II, 290 Broadway, New York, New York 10007–1866.

DATES: Comments must be submitted on or before May 5, 2010.

ADDRESSES: The proposed settlement is available for public inspection at EPA Region II offices at 290 Broadway, New York, New York 10007–1866. Comments should reference the Kentucky Avenue Wellfield Superfund Site, Town of Horseheads and the Village of Horseheads, Chemung County, New York, Index No. CERCLA–02–2010–2006. To request a copy of the proposed settlement agreement, please contact the EPA employee identified below.

FOR FURTHER INFORMATION CONTACT: Lauren Charney, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 290 Broadway, 17th Floor, New York, New York 10007–1866. Telephone: 212–637–3181.

Dated: March 12, 2010.

Walter Mugdan,

Director, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region 2.

[FR Doc. 2010–7625 Filed 4–2–10; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Sunshine Act; Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

Date and Time: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on April 8, 2010, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Roland E. Smith, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- March 11, 2010.

B. New Business

- Proposed Rule—Loan Policies and Operations; Loan Purchases from FDIC.

C. Reports

- Auditors' Report on FCSBA FY 2009 Financial Statements.

Closed Session*

- Office of Secondary Market Oversight Quarterly Report.

Dated: March 31, 2010.

Roland E. Smith,

Secretary, Farm Credit Administration Board.

[FR Doc. 2010–7748 Filed 4–1–10; 4:15 pm]

BILLING CODE 6705–01–P

* Session Closed-Exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review and Approval to the Office of Management and Budget (OMB), Comments Requested

March 30, 2010.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501 – 3520. Comments are requested concerning: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before May 5, 2010. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via the Internet at Nicholas_A._Fraser@omb.eop.gov and to the Federal Communications Commission via email to PRA@fcc.gov. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page http://reginfo.gov/public/do/PRAMain, (2) look for the section of the web page called "Currently Under Review", (3)

click on the downward–pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, (202) 418–0214. For additional information or copies of the information collection(s), contact Judith B. Herman, 202–418–0214, Judith–B.Herman@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0942.

Title: Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low–Volume Long Distance Users, Federal–State Joint Board on Universal Service.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for–profit.

Number of Respondents and Responses: 185 respondents; 945 responses.

Estimated Time per Response: 2 – 60 hours.

Frequency of Response: Annual and quarterly reporting requirements, third party disclosure requirements and recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. sections 1, 4(i), and (j), 201– 209, 218–222, 254 and 403.

Total Annual Burden: 9,841 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: The Commission is not requesting respondents to submit confidential information to the Commission or to the Universal Service Administrative Company (USAC). If the Commission requests respondents to submit information to the Commission that the respondents believe are confidential, respondents may wish request confidential treatment of such information pursuant to 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission will submit this expiring information collection to the Office of Management and Budget (OMB) as a revision during this comment period in order to obtain the full three year clearance from them. The Commission has reduced the total annual burden by 11,480 hours because the Competitive LEC quarterly reporting requirement has been consolidated into OMB Control Number 3060–0986 and is being removed from this information collection.

The Report and Order, FCC 00–193, required the Commission to take further action to further accelerate the development of competition in the local and long–distance telecommunications markets, and to further establish explicit universal service support that will be sustainable in an increasingly competitive marketplace, pursuant to the mandate of the Telecommunications Act of 1996. The Commission requires the following entities under the Coalitions for Affordable Local and Long Distance Service (CALLS) Proposal: 1) modified tariff filings with the Commission; 2) quarterly and annual data filings (line counts, price cap and revenue data); and 3) cost support information.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2010–7554 Filed 4–2–10; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review and Approval to the Office of Management and Budget (OMB), Comments Requested

March 30, 2010.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501 – 3520. Comments are requested concerning: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before May 5, 2010. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via the Internet at Nicholas_A._Fraser@omb.eop.gov and to the Federal Communications Commission via email to PRA@fcc.gov. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page http://reginfo.gov/public/do/PRAMain, (2) look for the section of the web page called "Currently Under Review", (3) click on the downward–pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, (202) 418–0214. For additional information or copies of the information collection(s), contact Judith B. Herman, 202–418–0214, Judith–B.Herman@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0295.

Title: Section 90.607(a)(1) and (b)(1), Supplemental Information To Be Furnished By Applicants For Facilities Under Subpart S.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for–profit, not–for–profit institutions, and state, local or tribal government.

Number of Respondents and Responses: 3,788 respondents; 3,788 responses.

Estimated Time per Response: .25 minutes.

Frequency of Response: One time reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 308(b).

Total Annual Burden: 947 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: No questions of a confidential nature are asked.

Needs and Uses: The Commission will submit this expiring information collection to the Office of Management and Budget during this comment period under delegated authority. The Commission inadvertently published a regular notice rather than a delegated notice announcing submission of this information collection at the end of the 60 day comment period which was March 29, 2010 (75 FR 4077, January 26, 2010). Therefore, the Commission is required to publish a 30 day notice following a regular notice. The Commission is reporting no change to the reporting requirement. However, there is a 1,436 hour reduction adjustment to the total annual burden hours since the last submission to the OMB in 2007. This reduction is due to 5,743 fewer respondents.

This rule section requires that affected applicants to submit a list of any radio facilities they hold within 40 miles of the base station transmitter site being applied for. This information is used to determine if an applicant's proposed system is necessary in light of communications facilities it already owns. Such a determination helps the Commission to equitably distribute limited spectrum and prevents spectrum warehousing. The information is collected only once – upon initial license application.

Federal Communications Commission.

Marlene H. Dortch,

Secretary,

Office of the Secretary,

Office of Managing Director.

[FR Doc. 2010–7557 Filed 4–2–10; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 19, 2010.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. David Muldrow Beasley, Society Hill, South Carolina, individually and as a member of a group acting in concert including Henry Wesley Beasley, Richard Lewis Beasley, both of Florence, South Carolina, and Richard Lee Beasley, Society Hill, South Carolina, to retain control of First Carolina Bancshares Corporation, Darlington, South Carolina, and thereby indirectly retain control of Carolina Bank and Trust Company, Lamar, South Carolina.

Board of Governors of the Federal Reserve System, March 31, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–7613 Filed 4–2–10; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 28, 2010.

A. Federal Reserve Bank of New York (Anne MacEwen, Bank Applications Officer) 33 Liberty Street, New York, New York 10045-0001:

1. The Goldman Sachs Group, Inc., New York, New York, to acquire up to 24.9 percent of SKBHC Holdings LLC, Corona del Mar, California, which is applying to become a bank holding company, and thereby indirectly acquire Starbuck Bancshares, Inc. and The First National Bank of Starbuck, both of Starbuck, Minnesota.

Board of Governors of the Federal Reserve System, March 31, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–7614 Filed 4–2–10; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2009–E–0202 and FDA–2009–E–0204]

Determination of Regulatory Review Period for Purposes of Patent Extension; LUSEDRA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for

LUSEDRA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit written comments and petitions 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*.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6222, Silver Spring, MD 20993–0002, 301–796–3602.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product LUSEDRA (fospropofol disodium). LUSEDRA is a sedative-hypnotic agent indicated for monitored anesthesia care sedation in adult patients undergoing diagnostic or therapeutic procedures. Subsequent to this approval, the Patent and Trademark Office received patent term restoration applications for LUSEDRA (U.S. Patent Nos. 6,204,257 and 6,872,838) from University of Kansas, and the Patent and Trademark Office requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated September 29, 2009, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of LUSEDRA represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for LUSEDRA is 2,405 days. Of this time, 1,962 days occurred during the testing phase of the regulatory review period, while 443 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: May 15, 2002. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on May 15, 2002.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: September 27, 2007. FDA has verified the applicant's claim that the new drug application (NDA) 22–244 was submitted on September 27, 2007.

3. *The date the application was approved*: December 12, 2008. FDA has verified the applicant's claim that NDA 22–244 was approved on December 12, 2008.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 1,424 days of patent term extension for patent no. 6,204,257 and 899 days of patent term extension for patent no. 6,872,838.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by June 4, 2010. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by October 4, 2010. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 22, 2010.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 2010–7516 Filed 4–2–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0495]

Draft Guidance for Industry and Food and Drug Administration Staff; Medical Devices; Neurological and Physical Medicine Device Guidance Documents; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of draft special controls guidance documents for 11 neurological and physical medicine devices. FDA has developed a draft special controls guidance document for each of the 11 devices. These draft guidance documents describe a means by which these devices may comply with the requirement of special controls for class II devices. Elsewhere in this issue of the **Federal Register**, FDA is publishing a proposed rule that would designate special controls for each of these devices and would exempt six of them from the premarket notification requirements of the Federal Food, Drug, and Cosmetic Act (the act). These draft guidance documents are not final nor are they in effect at this time.

DATES: Although you can comment on any guidance documents at any time

(see 21 CFR 10.115(g)(5)), to ensure that the agency considers your comment on any of these draft guidances before it begins work on the final versions of the guidances, submit written or electronic comments by July 6, 2010.

ADDRESSES: Submit written requests for single copies of any or all of the draft guidance documents to the Division of Small Manufacturers, International, and Consumer Assistance, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 4617, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–847–8149. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the draft guidance documents.

Submit written comments concerning any of the draft guidance documents 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*. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Robert J. DeLuca, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. G214, Silver Spring, MD 20993–0002, e-mail: *Robert.DeLuca@fda.hhs.gov*, 301–796–6630.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of the following 11 draft guidance documents:

(1) "Class II Special Controls Guidance Document: Electroconductive Media; Draft Guidance for Industry and FDA Staff";

(2) "Class II Special Controls Guidance Document: Cutaneous Electrode; Draft Guidance for Industry and FDA Staff";

(3) "Class II Special Controls Guidance Document: Transcutaneous Electrical Nerve Stimulator for Pain Relief; Draft Guidance for Industry and FDA Staff";

(4) "Class II Special Controls Guidance Document: Transcutaneous Electrical Nerve Stimulator for Pain Relief Intended for Over the Counter Use; Draft Guidance for Industry and FDA Staff";

(5) "Class II Special Controls Guidance Document: Transcutaneous Electrical Nerve Stimulator with Limited Output for Pain Relief; Draft Guidance for Industry and FDA Staff";

(6) "Class II Special Controls Guidance Document: Transcutaneous Electrical Stimulator for Aesthetic Purposes; Draft Guidance for Industry and FDA Staff";

(7) "Class II Special Controls Guidance Document: Transcutaneous Electrical Stimulator with Limited Output for Aesthetic Purposes; Draft Guidance for Industry and FDA Staff";

(8) "Class II Special Controls Guidance Document: Powered Muscle Stimulator for Rehabilitation; Draft Guidance for Industry and FDA Staff";

(9) "Class II Special Controls Guidance Document: Powered Muscle Stimulator with Limited Output for Rehabilitation; Draft Guidance for Industry and FDA Staff";

(10) "Class II Special Controls Guidance Document: Powered Muscle Stimulator for Muscle Conditioning; Draft Guidance for Industry and FDA Staff"; and

(11) "Class II Special Controls Guidance Document: Powered Muscle Stimulator with Limited Output for Muscle Conditioning; Draft Guidance for Industry and FDA Staff."

Each draft special controls guidance document identifies the classification, product code, and classification identification for each of the respective 11 device types. In addition, they would serve as special controls that, when followed and combined with the general controls and any other applicable special controls, would generally address the risks associated with these devices.

Elsewhere in this issue of the **Federal Register**, FDA is publishing a proposed rule that would designate special controls for these devices. The rule also proposes to exempt the following six device types from premarket notification requirements if they follow the designated special controls, including addressing the issues identified in the special controls guidance documents by following the guidances' recommendations: (1) Electroconductive media; (2) cutaneous electrode; (3) transcutaneous electrical nerve stimulator with limited output for pain relief; (4) transcutaneous electrical stimulator with limited output for aesthetic purposes; (5) powered muscle stimulator with limited output for rehabilitation; and (6) powered muscle stimulator with limited output for muscle conditioning.

These draft guidance documents were developed to describe a means by which these devices may comply with the requirement of special controls for class II devices. FDA believes that special controls, when combined with the general controls, would be sufficient to provide reasonable assurance of the safety and effectiveness of these devices.

II. Significance of Guidance

These draft guidance documents are being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). These draft guidances, when finalized will reflect the agency's current thinking regarding (1) Electroconductive media; (2) the cutaneous electrode; (3) the transcutaneous electrical nerve stimulator for pain relief; (4) the transcutaneous electrical nerve stimulator for pain relief intended for over the counter use; (5) the transcutaneous electrical nerve stimulator with limited output for pain relief; (6) the transcutaneous electrical stimulator for aesthetic purposes; (7) the transcutaneous electrical stimulator with limited output for aesthetic purposes; (8) the powered muscle stimulator for rehabilitation; (9) the powered muscle stimulator with limited output for rehabilitation; (10) the powered muscle stimulator for muscle conditioning; and (11) the powered muscle stimulator with limited output for muscle conditioning. They do not create or confer any rights for or on any person and do not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute, regulations, or both.

III. Electronic Access

To receive any or all of the following 11 draft guidance documents you may either send an e-mail request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document(s) or send a fax request to 301–847–8149 to receive a hard copy. Please use the document number to identify the guidance you are requesting: (1) "Class II Special Controls Guidance Document: Electroconductive Media; Draft Guidance for Industry and FDA Staff" (1571); (2) "Class II Special Controls Guidance Document: Cutaneous Electrode; Draft Guidance for Industry and FDA Staff" (1572); (3) "Class II Special Controls Guidance Document: Transcutaneous Electrical Nerve Stimulator for Pain Relief; Draft Guidance for Industry and FDA Staff" (1573); (4) "Class II Special Controls Guidance Document: Transcutaneous Electrical Nerve Stimulator for Pain Relief Intended for Over the Counter Use; Draft Guidance for Industry and FDA Staff" (1670); (5) "Class II Special Controls Guidance Document:

Transcutaneous Electrical Nerve Stimulator with Limited Output for Pain Relief; Draft Guidance for Industry and FDA Staff" (1574); (6) "Class II Special Controls Guidance Document: Transcutaneous Electrical Stimulator for Aesthetic Purposes; Draft Guidance for Industry and FDA Staff" (1575); (7) "Class II Special Controls Guidance Document: Transcutaneous Electrical Stimulator with Limited Output for Aesthetic Purposes; Draft Guidance for Industry and FDA Staff" (1576); (8) "Class II Special Controls Guidance Document: Powered Muscle Stimulator for Rehabilitation; Draft Guidance for Industry and FDA Staff" (1577); (9) "Class II Special Controls Guidance Document: Powered Muscle Stimulator with Limited Output for Rehabilitation; Draft Guidance for Industry and FDA Staff" (1578); (10) "Class II Special Controls Guidance Document: Powered Muscle Stimulator for Muscle Conditioning; Draft Guidance for Industry and FDA Staff" (1579); and/or (11) "Class II Special Controls Guidance Document: Powered Muscle Stimulator with Limited Output for Muscle Conditioning; Draft Guidance for Industry and FDA Staff" (1580).

Persons interested in obtaining a copy of any or all of the draft guidance documents may also do so by using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/MedicalDevices/default.htm*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm*. Guidance documents are also available at *http://www.regulations.gov*.

IV. Paperwork Reduction Act of 1995

These 11 draft guidance documents refer to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in part 807 (21 CFR part 807), subpart E pertain to premarket submission requirements for any person who intends to market certain medical devices, and have been approved under OMB control number 0910–0120.

Elsewhere in this issue of the **Federal Register**, FDA is publishing a proposed rule that would designate special controls for each of these devices and would exempt six of them from the premarket notification requirements of the act. The proposed rule contains an analysis of the paperwork burden for the proposed rule, including the anticipated reduction in burden for manufacturers who follow the special controls and for manufacturers of the six proposed exempt device types. Consistent with the Paperwork Reduction Act of 1995, we solicit comment on our revised burden estimates.

V. Comments

The agency is specifically interested in comments on the types of claims appropriate for devices included within these 11 classifications and, for the devices that remain subject to premarket review, the data sponsors should submit to support those claims. For example, under the proposed rule, certain transcutaneous electrical stimulators for aesthetic purposes would remain subject to 510(k). The agency is interested in comments on the type of data sponsors should submit to show a transcutaneous electrical nerve stimulator device achieves "aesthetic effects through physical change to the structure of the body" as well as the predicate device does.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**), written or electronic comments regarding this document. Submit a single copy of electronic comments or two copies of any mailed comments, except that individuals may submit one 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 between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 24, 2010.

Jeffrey Shuren,

Director, Center for Devices and Radiological Health.

[FR Doc. 2010–7634 Filed 4–2–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0100]

Food Additives; Bisphenol A; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comment.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of five documents related to FDA's continuing assessment of Bisphenol A (BPA) and soliciting public comments on the four documents prepared by FDA's Center for Food Safety and Applied Nutrition (CFSAN). These documents do not represent an agency opinion or position on BPA, on which an interim update was recently provided. (See *http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm064437.htm*). Rather, these documents provide perspectives and opinions that are being considered by FDA as it continues its safety assessment of BPA. This action will enable FDA to consider comments from the public in its assessment of BPA for food contact applications.

DATES: Submit written or electronic information and comments by June 4, 2010.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Francis Lin, Center for Food Safety and Applied Nutrition (HFS–275), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 301–436–1215.

SUPPLEMENTARY INFORMATION:

I. Background

BPA is a chemical used in certain food contact materials. Uses of BPA were approved by FDA under its food additive regulations in the early 1960s. In recent years, questions have been raised about BPA's safety. On August 14, 2008, FDA delivered its Draft Assessment of BPA for Use in Food Contact Applications (the Draft Assessment) (Ref. 1) to a Subcommittee of FDA's Science Board for external review.

On September 16, 2008, the Subcommittee held a public meeting on BPA as part of its external review

process, after which the Subcommittee wrote and transmitted its report to the FDA Science Board. On October 31, 2008, the Science Board accepted the Subcommittee's report and transmitted it to FDA with suggestions for revising the Draft Assessment and instructions to conduct a more in-depth review of certain relatively recent low-dose studies identified in a draft report, released in April 2008, by the National Toxicology Program (NTP) Center for the Evaluation of Risks to Human Reproduction (CERHR) (Ref. 2) and included in the final assessment completed by the NTP (Ref. 3).

FDA's Center for Food Safety and Applied Nutrition (CFSAN) has provided a review, as suggested by the Science Board, of the low-dose studies mentioned in the NTP report and issued a memorandum describing that review (Doc. 1).[1] In this review (Doc. 1), CFSAN also describes its review of other relevant studies that were either made available since the publication of the NTP report or suggested by the Science Board for consideration. Five expert, non-FDA, government scientists were requested by FDA to conduct a scientific review of CFSAN's assessment of the low-dose studies. Their reviews are combined and made available in Doc. 2 and, as such, provide perspectives on Doc. 1 that may be helpful as additional context, including for those who may want to comment on the CFSAN documents.

Based on its initial review of these materials, FDA recently provided an interim update where it expressed "some concern" about the potential effects of BPA on the brain, behavior, and prostate gland of fetuses, infants, and children, consistent with the final NTP report (Ref. 3), and indicated steps it is taking and interim recommendations, to address these concerns (see *http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm064437.htm*). FDA also recognized (*id.*), as did the NTP review, substantial uncertainties with respect to the overall interpretation of these studies and their potential implications for human health effects of BPA exposure. These uncertainties relate to issues such as the routes of exposure employed, the lack of consistency among some of the measured endpoints or results between studies, the relevance of some animal models to human health, differences in the metabolism (and detoxification) of and responses to BPA both at different ages and in different species, and limited or absent dose response information for some studies.

In a third document (Doc. 3), CFSAN reviews and summarizes a number of studies of BPA and health that were made available after its assessment of low-dose studies (Doc. 1). Among the additional studies summarized in Doc. 3 is an as yet unpublished study focused on the potential developmental neurotoxicity of dietary BPA in rats (Ref. 4), which was commissioned by the American Chemistry Council and submitted to FDA.

FDA also is making available CFSAN's updated dietary exposure estimate for the food contact uses of BPA in packaging for infant formula, baby and adult foods, and polycarbonate nursing bottles (Doc. 4). Finally, FDA is making available CFSAN's review of available biomonitoring data on BPA (Doc. 5).

At this time, as FDA continues its safety assessment of BPA, we are seeking public comment on the four CFSAN documents (Docs. 1, 3, 4, and 5) that are relevant to this safety assessment. While pre-decisional documents such as these are not required to be made available for public comment, we believe it is appropriate in this case due to the complexity of the scientific issues and the degree of public interest in FDA's scientific assessment of BPA. As we update our assessment, which may include additional peer review, we will consider any public comments received, as well as new scientific findings as they become available. The five documents, which are available in the docket established for this notice, are listed in table 1 of this document.

TABLE 1.

Document No.	Date	Title
1	August 31, 2009	Memorandum from Toxicology Group 1, Division of Food Contact Notifications, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition; HFS–275: "Bisphenol A (CAS RN. 80–05–7): Review of Low-Dose Studies"
2	November 2009	External Governmental Reviewer Comments on Draft Report: "Bisphenol A (CAS RN. 80–05–7): Review of Low-Dose Studies"
3	November 24, 2009	Memorandum from Toxicology Group 1, Division of Food Contact Notifications, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition; HFS–275: "Bisphenol A (CAS RN. 80–05–7): studies added to 'Review of Low Dose Studies' assessment"
4	October 22, 2009	Memorandum from: Chemistry Review Group 1, Division of Food Contact Notifications and Chemistry Team, HFS–275 and Chemistry Review Team, Division of Biotechnology and GRAS Notice Review, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition; HFS–255: "Exposure to Bisphenol A (BPA) for infants, toddlers and adults from the consumption of infant formula, toddler food and adult (canned) food"
5	November 16, 2009	Memorandum from: Regulatory Group 2, Division of Food Contact Notifications, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition, HFS–275: "Summary of Bisphenol A Biomonitoring Studies"

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments regarding this document. 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

[1] See table 1 of this document for a description of Document (Doc.) numbers 1 through 5.

comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the documents at *http://www.regulations.gov*.

IV. References

We have placed the following references on display in the Division of Dockets Management (see **ADDRESSES**). You may see them between 9 a.m. and 4 p.m., Monday through Friday. FDA has verified the Web site addresses, but FDA is not responsible for any subsequent changes to non-FDA Web sites after this document publishes in the **Federal Register**.

1. Draft Assessment of Bisphenol A for Use in Food Contact Applications (August 14, 2008). Accessible at: *http://www.fda.gov/food/foodingredientspackaging/ucm166145.htm*.

2. Draft NTP Brief on Bisphenol A, April 14, 2008. Accessible at: *http://cerhr.niehs.nih.gov/chemicals/bisphenol/BPADraftBriefVF_04_14_08.pdf*.

3. National Toxicology Program, Center for the Evaluation of Risks to Human Reproduction. NTP–CERHR Monograph on the Potential Human Reproductive and Developmental Effects of Bisphenol A. NIH Publication No. 08–5994. September 2008. Accessible at: *http://cerhr.niehs.nih.gov/chemicals/bisphenol/bisphenol.pdf*.

4. WIL Research Laboratories, LLC. A Dietary Developmental Neurotoxicity Study of Bisphenol A in Rats (WIL–186056), September 30, 2009.

Dated: March 30, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–7511 Filed 4–2–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0343]

International Conference on Harmonisation; Guidance on Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the International Conference on Harmonisation Regions; Annex 9 on Tablet Friability General Chapter; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled "Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the ICH Regions; Annex 9: Tablet Friability General Chapter." The guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The guidance provides the results of the ICH Q4B evaluation of the Tablet Friability General Chapter harmonized text from each of the three pharmacopoeias (United States, European, and Japanese) represented by the Pharmacopoeial Discussion Group (PDG). The guidance conveys recognition of the three pharmacopoeial methods by the three ICH regulatory regions and provides specific information regarding the recognition. The guidance is intended to recognize the interchangeability between the local regional pharmacopoeias, thus avoiding redundant testing in favor of a common testing strategy in each regulatory region. This guidance is in the form of an annex to the core guidance on the Q4B process entitled "Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the ICH Regions" (core ICH Q4B guidance).

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. Send two self-addressed adhesive labels to assist the office in processing your requests. Requests and comments should be identified with the docket number found in brackets in the heading of this document. Submit written comments on the guidance 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*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: *Regarding the guidance*: Robert H. King, Sr., Center for Drug Evaluation and Research (HFD–003), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 4150, Silver Spring, MD 20993–0002, 301–796–1242; or Christopher Joneckis, Center for Biologics Evaluation and Research (HFM–25), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–0373.

Regarding the ICH: Michelle Limoli, Office of International Programs (HFG–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4480.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare; the Japanese Pharmaceutical Manufacturers Association; the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA; and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, Health Canada, and the European Free Trade Area.

In the **Federal Register** of August 14, 2009 (74 FR 41144), FDA published a

notice announcing the availability of a draft tripartite guidance entitled "Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the ICH Regions; Annex 9: Tablet Friability General Chapter." The notice gave interested persons an opportunity to submit comments by October 13, 2009.

After consideration of the comments received and revisions to the guidance, a final draft of the guidance entitled "Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the ICH Regions; Annex 9: Tablet Friability General Chapter" was submitted to the ICH Steering Committee and endorsed by the three participating regulatory agencies in October 2009.

The guidance provides the specific evaluation outcome from the ICH Q4B process for the Tablet Friability General Chapter harmonization proposal originating from the three-party PDG. This guidance is in the form of an annex to the core ICH Q4B guidance made available in the **Federal Register** of February 21, 2008 (73 FR 9575). When implemented, the annex will provide guidance for industry and regulators on the use of the specific pharmacopoeial texts evaluated by the ICH Q4B process. Following receipt of comments on the draft, no substantive changes were made to the annex.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. 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.

III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.regulations.gov*, *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm*, or *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm*.

Dated: March 31, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–7592 Filed 4–2–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0012]

International Conference on Harmonisation; Guidance on Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the International Conference on Harmonisation Regions; Annex 7 on Dissolution Test General Chapter; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled "Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the ICH Regions; Annex 7: Dissolution Test General Chapter." The guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The guidance provides the results of the ICH Q4B evaluation of the Dissolution Test General Chapter harmonized text from each of the three pharmacopoeias (United States, European, and Japanese) represented by the Pharmacopoeial Discussion Group (PDG). The guidance conveys recognition of the three pharmacopoeial methods by the three ICH regulatory regions and provides specific information regarding the recognition. The guidance is intended to recognize the interchangeability between the local regional pharmacopoeias, thus avoiding redundant testing in favor of a common testing strategy in each regulatory region. This guidance is in the form of an annex to the core guidance on the Q4B process entitled "Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the ICH Regions" (core ICH Q4B guidance).

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. Send two self-addressed adhesive labels to assist the office in processing your requests. Submit written comments on the guidance 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*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: *Regarding the guidance*: Robert H. King, Sr., Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 4150, Silver Spring, MD 20993–0002, 301–796–1242; or Christopher Joneckis, Center for Biologics Evaluation and Research (HFM–25), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–0373.

Regarding the ICH: Michelle Limoli, Office of International Programs (HFG–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4480.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry

representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare; the Japanese Pharmaceutical Manufacturers Association; the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA; and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, Health Canada, and the European Free Trade Area.

In the **Federal Register** of February 17, 2009 (74 FR 7447), FDA published a notice announcing the availability of a draft tripartite guidance entitled "Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the ICH Regions; Annex 7: Dissolution Test General Chapter." The notice gave interested persons an opportunity to submit comments by April 20, 2009.

After consideration of the comments received and revisions to the guidance, a final draft guidance entitled "Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the ICH Regions; Annex 7: Dissolution Test General Chapter" was submitted to the ICH Steering Committee and endorsed by the three participating regulatory agencies in October 2009.

The guidance provides the specific evaluation outcome from the ICH Q4B process for the Dissolution Test General Chapter harmonization proposal originating from the three-party PDG. This guidance is in the form of an annex to the core ICH Q4B guidance made available in the **Federal Register** of February 21, 2008 (73 FR 9575). When implemented, the annex will provide guidance for industry and regulators on the use of the specific pharmacopoeial texts evaluated by the ICH Q4B process. Following receipt of comments on the draft, no substantive changes were made to the annex.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. 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.

III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.regulations.gov*, *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm*, or *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm*.

Dated: March 31, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–7593 Filed 4–2–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors, NIA.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute on Aging, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIA.

Date: May 11–12, 2010.

Closed: May 11, 2010, 8 a.m. to 8:30 a.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Boulevard, 3rd Floor Conference Room, Baltimore, MD 21224.

Open: May 11, 2010, 8:30 a.m. to 12 p.m.

Agenda: Committee Discussion.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Boulevard, 3rd Floor Conference Room, Baltimore, MD 21224.

Closed: May 11, 2010, 12 p.m. to 1:15 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Boulevard, 3rd Floor Conference Room, Baltimore, MD 21224.

Open: May 11, 2010, 1:15 p.m. to 4:15 p.m.

Agenda: Committee Discussion.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Boulevard, 3rd Floor Conference Room, Baltimore, MD 21224.

Closed: May 11, 2010, 4:15 p.m. to 4:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Boulevard, 3rd Floor Conference Room, Baltimore, MD 21224.

Open: May 11, 2010, 4:30 p.m. to 5 p.m.

Agenda: Committee Discussion.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Boulevard, 3rd Floor Conference Room, Baltimore, MD 21224.

Closed: May 11, 2010, 5 p.m. to 6 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Boulevard, 3rd Floor Conference Room, Baltimore, MD 21224.

Closed: May 12, 2010, 8 a.m. to 9 a.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Boulevard, 3rd Floor Conference Room, Baltimore, MD 21224.

Open: May 12, 2010, 9 a.m. to 11:30 a.m.

Agenda: Committee Discussion.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview

Boulevard, 3rd Floor Conference Room, Baltimore, MD 21224.

Closed: May 12, 2010, 11:30 a.m. to 12:45 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Boulevard, 3rd Floor Conference Room, Baltimore, MD 21224.

Open: May 12, 2010, 12:45 p.m. to 3:45 p.m.

Agenda: Committee Discussion.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Boulevard, 3rd Floor Conference Room, Baltimore, MD 21224.

Closed: May 12, 2010, 3:45 p.m. to 5 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute on Aging, Biomedical Research Center, 251 Bayview Boulevard, 3rd Floor Conference Room, Baltimore, MD 21224.

Contact Person: Michele K. Evans, MD, Acting Scientific Director, National Institute on Aging, 251 Bayview Boulevard, Suite 100, Room 04C221, Baltimore, MD 21224.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: March 31, 2010.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–7668 Filed 4–2–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Deafness and Other Communication Disorders Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the 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 Deafness and Other Communication Disorders Advisory Council.

Date: May 14, 2010.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892.

Open: 10:15 a.m. to 2:30 p.m.

Agenda: Staff reports on divisional, programmatic, and special activities.

Place: National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Craig A. Jordan, PhD, Director, Division of Extramural Activities, NIDCD, NIH, Executive Plaza South, Room 400C, 6120 Executive Blvd., Bethesda, MD 20892–7180. 301–496–8693. *jordanc@nidcd.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nidcd.nih.gov/about/groups/ndcdac/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: March 30, 2010.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–7671 Filed 4–2–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; 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 of Mental Health Special Emphasis Panel; Child Interventions Review.

Date: April 14, 2010.

Time: 2:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Marina Broitman, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6153, MSC 9608, Bethesda, MD 20892–9608, 301–402–8152, *mbroitman@mail.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. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: *March 29, 2010.*

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–7675 Filed 4–2–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; 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 USC,

as amended. The loan repayment 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 of Child Health and Human Development Special Emphasis Panel.

Date: April 23, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate Loan Repayment Application.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852.

Contact Person: Sathasiva B. Kandasamy, PhD, Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892–9304, (301) 435–6680, *skandasa@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: March 30, 2010.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–7672 Filed 4–2–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2009–0001]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, OMB No. 1660–NEW; FEMA Preparedness Grants: Homeland Security Grant Program (HSGP)

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 30-day notice and request for comments; new information collection; OMB No. 1660–NEW; FEMA Form 089–1, HSGP Investment Justification.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission describes the nature of the information collection, the categories of respondents, the estimated burden (i.e., the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before May 5, 2010.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *oira.submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 1800 South Bell Street, Arlington, VA 20598–3005, facsimile number (202) 646–3347, or e-mail address *FEMA–Information-Collections@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Collection of Information

Title: FEMA Preparedness Grants: Homeland Security Grant Program (HSGP).

Type of information collection: New information collection.

OMB Number: 1660–NEW.

Form Titles and Numbers: FEMA Form 089–1, HSGP Investment Justification.

Abstract: The HSGP is an important tool among a comprehensive set of measures to help strengthen the Nation against risks associated with potential terrorist attacks. DHS/FEMA uses the information to evaluate applicants' familiarity with the national preparedness architecture and identify how elements of this architecture have been incorporated into regional/state/local planning, operations, and investments. The Homeland Security Grant Program (HSGP) is a primary funding mechanism for building and sustaining national preparedness capabilities. HSGP is comprised of four separate grant programs: The State Homeland Security Program (SHPS), the Urban Areas Security Initiative (UASI), the Metropolitan Medical Response Systems (MMRS), and the Citizen Corps Program (CCP). Together, these grants fund a range of preparedness activities, including planning, organization, equipment purchase, training, exercises, and management and administration costs.

Affected Public: State, Local or Tribal Government.

Estimated Number of Respondents: 287.

Frequency of Response: On occasion.

Estimated Average Hour Burden per Respondent: 3,714.50 hours.

Estimated Total Annual Burden Hours: 308,136 hours.

Estimated Cost: There is no annual reporting recordkeeping cost associated with this collection.

Dated: March 25, 2010.

Larry Gray,

Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2010–7555 Filed 4–2–10; 8:45 am]

BILLING CODE 9111–78–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2009–0001]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, OMB No. 1660—NEW; FEMA Preparedness Grants: Buffer Zone Protection Program (BZPP)

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 30-day notice and request for comments; new information collection; OMB No. 1660—NEW; FEMA Form 089–23, Buffer Zone Plan; FEMA Form 089–23A, Vulnerability Reduction Purchasing Plan.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission describes the nature of the information collection, the categories of respondents, the estimated burden (i.e., the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before May 5, 2010.

ADDRESSES: Submit written comments on the proposed information collection

to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *oira.submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 1800 South Bell Street, Arlington, VA 20598–3005, facsimile number (202) 646–3347, or e-mail address *FEMA–Information-Collections@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Collection of Information

Title: FEMA Preparedness Grants: Buffer Zone Protection Program (BZPP).

Type of information collection: New information collection.

OMB Number: 1660–NEW.

Form Titles and Numbers: FEMA Form 089–23, Buffer Zone Plan; FEMA Form 089–23A, Vulnerability Reduction Purchasing Plan.

Abstract: The information collection activity is the collection of financial and programmatic information from States and local governments pertaining to grant and cooperative agreement awards that include application, program narrative statement, grant award, performance information, outlay reports, property management, and closeout information. The information enables FEMA to evaluate applications and make award decisions, monitor ongoing performance and manage the flow of federal funds, and to appropriately close out grants or cooperative agreements. The Buffer Zone Plan (BZP) is a narrative plan that includes an assessment of possible infrastructure security risks and documents the degree to which security processes and procedures are in place, including planning to enhance and/or improve site security and the actions jurisdictions undertake in their BZP to protect against or prevent terrorist attacks at Critical Infrastructure and Key Resources (CIKR). The Vulnerability Reduction Purchasing Plan is a plan applicants prepare that corresponds to the Buffer Zone Plan and lists procurement items including equipment, information technology, and other resources such as training, that are needed to improve or enhance a jurisdiction's preventive or protective posture around CIKR sites identified in the BZP.

Affected Public: State, Local or Tribal Government.

Estimated Number of Respondents: 500 hours.

Frequency of Response: On occasion.

Estimated Average Hour Burden per Respondent: 16 hours.

Estimated Total Annual Burden Hours: 4,000 hours.

Estimated Cost: There is no annual reporting or recordkeeping costs associated with this collection.

Dated: March 25, 2010.

Larry Gray

Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2010–7558 Filed 4–2–10; 8:45 am]

BILLING CODE 9111–78–P

DEPARTMENT OF THE INTERIOR

National Park Service

60-Day Notice of Intention To Request Clearance of Information Collection; Opportunity for Public Comment

AGENCY: National Park Service, Interior.

ACTION: Notice and request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 and 5 CFR part 1320, Reporting and Record Keeping Requirements, the National Park Service (NPS) invites public comments on an extension of a currently approved collection of information (Office of Management and Budget (OMB) #1024–0231). 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.

DATES: Public comments on this Information Collection Request (ICR) will be accepted on or before June 4, 2010.

ADDRESSES: Submit comments directly to Ms. Jo A. Pendry, Chief, Commercial Services Program, National Park Service, 1201 Eye Street, NW., 11th Floor, Washington, DC 20005, or e-mail at *jo_pendry@nps.gov,* or via fax at 202/371–2090.

FOR FURTHER INFORMATION CONTACT: Ms. Jo A. Pendry, Chief, Commercial Services Program, National Park Service, 1201 Eye Street, NW., 11th Floor, Washington, DC 20005, or e-mail at, *jo_pendry@nps.gov,* or phone at 202–513–7156, or via fax at 202/371–2090. You are entitled to a copy of the entire ICR package free-of-charge.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 1024–0231.

Title: Concession Contract—36 CFR 51.

Current Expiration Date: 7/31/2010.

Form(s): None.

Type of Request: Extension of a currently approved collection of information.

Abstract: The information is being collected to meet the requirements of sections 403(7) and (8) of the NPS Concessions Management Improvement Act of 1998 (the Act), concerning the granting of a preferential right to renew a concession contract; section 405 of the Act, regarding the construction of capital improvements by concessioners; and section 414 of the Act, regarding recordkeeping requirements of concessioners. The information will be used by the agency in considering appeals concerning preferred offeror determinations; agency review and approval of construction projects and determinations with regard to the leasehold surrender interest value of such projects; and, when necessary, agency review of a concessioner's books and records related to its activities under a concession contract.

Affected public: Business or nonprofit organizations.

Obligation to respond: Required to obtain or retain a benefit.

Activity	Number of respondents	Number annual responses	Average completion time (hours)	Total annual burden hours
Report for 36 CFR 51.47–Concession Contracts/Appeal of Preferred Offeror Determinations	8	8	1	8
Certification for 36 CFR 51.54—Large Project	31	31	48	1488
Report for 36 CFR 51.55—Small Project—Construction of Capital Improvements	89	89	20	1780

Activity	Number of respondents	Number annual responses	Average completion time (hours)	Total annual burden hours
Totals	128	128		3276

Estimated annual non hour cost burden: None.

Comments are invited on: (1) The practical utility of the information being gathered; (2) the accuracy of the burden hour estimate; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology. 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 NPS will be able to do so. All comments will become a matter of public record. All responses to this notice will be summarized and included in the request for the Office of Management and Budget approval.

Dated: March 29, 2010.

Cartina Miller,

NPS Information Collection Clearance Officer.

[FR Doc. 2010–7633 Filed 4–2–10; 8:45 am]

BILLING CODE 4312–53–P

DEPARTMENT OF THE INTERIOR

National Park Service

60-Day Notice of Intention To Request Clearance of Collection of Information-Opportunity for Public Comment

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice and request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3507) and 5 CFR part 1320, Reporting and Recordkeeping Requirements, the National Park Service invites public comments on an extension of a currently approved collection of information Office of Management and Budget (OMB) #1024–0028. 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.

DATES: Public comments will be accepted on or before June 4, 2010

ADDRESSES: Send comments to Michael D. Wilson, Chief or Laurie Heupel, Outdoor Recreation Planner, State and Local Assistance Programs Division, National Park Service (2225), 1849 C Street, NW., Washington, DC 20240–0001 or via e-mail at *michael_d_wilson@nps.gov*. or *laurie_heupel@nps.gov*. All responses to this notice will be summarized and included in the request.

To Request a Draft of Proposed Collection of Information Contact: Michael D. Wilson, Chief or Laurie Heupel, Outdoor Recreation Planner, State and Local Assistance Programs Division, National Park Service (2225), 1849 C Street, NW., Washington, DC 20240–0001 or via e-mail at *Michael_d_wilson@nps.gov* or *Laurie_heupel@nps.gov*. You are entitled to a copy of the entire ICR package free-of-charge.

SUPPLEMENTARY INFORMATION: *OMB Control Number:* 1024–0028.

Title: Urban Park and Recreation Recovery Performance Report.

Form: None.

Type of Request: Extension of currently approved information collection.

Expiration Date: August 31, 2010.

Abstract: Performance Reports are needed to show quarterly or annual progress reports on the physical completion per percentage of each grant, financial expenditures to date, budget revisions if needed, work planned for the next year, and any additional information pertinent for grant completion. Although remaining authorized, UPARR has not been funded since 2002. This report is only required for active funded grants.

Affected Public: 56 State Governments, DC and Territories.

Obligation to Respond: Required to Obtain a Benefit.

Frequency of Response: On occasion.

Estimated Total Annual Responses: 5.

Estimated Average Completion Time per Response: 1.5 hours.

Estimated Annual Reporting Burden: 7.5 hours.

Estimated Annual Non Hour Cost Burden: $234.

The NPS also is asking for comments on (1) The practical utility of the information being gathered; (2) the accuracy of the burden hour estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology. 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 we cannot guarantee that we will be able to do so.

Dated: March 26, 2010.

Cartina Miller,

Information Collection Officer, National Park Service.

[FR Doc. 2010–7635 Filed 4–2–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2010–N037; 40120–1113–0000–C4]

Endangered and Threatened Wildlife and Plants; 5-Year Status Review of Roseate Tern

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of status review; request for information; clarification.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are clarifying a prior published notice regarding our 5-year status review for the roseate tern (*Sterna dougalli dougalli*) under the Endangered Species Act of 1973, as amended (Act). We conduct these reviews to ensure that the classification of species as threatened or endangered on the Lists of Endangered and Threatened Wildlife and Plants is accurate. The prior notice indicated that we are conducting a status review of only the northeastern population of the roseate tern; we are actually conducting a status review of this species throughout the entire area where it is listed.

DATES: To allow us adequate time to conduct this review, we must receive your comments or information on or before June 4, 2010. However, we will continue to accept new information about any listed species at any time.

ADDRESSES: To submit information on the roseate tern or review information that we receive, contact the appropriate address:

- *Roseate tern where listed as endangered:* New England Field Office, U.S. Fish and Wildlife Service, 70 Commercial Street, Suite 300, Concord, New Hampshire 03301.
- *Roseate tern where listed as threatened:* Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622.

FOR FURTHER INFORMATION CONTACT: For information on the roseate tern where listed as endangered, contact Michael Amaral of the New England Field Office (*see* address above): Phone: 603–223–2541, ext. 23; e-mail: *michael_amaral@fws.gov.*

For information on the roseate tern where listed as threatened, contact Marelisa Rivera of the Caribbean Field Office (*see* address above): Phone: 787–851–7297, ext. 231; e-mail: *marelisa_rivera@fws.gov.*

SUPPLEMENTARY INFORMATION:

Background

Under the Act (16 U.S.C. 1531 *et seq.*), we maintain lists of endangered and threatened wildlife and plant species in the Code of Federal Regulations (CFR) at 50 CFR 17.11 (for wildlife) and 17.12 (for plants) (collectively referred to as the List). Section 4(c)(2)(A) of the Act requires that we conduct a review of listed species at least once every 5 years. Then, on the basis of such reviews, under section 4(c)(2)(B), we determine whether or not any species should be removed from the List (delisted), or reclassified from endangered to threatened or from threatened to endangered.

If we consider delisting a species, we must support the action by the best scientific and commercial data available. We must consider if these data substantiate that the species is neither endangered nor threatened for one or more of the following reasons: (1) The species is considered extinct; (2) the species is considered to be recovered; and/or (3) the original data available when the species was listed, or the interpretation of such data, were in error. Any change in Federal classification would require a separate rulemaking process. Our regulations at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species currently under our active review.

The roseate tern is currently listed at 50 CFR 17.11(h) as endangered in the United States along the Atlantic Coast south to North Carolina, Canada (in Newfoundland, Nova Scotia, and Quebec), and Bermuda. The roseate tern is listed as threatened in the Western Hemisphere and adjacent oceans, including Florida, Puerto Rico, and the Virgin Islands, where it is not listed as endangered. On December 16, 2008, we initiated a status review of several species, including the roseate tern in the Northeast (Connecticut, Maine, Massachusetts, New Jersey, New York, North Carolina, Rhode Island, and Virginia) (73 FR 76373). The purpose of this notice is to announce our active review of the roseate tern (*Sterna dougalli dougalli*) in its entire listed range.

What Information Do We Consider in a 5-Year Review?

A 5-year review considers the best scientific and commercial data that have become available since the current listing determination or most recent status review of each species, such as:

A. Species biology, including but not limited to population trends, distribution, abundance, demographics, and genetics;

B. Habitat conditions, including but not limited to amount, distribution, and suitability;

C. Conservation measures that have been implemented to benefit the species;

D. Threat status and trends (*see* five factors under heading "How do we determine whether a species is endangered or threatened?"); and

E. Other new information, data, or corrections, including but not limited to taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

Definitions Related to This Notice

A. *Species* includes any species or subspecies of fish, wildlife, or plant, and any distinct population segment of any species of vertebrate which interbreeds when mature.

B. *Endangered* means any species that is in danger of extinction throughout all or a significant portion of its range.

C. *Threatened* means any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

How Do We Determine Whether a Species Is Endangered or Threatened?

Section 4(a)(1) of the Act establishes that we determine whether a species is endangered or threatened based on one or more of the following five factors:

A. The present or threatened destruction, modification, or curtailment of its habitat or range;

B. Overutilization for commercial, recreational, scientific, or educational purposes;

C. Disease or predation;

D. The inadequacy of existing regulatory mechanisms; or

E. Other natural or manmade factors affecting its continued existence.

What Could Happen as a Result of This Review?

If we find that there is new information concerning the roseate tern indicating that a change in classification may be warranted, we may propose a new rule that could do one of the following: (a) Reclassify the species from endangered to threatened (downlist); (b) reclassify the species from threatened to endangered (uplist); or (c) delist the species. If we determine that a change in classification is not warranted, then the species will remain on the List under its current status.

Request for New Information

We request any new information concerning the status of the roseate tern. See "What information do we consider in a 5-year review?" heading for specific criteria. Information submitted should be supported by documentation such as maps, bibliographic references, methods used to gather and analyze the data, and/or copies of any pertinent publications, reports, or letters by knowledgeable sources.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that the 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: We publish this document under the authority of the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: February 25, 2010.

Patrick Leonard,

Acting Regional Director, Southeast Region.

[FR Doc. 2010–7709 Filed 4–2–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Preparation of an Environmental Assessment (EA) for Proposed Outer Continental Shelf (OCS) Oil and Gas Lease Sale 216 in the Central Gulf of Mexico Planning Area (2011)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of Preparation (NOP) of an Environmental Assessment (EA).

SUMMARY: The purpose of the NOP is to gather new information on environmental impacts of oil and gas leasing, exploration, and development that might result from an Outer Continental Shelf (OCS) oil and gas lease sale tentatively scheduled for March 2011.

DATES: Comments must be received no later than May 5, 2010 at the address specified below.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

ADDRESSES: Federal, State, and local government agencies, and other interested parties are requested to send their written comments on the EA, significant issues that should be addressed, and alternatives that should be considered in one of the following ways:

1. In written form enclosed in an envelope labeled "Comments on the Lease Sale 216 EA" and mailed (or hand carried) to the Regional Supervisor, Leasing and Environment (Mail Stop 5410), Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394.

2. Electronically to the MMS e-mail address: *WPALeaseSale216@mms.gov.*

FOR FURTHER INFORMATION CONTACT: For information on the NOP, you may contact Mr. Quazi T. Islam, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, telephone (504) 736–2780. For information on the EA, you may contact Gary D. Goeke, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, MS 5410, New Orleans, Louisiana 70123–2394 or by e-mail at *CPALeaseSale216@mms.gov.* You may also contact Mr. Goeke by telephone at (504) 736–3233.

Notice of Preparation of an Environmental Assessment

1. Authority

This NOP is published pursuant to the regulations (40 CFR 1501.7) implementing the provisions of the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.* (1988)).

2. Purpose of Notice of Preparation

Pursuant to the regulations implementing the procedural provisions of NEPA, MMS is announcing its intent to prepare an EA on an oil and gas lease sale tentatively scheduled for early 2011 in the Central Planning Area (CPA) offshore of the States of Louisiana, Mississippi, Alabama, and Florida. The MMS is issuing this notice to facilitate public involvement. The preparation of this EA is an important step in the decision process for Lease Sale 216. The proposal for Lease Sale 216 was analyzed in the Gulf of Mexico OCS Oil and Gas Lease Sales: 2009–2012: Central Planning Area Sales 208, 213, 216, and 222; Western Planning Area Sales 210, 215, and 218—Final Supplemental Environmental Impact Statement (Supplemental EIS, OCS EIS/EA MMS 2008–041). This EA for proposed Lease Sale 216 will reexamine the potential environmental effects of the proposed lease sale and its alternatives (i.e., excluding the unleased blocks near biologically sensitive topographic features; excluding the unleased blocks within 15 miles of the Baldwin County, Alabama, coast; and no action) based on changes in the proposed action and any new relevant information and circumstances regarding potential environmental impacts and issues that were not available at the time the Supplemental EIS was prepared, to determine if preparation of a new supplemental EIS is warranted.

3. Supplemental Information

Final delineation of this area for possible leasing will be made at a later date and in compliance with applicable laws, including all requirements of NEPA, the Coastal Zone Management Act, Outer Continental Shelf Lands Act, and other applicable statutes. Established Departmental procedures will also be followed.

The MMS routinely assesses the status of information acquisition efforts and the quality of the information base for potential decisions on a tentatively scheduled lease sale. An extensive environmental studies program has been underway in the Gulf of Mexico (GOM) since 1973. The emphasis, including continuing studies, has been on "environmental analysis" of biologically sensitive habitats, physical oceanography, ocean-circulation modeling, ecological effects of oil and gas activities, and hurricane impacts on coastal communities and the environment.

Federal regulations allow for several related or similar proposals to be analyzed in one EIS (40 CFR 1502.4). Each proposed lease sale and its projected activities are very similar each year for each planning area. The Multisale EIS (OCS EIS/EA MMS 2007–018) addressed Western Planning Area (WPA) Lease Sale 204 in 2007, Sale 207 in 2008, Sale 210 in 2009, Sale 215 in 2010, and Sale 218 in 2011; and CPA Lease Sale 205 in 2007, Sale 206 in 2008, Sale 208 in 2009, Sale 213 in 2010, Sale 216 in 2011, and Sale 222 in 2012. However, the Gulf of Mexico Energy Security Act of 2006 repealed the congressional moratorium on approximately 5.8 million acres located in the southeastern part of the CPA. Therefore, it was necessary to prepare additional NEPA documentation to address the MMS proposal to expand the CPA by the 5.8 million-acre area. A single Supplemental EIS was prepared for the remaining seven WPA and CPA lease sales scheduled in the *OCS Oil and Gas Leasing Program: 2007–2012* (5-Year Program). In September 2008, MMS published a Supplemental EIS (OCS EIS/EA MMS 2008–041) that addressed seven proposed Federal actions that would offer for lease areas on the GOM OCS that may contain economically recoverable oil and gas resources.

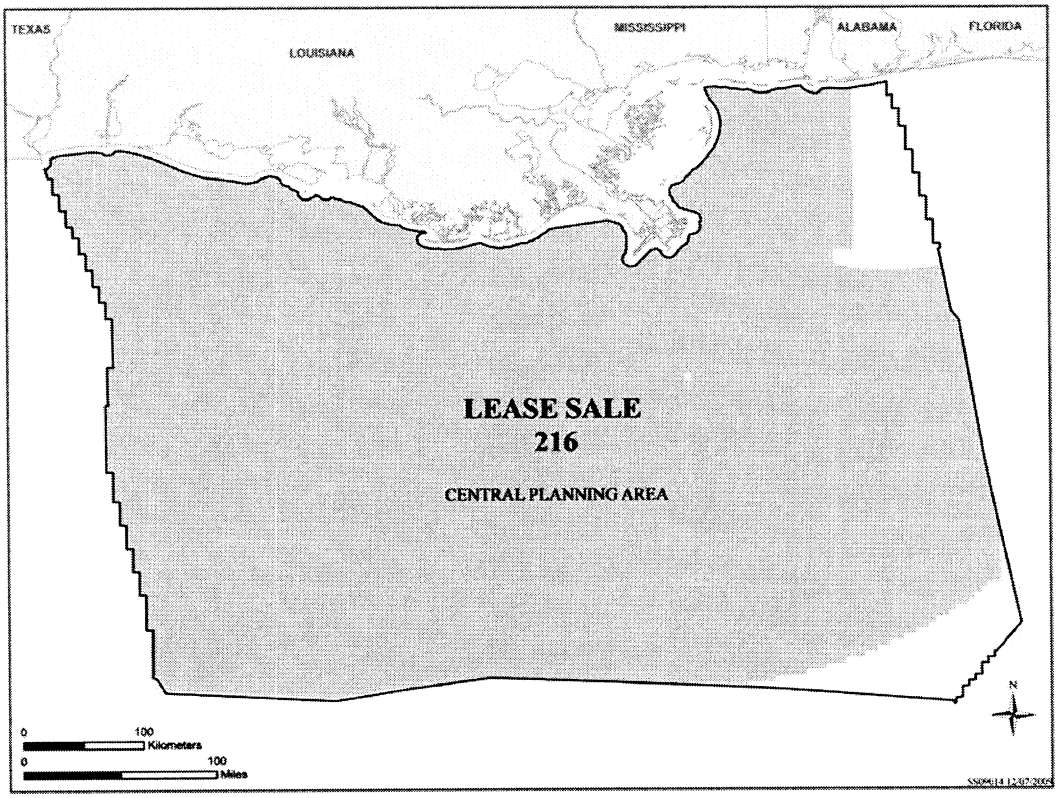
After completion of this EA, the MMS will determine whether to prepare a Finding of No New Significant Impact (FONNSI) or a Supplemental EIS for Lease Sale 216 and the subsequent sales. The MMS prepares a Consistency Determination (CD) to determine whether the lease sale is consistent with each affected state's federally approved Coastal Zone Management program. Finally, the MMS will solicit comments via the Proposed Notice of Sale (NOS) from the Governors of the affected states on the size, timing, and location of the lease sale. The tentative schedule for the prelease decision process for Lease Sale 216 is as follows: EA/FONSI or Supplemental EIS decision will be completed in September-October 2010; CDs will be sent to the affected states approximately 5 months before the lease sale; Proposed NOS sent to the Governors of the affected states approximately 5 months before the lease

sale; Final NOS, if applicable, will be published in the **Federal Register** in February 2011.

Dated: March 31, 2010.

S. Elizabeth Birnbaum,

Director, Minerals Management Service.



[FR Doc. 2010–7719 Filed 4–2–10; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Gulf of Mexico, Outer Continental Shelf, Western Planning Area, Oil and Gas Lease Sale 215 (2010) Environmental Assessment

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of availability of an environmental assessment.

SUMMARY: The Minerals Management Service (MMS) is issuing this notice to advise the public, pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. 4321 *et seq.,* that MMS has prepared an environmental assessment (EA) for proposed Gulf of Mexico Outer Continental Shelf (OCS) oil and gas Lease Sale 215 in the Western Planning Area (WPA) (Lease Sale 215) scheduled for August 2010. The preparation of this EA is an important step in the decision process for Lease Sale 215. The proposal for Lease Sale 215 was identified by the Notice of Preparation published in the **Federal Register** on September 9, 2009, and was analyzed in the *Gulf of Mexico OCS Oil and Gas Lease Sales: 2007–2012; Western Planning Area Sales 204, 207, 210, 215, and 218; Central Planning Area Sales 205, 206, 208, 213, 216, and 222—Final Environmental Impact Statement; Volumes I and II* (Multisale EIS, OCS EIS/EA MMS 2007–018) and in the *Gulf of Mexico OCS Oil and Gas Lease Sales: 2009–2012; Central Planning Area Sales 208, 213, 216, and 222; Western Planning Area Sales 210, 215, and 218—Final Supplemental Environmental Impact Statement* (Supplemental EIS, OCS EIS/EA MMS 2008–041).

This EA for proposed Lease Sale 215 examines the potential environmental effects of the proposed lease sale and its alternatives (excluding unleased whole and partial blocks that are part of Flower Garden Banks National Marine Sanctuary and whole and partial blocks that lie within the 1.4-nautical-mile buffer zone north of the OCS boundary between the U.S. and Mexico) based on changes and any new relevant information and circumstances regarding potential environmental impacts and issues that were not available at the time the Supplemental EIS was prepared to determine if preparation of a new supplemental EIS is warranted. No new significant impacts were identified for proposed Lease Sale 215 that were not already assessed in the Multisale EIS or Supplemental EIS. As a result, MMS determined that an additional supplemental EIS is not required and prepared a Finding of No New Significant Impact (FONNSI).

FOR FURTHER INFORMATION CONTACT: Mr. Barry Obiol, Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, MS 5410, New Orleans, Louisiana 70123–2394. You may also contact Mr. Obiol by telephone at (504) 736–2786.

SUPPLEMENTARY INFORMATION: The Multisale EIS (OCS EIS/EA MMS 2007–018) addressed WPA Lease Sale 204 in 2007, Sale 207 in 2008, Sale 210 in 2009, Sale 215 in 2010, and Sale 218 in 2011; and Central Planning Area (CPA) Lease Sale 205 in 2007, Sale 206 in 2008, Sale 208 in 2009, Sale 213 in 2010, Sale 216 in 2011, and Sale 222 in 2012. However, the Gulf of Mexico Energy Security Act of 2006 repealed the Congressional moratorium on

approximately 5.8 million acres located in the southeastern part of the CPA. Therefore, it was necessary to prepare additional NEPA documentation to address the MMS proposal to expand the CPA by the 5.8-million-acre area. Federal regulations allow for several related or similar proposals to be analyzed in one EIS (40 CFR 1502.4). Since each proposed lease sale and its projected activities are very similar each year for each planning area, a single Supplemental EIS was prepared for the remaining seven WPA and CPA lease sales scheduled in the *OCS Oil and Gas Leasing Program: 2007–2012* (5-Year Program). In September 2008, MMS published a Supplemental EIS (OCS EIS/EA MMS 2008–041) that addressed seven proposed Federal actions that would offer for lease areas on the Gulf of Mexico OCS that may contain economically recoverable oil and gas resources.

An additional NEPA review (an EA) was conducted for proposed Lease Sale 215 to address any new information relevant to the proposed lease sale. Additional NEPA reviews will also be conducted prior to decisions on each of the three subsequent proposed lease sales. The purpose of these EA's is to determine whether to prepare a FONNSI or a Supplemental EIS. For each proposed lease sale, MMS prepares a Consistency Determination (CD) to determine whether the lease sale is consistent with each affected State's federally approved, coastal zone management program. Finally, MMS solicits comments via the Proposed Notice of Sale (NOS) from the governors of the affected States on the size, timing, and location of the lease sale. The tentative schedule for the prelease decision process for Lease Sale 215 is as follows: CD's sent to the affected States, March 2010; Proposed NOS sent to the governors of the affected States, March 2010; Final NOS, if applicable, published in the **Federal Register**, July 2010; and Lease Sale 215, August 2010.

EA Availablity: To obtain a copy of this EA and FONNSI, you may contact the Minerals Management Service, Gulf of Mexico OCS Region, Attention: Public Information Office (MS 5034), 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana 70123–2394 (1–800–200–GULF). You may also view this EA and FONNSI on the MMS Web site at *http://www.gomr.mms.gov/homepg/regulate/environ/nepa/nepaprocess.html.*

Dated: March 31, 2010.

Chris C. Oynes,

Associate Director for Offshore Minerals Management.

[FR Doc. 2010–7715 Filed 4–2–10; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Capital Memorial Advisory Commission; Notice of Public Meeting

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the National Capital Memorial Advisory Commission (the Commission) plans to meet at the National Building Museum, Room 312, 401 F Street, NW., Washington, DC, on Wednesday, April 21, 2010, at 1 p.m.

The meeting will be open to the public. Persons who wish to file a written statement or testify at the meeting or who want further information concerning the meeting may contact Ms. Nancy Young, Secretary to the Commission. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

The purpose of the meeting will be to discuss currently authorized and proposed memorials in the District of Columbia and its environs.

In addition to discussing general matters and conducting routine business, the Commission will consider the following:

I. Design Consultation—Dwight D. Eisenhower Memorial.

II. Review of Legislation Pending in the 111th Congress:

(a) H.R. 4197, A bill to authorize the Gold Star Mothers National Monument Foundation to establish a national monument in the District of Columbia.

(b) H.R. 4195, A bill to authorize the Peace Corps Commemorative Foundation to establish a commemorative work in the District of Columbia and its environs to commemorate the establishment of the Peace Corps and to honor the ideals upon which it was founded.

(c) H.R. 4036, a bill to authorize the National Mall Liberty Fund DC to establish a memorial on Federal land in the District of Columbia to honor free persons and slaves who fought for independence, liberty, and justice for all during the American Revolution.

III. Consideration of a draft revision to the Commission's bylaws.

DATES: Wednesday, April 21, 2010.

ADDRESSES: National Building Museum, Room 312, 401 F Street, NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Young, Secretary to the Commission, by telephone at (202) 619–7097, by e-mail at *nancy_young@nps.gov,* by telefax at (202) 619–7420, or by mail at the National Capital Memorial Advisory Commission, 1100 Ohio Drive, SW., Room 220, Washington, DC 20242.

SUPPLEMENTARY INFORMATION: The Commission was established by Public Law 99–652, the Commemorative Works Act (40 U.S.C. Chapter 89 *et seq.*), to advise the Secretary of the Interior (the Secretary) and the Administrator, General Services Administration, (the Administrator) on policy and procedures for establishment of, and proposals to establish, commemorative works in the District of Columbia and its environs, as well as such other matters as it may deem appropriate concerning commemorative works.

The Commission examines each memorial proposal for conformance to the Commemorative Works Act, and makes recommendations to the Secretary and the Administrator and to Members and Committees of Congress. The Commission also serves as a source of information for persons seeking to establish memorials in Washington, DC, and its environs.

The members of the Commission are as follows:

Director, National Park Service.

Administrator, General Services Administration.

Chairman, National Capital Planning Commission.

Chairman, Commission of Fine Arts.

Mayor of the District of Columbia.

Architect of the Capitol.

Chairman, American Battle Monuments Commission.

Secretary of Defense.

Dated: March 9, 2010.

Peggy O'Dell,

Regional Director, National Capital Region.

[FR Doc. 2010–7615 Filed 4–2–10; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Chesapeake and Ohio Canal National Historical Park Advisory Commission; Notice of Public Meeting

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that a meeting of the Chesapeake and Ohio Canal National Historical Park Advisory Commission (the Commission) will be held at 9 a.m., on Friday, May 14, 2010, at the House of Sweden, 2900 K Street, NW., Washington, DC 20007.

DATES: Friday, May 14, 2010.

ADDRESSES: House of Sweden, 2900 K Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Kevin Brandt, Superintendent, Chesapeake and Ohio Canal National Historical Park, 1850 Dual Highway, Suite 100, Hagerstown, Maryland 21740, telephone: (301) 714–2201.

SUPPLEMENTARY INFORMATION: The Commission was established by Public Law 91–664 to meet and consult with the Secretary of the Interior on general policies and specific matters related to the administration and development of the Chesapeake and Ohio Canal National Historical Park, and the Commission seeks public comment in formulating its advice. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

The members of the Commission are as follows:

Mrs. Sheila Rabb Weidenfeld, Chairperson.
Mr. Charles J. Weir.
Mr. Barry A. Passett.
Mr. James G. McCleaf II.
Mr. John A. Ziegler.
Mrs. Mary E. Woodward.
Mrs. Donna Printz.
Mrs. Ferial S. Bishop.
Ms. Nancy C. Long.
Mrs. Jo Reynolds.
Dr. James H. Gilford.
Brother James Kirkpatrick.
Dr. George E. Lewis, Jr.
Mr. Charles D. McElrath.
Ms. Patricia Schooley.
Mr. Jack Reeder.
Ms. Merrily Pierce.

Topics that will be presented during the meeting include:

1. Update on park operations.
2. Update on major construction development projects.
3. Update on partnership projects.

The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning the matters to be discussed. Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact Kevin Brandt, Superintendent, Chesapeake and Ohio Canal National Historical Park. Minutes of the meeting will be available for public inspection six weeks after the meeting at Chesapeake and Ohio Canal National Historical Park Headquarters, 1850 Dual Highway, Suite 100, Hagerstown, Maryland 21740.

Dated: February 25, 2010.

Kevin D. Brandt,

Deputy Superintendent, Chesapeake and Ohio Canal National Historical Park.

[FR Doc. 2010–7612 Filed 4–2–10; 8:45 am]

BILLING CODE 4310–6V–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–FHC–2010–N065; 81331–1334–8TWG–W4]

Trinity Adaptive Management Working Group

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The Trinity Adaptive Management Working Group (TAMWG) affords stakeholders the opportunity to give policy, management, and technical input concerning Trinity River (California) restoration efforts to the Trinity Management Council (TMC). The TMC interprets and recommends policy, coordinates and reviews management actions, and provides organizational budget oversight. This notice announces a TAMWG conference call, which is open to the public.

DATES: The TAMWG conference call will run from 9:30 a.m. to 12 p.m. on Friday, April 16, 2010. *Leader:* Arnold Whitridge, *Toll free number:* 888–790–3257, *Duration:* 2 hr 30 min, *Participant passcode:* 9825534#.

FOR FURTHER INFORMATION CONTACT: *Meeting information:* Randy A. Brown, TAMWG Designated Federal Officer, U.S. Fish and Wildlife Service, 1655 Heindon Road, Arcata, CA 95521; telephone: (707) 822–7201. *Trinity River Restoration Program (TRRP) information:* Jennifer Faler, Acting Executive Director, Trinity River Restoration Program, P.O. Box 1300, 1313 South Main Street, Weaverville, CA 96093; telephone: (530) 623–1800; e-mail: *jfaler@usbr.gov.*

SUPPLEMENTARY INFORMATION: Under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.), this notice announces a meeting of the TAMWG. The meeting will include discussion of the:

- 2010 flow schedule.

Completion of the agenda is dependent on the amount of time each item takes. The meeting could end early if the agenda has been completed.

Dated: March 30, 2010.

Randy A. Brown,

Designated Federal Officer, Arcata Fish and Wildlife Office, Arcata, CA.

[FR Doc. 2010–7585 Filed 4–2–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

Flight 93 National Memorial Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Notice of May 1, 2010, meeting.

SUMMARY: This notice sets forth the date of the May 1, 2010, meeting of the Flight 93 Advisory Commission.

DATES: The public meeting of the Advisory Commission will be held on Saturday, May 1, 2010, from 10 a.m. to 1 p.m. (Eastern). The Commission will meet jointly with the Flight 93 Memorial Task Force.

Location: The meeting will be held at the Somerset County Courthouse, Court Room #1, located at 111 E. Union Street, Somerset, PA 15501.

Agenda:

The May 1, 2010, joint Commission and Task Force meeting will consist of:

1. Opening of Meeting and Pledge of Allegiance.
2. Review and Approval of Commission Minutes from February 7, 2009.
3. Reports from the Flight 93 Memorial Task Force and National Park Service.
4. Old Business.
5. New Business.
6. Public Comments.
7. Closing Remarks.

FOR FURTHER INFORMATION CONTACT: Joanne M. Hanley, Superintendent, Flight 93 National Memorial, 109 West

Main Street, Somerset, PA 15501, 814.443.4557.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning agenda items. Address all statements to: Flight 93 Advisory Commission, 109 West Main Street, Somerset, PA 15501. 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.

Dated: March 18, 2010.

Joanne M. Hanley,

Superintendent, Flight 93 National Memorial.

[FR Doc. 2010–7636 Filed 4–2–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Notice of Availability of the Proposed Notice of Sale (NOS) for Outer Continental Shelf (OCS) Oil and Gas Lease Sale 215 in the Western Planning Area (WPA) in the Gulf of Mexico (GOM)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of availability of the proposed NOS for proposed Sale 215.

SUMMARY: The MMS announces the availability of the proposed NOS for proposed Sale 215 in the WPA. This Notice is published pursuant to 30 CFR 256.29(c) as a matter of information to the public. With regard to oil and gas leasing on the OCS, the Secretary of the Interior, pursuant to section 19 of the OCS Lands Act, provides the affected states the opportunity to review the proposed Notice. The proposed Notice sets forth the proposed terms and conditions of the sale, including minimum bids, royalty rates, and rentals.

DATES: Comments on the size, timing, or location of proposed Sale 215 are due from the affected states within 60 days following their receipt of the proposed Notice. The final NOS will be published in the **Federal Register** at least 30 days prior to the date of bid opening. Bid opening is currently scheduled for August 18, 2010.

SUPPLEMENTARY INFORMATION: The proposed NOS for Sale 215 and a "Proposed Notice of Sale Package" containing information essential to potential bidders may be obtained from the Public Information Unit, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, telephone: (504) 736–2519.

Dated: March 31, 2010.

S. Elizabeth Birnbaum,

Director, Minerals Management Service.

[FR Doc. 2010–7713 Filed 4–2–10; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

Notice is hereby given that on March 30, 2010, a Consent Decree in *United States of America* v. *the Commonwealth of Pennsylvania*, Civil Action No. 10–cv–1382, was lodged with the United States District Court for the Eastern District of Pennsylvania.

The United States filed a complaint concurrently with the settlement agreement in which it asserts claims against the Commonwealth of Pennsylvania pursuant to sections 107 and 113 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9607 and 9613. The claims arise from asbestos contamination at the Valley Forge Asbestos Release Site (the "Site"), located within the Valley Forge National Historical Park in Montgomery County, Pennsylvania. As alleged in the complaint, beginning in the late 1890's, several companies owned and operated an asbestos manufacturing facility on 46 acres within the Site. The Commonwealth operated a State park at the Site adjacent to the manufacturing operations during the time of disposal of asbestos-containing wastes, and the area of the former State park also became contaminated with asbestos-containing wastes. In 1976, the United States purchased the property formerly owned by the asbestos manufacturers, and the Commonwealth of Pennsylvania transferred the former State park to the United States. The United States created the Valley Forge National Historical Park which is now comprised of the former State park and the property the United States acquired from the asbestos manufacturers. In the complaint, the United States, on behalf of the Department of the Interior and the Environmental Protection Agency, seeks reimbursement of costs incurred and to be incurred to remedy the asbestos contamination at the Site.

The Settlement Agreement resolves the claims of the United States and the potential claims or counterclaims of the Commonwealth of Pennsylvania at the Site. The National Park Service has selected a remedy for the Site and, under the Settlement Agreement, the Commonwealth will pay sixty percent of the cost of implementing the remedy at the Site and the United States will pay forty percent. Specifically, the Settlement Agreement obligates Pennsylvania to pay $5.2 million to the United States upon entry of the Agreement by the Court. No more than one year after entry of the Agreement, the Commonwealth will set aside $2 million into a special restricted account which will be used to pay sixty percent of the cost of performance of the remedy at the Site above $8.66 million up to a maximum of $12 million. In the event that the costs of the remedy exceed $12 million, the Agreement provides that the United States will pay $400,000 of each increment of $1 million and Pennsylvania will pay $600,000. The United States as the lead agency at the Site will oversee implementation of the remedy.

The Department of Justice will receive for a period of sixty (60) days from the date of this publication comments relating to this proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, Attention: Nancy Flickinger (EES), and should refer to *United States of America* v. *Commonwealth of Pennsylvania,* Civil Action No. 10–cv–1382 and DOJ #90–11–2–06991/2.

The proposed Consent Decree may be examined at the Office of the United States Attorney for the Eastern District of Pennsylvania, 615 Chestnut Street, Suite 1250, Philadelphia, PA 19016. The consent decree also may be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the proposed 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 $35.75 (25 cents per page reproduction cost for a full copy) payable to the U.S. Treasury.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2010–7526 Filed 4–2–10; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreement Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on March 30, 2010, a proposed Settlement Agreement in the bankruptcy matter, *In re Lyondell Chemical Company, et al.,* Jointly Administered Case No. 09–10023 (REG), was lodged with the United States Bankruptcy Court for the Southern District of New York. The Settlement Agreement relates to alleged environmental liabilities of debtor Lyondell Chemical Company and 93 of its affiliates (collectively, the "Lyondell Debtors").

The Settlement Agreement resolves claims of the Environmental Protection Agency ("EPA") against certain Lyondell Debtors for response costs under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601–9675, with respect to the following sites: (1) The 68th Street Dump Site located in Maryland; (2) the Allied Paper/Portage Creek/Kalamazoo River Site located in Michigan; (3) the Barefoot Disposal Site located in Pennsylvania; (4) the Berks Landfill Site located in Pennsylvania; (5) the Chief Supply Site located in Oklahoma; (6) the Clinton Dock Area Site located in Iowa; (7) the Diamond Alkali/Lower Passaic River Study Area Site located in New Jersey; (8) the French Limited Site located in Texas; (9) the Hegeler Zinc Site located in Illinois; (10) the Malone Service Site located in Texas; (11) the Many Diversified Interests Site located in Texas; (12) the Omega Chemical Corporation Site located in California; and (13) the San Fernando Valley Site located in California.

The Settlement Agreement further settles EPA's claims against certain Lyondell Debtors for: (1) Civil penalties under the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6901–6992k, with respect to the Brunswick Facility located in Georgia; (2) civil penalties under the Clean Air Act, 42 U.S.C. 7401–7671q, with respect to the Houston Refinery located in Texas; and (3) stipulated penalties under CERCLA Administrative Orders on Consent with respect to the Allied Paper/Portage Creek/Kalamazoo River Site and the Chief Supply Site.

The Settlement Agreement also resolves claims of the Department of the Interior ("DOI") and the National Oceanic and Atmospheric Administration ("NOAA") against certain Lyondell Debtors for natural resource damages and related assessment costs with respect to the following sites: (1) The Allied Paper/Portage Creek/Kalamazoo River Site; (2) the Diamond Alkali/Lower Passaic River Study Area Site; and (3) the Hegeler Zinc Site.

Under the Settlement Agreement, EPA, DOI, and NOAA collectively will receive allowed general unsecured claims in the bankruptcy totaling $1,135,895,990.

The United States will also receive a cash payment of $53,628,150, which will be applied to the following six sites: (1) The 68th Street Dump Site; (2) the Allied Paper/Portage Creek/Kalamazoo River Site; (3) the Barefoot Disposal Site; (4) the Berks Landfill Site; (5) the Diamond Alkali/Lower Passaic River Study Area Site; and (6) the French Limited Site.

Pursuant to the Settlement Agreement, the United States may seek to recover response costs and natural resource damages with respect to approximately 380 additional non-debtor-owned sites, and such costs and damages will be treated as general unsecured claims under the Lyondell Debtors' Plan of Reorganization. The United States may pursue injunctive relief against the Lyondell Debtors under RCRA Section 7003 with respect to nine of the approximately 380 sites, but may not otherwise seek injunctive relief under CERCLA Section 106 or RCRA Section 7003 against the Lyondell Debtors with respect to those sites.

Finally, pursuant to the Settlement Agreement and a Custodial Trust Agreement, certain Lyondell Debtors will transfer title to nine debtor-owned real properties to a custodial trust and contribute approximately $108.4 million to the trust to fund cleanups of these properties and administrative expenses of the trust. The nine custodial trust properties are: (1) The Allied Paper Mill located in Michigan; (2) the Beaver Valley property located in Pennsylvania; (3) the Bully Hill Mine located in California; (4) the Charlotte property located in North Carolina; (5) the Excelsior Mine located in California; (6) the Gypsum Pile property located in Illinois; (7) the Rising Star Mine located in California; (8) the Saint Helena property located in Maryland; and (9) the Turtle Bayou property located in Texas.

The Department of Justice will receive, for a period of fifteen days from the date of this publication, comments relating to the Settlement Agreement. To be considered, comments must be received by the Department of Justice by the date that is fifteen days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *In re Lyondell Chemical Company, et al.,* D.J. Ref. 90–5–2–1–2132/3. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The Settlement Agreement and the Custodial Trust Agreement may be examined at the Office of the United States Attorney, 86 Chambers Street, 3rd Floor, New York, New York 10007, and at the U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. During the public comment period, the Settlement Agreement and the Custodial Trust Agreement may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* Copies of the Settlement Agreement and the Custodial Trust Agreement 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 $55.00 (with exhibits) or $29.75 (without exhibits) (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, please forward a check in that amount to the

Consent Decree Library at the stated address.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2010–7769 Filed 4–2–10; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Meeting of the Compact Council for the National Crime Prevention and Privacy Compact

AGENCY: Federal Bureau of Investigation, Justice.

ACTION: Meeting notice.

SUMMARY: The purpose of this notice is to announce a meeting of the National Crime Prevention and Privacy Compact Council (Council) created by the National Crime Prevention and Privacy Compact Act of 1998 (Compact). Thus far, the Federal Government and 28 states are parties to the Compact which governs the exchange of criminal history records for licensing, employment, and similar purposes. The Compact also provides a legal framework for the establishment of a cooperative federal-state system to exchange such records.

The United States Attorney General appointed 15 persons from state and federal agencies to serve on the Council. The Council will prescribe system rules and procedures for the effective and proper operation of the Interstate Identification Index system. Matters for discussion are expected to include:

(1) Establishment of a Benchmark for National Fingerprint File (NFF) Program Participation and an NET Implementation Plan.

(2) Report on the Bureau of Justice Statistics' Criminal History Record Information Sharing (CHRIS) Project.

(3) Update on the Criminal Justice Information Services (CJIS) Division Security Policy.

The meeting will be open to the public on a first-come, first-seated basis. Any member of the public wishing to file a written statement with the Council or wishing to address this session of the Council should notify Mr. Gary S. Barron at (304) 625–2803, at least 24 hours prior to the start of the session. The notification should contain the requestor's name and corporate designation, consumer affiliation, or government designation, along with a short statement describing the topic to be addressed and the time needed for the presentation.

Requesters will ordinarily be allowed up to 15 minutes to present a topic.

Dates and Times: The Council will meet in open session from 9 a.m. until 5 p.m., on May 12–13, 2010.

ADDRESSES: The meeting will take place at the Hyatt Regency Louisville, 320 West Jefferson, Louisville, Kentucky, telephone (502) 217–6091.

FOR FURTHER INFORMATION CONTACT: Inquiries may be addressed to Mr. Gary S. Barron, FBI Compact Officer, Compact Council Office, Module D3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306, telephone (304) 625–2803, facsimile (304) 625–2868.

Dated: March 18, 2010.

Kimberly J. DelGreco,

Section Chief, Biometric Services Section Criminal Justice Information Services Division, Federal Bureau of Investigation.

[FR Doc. 2010–7519 Filed 4–2–10; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF LABOR

Office of the Secretary

Job Corps: Preliminary Finding of No Significant Impact (FONSI) for the Installation of a Small Wind Turbine at the Pine Ridge Job Corps Center Located at 15710 Highway 385, Chadron, NE 69337

AGENCY: Office of the Secretary, Department of Labor.

Recovery: This project will be wholly funded under the American Recovery and Reconstruction Act of 2009.

ACTION: Preliminary Finding of No Significant Impact (FONSI) for a small Wind Turbine Installation to be located at the Pine Ridge Job Corps Center, 15710 Highway 385, Chadron, NE 69337.

SUMMARY: Pursuant to the Council on Environmental Quality Regulations (40 CFR part 1500–08) implementing procedural provisions of the National Environmental Policy Act (NEPA), the Department of Labor, Office of the Secretary (OSEC) in accordance with 29 CFR 11.11(d), gives notice that an Environmental Assessment (EA) has been prepared for a proposed Wind Turbine Installation to be located at the Pine Ridge Job Corps Center, 15710 Highway 385, Chadron, NE 69337. Through the EA and consultation with the U.S. Fish and Wildlife and the Nebraska Game and Parks Commission, the proposed plan for the construction of a wind turbine at the Pine Ridge Job Corps Center will have no significant environmental impact. This Preliminary Finding of No Significant Impact (FONSI) will be made available for public review and comment for a period of 30 days.

DATES: Comments must be submitted by May 5, 2010.

ADDRESSES: Any comment(s) are to be submitted to William A Dakshaw, P.E., Division of Facilities and Asset Management, Department of Labor, 200 Constitution Avenue, NW., Room N–4460, Washington, DC 20210, (202) 693–2867 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Copies of the EA are available to interested parties by contacting William A Dakshaw, P.E., Division of Facilities and Asset Management, Department of Labor, 200 Constitution Avenue, NW., Room N–4460, Washington, DC 20210, (202) 693–2867 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: This EA summary addresses the proposed construction of a single 100 kW rated or two 50 kW rated wind turbines at the Pine Ridge Job Corps Center.

The wind turbine will be installed on self-supporting towers approximately 120′ above the ground. The wind turbine will produce clean energy for the Pine Ridge Job Corps center, demonstrate renewable energy capabilities to Job Corps Students and help the program meet federal requirements in Executive Order 13423 for renewable energy production.

This project is not expected to have a negative impact on population demographics, the surrounding area, environmental quality, or natural systems and heritage. The U.S. Fish and Wildlife Service and the Nebraska Game and Parks Commission were consulted on this project. The Nebraska Game and Parks Commission determined the project will have no effect on state listed threatened or endangered species.

Based on the information gathered during the preparation of the EA and the consultation with the U.S. Fish and Wildlife and the Nebraska Game and Parks Commission, the construction of the Wind Turbine Installation at the Pine Ridge Job Corp Center, 15710 Highway 385, Chadron, NE 69337 will not create any significant adverse impacts on the environment.

Dated: March 31, 2010.

Edna Primrose,

Director of Job Corps.

[FR Doc. 2010–7657 Filed 4–2–10; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2010–0020]

Dipping and Coating Operations (Dip Tanks) Standard; Extension of the Office of Management and Budget's Approval of the Information Collection (Paperwork) Requirement

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comment.

SUMMARY: OSHA solicits public comments concerning its proposal to extend OMB approval of the information collection requirement specified in its Standard on Dipping and Coating Operations (Dip Tanks) (29 CFR 1910.126(g)(4)).

DATES: Comments must be submitted (postmarked, sent, or received) by June 4, 2010.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit three copies of your comments and attachments to the OSHA Docket Office, OSHA Docket No. OSHA–2010–0020, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number for the Information Collection Request (ICR) (OSHA Docket No. OSHA–2010–0020). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments *see* the "Public Participation" heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The Standard on Dipping and Coating Operations (29 CFR 1910.126(g)(4)) requires employers to post a conspicuous sign near each piece of electrostatic detearing equipment that notifies employees of the minimum safe distance they must maintain between goods undergoing electrostatic detearing and the electrodes or conductors of the equipment used in the process. Doing so reduces the likelihood of igniting the explosive chemicals used in electrostatic detearing operations.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirement is necessary for the proper performance of the Agency's functions to protect workers, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirement, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend its approval of the information collection requirement contained in the Standard on Dipping and Coating Operations (Dip Tanks) (29 CFR 1910.126(g)(4)). The Agency is requesting to retain its previous burden hour estimate of one (1) hour. The Agency will summarize the comments submitted in response to this notice, and will include this summary in the request to OMB.

Type of Review: Extension of a currently approved information collection.

Title: Dipping and Coating Operations (Dip Tanks) (29 CFR 1910.126(g)(4)).

OMB Number: 1218–0237.

Affected Public: Business or other for-profits; Federal Government; State, Local, or Tribal Government.

Number of Respondents: 1.

Frequency of Recordkeeping: On occasion.

Total Responses: 1.

Average Time per Response: 0.

Estimated Total Burden Hours: 1.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the

ICR (OSHA Docket No. OSHA–2010–0020). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (*see* the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's "User Tips" link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 5–2007 (72 FR 31160).

Signed at Washington, DC, on March 30, 2010.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2010–7576 Filed 4–2–10; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2009–0041]

Formaldehyde Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comment.

SUMMARY: OSHA solicits public comments concerning its proposal to extend OMB approval of the information collection requirements specified in the Standard on Formaldehyde (29 CFR 1910.1048). The standard protects workers from the adverse health effects from occupational exposure to Formaldehyde.

DATES: Comments must be submitted (postmarked, sent, or received) by June 4, 2010.

ADDRESSES: *Electronically:* You may submit comments and attachments electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2009–0041, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number for the Information Collection Request (ICR) (OSHA–2009–0041). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the "Public Participation" heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Todd Owen or Jamaa Hill at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Todd Owen or Jamaa Hill, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657). The standard protects workers from the adverse health effects from occupational exposure to formaldehyde, including an itchy, runny, and stuffy nose; a dry or sore throat; eye irritation, headaches, and cancer of the lung, buccal cavity, and pharynyx. Formaldehyde solutions can damage the skin and burn the eyes.

The Standard specifies a number of paperwork requirements. The following is a brief description of the collection of information requirements contained in the Formaldehyde Standard. The Formaldehyde Standard requires employers to conduct worker exposure monitoring to determine workers' exposure to Formaldehyde, notify workers of their formaldehyde exposures, provide medical surveillance to workers, provide examining physicians with specific information, ensure that workers receive a copy of their medical examination results, maintain workers' exposure monitoring and medical records for specific periods, and provide access to these records by OSHA, the National Institute for Occupational Safety and Health, the affected workers, and their authorized representatives.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend its approval of the collection of information requirements contained in the Standard on Formaldehyde (29 CFR 1910.1048). The Agency is requesting an adjustment decrease of 191,541 hours (from 519,076 hours to 327,535 hours). The primary reasons for the reduction are a decrease in the number of workers requiring medical surveillance from 370,610 to 205,333 and a decrease in the overall number of establishments from 112,638 to 103,511. The establishment decrease resulted in fewer medical examinations, training sessions, and exposure measurements.

The Agency is also requesting a cost decrease of $12,699,342 from $55,325,688 to $42,626,346. The cost decrease is primarily the result of reducing the number of establishments, which also resulted in a reduction in the number of workers. Although the number of workers has decreased, the cost of medical examinations increased from $130 to $180. Additionally, the cost of monitoring samples has increased from $42 to $45.

OSHA will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend the approval of the information collection requirements contained in the Formaldehyde Standard (29 CFR 1910.1048).

Type of Review: Extension of currently approved collections.

Title: Formaldehyde Standard (29 CFR 1910.1048).

OMB Number: 1218–0145.

Affected Public: Business or other for-profits.

Number of Respondents: 103,511.

Total Responses: 1,186,422.

Frequency: On occasion.

Estimated Time per Response: Varies from 5 minutes (.08 hour) for employers (clerical/secretarial staff) to maintain records to 1 hour for an employee to undergo a medical examination.

Total Burden Hours: 327,535.

Estimated Cost (Operation and Maintenance): $42,626,346.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov*, which is the Federal e-Rulemaking Portal; (2) by facsimile (FAX); or (3) by hard copy. All comments, attachments, and other materials must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2009–0041). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627). Comments and submissions are posted without change at *http://www.regulations.gov*. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (e.g. copyrighted material) is not publically available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available through the Web site's "User Tips" link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 5–2007 (72 FR 31160).

Signed at Washington, DC, on March 30, 2010.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2010–7582 Filed 4–2–10; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2010–0018]

Asbestos in General Industry; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comment.

SUMMARY: OSHA solicits public comments concerning its proposal to extend OMB approval of the information collection requirements specified in its Standard on Asbestos in General Industry (29 CFR 1910.1001).

DATES: Comments must be submitted (postmarked, sent, or received) by June 4, 2010.

ADDRESSES: *Electronically:* You may submit comments and attachments electronically at *http://www.regulations.gov*, which is the

Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit three copies of your comments and attachments to the OSHA Docket Office, OSHA Docket No. OSHA–2010–0018, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number for the Information Collection Request (ICR) (OSHA Docket No. OSHA–2010–0018). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov*. For further information on submitting comments see the "Public Participation" heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Jamaa N. Hill at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Todd Owen or Jamaa N. Hill, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The basic purpose of the information collection requirements in the Standard is to document that employers in general industry are providing their workers with protection from hazardous asbestos exposure. Asbestos exposure results in asbestosis, an emphysema-like condition; lung cancer; mesothelioma; and gastrointestinal cancer.

Several provisions of the Standard specify paperwork requirements, including:

Implementing an exposure monitoring program that notifies workers of their exposure monitoring results; establishing a written compliance program; and informing laundry personnel of the requirement to prevent release of airborne asbestos above the time-weighted average and excursion limit. Other provisions associated with paperwork requirements include: Maintaining records of information obtained concerning the presence, location, and quantity of asbestos-containing materials (ACMs) and/or presumed asbestos-containing materials (PACMs) in a building/facility; notifying housekeeping workers of the presence and location of ACMs and PACMs in areas they may contact during their work; posting warning signs demarcating regulated areas; posting signs in mechanical rooms/areas that workers may enter and that contain ACMs and PACMs, informing them of the identity and location of these materials and work practices that prevent disturbing the materials; and affixing warning labels to asbestos-containing products and to containers holding such products. Additional provisions that contain paperwork requirements include: Developing specific information and training programs for workers; using information, data, and analyses to demonstrate that PACMs do not contain asbestos; providing medical surveillance for workers potentially exposed to ACMs and/or PACMs, including administering a worker medical questionnaire, providing information to the examining physician, and providing the physician's written opinion to the worker; maintaining exposure monitoring records, objective data used for exposure determinations, and medical surveillance; making specified records (*e.g.,* exposure monitoring and medical surveillance records) available to designated parties; and transferring exposure monitoring and medical surveillance records to the National Institute for Occupational Safety and Health (NIOSH) on cessation of business, if so requested by NIOSH.

These paperwork requirements permit employers, workers and their designated representatives, OSHA, and other specified parties to determine the effectiveness of an employer's asbestos-control program. Accordingly, the requirements ensure that workers exposed to asbestos receive all of the protection afforded by the Standard.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend its approval of the information collection requirements contained in the Standard on Asbestos in General Industry (29 CFR 1910.1001). The Agency is requesting to reduce the burden hours associated with the Standard from 23,849 to 11,933 for a total reduction of 11,916 burden hours. The primary reason for this reduction is that the estimated number of affected

facilities covered by this Standard has been reduced.

The Agency will summarize the comments submitted in response to this notice, and will include this summary in the request to OMB.

Type of Review: Extension of a currently approved information collection.

Title: Asbestos in General Industry (29 CFR 1910.1001).

OMB Number: 1218–0133.

Affected Public: Business or other for-profits.

Number of Respondents: 243.

Frequency: Annually; semi-annually.

Average Time per Response: Varies from 5 minutes to maintain records to 1.5 hours for workers to receive training or medical evaluations.

Estimated Total Burden Hours: 11,933.

Estimated Cost (Operation and Maintenance): $862,347.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (OSHA Docket No. OSHA–2010–0018). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (e.g., copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's "User Tips" link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

Electronic copies of this **Federal Register** document are available at *http://www.regulations.gov*. This document as well as news releases and other relevant information also are available at OSHA's Web page at *http://www.osha.gov.*

V. Authority and Signature

David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 5–2007 (72 FR 31160).

Signed at Washington, DC, on March 30, 2010.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2010–7586 Filed 4–2–10; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (10–038)]

NASA Advisory Council; Aeronautics Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the Aeronautics Committee of the NASA Advisory Council. The meeting will be held for the purpose of soliciting from the aeronautics community and other persons research and technical information relevant to program planning.

DATES: Friday, April 23, 2010, 8 a.m. to 1 p.m.; Eastern Daylight Time.

ADDRESSES: NASA Langley Research Center, Building 1219, Room 225, Hampton, Virginia (Note that visitors will need to go to the LaRC Badge & Pass Office, which is to the right of the main gate, to be granted access)

FOR FURTHER INFORMATION CONTACT: Ms. Susan L. Minor, Executive Secretary for the Aeronautics Committee, National Aeronautics and Space Administration Headquarters, Washington, DC 20546, (202) 358–0566, or *susan.l.minor@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

- Langley Research Center Overview.
- Aeronautics Test Program overview and strategic plan.
- Unmanned Aircraft Systems research planning.
- Validation and Verification research planning.

It is imperative that these meetings be held on this date to accommodate the scheduling priorities of the key participants. Attendees will be requested to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide a copy of their passport, visa, or green card in addition to providing the following information no less than 10 working days prior to the meeting: Full name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, phone); and title/position of attendee. To expedite admittance, attendees with U.S. citizenship can provide identifying information 3 working days in advance by contacting Cheryl Cleghorn via e-mail at *cheryl.w.cleghon@nasa.gov* or by telephone at (757) 864–2497. Persons with disabilities who require assistance should indicate this. Any person interested in participating in the meeting by Webex and telephone should contact Ms. Susan L. Minor at (202) 358–0566 for the Web link, toll-free number and passcode.

Dated: March 30, 2010.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2010–7656 Filed 4–2–10; 8:45 am]

BILLING CODE P

NATIONAL COUNCIL ON DISABILITY

Sunshine Act Meetings; Correction

AGENCY: National Council on Disability.

ACTION: Notice; correction.

Type: Quarterly meeting.

SUMMARY: NCD published a Sunshine Act Meeting Notice in the **Federal Register** on March 11, 2010, notifying the public of a quarterly meeting in Detroit, MI. The meeting has been cancelled.

FOR FURTHER INFORMATION CONTACT: Mark Quigley, Director of Communications, NCD, 1331 F Street, NW., Suite 850, Washington, D.C. 20004; 202–272–2004 (voice), 202–272–2074 (TTY), 202–272–2022 (fax).

Correction

In the **Federal Register** on March 11, 2010, in FR Doc. 2010–5407, on pages 11565–11566, correct the "Dates and Times" and "Location" captions to read:

DATE AND TIMES: Meeting cancelled.

LOCATION: Meeting cancelled.

Dated: March 25, 2010.

Joan M. Durocher,

Executive Director.

[FR Doc. 2010–7717 Filed 4–1–10; 11:15 am]

BILLING CODE 6820–MA–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2010–0142]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: 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 Form 212 "*Qualifications Investigation, Professional, Technical, and Administrative Positions*", and NRC Form 212A "*Qualifications Investigation Secretarial/Clerical*"

2. *Current OMB approval number:* 3150–0033 and 3150–0034.

3. *How often the collection is required:* The form(s) are collected for every new hire to the U.S. Nuclear Regulatory Commission.

4. *Who is required or asked to report:* References are collected for every new hire.

5. *The number of annual respondents: NRC Form 212:* 1,000 annual respondents. *NRC Form 212A:* 400 annual respondents.

6. *The number of hours needed annually to complete the requirement or request: NRC Form 212:* 250 hours. *NRC Form 212A:* 100 hours.

7. *Abstract:* Information requested on NRC Form 212, "Qualifications Investigation, Professional, Technical, and Administrative Positions (other than clerical positions)" and NRC Form 212A, "Qualifications Investigation, Secretarial/Clerical" is used to determine the qualifications and suitability of external applicants for employment with NRC. The completed forms may be used to examine, rate and/or assess the prospective employee's qualifications. The information regarding the qualifications of applicants for employment is reviewed by professional personnel of the Office of Human Resources, in conjunction with other information in the NRC files, to determine the qualifications of the applicant for appointment to the position under consideration.

Submit, by June 4, 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–2010–0142. 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–2010–0142. 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 25th day of March 2010.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2010–7603 Filed 4–2–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–9068; NRC–2008–0391]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for an Exemption to the Part 40 Commencement of Construction Requirements, Lost Creek ISR, LLC, Sweetwater County, WY

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

FOR FURTHER INFORMATION CONTACT: Tanya Palmateer Oxenberg, Ph.D., Project Manager, Uranium Recovery Licensing Branch, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415-6142; fax number: (301) 415–5369; e-mail: *tanya.oxenberg@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

By letter dated July 2, 2009, Lost Creek ISR, LLC (the Applicant)

submitted a request to the U.S. Nuclear Regulatory Commission (NRC) seeking an exemption from the "commencement of construction" provisions of 10 Code of Federal Regulations (CFR) 40.32(e) for certain site preparation activities. As discussed in its technical evaluation report (TER), the NRC is granting this request, in part. The NRC is authorizing the Applicant to undertake certain site preparation activities for its proposed Lost Creek in situ recovery (ISR) project in Sweetwater County, Wyoming, before a decision is made on whether to grant the Applicant's pending request for a uranium milling operating license. Granting the July 2, 2009, exemption request does not mean that the NRC has decided to issue an operating license, and the Applicant would be undertaking these site preparation activities with the risk that its pending NRC license application may later be denied. The NRC has prepared an Environmental Assessment (EA) in support of the exemption being granted in accordance with the requirements of 10 CFR 51.21. A draft of this EA was published in the **Federal Register** for public comment on November 9, 2009 (74 FR 57712). As indicated below in Section IV, the final EA is available for review, as is the TER. The final EA is summarized below.

II. EA Summary

The exemption being granted authorizes site preparation activities to be undertaken at the Applicant's proposed Lost Creek ISR site. Specifically, the exemption will allow the Applicant to conduct activities that do not have a nexus to radiological health and safety, and thus do not require an NRC license. As discussed in the TER, the NRC authorizes site preparation activities to be undertaken, except for the following:

1. Construction of the processing plant. The processing plant will concentrate, precipitate, and dry yellowcake, and its construction has a nexus to radiological health and safety, due to the intended presence and handling there of radioactive materials. Specific aspects of processing plant construction are thus subject to review and approval by NRC staff. Therefore, the construction of the processing plant is not approved as an exempted activity.

2. Drill and case up to four deep wells. The installation of these proposed wells has a nexus to radiological health and safety because the Applicant plans to use them to dispose of liquid 11e.(2) byproduct material. Therefore, drilling and casing deep disposal wells is not approved as an exempted activity.

The requested site preparation activities approved under this exemption include the following:

1. Leveling and surfacing of the area around the plant and maintenance building.
2. Constructing the maintenance building.
3. Installing household septic systems for the plant and maintenance buildings.
4. Installing fence around the plant and maintenance building area.
5. Upgrading existing road access from the west to the plant.
6. Upgrading existing road access from the east to the plant.
7. Installing fence for early wellfield area.
8. Installing power line to the plant and maintenance buildings and drillers shed.
9. Constructing a drillers shed and staging area.

The NRC staff prepared its EA pursuant to 10 CFR 51.21, which states, "[a]ll licensing and regulatory actions subject to this subpart require an environmental assessment * * *" The only two exceptions to this rule are those actions requiring environmental impact statements, and those that are categorically excluded or identified as otherwise not requiring environmental review pursuant to 10 CFR 51.22. Exemptions are not currently covered by any categorical exclusion, and, therefore, an EA is required for this action.

The impacts of activities allowed by the exemption being granted are not evaluated in the EA. However, the staff conditioned the exemption approval so as to protect endangered species and cultural and historic resources from the effects of site preparation activities. The impacts of all site preparation activities will be evaluated as direct impacts in the supplemental environmental impact statement (SEIS) being prepared for this site.

III. Finding of No Significant Impact

On the basis of the EA, the NRC finds that there are no significant environmental impacts from the proposed action, and that preparation of an environmental impact statement regarding the exemption is not warranted. Accordingly, the NRC has determined that a Finding of No Significant Impact is appropriate.

IV. Further Information

Documents related to this action, including the application for exemption and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are:

Document title	Date	Accession No.
Lost Creek ISR, LLC, Application for a Source Materials License	October 27, 2007	ML073190539
Lost Creek ISR, LLC, Resubmitted Application for a Source Materials License	March 20, 2008	ML081060525
Lost Creek Project Exemption Request	July 2, 2009	ML091940438
Request for Exemption From 10 CFR Part 40.32(e), Lost Creek ISR, LLC, Lost Creek In Situ Recovery Facility, Sweetwater County, Wyoming.	July 28, 2009	ML092090186
Letter from Bureau of Land Management in Rawlins, WY, Re: Review of Draft EA for Proposed Lost Creek ISR, LLC Exemption to Commencement of Construction Requirements in 10 CFR 40.32(e).	October 28, 2009	ML093090467
Response from Wyoming SHPO Re: Lost Creek ISR Request for Exemption from Commencement of Construction Requirements.	October 30, 2009	ML093170313
Federal Register Notice Re: Notice of Availability of Draft Environmental Assessment and Opportunity to Provide Comments for Exemption Request for Lost Creek ISR, LLC, Sweetwater County, WY.	November 2, 2009	ML092890567
Notice of Availability of Draft Environmental Assessment and Opportunity to Provide Comments for Exemption Request for Lost Creek ISR, LLC, Sweetwater County, WY.	November 9, 2009	ML093220010
Comment (3) of J. W. Cash on Behalf of Lost Creek ISR, LLC on NRC Notice of Availability of Draft Environment Assessment and Opportunity to Provide Comments for Exemption Request (Issued 11/9/2009).	December 8, 2009	ML093510015

Document title	Date	Accession No.
E-mail Comments from Wyoming Outdoor Council on Lost Creek ISR	December 9, 2009	ML093440560
Letter from Wyoming SHPO Re: Lost Creek ISR Notification of an Exemption from the Commencement of Construction Requirements in 10 CFR 40.32(e).	December 10, 2009	ML093440852
Press Release–09–197: NRC Seeks Public Comment on Draft Environmental Reports for Three Proposed Uranium Recovery Facilities.	December 10, 2009	ML093441307
S. Cohen Email Re: Lost Creek ISR EA Comments	December 18, 2009	ML093560625
Lost Creek ISR, LLC, Exemption Request, Final Technical Evaluation Report	March 25, 2010	ML093350365
Lost Creek ISR, LLC Exemption Request, Final Environmental Assessment	March 25, 2010	ML093350677

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC's Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland this 25th day of March 2010.

For the U.S. Nuclear Regulatory Commission.

Keith I. McConnell,

Deputy Director, Decommissioning and Uranium Recovery, Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2010–7604 Filed 4–2–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–331; NRC–2010–0107]

Nextera Energy Duane Arnold, LLC, Duane Arnold Energy Center; Exemption

1.0 Background

NextEra Energy Duane Arnold, LLC, formerly FPL Energy Duane Arnold, LLC (the licensee) is the holder of Facility Operating License No. DPR–49, which authorizes operation of the Duane Arnold Energy Center (Duane Arnold). The facility consists of a boiling-water reactor located in Linn County in the State of Iowa. The licensee was authorized to change its name by Amendment No. 275, dated November 13, 2009, to the Facility Operating License. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect. In a letter dated March 4, 2009, FPL Energy Duane Arnold, LLC requested exemption from certain requirements of 10 CFR part 50, Appendix J.

2.0 Request/Action

Title 10 of the Code of Federal Regulations (10 CFR), Appendix J specifies the leakage test requirements, schedules, and acceptance criteria for tests of the leak-tight integrity of the primary reactor containment and systems and components which penetrate the containment. Option B of Appendix J is entitled "Performance-Based Requirements." Option B, Section III.A., "Type A Test," requires, among other things, that the overall integrated leakage rate must not exceed the allowable leakage rate (La) with margin, as specified in the Technical Specifications (TSs).

The overall integrated leak rate, is defined in 10 CFR part 50, Appendix J as "the total leakage rate through all tested leakage paths, including containment welds, valves, fittings, and components that penetrate the containment system." This includes the contribution from main steam isolation valve (MSIV) leakage. The licensee has requested exemption from Option B, Section III.A requirements to permit exclusion of MSIV leakage from the overall integrated leak rate test measurement. Main steam leakage includes leakage through all four main steam lines and the main steam drain line.

Option B, Section III.B of 10 CFR part 50, Appendix J, "Type B and C Tests," requires, among other things, that the sum of the leakage rates at accident pressure of Type B tests and pathway leakage rates from Type C tests be less than the performance criterion (La) with margin, as specified in the TSs. The licensee also requests exemption from this requirement, to permit exclusion of the main steam pathway leakage contributions from the sum of the leakage rates from Type B and Type C tests.

The licensee requests this exemption because the main steam pathway leakage is treated separately from the remainder of the assumed leakage from primary containment in the design basis loss-of-coolant accident (DBA LOCA) analysis. The MSIV leakage effluent has a different pathway to the environment, when compared to a typical containment penetration. The licensee has analyzed the MSIV and main steam pathway leakage separately from the overall containment integrated leakage, local leakage across pressure retaining, leakage limiting boundaries, and containment isolation valve leakage in its dose consequence analysis. By currently including the main steam pathway leakage in with the rest of the primary containment leakage actual test results, it is essentially being accounted for twice in the dose analysis.

In summary, by application dated March 4, 2009, the licensee requested an exemption for the Duane Arnold Energy Center (Duane Arnold). The proposed change will exempt Duane Arnold from certain requirements of Appendix J to 10 CFR part 50. Specifically, the licensee is requesting a permanent exemption to permit exclusion of the main steam pathway leakage contributions from the overall integrated leakage rate (Type A) test measurement and from the sum of the leakage rates from local leakage rate (Type B and Type C) tests.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Special circumstances are present whenever, according to 10 CFR 50.12(a)(2)(ii), "Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule * * *."

Authorized by Law

The exemption would permit exclusion of the main steam pathway leakage contributions from the overall integrated leakage rate (Type A) test

measurement and from the sum of the leakage rates from local leakage rate (Type B and Type C) tests.

As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR part 50, Appendix J. The NRC staff has determined that granting of the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

No Undue Risk to Public Health and Safety

The underlying purposes of 10 CFR part 50, Appendix J is to assure that containment leak-tight integrity is maintained (a) as tight as reasonably achievable, and (b) sufficiently tight so as to limit effluent release to values bounded by the analyses of radiological consequences of design-basis accidents.

In License Amendments 237 (regarding secondary containment OPERABILITY during movement of irradiated fuel and core alterations, dated April 16, 2001) and Amendment 240 (regarding Alternative Source Term (AST), dated July 31, 2001), the NRC approved the use of the AST (10 CFR 50.67) in the calculations of the radiological dose consequences of design basis accidents (DBAs) for the Duane Arnold Energy Center. The reactor design basis accident of concern is the design basis loss-of-coolant accident (LOCA). The NRC Staff Safety Evaluation accompanying Amendment 240 accepted that the main steam pathway leakage is treated separately from the remainder of the assumed leakage from primary containment in the LOCA analysis and once dispersed in the primary containment, the release to the environment is assumed to occur through three pathways: (1) The leakage of primary containment atmosphere (*i.e.,* design leakage); (2) the leakage of primary containment atmosphere via design leakage through main steam isolation valves (MSIVs); and (3) the leakage from emergency core cooling systems (ECCS) that recirculate suppression pool water outside of the primary containment (*i.e.,* design leakage). Since Amendment 237 was specifically for the Fuel Handling Accident (FHA), which occurs during refueling when primary containment is not required, the main steam pathway leakage is not part of the release pathway for this reactor accident. Thus, no new accident precursors are created by exempting Duane Arnold from certain requirements of Appendix J to 10 CFR part 50.

Further, based on the above the determination that no new accident precursors are created by the proposed exemption, the probability of postulated accidents is not increased. Additionally, based on the above based on the way the main steam pathway leakage has previously been evaluated and accepted in the Duane Arnold radiological dose analysis for DBAs separately from the overall leakage associated with the primary containment boundary (Type A) and local leakage rate total (Type B and C), the consequences of postulated accidents are not increased. Therefore, there is no undue risk, since risk is probability multiplied by consequences, to public health and safety.

Consistent With Common Defense and Security

The exemption would permit exclusion of the main steam pathway leakage contributions from the overall integrated leakage rate (Type A) test measurement and from the sum of the leakage rates from local leakage rate (Type B and Type C) tests. This change to accounting for leakage rate measurement has no relation to security issues. Therefore, the common defense and security is not impacted by this exemption.

Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2), are present whenever application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule. The underlying purpose of 10 CFR part 50, Appendix J, Option B, Paragraphs III.A and III.B is to ensure the actual radiological consequences of reactor accidents remain below those previously evaluated and accepted, as demonstrated by the actual, periodic measurement of containment leakage (Type A) and local leakage rate measurement (Type B and C).

Although Type A, and Type B and C, leakage tests are defined as a measurement of those leakages, inclusion of the main steam pathway leakage results in double counting at the Duane Arnold Energy Center, once as a part of the actual containment leakage and again as part of main steam pathway leakage used in dose calculations. This is because Duane Arnold's revised design-basis radiological consequence analysis, reviewed and approved in Amendments 237 and 240 to Duane Arnold's operating license, address MSIV leakage as individual factors, exclusive of primary containment leakage. Therefore, requiring inclusion of main steam pathway leakage in the Type A, and Type B and C, leakage is not necessary to achieve the underlying purpose of the rule.

Because compliance with 10 CFR part 50, Appendix J, Option B, Paragraphs III.A and III.B is not necessary to achieve the underlying purposes of the requirements, the special circumstances required by 10 CFR 50.12(a)(2), for the granting of an exemption from 10 CFR Part 50, Appendix J, Option B, Paragraphs III.A and III.B exist.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants to NextEra Energy Duane Arnold, LLC a permanent exemption from the requirements of 10 CFR part 50, Appendix J, Option B, Paragraphs III.A and III.B for the Duane Arnold Energy Center.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment [75 FR 13318; dated March 19, 2010].

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 29th day of March 2010.

For the Nuclear Regulatory Commission.

Robert A. Nelson,

Acting Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–7601 Filed 4–2–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–9086, NRC–2010–0143]

Notice of Opportunity To Request a Hearing for the License Application From International Isotopes Fluorine Products, Inc., for a Fluoride Extraction and Uranium Deconversion Facility in Lea County NM and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of license application and opportunity to request a hearing

and to petition for leave to intervene, and Commission order imposing procedures for access to sensitive unclassified non-safeguards information (SUNSI).

DATES: Requests for a hearing or leave to intervene must be filed by June 4, 2010. Any potential party as defined in 10 CFR 2.4 who believes access to SUNSI is necessary to respond to this notice must request document access by April 15, 2010.

FOR FURTHER INFORMATION CONTACT: Matt Bartlett, Project Manager, Advanced Fuel Cycle, Enrichment, and Uranium Conversion Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop EBB2–C40M, Washington, DC 20555–0001, Telephone: (301) 492–3119; Fax number: (301) 492–3363; e-mail: *matthew.bartlett@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) has received, by letter dated December 30, 2009, an application from International Isotopes Fluorine Products, Inc. (IIFP), for a proposed fluoride extraction and depleted uranium deconversion facility in Lea County, New Mexico.

Issuance of a license would authorize the applicant to process depleted uranium hexafluoride (DUF_6) into commercially resalable fluoride products and depleted uranium oxide (for disposal). Specifically, the plant is projected to be capable of deconverting up to 7.5 million pounds per year of DUF_6 provided by commercial enrichment facilities throughout the United States. The process is primarily chemical, but because it also involves NRC-licensed source material, IIFP would have to comply with applicable portions of 10 CFR part 40, among other regulations.

An NRC administrative review, documented in a letter to IIFP dated February 23, 2010 (ML100480302), found the application acceptable to begin a technical review. If the NRC approves the application, the approval will be documented with an issuance of a NRC License. However, before reaching a decision on the proposed application, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a Safety Evaluation Report and an Environmental Impact Statement.

II. Opportunity To Request a Hearing

Requirements for hearing requests and petitions for leave to intervene are found in 10 CFR 2.309, "Hearing requests, Petitions to Intervene, Requirements for Standing, and Contentions." Interested persons should consult 10 CFR 2.309, which is available at the NRC's Public Document Room (PDR), located at O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852 (or call the PDR at (800) 397–4209 or (301) 415–4737). NRC regulations are also accessible electronically from the NRC's Electronic Reading Room on the NRC Web site at *http://www.nrc.gov.*

III. Petitions for Leave To Intervene

Any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition must provide the name, address, and telephone number of the petitioner and specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest.

A petition for leave to intervene must also include a specification of the contentions that the petitioner seeks to have litigated in the hearing. For each contention, the petitioner must provide a specific statement of the issue of law or fact to be raised or controverted, as well as a brief explanation of the basis for the contention. Additionally, the petitioner must demonstrate that the issue raised by each contention is within the scope of the proceeding and is material to the findings the NRC must make to support the granting of a license amendment in response to the application. The petition must also include a concise statement of the alleged facts or expert opinions which support the position of the petitioner and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the petitioner intends to rely. Finally, the petition must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact, including references to specific portions of the application for amendment that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application for amendment fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief. Each contention must be one that, if proven, would entitle the petitioner to relief.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with NRC regulations, policies, and procedures. The Licensing Board will set the time and place for any prehearing conferences and evidentiary hearings, and the appropriate notices will be provided.

Non-timely petitions for leave to intervene and contentions, amended petitions, and supplemental petitions will not be entertained absent a determination by the Commission, the Licensing Board or a Presiding Officer that the petition should be granted and/or the contentions should be admitted based upon a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

A State, county, municipality, Federally-recognized Indian Tribe, or agencies thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(d)(2). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by June 4, 2010. The petition must be filed in accordance with the filing instructions in section IV of this document, and should meet the requirements for petitions for leave to intervene set forth in this section. The entities listed above may also seek to participate in a hearing as a nonparty pursuant to 10 CFR 2.315(c).

Any person who does not wish, or is not qualified, to become a party to this proceeding may request permission to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding.

A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to such limits and conditions as may be imposed by the Licensing Board. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission by June 4, 2010.

IV. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov*, or by telephone at (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through an electronic information exchange, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time (ET) on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by e-mail at *MSHD.Resource@nrc.gov,* or by a toll-free call at (866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., ET, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. Participants are requested not to include copyrighted materials in their submission, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application.

Petitions for leave to intervene must be filed no later than 60 days from April 5, 2010. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing Sensitive Unclassified Non-Safeguards Information (SUNSI).

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request such access. A "potential party" is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requester shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission (NRC), Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The e-mail address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCmailcenter@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1);

(3) The identity of the individual or entity requesting access to SUNSI and the requester's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly-available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after the requestor is granted access to that information. However, if more than 25 days remain between the date the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff either after a determination on standing and need for access, or after a determination on trustworthiness and reliability, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requester may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

H. Review of Grants of Access. A party other than the requester may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered. Dated at Rockville, Maryland, this 30th day of March 2010.

For the Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's "E–Filing Rule," the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

[3] Requesters should note that the filing requirements of the NRC's E–Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING

Day	Event/Activity
0	Publication of **Federal Register** notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: Supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requester reply).
20	Nuclear Regulatory Commission (NRC) staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no "need" or no likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[FR Doc. 2010–7600 Filed 4–2–10; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. MT2010–1; Order No. 434]

Market Test

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service notice announcing its intent to initiate a market test. This notice addresses procedural steps associated with this filing.

DATES: Comments are due: April 20, 2010.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 or *stephen.sharfman@prc.gov.*

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Notice of Filing
III. Ordering Paragraphs

I. Introduction

On March 29, 2010, the Postal Service filed a formal notice, pursuant to 39 U.S.C. 3641(c)(1), announcing its intent to initiate a market test beginning on or about May 1, 2010, of an experimental competitive product, Samples Co-Op Box.[1] The market research test will consist of one mailing of Samples Co-Op Boxes to consumers in certain test markets. *Id.* at 1.

Statutory authority. The Postal Service indicates that its proposal satisfies the criteria of section 3641, which imposes certain conditions on experimental products. 39 U.S.C. 3641. For example, the Postal Service asserts that Samples Co-Op Box is significantly different from all products within the meaning of section 3641(b)(1). *Id.* at 5. In addition, it contends that "the introduction or continued offering of the product will not create an unfair or otherwise inappropriate competitive advantage for the Postal Service or any mailer, particularly in regard to small business concerns." *Id.*; *see also* section 3641(b)(2). Also, it submits that Samples Co-Op Box is correctly classified as a competitive product. *Id.*; *see also* section 3641(b)(3).

Product description. Pursuant to section 3641(c)(1)(B), the Postal Service provides a brief description of the nature and scope of the market test. It explains that consumer packaged goods companies (CPGs) are looking for ways to build brand recognition by way of trial-size samples. *Id.* at 3. The Postal

[1] Notice of the United States Postal Service of Market Test of Experimental Product-Samples Co-Op Box, March 29, 2010 (Notice).

Service adds its internal research shows that sample distribution is a large and growing industry. The Postal Service notes that the volume of samples mailed in recent years has declined. It attributes this to a rate design adopted in 2005. Through the experiment, the Postal Service is exploring the possibility of increasing its presence in the sample distribution market. *Id.* at 3–4.

Under the proposed market test, the Postal Service will provide a parcel box weighing at least 12.5 ounces that will contain an assortment of samples from multiple CPGs to be delivered to consumers in targeted demographic markets. *Id.* at 4. The Postal Service states that a partner will prepare several hundred thousand Samples Co-Op Boxes, each containing product samples from multiple CPGs. The CPGs will not be charged for inclusion of their samples in the boxes. The Postal Service will deliver the Samples Co-Op Boxes to the test market. *Id.* Postage will not be charged for the mailing. *Id.* at 8.

Following the one-time mailing of the boxes, the Postal Service will conduct research designed to gain information about the proposed product. *Id.* at 1. Depending on the results of that research, the Postal Service may conduct a second market test after providing notice to the Commission. *Id.* at 10.

The Notice also addresses the Postal Service's plans to monitor performance and its data collection plan. *Id.* at 9–10.

II. Notice of Filing

The Commission establishes Docket No. MT2010–1 for consideration of matters raised by the Notice. Interested persons may submit comments on whether the Postal Service's filing in the captioned docket is consistent with the policies of 39 U.S.C. 3641. Comments are due no later than April 20, 2010. The filing can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Steven Hoffer and Natalie Rea to serve as Public Representatives in this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. MT2010–1 for consideration of the matters raised by the Notice.

2. Pursuant to 39 U.S.C. 505, Steven Hoffer and Natalie Rea are appointed to serve as officers of the Commission (Public Representatives) to represent the interests of the general public in this proceeding.

3. Comments by interested persons are due no later than April 20, 2010.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2010–7692 Filed 4–2–E8; 8:45 am]

BILLING CODE 7710–FW–S

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2010–33, CP2010–34 and CP2010–35; Order No. 431]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to add several Global Expedited Package Services 2 (GEPS 2) contracts to the Competitive Product List. This notice addresses related procedural steps.

DATES: Comments are due: April 6, 2010.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 or *stephen.sharfman@prc.gov.*

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Notice of Filing
III. Ordering Paragraphs

I. Introduction

On March 26, 2010, the Postal Service filed a notice announcing that it has entered into three additional Global Expedited Package Services 2 (GEPS 2) contracts.[1] The Postal Service believes the instant contracts are functionally equivalent to previously submitted GEPS 2 contracts, and are supported by Governors' Decision No. 08–7, attached to the Notice and originally filed in Docket No. CP2008–4. *Id.* at 1, Attachment 3. The Notice also explains that Order No. 86, which established GEPS 1 as a product, also authorized functionally equivalent agreements to be included within the product, provided that they meet the requirements of 39 U.S.C. 3633. *Id.* at 1. In Order No. 290, the Commission approved the GEPS 2 product.[2]

The instant contracts. The Postal Service filed the instant contracts pursuant to 39 CFR 3015.5. In addition, the Postal Service contends that each contract is in accordance with Order No. 86. The term of each contract is 1 year from the date the Postal Service notifies the customer that all necessary regulatory approvals have been received. Notice at 2–3.

In support of its Notice, the Postal Service filed four attachments as follows:

1. Attachments 1A, 1B and 1C-redacted copies of the three contracts and applicable annexes;

2. Attachments 2A, 2B and 2C-a certified statement required by 39 CFR 3015.5(c)(2) for each of the three contracts;

3. Attachment 3–a redacted copy of Governors' Decision No. 08–7 which establishes prices and classifications for GEPS contracts, a description of applicable GEPS contracts, formulas for prices, an analysis and certification of the formulas and certification of the Governors' vote; and

4. Attachment 4–an application for non-public treatment of materials to maintain redacted portions of the contracts and supporting documents under seal.

The Notice advances reasons why the instant GEPS 2 contracts fit within the Mail Classification Schedule language for GEPS 2. The Postal Service identifies customer specific information, general contract terms and other differences that distinguish the instant contracts from the baseline GEPS 2 agreement, all of which are highlighted in the Notice. *Id.* at 3–6. These modifications as described in the Postal Service's Notice apply to each of the instant contracts.

The Postal Service contends that the instant contracts are functionally equivalent to the GEPS 2 contracts filed previously notwithstanding these differences. *Id.* at 6–7.

The Postal Service asserts that several factors demonstrate the contracts' functional equivalence with previous GEPS 2 contracts, including the product being offered, the market in which it is offered, and its cost characteristics. *Id.* at 3. The Postal Service concludes that

[1] Notice of United States Postal Service Filing of Three Functionally Equivalent Global Expedited Package Services 2 Negotiated Service Agreements and Application for Non-Public Treatment of Materials Filed Under Seal, March 26, 2010 (Notice).

[2] Docket No. CP2009–50, Order Granting Clarification and Adding Global Expedited Package Services 2 to the Competitive Product List, August 28, 2009 (Order No. 290).

because the GEPS agreements "incorporate the same cost attributes and methodology, the relevant cost and market characteristics are similar, if not the same . . . " despite any incidental differences. *Id.* at 6.

The Postal Service contends that its filings demonstrate that each of the new GEPS 2 contracts comply with the requirements of 39 U.S.C. 3633 and is functionally equivalent to previous GEPS 2 contracts. It also requests that the contracts be included within the GEPS 2 product. *Id.* at 7.

II. Notice of Filing

The Commission establishes Docket Nos. CP2010–33, CP2010–34 and CP2010–35 for consideration of matters related to the contracts identified in the Postal Service's Notice.

These dockets are addressed on a consolidated basis for purposes of this order. Filings with respect to a particular contract should be filed in that docket.

Interested persons may submit comments on whether the Postal Service's contracts are consistent with the policies of 39 U.S.C. 3632, 3622 or 3642. Comments are due no later than April 6, 2010. The public portions of these filings can be accessed via the Commission's Web site *(http://www.prc.gov).*

The Commission appoints Cassie D'Souza to serve as Public Representative in the captioned proceedings.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. CP2010–33, CP2010–34 and CP2010–35 for consideration of matters raised by the Postal Service's Notice.

2. Comments by interested persons in these proceedings are due no later than April 6, 2010.

3. Pursuant to 39 U.S.C. 505, Cassie D'Souza is appointed to serve as the officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2010–7578 Filed 4–2–10; 8:45 am]

BILLING CODE 7710–FW–S

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12102 and #12103]

West Virginia Disaster #WV–00017

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of West Virginia (FEMA–1893–DR), dated 03/29/2010.

Incident: Severe Storms, Flooding, Mudslides and Landslides.

Incident Period: 03/12/2010 and continuing.

Effective Date: 03/29/2010.

Physical Loan Application Deadline Date: 05/28/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 12/29/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 03/29/2010, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Fayette, Mercer, Raleigh, Summers.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere ...	3.625
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12102B and for economic injury is 12103B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–7606 Filed 4–2–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12094 and #12095]

New Hampshire Disaster #NH–00015

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of New Hampshire (FEMA–1892–DR), dated 03/29/2010.

Incident: Severe Winter Storm.

Incident Period: 02/23/2010 through 03/03/2010.

Effective Date: 03/29/2010.

Physical Loan Application Deadline Date: 05/28/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 12/29/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 03/29/2010, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Grafton, Hillsborough, Merrimack, Rockingham, Strafford, Sullivan.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere ...	3.625
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	

	Percent
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12094B and for economic injury is 12095B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–7607 Filed 4–2–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12096 and #12097]

West Virginia Disaster #WV–00016

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of West Virginia (FEMA–1893–DR), dated 03/29/2010.

Incident: Severe Storms, Flooding, Mudslides, and Landslides.

Incident Period: 03/12/2010 and continuing.

Effective Date: 03/29/2010.

Physical Loan Application Deadline Date: 05/28/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 12/29/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 03/29/2010, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans):

Fayette, Greenbrier, Kanawha, Mercer, Raleigh.

Contiguous Counties (Economic Injury Loans Only):

West Virginia: Boone, Clay, Jackson, Lincoln, Mcdowell, Monroe, Nicholas, Pocahontas, Putnam, Roane, Summers, Webster, Wyoming.

Virginia: Alleghany, Bath, Bland, Giles, Tazewell.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere:	5.250
Homeowners Without Credit Available Elsewhere:	2.625
Businesses With Credit Available Elsewhere:	6.000
Businesses Without Credit Available Elsewhere:	4.000
Non-Profit Organizations With Credit Available Elsewhere:	3.625
Non-Profit Organizations Without Credit Available Elsewhere:	3.000
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere:	4.000
Non-Profit Organizations Without Credit Available Elsewhere:	3.000

The number assigned to this disaster for physical damage is 120966 and for economic injury is 120970.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–7609 Filed 4–2–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12100 and #12101]

Massachusetts Disaster #MA–00025

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Massachusetts (FEMA–1895–DR), dated 03/29/2010.

Incident: Severe Storms and Flooding.

Incident Period: 03/12/2010 and continuing.

DATES: *Effective Date:* 03/29/2010.

Physical Loan Application Deadline Date: 05/28/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 12/29/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 03/29/2010, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans):

Bristol, Essex, Middlesex, Norfolk, Plymouth, Suffolk, Worcester.

Contiguous Counties (Economic Injury Loans Only):

Massachusetts: Barnstable, Franklin, Hampden, Hampshire.

Connecticut: Tolland, Windham.

New Hampshire: Cheshire, Hillsborough, Rockingham.

Rhode Island: Bristol, Newport, Providence.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.250
Homeowners Without Credit Available Elsewhere	2.625
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.625
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 121006 and for economic injury is 121010.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–7616 Filed 4–2–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12098 and #12099]

Rhode Island Disaster #RI–00006

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Rhode Island (FEMA–1894–DR), dated 03/29/2010.

Incident: Severe Storms and Flooding.

Incident Period: 03/12/2010 and continuing.

DATES: *Effective Date:* 03/29/2010.

Physical Loan Application Deadline Date: 05/28/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 12/29/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 03/29/2010, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Kent, Newport, Providence, Washington.

Contiguous Counties (Economic Injury Loans Only):

Rhode Island: Bristol.

Connecticut: New London, Windham.

Massachusetts: Bristol, Norfolk, Worcester.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.250
Homeowners Without Credit Available Elsewhere	2.625
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.625
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 120986 and for economic injury is 120990.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–7617 Filed 4–2–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12062 and #12063]

Iowa Disaster Number IA–00023

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Iowa (FEMA–1880–DR), dated 03/02/2010.

Incident: Severe Winter Storms.

Incident Period: 01/19/2010 through 01/26/2010.

Effective Date: 03/25/2010.

Physical Loan Application Deadline Date: 05/03/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 12/02/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Iowa, dated 03/02/2010, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Adams, Boone, Buena Vista, Cherokee, Clay, Dallas Emmet, Greene, Hardin, Ida, Monona, Palo Alto, Pocahontas, Story, Union.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–7618 Filed 4–2–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12055 and #12056]

Nebraska Disaster Number NE–00033

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Nebraska (FEMA–1878–DR), dated 02/25/2010 .

Incident: Severe Winter Storms and Snowstorm.

Incident Period: 12/22/2009 through 01/08/2010.

Effective Date: 03/26/2010.

Physical Loan Application Deadline Date: 04/26/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 11/25/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Nebraska, dated 02/25/2010, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Boone, Boyd, Cedar, Colfax, Cuming, Dixon, Fillmore, Frontier, Furnas, Gosper, Greeley, Harlan, Holt, Howard, Knox, Loup, Merrick, Nuckolls, Pierce, Platte, Polk, Richardson, Sarpy, Wayne.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–7621 Filed 4–2–10; 8:45 am]

BILLING CODE 8025–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–29193]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

March 26, 2010.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of March, 2010. A copy of each application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 20, 2010, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus at (202) 551–6810, SEC, Division of Investment Management, Office of Investment Company Regulation, 100 F Street, NE., Washington, DC 20549–4041.

Natixis Funds Trust III

[File No. 811–7345]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 17, 2009, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $28,735 incurred in connection with the liquidation were paid by applicant and Natixis Asset Management Advisors, L.P., applicant's investment adviser. Applicant has retained assets in the amount of $146,822 to cover outstanding expenses.

Filing Dates: The application was filed on December 30, 2009, and amended on February 26, 2010.

Applicant's Address: Natixis Asset Management Advisors, L.P., 399 Boylston St., Boston, MA 02116.

Oppenheimer Baring China Fund

[File No. 811–21953]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On August 6, 2009, applicant transferred its assets to Oppenheimer Developing Markets Fund, based on net asset value. Expenses of $65,150 incurred in connection with the reorganization were paid by applicant.

Filing Dates: The application was filed on February 2, 2010, and amended on March 8, 2010.

Applicant's Address: 6803 S. Tucson Way, Centennial, CO 80112.

Philadelphia Fund, Inc.

[File No. 811–505]

Philadelphia Fund Investing Programs

[File No. 811–787]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. Prior to November 16, 2009, Philadelphia Fund Investing Programs, a unit investment trust, invested all of its assets in Philadelphia Fund, Inc. On November 16, 2009, Philadelphia Fund, Inc. transferred its assets to WHG Large Cap Value Fund, a series of Advisors' Inner Circle Fund (the "Acquiring Fund"), based on net asset value, and Philadelphia Fund Investing Programs terminated and its shareholders received shares of the Acquiring Fund, based on net asset value. Expenses of $168,094 incurred in connection with the reorganization of Philadelphia Fund, Inc. were paid by that applicant, Westwood Management Corp., investment adviser to the Acquiring Fund, and Baxter Financial Corporation, applicants' investment adviser. Philadelphia Fund Investing Programs incurred no expenses in connection with its termination.

Filing Date: The applications were filed on January 4, 2010 and amended on March 9, 2010.

Applicants' Address: 1200 North Federal Hwy., Suite 424, Boca Raton, FL 33432.

DWS Investors Funds, Inc.

[File No. 811–8227]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On August 14, 2009, applicant transferred its assets to DWS International Value Opportunities Fund, a series of DWS International Fund, Inc., based on net asset value. Expenses of $189,259 incurred in connection with the reorganization were paid by applicant.

Filing Dates: The application was filed on December 7, 2009, and amended on March 4, 2010.

Applicant's Address: 345 Park Ave., New York, NY 10154.

Dreyfus Global Diversified Income Fund

[File No. 811–22111]

Dreyfus High Yield Municipal Income Fund

[File No. 811–22179]

Dreyfus Emerging Currency & Income Fund

[File No. 811–22181]

Summary: Each applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicants have never made a public offering of their securities and do not propose to make a public offering or engage in business of any kind.

Filing Date: The applications were filed on February 18, 2010.

Applicants' Address: The Dreyfus Corporation, 200 Park Ave., New York, NY 10166.

Franklin Capital Growth Fund

[File No. 811–334]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On May 6, 2009, applicant transferred its assets to Franklin Growth Fund, a series of Franklin Custodian Funds, based on net asset value. Expenses of $286,288 incurred in connection with the reorganization were paid by applicant, the surviving fund and Franklin Advisers, Inc., applicant's investment adviser.

Filing Date: The application was filed on March 3, 2010.

Applicant's Address: One Franklin Parkway, San Mateo, CA 94403–1906.

Oppenheimer SMA Core Bond Fund

[File No. 811–21916]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 24, 2009, applicant made a liquidating distribution to its sole shareholder, based on net asset value. Applicant incurred no expenses in connection with the liquidation.

Filing Date: The application was filed on March 3, 2010.

Applicant's Address: 6803 S. Tucson Way, Centennial, CO 80112.

Centennial Money Market Trust

[File No. 811–2945]

Centennial Government Trust

[File No. 811–3391]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On November 22, 2009, each applicant made a liquidating distribution to its shareholders, based on net asset value. Applicants incurred no expenses in connection with the liquidations.

Filing Date: The applications were filed on March 3, 2010.

Applicants' Address: 6803 S. Tucson Way, Centennial, CO 80112.

Dreyfus New York Municipal Income, Inc.

[File No. 811–5651]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On March 3, 2005, applicant transferred its assets to Dreyfus New York Tax Exempt Bond Fund, Inc., based on net asset value. Expenses of $68,200 incurred in connection with the reorganization were paid by applicant and the surviving fund.

Filing Date: The application was filed on March 4, 2010.

Applicant's Address: c/o The Dreyfus Corporation, 200 Park Ave., New York, NY 10166.

Dreyfus Fixed Income Securities

[File No. 811–21047]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On July 26, 2007, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $5,000 incurred in connection with the liquidation were paid by The Dreyfus Corporation, applicant's investment adviser.

Filing Date: The application was filed on March 4, 2010.

Applicant's Address: c/o The Dreyfus Corporation, 200 Park Ave., New York, NY 10166.

Dreyfus Edison Electric Index Fund, Inc.

[File No. 811–6289]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 26, 1996, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $3,750 incurred in connection with the liquidation were paid by The Dreyfus Corporation, applicant's investment adviser.

Filing Date: The application was filed on March 5, 2010.

Applicant's Address: The Dreyfus Corporation, 200 Park Ave., New York, NY 10166.

Transamerica Investors, Inc.

[File No. 811–9010]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. By November 20, 2009, each series of applicant had transferred its assets to corresponding series of Transamerica Funds, based on net asset value. Expenses of $422,800 incurred in connection with the reorganization were paid by applicant, the surviving fund, and Transamerica Asset Management, Inc., applicant's investment adviser.

Filing Date: The application was filed on March 10, 2010.

Applicant's Address: 570 Carillon Parkway, St. Petersburg, FL 33716.

Dreyfus California Municipal Income, Inc.

[File No. 811–5653]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On February 24, 2005, applicant transferred its assets to Dreyfus California AMT-Free Municipal Bond Fund, a series of Dreyfus Premier California AMT-Free Municipal Bond Fund, Inc., based on net asset value. Expenses of $68,800 incurred in connection with the reorganization were paid by applicant and the surviving fund.

Filing Date: The application was filed on March 10, 2010.

Applicant's Address: c/o The Dreyfus Corporation, 200 Park Ave., New York, NY 10166.

Dreyfus A Bonds Plus, Inc.

[File No. 811–2625]

Dreyfus Premier Fixed Income Funds

[File No. 811–4748]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On May 14, 2008 and May 15, 2008, respectively, each applicant transferred its assets to corresponding series of Dreyfus Investment Grade Funds, Inc., based on net asset value. Expenses of $84,052 and $108,530, respectively, incurred in connection with the reorganizations were paid by each applicant.

Filing Date: The applications were filed on March 4, 2010.

Applicants' Address: c/o The Dreyfus Corporation, 200 Park Ave., New York, NY 10166.

Connecticut Daily Tax Free Income Fund, Inc.

[File No. 811–4265]

Florida Daily Municipal Income Fund

[File No. 811–8654]

New Jersey Daily Municipal Income Fund, Inc.

[File No. 811–6152]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On November 23, 2009, each applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of approximately $14,547, $15,044 and $14,580, respectively, incurred in connection with the liquidations were paid by Reich & Tang Asset Management, LLC, investment adviser to each applicant.

Filing Dates: The applications for Connecticut Daily Tax Free Income Fund, Inc. and Florida Daily Municipal Income Fund were filed on March 10, 2010. The application for New Jersey Daily Municipal Income Fund, Inc. was filed on March 11, 2010.

Applicants' Address: 600 Fifth Ave., New York, NY 10020.

BlackRock California Municipal Income Trust II

[File No. 811–21125]

BlackRock California Municipal Bond Trust

[File No. 811–21052]

BlackRock California Insured Municipal Income Trust

[File No. 811–21177]

Summary: Each applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On February 1, 2010, each applicant transferred its assets to corresponding series of BlackRock California Municipal Income Trust (the "acquiring fund"), based on net asset value. Holders of each applicant's auction market preferred shares ("preferred shares") received corresponding series of preferred shares of the acquiring fund having an aggregate liquidation preference equal to the aggregate liquidation preference attributable to the preferred shares exchanged by each applicant. Expenses of approximately $157,919, $144,737 and $149,705, respectively, incurred in connection with the reorganizations were paid by applicants.

Filing Date: The applications were filed on February 10, 2010.

Applicants' Address: 100 Bellevue Parkway, Wilmington, DE 19809.

BlackRock Legacy Securities Public-Private Trust

[File No. 811–22316]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Date: The application was filed on February 12, 2010.

Applicant's Address: 100 Bellevue Parkway, Wilmington, DE 19809.

Nuveen Multistate Shell Trust

[File No. 811–7759]

Nuveen Investment Trust IV

[File No. 811–9061]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. Applicants are not engaged in business of any kind. Applicants never had any assets and there were no shareholders.

Filing Date: The applications were filed on March 9, 2010.

Applicants' Address: 333 West Wacker Dr., Chicago, IL 60606.

Nuveen Multi-Currency Income Fund

[File No. 811–22071]

Nuveen Credit Strategies Fund

[File No. 811–22168]

Nuveen Connecticut Municipal Value Fund

[File No. 811–22286]

Nuveen Massachusetts Municipal Value Fund

[File No. 811–22287]

Nuveen High Income Municipal Fund

[File No. 811–22297]

Summary: Each applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicants are not engaged in business of any kind. Applicants never had any assets and there were no shareholders.

Filing Date: The applications were filed on March 9, 2010.

Applicants' Address: 333 West Wacker Dr., Chicago, IL 60606.

Nuveen Symphony Market Neutral Fund

[File No. 811–21264]

Nuveen Municipal High Income Advantage Fund 3

[File No. 811–22173]

Nuveen Connecticut Municipal Income Opportunity Fund

[File No. 811–22176]

Nuveen Maryland Municipal Value Fund

[File No. 811–22288]

Nuveen North Carolina Municipal Value Fund

[File No. 811–22289]

Nuveen Ohio Municipal Value Fund

[File No. 811–22290]

Nuveen Virginia Municipal Value Fund

[File No. 811–22291]

Nuveen High Grade Municipal Income Fund

[File No. 811–22292]

Summary: Each applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicants are not engaged in business of any kind. Applicants never had any assets and there were no shareholders.

Filing Date: The applications were filed on March 9, 2010.

Applicants' Address: 333 West Wacker Dr., Chicago, IL 60606.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–7552 Filed 4–2–10; 8:45 am]

BILLING CODE 8011–01–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 a Closed Meeting on Thursday, April 8, 2010 at 3 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Paredes, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, April 8, 2010 will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings; and

Other matters relating to enforcement proceedings.

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: April 1, 2010.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–7787 Filed 4–1–10; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61803; File No. S7–06–09]

Order Extending Temporary Exemptions Under the Securities Exchange Act of 1934 in Connection With Request of Chicago Mercantile Exchange Inc. Related to Central Clearing of Credit Default Swaps, and Request for Comments

March 30, 2010.

I. Introduction

The Securities and Exchange Commission ("Commission") has taken multiple actions [1] designed to address

[1] *See generally* Securities Exchange Act Release No. 60372 (Jul. 23, 2009), 74 FR 37748 (Jul. 29, 2009) (temporary exemptions in connection with CDS clearing by ICE Clear Europe Limited); Securities Exchange Act Release No. 60373 (Jul. 23, 2009), 74 FR 37740 (Jul. 29, 2009) (temporary exemptions in connection with CDS clearing by Eurex Clearing AG); Securities Exchange Act Release No. 59578 (Mar. 13, 2009), 74 FR 11781 (Mar. 19, 2009) ("March 2009 CME order") and Securities Exchange Act Release No. 61164 (Dec. 14, 2009), 74 FR 67258 (Dec. 18, 2009) ("December 2009 CME order") (temporary exemptions in connection with CDS clearing by Chicago Mercantile Exchange Inc.); Securities Exchange Act Release No. 59527 (Mar. 6, 2009), 74 FR 10791

Continued

concerns related to the market in credit default swaps ("CDS").[2] The over-the-counter ("OTC") market for CDS has been a source of particular concern to us and other financial regulators, and we have recognized that facilitating the establishment of central counterparties ("CCPs") for CDS can play an important role in reducing the counterparty risks inherent in the CDS market, and thus can help mitigate potential systemic impact. We have therefore found that taking action to help foster the prompt development of CCPs, including granting temporary conditional exemptions from certain provisions of the Federal securities laws, is in the public interest.[3]

The Commission's authority over the OTC market for CDS is limited. Specifically, Section 3A of the Securities Exchange Act of 1934 ("Exchange Act") limits the Commission's authority over swap agreements, as defined in Section 206A of the Gramm-Leach-Bliley Act.[4] For those CDS that are swap agreements, the exclusion from the definition of security in Section 3A of the Exchange Act, and related provisions, will continue to apply. The Commission's action today does not affect these CDS, and this Order does not apply to them. For those CDS that are not swap agreements ("non-excluded CDS"), the Commission's action today provides temporary conditional exemptions from certain requirements of the Exchange Act.

The Commission believes that using well-regulated CCPs to clear transactions in CDS provides a number of benefits by helping to promote efficiency and reduce risk in the CDS market, by contributing to the goal of market stability, and by requiring maintenance of records of CDS transactions that would aid the Commission's efforts to prevent and detect fraud and other abusive market practices.[5]

In March 2009, the Commission issued an order[6] providing temporary conditional exemptions to the Chicago Mercantile Exchange Inc. ("CME") and Citadel Investment Group, LLC. ("Citadel"), and certain other parties to permit CME and Citadel to clear and settle CDS transactions.[7] In response to CME's request, the Commission temporarily extended and expanded the exemptions in December 2009.[8] The current exemptions are scheduled to expire on March 31, 2010, and CME has requested that the Commission extend those exemptions.[9]

Based on the facts presented and the representations made by CME,[10] and for the reasons discussed in this Order and subject to certain conditions, the Commission is extending each of the existing exemptions connected with CDS clearing by CME: the temporary conditional exemption granted to CME from clearing agency registration under Section 17A of the Exchange Act solely to perform the functions of a clearing agency for certain non-excluded CDS transactions; the temporary conditional exemption of CME and certain of its clearing members from the registration requirements of Sections 5 and 6 of the Exchange Act solely in connection with the calculation of mark-to-market prices for non-excluded CDS cleared by CME; the temporary conditional exemption of CME and certain eligible contract participants from certain Exchange Act requirements with respect to non-excluded CDS cleared by CME; the temporary conditional exemption of certain CME clearing members that receive customer collateral in connection with non-excluded CDS cleared by CME from certain Exchange Act requirements; and the temporary conditional exemption from certain

(Mar. 12, 2009), Securities Exchange Act Release No. 61119 (Dec. 4, 2009), 74 FR 65554 (Dec. 10, 2009), and Securities Exchange Act Release No. 61662 (Mar. 5, 2010), 75 FR 11589 (Mar. 11, 2010) (temporary exemptions in connection with CDS clearing by ICE Trust U.S. LLC); Securities Exchange Act Release No. 59164 (Dec. 24, 2008), 74 FR 139 (Jan. 2, 2009) (temporary exemptions in connection with CDS clearing by LIFFE A&M and LCH.Clearnet Ltd.) and other Commission actions discussed in several of these orders.

In addition, we have issued interim final temporary rules that provide exemptions under the Securities Act of 1933 and the Securities Exchange Act of 1934 for CDS to facilitate the operation of one or more central counterparties for the CDS market. *See* Securities Act Release No. 8999 (Jan. 14, 2009), 74 FR 3967 (Jan. 22, 2009) (initial approval); Securities Act Release No. 9063 (Sep. 14, 2009), 74 FR 47719 (Sep. 17, 2009) (extension until Nov. 30, 2010).

Further, the Commission has provided temporary exemptions in connection with Sections 5 and 6 of the Securities Exchange Act of 1934 for transactions in CDS. *See* Securities Exchange Act Release No. 59165 (Dec. 24, 2008), 74 FR 133 (Jan. 2, 2009) (initial exemption); Securities Exchange Act Release No. 60718 (Sep. 25, 2009), 74 FR 50862 (Oct. 1, 2009) (extension until Mar. 24, 2010).

[2] A CDS is a bilateral contract between two parties, known as counterparties. The value of this financial contract is based on underlying obligations of a single entity ("reference entity") or on a particular security or other debt obligation, or an index of several such entities, securities, or obligations. The obligation of a seller to make payments under a CDS contract is triggered by a default or other credit event as to such entity or entities or such security or securities. Investors may use CDS for a variety of reasons, including to offset or insure against risk in their fixed-income portfolios, to take positions in bonds or in segments of the debt market as represented by an index, or to take positions on the volatility in credit spreads during times of economic uncertainty.

Growth in the CDS market has coincided with a significant rise in the types and number of entities participating in the CDS market. CDS were initially created to meet the demand of banking institutions looking to hedge and diversify the credit risk attendant to their lending activities. However, financial institutions such as insurance companies, pension funds, securities firms, and hedge funds have entered the CDS market.

[3] *See generally* actions referenced in note 1, *supra.*

[4] 15 U.S.C. 78c–1. Section 3A excludes both a non-security-based and a security-based swap agreement from the definition of "security" under Section 3(a)(10) of the Exchange Act, 15 U.S.C. 78c(a)(10). Section 206A of the Gramm-Leach-Bliley Act defines a "swap agreement" as "any agreement, contract, or transaction between eligible contract participants (as defined in section 1a(12) of the Commodity Exchange Act * * *) * * * the material terms of which (other than price and quantity) are subject to individual negotiation." 15 U.S.C. 78c note.

[5] *See generally* actions referenced in note 1, *supra.*

[6] Securities Exchange Act Release No. 59578 (Mar. 13, 2009), 74 FR 11781 (Mar. 19, 2009).

[7] For purposes of this Order, "Cleared CDS" means a credit default swap that is submitted (or offered, purchased, or sold on terms providing for submission) to CME, that is offered only to, purchased only by, and sold only to eligible contract participants (as defined in Section 1a(12) of the Commodity Exchange Act as in effect on the date of this Order (other than a person that is an eligible contract participant under paragraph (C) of that section)), and in which: (i) the reference entity, the issuer of the reference security, or the reference security is one of the following: (A) An entity reporting under the Exchange Act, providing Securities Act Rule 144A(d)(4) information, or about which financial information is otherwise publicly available; (B) a foreign private issuer whose securities are listed outside the United States and that has its principal trading market outside the United States; (C) a foreign sovereign debt security; (D) an asset-backed security, as defined in Regulation AB, issued in a registered transaction with publicly available distribution reports; or (E) an asset-backed security issued or guaranteed by the Federal National Mortgage Association ("Fannie Mae"), the Federal Home Loan Mortgage Corporation ("Freddie Mac") or the Government National Mortgage Association ("Ginnie Mae"); or (ii) the reference index is an index in which 80 percent or more of the index's weighting is comprised of the entities or securities described in subparagraph (i). *See* definition in paragraph III.(f)(1) of this Order. As discussed above, the Commission's action today does not affect CDS that are swap agreements under Section 206A of the Gramm-Leach-Bliley Act. *See* text at note 4, *supra.*

[8] Securities Exchange Act Release No. 61164 (Dec. 14, 2009), 74 FR 67258 (Dec. 18, 2009).

[9] *See* Letter from Ann K. Shuman, Managing Director and Deputy General Counsel, CME, to Elizabeth Murphy, Secretary, Commission, Mar. 30, 2010 ("March 2010 request").

[10] *See id.* The exemptions we are granting today are based on all of the representations made by CME in its request, which in turn incorporate representations made by CME in its request for relief granted in the December 2009 exemptions addressing CDS clearing by CME. We recognize, however, that there could be legal uncertainty in the event that one or more of the underlying representations were to become inaccurate. Accordingly, if any of these exemptions were to become unavailable by reason of an underlying representation no longer being materially accurate, the legal status of existing open positions in non-excluded CDS that previously had been cleared pursuant to the exemptions would remain unchanged, but no new positions could be established pursuant to the exemptions until all of the underlying representations were again accurate.

Exchange Act requirements granted to registered broker-dealers. This extension is temporary, and the exemptions will expire on November 30, 2010.

II. Discussion

A. CME's CDS Clearing Activities to Date

CME's request for an extension of its current temporary conditional exemptions incorporates representations, in its request preceding the December 2009 CME order, explaining how CME would clear proprietary CDS transactions of its clearing members and CDS transactions involving its clearing members' clients.[11] These representations are discussed in detail in our earlier CME orders.[12]

On December 15, 2009, CME began offering clearing services for CDS contracts on a limited basis. As of March 12, 2010, CME had cleared 33 CDS transactions, with a total $189.5 million notional amount, of CDS contracts based on indices of securities.

B. Extended Temporary Conditional Exemption From Clearing Agency Registration Requirement

In March 2009 and December 2009, in connection with its efforts to facilitate the establishment of one or more CCPs for Cleared CDS, the Commission issued orders conditionally exempting CME from clearing agency registration under Section 17A of the Exchange Act on a temporary basis.[13] Subject to the conditions in those orders, CME has been permitted to act as a CCP for Cleared CDS by novating trades of non-excluded CDS that are securities and generating money and settlement obligations for participants without having to register with the Commission as a clearing agency. The current CME exemptive order expires on March 31, 2009. Pursuant to its authority under Section 36 of the Exchange Act,[14] for the reasons described herein, the Commission is extending the exemption granted in that order until November 30, 2010, subject to certain conditions.

In the earlier exemptive orders, the Commission recognized the need to ensure the prompt establishment of CME as a CCP for CDS transactions. The Commission also recognized the need to ensure that important elements of Section 17A of the Exchange Act, which sets forth the framework for the regulation and operation of the U.S. clearance and settlement system for securities, apply to the non-excluded CDS market. Accordingly, the temporary exemptions in those orders were subject to a number of conditions designed to enable Commission staff to monitor CME's clearance and settlement of CDS transactions.[15]

The temporary exemptions were based, in part, on CME's representation that it met the standards set forth in the Committee on Payment and Settlement Systems ("CPSS") and International Organization of Securities Commissions ("IOSCO") report entitled: *Recommendations for Central Counterparties* ("RCCP").[16] The RCCP establishes a framework that requires a CCP to have: (i) the ability to facilitate the prompt and accurate clearance and settlement of CDS transactions and to safeguard its users' assets; and (ii) sound risk management, including the ability to appropriately determine and collect clearing fund and monitor its users' trading. This framework is generally consistent with the requirements of Section 17A of the Exchange Act.

The Commission believes that continuing to facilitate the central clearing of CDS transactions—including customer CDS transactions—through a temporary conditional exemption from Section 17A will continue to provide important risk management and systemic benefits by facilitating the prompt establishment of CCP clearance and settlement services. Accordingly, and consistent with our findings in the CME Exemptive Order, we find pursuant to Section 36 of the Exchange Act that it is necessary and appropriate in the public interest and is consistent with the protection of investors for the Commission to extend, until November 30, 2010, CME's exemption provided from the clearing agency registration requirements of Section 17A, subject to certain conditions.

In granting this exemption, we are balancing the aim of facilitating CME's service as a CCP for non-excluded CDS transactions with ensuring that important elements of Commission oversight are applied to the non-excluded CDS market. The continued use of temporary exemptions will permit the Commission to continue to develop direct experience with the non-excluded CDS market. During the extended exemptive period, the Commission will continue to monitor closely the impact of the CCPs on this market. In particular, the Commission will seek to assure itself that CME has sufficient risk management controls in place and does not act in an anticompetitive manner or indirectly facilitate anticompetitive behavior with respect to fees charged to members, the dissemination of market data, and the access to clearing services by independent CDS exchanges or CDS trading platforms.

This temporary extension of this exemption also is designed to assure that—as CME has represented—information will be available to market participants about the terms of the CDS cleared by CME, the creditworthiness of CME or any guarantor, and the clearance and settlement process for CDS.[17] The Commission believes operation of CME consistent with the conditions of the Order will facilitate the availability to market participants of information that should enable them to make better informed investment decisions and better value and evaluate their Cleared CDS and counterparty exposures relative to a market that is not centrally cleared.

This temporary extension of this exemption is subject to a number of conditions that are designed to enable

[11] *See* March 2010 Request, *supra* note 9. CME represents that there have been no material changes to the statements made in the letter that preceded the exemptions we granted in the December 2009 CME order, apart from certain developments it described with regard to the implementation of its price quality auction methodology, open access to CDS clearing services, policies and procedures with regard to securities trading by employees, enhancements related to financial safeguards, and the status of a CME petition with the Commodity Futures Trading Commission ("CFTC").

[12] In its present request, CME reiterates that it expects to rely on procedures, pursuant to the price quality auction methodology described in its earlier request for exemptions, whereby CME will periodically require CDS clearing members to trade at prices generated by their indicative settlement prices, where those prices generate crossed bids and offers. To date, CME has yet to require the execution of any trades through this process.

[13] *See supra,* note 1.

[14] 15 U.S.C. 78mm. Section 36 of the Exchange Act authorizes the Commission to conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Exchange Act or any rule or regulation thereunder, by rule, regulation, or order, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

[15] *See* Securities Exchange Act Release No. 59527 (Mar. 6, 2009), 74 FR 10791 (Mar. 12, 2009).

[16] The RCCP was drafted by a joint task force ("Task Force") composed of representative members of IOSCO and CPSS and published in November 2004. The Task Force consisted of securities regulators and central bankers from 19 countries and the European Union. The U.S. representatives on the Task Force included staff from the Commission, the Federal Reserve Board, and the CFTC.

[17] The Commission believes that it is important in the CDS market, as in the securities market generally, that parties to transactions have access to financial information that would allow them to evaluate appropriately the risks relating to a particular investment and make more informed investment decisions. *See generally* Policy Statement on Financial Market Developments, The President's Working Group on Financial Markets, March 13, 2008, available at: *http://www.treas.gov/press/releases/reports/pwgpolicystatemktturmoil_03122008.pdf.*

Commission staff to monitor CME's clearance and settlement of CDS transactions and help reduce risk in the CDS market. These conditions require that CME: (i) Make available on its Web site its annual audited financial statements; (ii) preserve records related to the conduct of its Cleared CDS clearance and settlement services for at least five years (in an easily accessible place for the first two years); (iii) provide information relating to its Cleared CDS clearance and settlement services to the Commission and provide access to the Commission to conduct on-site inspections of facilities, records, and personnel related to its Cleared CDS clearance and settlement services; (iv) notify the Commission on a monthly basis about material disciplinary actions taken against any of its members utilizing its Cleared CDS clearance and settlement services, and about the involuntary termination of the membership of an entity that is utilizing CME's Cleared CDS clearance and settlement services; (v) provide the Commission with changes to rules, procedures, and any other material events affecting its Cleared CDS clearance and settlement services not less than one day prior to effectiveness or implementation of such rule changes, or in exigent circumstances, as promptly as reasonably practicable under the circumstances; (vi) provide the Commission with reports prepared by independent audit personnel that are generated in accordance with risk assessment of the areas set forth in the Commission's Automation Review Policy Statements [18] and its annual audited financial statements prepared by independent audit personnel; and (vii) report all significant systems outages to the Commission within specified timeframes.

Also, the temporary extension of this exemption is conditioned on CME, directly or indirectly, making available to the public on terms that are fair and reasonable and not unreasonably discriminatory: (i) All end-of-day settlement prices and any other prices with respect to Cleared CDS that CME may establish to calculate settlement variation or margin requirements for CME clearing members; and (ii) any other pricing or valuation information with respect to Cleared CDS as is published or distributed by CME.

As a CCP, CME will collect and process information about CDS transactions, prices, and positions from all of its participants. With this information, it will calculate and disseminate current values for open positions for the purpose of setting appropriate margin levels. The availability of such information can improve fairness, efficiency, and competitiveness of the market—all of which enhance investor protection and facilitate capital formation. Moreover, with pricing and valuation information relating to Cleared CDS, market participants would be able to derive information about underlying securities and indexes. This may improve the efficiency and effectiveness of the securities markets by allowing investors to better understand credit conditions generally.

In addition, the temporary extension of this exemption is conditioned on CME not materially changing its methodology for determining Cleared CDS margin levels without prior written approval from the Commission staff,[19] and from FINRA with respect to customer margin requirements that would apply to broker-dealers.

C. Extended Temporary Conditional Exemption From Exchange Registration Requirements

In our December 2009 order in connection with CDS clearing by CME, we granted a temporary conditional exemption for CME from the requirements of Sections 5 and 6 of the Exchange Act, and the rules and regulations thereunder, in connection with CME's methodology for determining CDS settlement prices, including its price quality auction methodology. We also temporarily exempted CME clearing members from the prohibitions of Section 5 to the extent they use CME to effect or report any transaction in Cleared CDS in connection with CME's calculation of mark-to-market prices for open positions in Cleared CDS. Section 5 of the Exchange Act contains certain restrictions relating to the registration of national securities exchanges,[20] while Section 6 provides the procedures for registering as a national securities exchange.[21]

We granted these temporary exemptions to facilitate the establishment of CME's settlement price process. CME had represented that updated settlement prices will be made available to clearing members on their open positions on a regular basis (at least once a day, or more frequently in case of sudden market moves), and that, as part of the CDS clearing process, CME would periodically require CDS clearing members to trade at prices generated by their indicative settlement prices where those indicative settlement prices generate crossed bids and offers, pursuant to CME's price quality auction methodology.

As part of its current request, CME states that it continues to want to be able to make use of procedures that periodically will require clearing members to execute certain CDS trades in this manner.[22]

As discussed above, we have found in general that it is necessary or appropriate in the public interest, and is consistent with the protection of investors, to facilitate continued CDS clearing by CME. Consistent with that finding—and in reliance on CME's representation that the settlement pricing process, including the periodically required trading, is part of its clearing process—we further find that it is necessary or appropriate in the public interest, and is consistent with the protection of investors that we exercise our authority under Section 36 of the Exchange Act to extend, until November 30, 2010, CME's temporary exemption from Sections 5 and 6 of the Exchange Act in connection with its calculation of settlement variation prices for open positions in Cleared CDS, and CME clearing members' temporary exemption from Section 5 with respect to such trading activity, subject to certain conditions.

The temporary exemption for CME will continue to be subject to three conditions. First, CME must report the following information with respect to its determination of daily settlement prices for cleared CDS to the Commission within 30 days of the end of each quarter, and preserve such reports for as long as CME offers CDS clearing services and for a period of at least five years thereafter:

- The total dollar volume of CDS transactions executed during the quarter

[18] *See* Automated Systems of Self-Regulatory Organization, Exchange Act Release No. 27445 (Nov. 16, 1989), File No. S7–29–89, and Automated Systems of Self-Regulatory Organization (II), Exchange Act Release No. 29185 (May 9, 1991), File No. S7–12–91.

[19] This condition has been modified from the equivalent condition in the December 2009 CME order, to provide that prior written approval may be given by Commission staff.

[20] In particular, Section 5 provides:

It shall be unlawful for any broker, dealer, or exchange, directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce for the purpose of using any facility of an exchange * * * to effect any transaction in a security, or to report any such transactions, unless such exchange (1) is registered as a national securities exchange under section 6 of [the Exchange Act], or (2) is exempted from such registration * * * by reason of the limited volume of transactions effected on such exchange. * * *

15 U.S.C. 78e.

[21] 15 U.S.C. 78f. Section 6 of the Exchange Act also sets forth various requirements to which a national securities exchange is subject.

[22] *See* note 12, *supra.*

pursuant to CME's price quality auction methodology, broken down by reference entity, security, or index; and

- The total unit volume or notional amount executed during the quarter pursuant to CME's price quality auction methodology, broken down by reference entity, security, or index.

Second, CME must establish and maintain adequate safeguards and procedures to protect participants' confidential trading information related to Cleared CDS. Such safeguards and procedures shall include: (a) Limiting access to the confidential trading information of participants to those CME employees who have a need to access such information in connection with the provision of CME CDS clearing services or who are responsible for compliance with this exemption or any other applicable rules; and (b) implementing policies and procedures for CME employees with access to such information with respect to trading for their own accounts. CME must adopt and implement adequate oversight procedures to ensure that the policies and procedures established pursuant to this condition are followed.

Third, CME must comply with the conditions to the temporary exemption from registration as a clearing agency extended by this Order, given that this exemption is granted in the context of our goal of continuing to facilitate CME's ability to act as a CCP for non-excluded CDS, and given CME's representation that the forced trade process is an important component of CME's overall settlement price determination process.

The Commission also is continuing to temporarily exempt each CME clearing member, until November 30, 2010, from the prohibition in Section 5 of the Exchange Act to the extent that such CME clearing member uses any facility of CME to effect any transaction in Cleared CDS, or to report any such transaction, in connection with CME's calculation of mark-to-market prices for open positions in Cleared CDS. Absent an exemption, Section 5 would prohibit any CME clearing member that is a broker or dealer from effecting transactions in Cleared CDS on CME, which will rely on this Order for an exemption from exchange registration. The Commission believes that temporarily exempting CME clearing members from the restriction in Section 5 is necessary and appropriate in the public interest and is consistent with the protection of investors because it will facilitate their use of CME's CCP for Cleared CDS, which for the reasons set forth in this Order the Commission believes to be beneficial. Without also temporarily exempting CME clearing members from this Section 5 requirement, the Commission's temporary exemption of CME from Sections 5 and 6 of the Exchange Act would be ineffective, because CME clearing members that are brokers or dealers would not be permitted to effect transactions on CME in connection with the end-of-day settlement price process.

D. Extended Temporary Conditional General Exemption for CME and Certain Eligible Contract Participants

As we recognized in our earlier orders in connection with CDS clearing by CME, applying the full panoply of Exchange Act requirements to participants in transactions in non-excluded CDS likely would deter some participants from using CCPs to clear CDS transactions. We also recognized that it is important that the antifraud provisions of the Exchange Act apply to transactions in non-excluded CDS, particularly given that OTC transactions subject to individual negotiation that qualify as security-based swap agreements already are subject to those provisions.[23]

As a result, we concluded in those orders that it is appropriate in the public interest and consistent with the protection of investors temporarily to apply substantially the same framework to transactions by market participants in non-excluded CDS that applies to transactions in security-based swap agreements. We thus temporarily exempted CME and certain eligible contract participants from a number of Exchange Act requirements, while excluding certain enforcement-related and other provisions from the scope of the exemption.

We believe that continuing to facilitate the central clearing of CDS transactions by CME through this type of temporary conditional exemption will provide important risk management and systemic benefits. We also believe that facilitating the central clearing of customer CDS transactions, subject to the conditions in this Order, will provide an opportunity for the customers of CME clearing members to control counterparty risk.

Accordingly, pursuant to Section 36 of the Exchange Act, the Commission finds that it is necessary or appropriate in the public interest and is consistent with the protection of investors to grant an exemption until November 30, 2010, from the requirements of the Exchange Act discussed below, subject to certain conditions. As before, this temporary exemption applies to CME and to eligible contract participants[24] other than: Eligible contract participants that receive or hold funds or securities for the purpose of purchasing, selling, clearing, settling, or holding Cleared CDS positions for other persons;[25] eligible contract participants that are self-regulatory organizations; or eligible contract participants that are registered brokers or dealers.[26]

As before, under this temporary conditional exemption, and solely with respect to Cleared CDS, those persons

[23] While Section 3A of the Exchange Act excludes "swap agreements" from the definition of "security," certain antifraud and insider trading provisions under the Exchange Act explicitly apply to security-based swap agreements. *See* (a) paragraphs (2) through (5) of Section 9(a), 15 U.S.C. 78i(a), prohibiting the manipulation of security prices; (b) Section 10(b), 15 U.S.C. 78j(b), and underlying rules prohibiting fraud, manipulation or insider trading (but not prophylactic reporting or recordkeeping requirements); (c) Section 15(c)(1), 15 U.S.C. 78o(c)(1), which prohibits brokers and dealers from using manipulative or deceptive devices; (d) Sections 16(a) and (b), 15 U.S.C. 78p(a) and (b), which address disclosure by directors, officers and principal stockholders, and short-swing trading by those persons, and rules with respect to reporting requirements under Section 16(a); (e) Section 20(d), 15 U.S.C. 78t(d), providing for antifraud liability in connection with certain derivative transactions; and (f) Section 21A(a)(1), 15 U.S.C. 78u–1(a)(1), related to the Commission's authority to impose civil penalties for insider trading violations.

"Security-based swap agreement" is defined in Section 206B of the Gramm-Leach-Bliley Act as a swap agreement in which a material term is based on the price, yield, value, or volatility of any security or any group or index of securities, or any interest therein.

[24] This exemption in general applies to eligible contract participants, as defined in Section 1a(12) of the Commodity Exchange Act ("CEA") as in effect on the date of this Order, other than persons that are eligible contract participants under paragraph (C) of that section.

[25] Solely for purposes of this requirement, an eligible contract participant would not be viewed as receiving or holding funds or securities for purpose of purchasing, selling, clearing, settling, or holding Cleared CDS positions for other persons, if the other persons involved in the transaction would not be considered "customers" of the eligible contract participant in a parallel manner when certain persons would not be considered "customers" of a broker-dealer under Exchange Act Rule 15c3–3(a)(1). For these purposes, and for the purpose of the definition of "Cleared CDS," the terms "purchasing" and "selling" mean the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing the rights or obligations under, a Cleared CDS, as the context may require. This is consistent with the meaning of the terms "purchase" or "sale" under the Exchange Act in the context of security-based swap agreements. *See* Exchange Act Section 3A(b)(4). A separate temporary conditional exemption addresses members of CME that hold funds or securities for the purpose of purchasing, selling, clearing, settling, or holding Cleared CDS positions for other persons. *See* Part II.E, *infra.*

[26] A separate temporary exemption addresses the Cleared CDS activities of registered broker dealers. *See* Part II.F, *infra.* Solely for purposes of this Order, a registered broker-dealer, or a broker or dealer registered under Section 15(b) of the Exchange Act, does not refer to someone that would otherwise be required to register as a broker or dealer solely as a result of activities in Cleared CDS in compliance with this Order.

generally are exempt from the provisions of the Exchange Act and the rules and regulations thereunder that do not apply to security-based swap agreements. Thus, those persons will still be subject to those Exchange Act requirements that explicitly are applicable in connection with security-based swap agreements.[27] In addition, all provisions of the Exchange Act related to the Commission's enforcement authority in connection with violations or potential violations of such provisions remain applicable.[28] In this way, the temporary exemption applies the same Exchange Act requirements in connection with non-excluded CDS as apply in connection with OTC credit default swaps that are security-based swap agreements.

Consistent with our earlier exemptions, and for the same reasons, this temporary exemption also does not extend to: The exchange registration requirements of Exchange Act Sections 5 and 6;[29] the clearing agency registration requirements of Exchange Act Section 17A; the requirements of Exchange Act Sections 12, 13, 14, 15(d), and 16;[30] the Commission's administrative proceeding authority under Sections 15(b)(4) and (b)(6);[31] or certain provisions related to government securities.[32] CME clearing members relying on this temporary exemption must be in material compliance with CME rules.

E. Extension of Conditional Temporary Exemption for Certain Clearing Members of CME

In our December 2009 order, we granted a temporary conditional exemption from the same Exchange Act requirements discussed above to CME clearing members that receive or hold customer funds or securities for the purpose of purchasing, selling, clearing, settling or holding Cleared CDS positions for customers. Absent an exception or exemption, persons that effect transactions in non-excluded CDS that are securities may be required to register as broker-dealers pursuant to Section 15(a)(1) of the Exchange Act.[33]

As we noted in our earlier orders, it is consistent with our investor protection mandate to require securities intermediaries that receive or hold funds and securities on behalf of others to comply with standards that safeguard the interests of their customers.[34] At the same time, we recognized that requiring intermediaries that receive or hold funds and securities on behalf of customers in connection with transactions in non-excluded CDS to register as broker-dealers may deter the use of CCPs in CDS transactions, to the detriment of the markets and market participants generally. We concluded that those factors, along with certain representations by CME, argued in favor of flexibility in applying the requirements of the Exchange Act to these intermediaries.

Accordingly, in December 2009 (as in March 2009) we provided a temporary conditional exemption to CME clearing members registered as FCMs that receive or hold funds or securities for the purpose of purchasing, selling, clearing, settling, or holding Cleared CDS positions for other persons. Solely with respect to Cleared CDS, those CME clearing members generally were exempted from provisions of the Exchange Act and the underlying rules and regulations that do not apply to security-based swap agreements.

Our December 2009 order—in contrast to the March 2009 order—required CME clearing members relying on this exemption to hold customer collateral in one of three types of accounts: (i) In an account established pursuant to Section 4d of the CEA;[35] or (ii) in the absence of a 4d Order from the CFTC, in an account that is part of a separate account class, specified by CFTC Bankruptcy Rules, established for an FCM to hold its customers' positions

[27] *See* note 23, *supra.*

[28] Thus, for example, the Commission retains the ability to investigate potential violations and bring enforcement actions in the federal courts as well as in administrative proceedings, and to seek the full panoply of remedies available in such cases.

[29] These are subject to a separate temporary class exemption. *See* note 1, *supra.* A national securities exchange that effects transactions in Cleared CDS would continue to be required to comply with all requirements under the Exchange Act applicable to such transactions. A national securities exchange could form subsidiaries or affiliates that operate exchanges exempt under that order. Any subsidiary or affiliate of a registered exchange could not integrate, or otherwise link, the exempt CDS exchange with the registered exchange including the premises or property of such exchange for effecting or reporting a transaction without being considered a "facility of the exchange." *See* Section 3(a)(2), 15 U.S.C. 78c(a)(2).

This Order also includes a separate temporary exemption from Sections 5 and 6 in connection with the settlement price calculation methodology of CME, discussed above. *See* Part II.C, *supra.*

[30] 15 U.S.C. 78*l,* 78m, 78n, 78o(d), 78p. Eligible contract participants and other persons instead should refer to the interim final temporary rules issued by the Commission. *See* note 1, *supra.*

[31] Exchange Act Sections 15(b)(4) and 15(b)(6), 15 U.S.C. 78o(b)(4) and (b)(6), grant the Commission authority to take action against broker-dealers and associated persons in certain situations. Accordingly, while this exemption generally extends to persons that act as inter-dealer brokers in the market for Cleared CDS and do not hold funds or securities for others, such inter-dealer brokers may be subject to actions under Sections 15(b)(4) and (b)(6) of the Exchange Act. In addition, such inter-dealer brokers may be subject to actions under Exchange Act Section 15(c)(1), 15 U.S.C. 78o(c)(1), which prohibits brokers and dealers from using manipulative or deceptive devices. As noted above, Section 15(c)(1) explicitly applies to security-based swap agreements. Sections 15(b)(4), 15(b)(6), and 15(c)(1), of course, would not apply to persons subject to this exemption who do not act as broker-dealers or associated persons of broker-dealers.

[32] This exemption specifically does not extend to the Exchange Act provisions applicable to government securities, as set forth in Section 15C, 15 U.S.C. 78o–5, and its underlying rules and regulations; nor does the exemption extend to related definitions found at paragraphs (42) through (45) of Section 3(a), 15 U.S.C. 78c(a). The Commission does not have authority under Section 36 to issue exemptions in connection with those provisions. *See* Exchange Act Section 36(b), 15 U.S.C. 78mm(b).

[33] 15 U.S.C. 78o(a)(1). This section generally provides that, absent an exception or exemption, a broker or dealer that uses the mails or any means of interstate commerce to effect transactions in, or to induce or attempt to induce the purchase or sale of, any security must register with the Commission.

Section 3(a)(4) of the Exchange Act generally defines a "broker" as "any person engaged in the business of effecting transactions in securities for the account of others," but provides 11 exceptions for certain bank securities activities. 15 U.S.C. 78c(a)(4). Section 3(a)(5) of the Exchange Act generally defines a "dealer" as "any person engaged in the business of buying and selling securities for his own account," but includes exceptions for certain bank activities. 15 U.S.C. 78c(a)(5). Exchange Act Section 3(a)(6) defines a "bank" as a bank or savings association that is directly supervised and examined by state or federal banking authorities (with certain additional requirements for banks and savings associations that are not chartered by a federal authority or a member of the Federal Reserve System). 15 U.S.C. 78c(a)(6).

Certain reporting and other requirements of the Exchange Act may also apply to such persons, as broker-dealers, regardless of whether they are registered with the Commission.

[34] Registered broker-dealers are required to segregate assets held on behalf of customers from proprietary assets, because segregation will assist customers in recovering assets in the event the intermediary fails. Absent such segregation, collateral could be used by an intermediary to fund its own business, and could be attached to satisfy the intermediary's debts were it to fail. Moreover, the maintenance of adequate capital and liquidity protects customers, CCPs, and other market participants. Adequate books and records (including both transactional and position records) are necessary to facilitate day to day operations as well as to help resolve situations in which an intermediary fails and either a regulatory authority or receiver is forced to liquidate the firm. Appropriate records also are necessary to allow examiners to review for improper activities, such as insider trading or fraud.

[35] If the CFTC were to issue an order pursuant to Section 4d of the CEA ("4d Order"), Section 4d of the CEA and the related regulations would control the segregation and protection of customer funds and property. In that event, all collateral received from customers of FCMs in connection with purchasing, selling, or holding CDS positions would be subject to the requirements of CFTC Regulation 1.20, *et seq.* promulgated under Section 4d. These regulations require that customer positions and property be separately accounted for and segregated from the positions and property of an FCM. Customer property would be held under an account name that clearly identifies it as customer property and demonstrates that it is appropriately segregated as required by the CEA and Regulation 1.20, *et seq.*

and collateral in cleared OTC derivatives; or (iii) if both of those other two alternatives are not available, in an account established in accordance with CFTC Rule 30.7 (with additional disclosures to be made to the customer).[36]

Those conditions reflected our understanding that the protections associated with using CFTC Rule 30.7 to segregate collateral associated with over-the-counter derivatives are untested, and thus are less certain than those protections that would be afforded to collateral protected by Section 4d. The conditions also reflected the CFTC's proposal of a rule (on which CFTC has not taken action) to provide for the establishment of a new account class that would be designed to protect positions in cleared over-the-counter derivatives and collateral securing such positions in the event an FCM became insolvent.[37]

To date, the CFTC has not issued the 4d Order, and it has not taken final action on proposed rules that would establish a new account class. We remain mindful, however, of the benefits that may be expected to accompany central clearing of customer CDS transactions by CME. In that light, we have determined to renew this exemption on a temporary basis.[38]

Accordingly, in light of the risk management and systemic benefits in continuing to facilitate CDS clearing by CME while promoting customer protection in connection with those CDS transactions, the Commission finds pursuant to Section 36 of the Exchange Act that it is necessary or appropriate in the public interest and is consistent with the protection of investors to extend this temporary conditional exemption for certain CME clearing members from certain requirements of the Exchange Act in connection with Cleared CDS until November 30, 2010.

As before, this temporary conditional exemption will be available to any CME clearing member that is also an FCM (other than one that either is registered pursuant to Section 4f(a)(2) or is registered as a broker or dealer under Section 15(b) of the Exchange Act (other than paragraph (11) thereof)) that receives or holds funds or securities for the purpose of purchasing, selling, clearing, settling, or holding Cleared CDS positions for other persons. Solely with respect to Cleared CDS, those members generally will be exempt from those provisions of the Exchange Act and the underlying rules and regulations that do not apply to security-based swap agreements. As with the exemption discussed above that is applicable to CME and certain eligible contract participants, and for the same reasons, this exemption for CME clearing members that receive or hold funds and securities does not extend to Exchange Act provisions that explicitly apply in connection with security-based swap agreements,[39] or to related enforcement authority provisions.[40] As with the exemption discussed above, we also are not exempting those members from Sections 5, 6, 12(a) and (g), 13, 14, 15(b)(4), 15(b)(6), 15(d), 16, and 17A of the Exchange Act.[41]

This temporary exemption is subject to the member complying with conditions that are important for protecting customer funds and securities. Any CME clearing member relying on this temporary exemption must be in material compliance with the rules of CME,[42] and in material compliance with applicable laws and regulations relating to capital, liquidity, and segregation of customers' funds and securities (and related books and records provisions) with respect to Cleared CDS.[43] In addition, the customers for whom the clearing member receives or holds such funds or securities may not be natural persons, and the clearing member must make certain risk disclosures to those customers.[44]

As discussed above, this temporary exemption is further conditioned on funds or securities received or held by the clearing member for the purpose of purchasing, selling, clearing, settling, or holding cleared CDS positions for those customers being held: (i) In an account established in accordance with Section 4d of the CEA and CFTC Rules 1.20 through 1.30 and 1.32 thereunder, or (ii) in the absence of a 4d order from the CFTC, in an account that is part of a separate account class, specified by CFTC Bankruptcy Rules,[45] established for an FCM to hold its customers' positions in cleared OTC derivatives (and funds and securities posted to margin, guarantee, or secure such positions); or (iii) if neither of those other accounts is available, those funds and securities must be held in an account established in accordance with CFTC Rule 30.7.[46]

To facilitate compliance with these segregation conditions, the clearing member—regardless of the type of account discussed above that it uses—also must annually provide CME with a self-assessment that it is in compliance with the requirements, along with a report by the clearing member's independent third-party auditor that attests to that assessment.[47] Finally, a CME clearing member that receives or holds funds or securities of customers for the purpose of purchasing, selling,

[36] Rule 30.7 provides a mechanism for establishing accounts for holding collateral posted by foreign futures customers. When CME requested the exemptions that we granted in March 2009, it stated that, pending the receipt of the 4d Order, FCMs would hold customer collateral within accounts established pursuant to Rule 30.7.

When CME requested the relief granted to it in December 2009, it recognized the uncertainty associated with the protections provided by Rule 30.7, stating that "[n]either the CFTC nor the courts have issued an interpretation with regard to the bankruptcy protections that would be afforded to customers clearing OTC positions in 30.7 accounts, and it is therefore unclear whether they would receive the same protections as foreign futures customers." *See* Letter from Ann K. Shuman, Managing Director and Deputy General Counsel, CME, to Elizabeth Murphy, Secretary, Commission, Dec. 14, 2009.

[37] *See* 74 FR 40794 (Aug. 13, 2009).

[38] During the exemptive period we intend to monitor developments with regard to the protection afforded this collateral.

[39] *See* note 23, *supra.*

[40] *See* note 28, *supra.*

[41] *See* notes 29 through 31, *supra,* and accompanying text. Nor are we exempting those members from provisions related to government securities, as discussed above. *See* note 32, *supra.*

[42] These include Rules 971 and 973 relating to Segregation and Secured Requirements and Customer Accounts with the Clearing House.

[43] The term "customer," solely for purposes of Part III.(d) and (e), *infra,* and corresponding references in this Order, means a "customer" as defined under CFTC Regulation 1.3(k). 17 CFR 1.3(k).

[44] The clearing member must disclose that it is not regulated by the Commission, that U.S. broker-dealer segregation requirements and protections under the Securities Investor Protection Act will not apply to any funds or securities held by the clearing member to collateralize Cleared CDS, and that the applicable insolvency law may affect such customers' ability to recover funds and securities, or the speed of any such recovery, in an insolvency proceeding.

[45] 17 CFR 190.01 *et seq.*

[46] In that situation, the clearing member must disclose to Cleared CDS customers that uncertainty exists as to whether they would receive priority in bankruptcy (vis-à-vis other customers) with respect to any funds or securities held by the clearing member to collateralize Cleared CDS positions.

The conditions in this Order require that any FCM that holds Cleared CDS customer funds and securities in a 30.7 account must segregate *all* such customer funds and securities in a 30.7 account. It is our understanding that this is consistent with CME Rule 8F03.

[47] The report must be dated the same date as the clearing member's annual audit report (but may be separate from it), and must be produced in accordance with the standards that the auditor follows in auditing the clearing member's financial statements.

This condition requiring the clearing member to convey a third-party audit report to CME as a repository for regulators does not impose upon CME any independent duty to audit or otherwise review that information. This condition also does not impose on CME any independent fiduciary or other obligation to any customer of a clearing member.

clearing, settling, or holding Cleared CDS positions shall segregate such funds and securities of customers from the CME clearing member's own assets (*i.e.*, the member may not permit the customers to "opt out" of applicable segregation requirements for such funds and securities even if regulations or laws would permit the customer to "opt out").

F. Extended Temporary Conditional General Exemption for Certain Registered Broker-Dealers Including Certain Broker-Dealer-FCMs

The March 2009 and December 2009 CME exemptive orders granted temporary limited exemptions from Exchange Act requirements to registered broker-dealers in connection with their activities involving Cleared CDS. In crafting these temporary exemptions, we balanced the need to avoid creating disincentives to the prompt use of CCPs against the critical role that certain broker-dealers play in promoting market integrity and protecting customers (including broker-dealer customers that are not involved with CDS transactions).

In light of the risk management and systemic benefits in continuing to facilitate CDS clearing by CME through targeted conditional exemptions to registered broker-dealers, the Commission finds pursuant to Section 36 of the Exchange Act that it is necessary or appropriate in the public interest and is consistent with the protection of investors to exercise its authority to extend this temporary conditional registered broker-dealer exemption from certain Exchange Act requirements until November 30, 2010.[48]

As before, consistent with the temporary exemptions discussed above, and solely with respect to Cleared CDS, we are temporarily exempting registered broker-dealers (including registered broker-dealers that are also FCMs ("BD–FCMs")) from provisions of the Exchange Act and the rules and regulations thereunder that do not apply to security-based swap agreements, subject to certain conditions. As discussed above, we are not excluding registered broker-dealers, including BD–FCMs, from Exchange Act provisions that explicitly apply in connection with security-based swap agreements or from related enforcement authority provisions.[49] As above, and for similar reasons, we are not exempting registered broker-dealers, including BD–FCMs, from: Sections 5, 6, 12, 13, 14, 15(b)(4), 15(b)(6), 15(d), 16 and 17A of the Exchange Act.[50]

Further, we are not exempting registered broker-dealers from the following additional provisions under the Exchange Act: (1) Section 7(c),[51] regarding the unlawful extension of credit by broker-dealers; (2) Section 15(c)(3),[52] regarding the use of unlawful or manipulative devices by broker-dealers; (3) Section 17(a),[53] regarding broker-dealer obligations to make, keep, and furnish information; (4) Section 17(b),[54] regarding broker-dealer records subject to examination; (5) Regulation T,[55] a Federal Reserve Board regulation regarding extension of credit by broker-dealers; (6) Exchange Act Rule 15c3–1,[56] regarding broker-dealer net capital; (7) Exchange Act Rule 15c3–3,[57] regarding broker-dealer reserves and custody of securities; (8) Exchange Act Rules 17a–3 through 17a–5,[58] regarding records to be made and preserved by broker-dealers and reports to be made by broker-dealers; and (9) Exchange Act Rule 17a–13,[59] regarding quarterly security counts to be made by certain exchange members and broker-dealers.[60] Registered broker-dealers must comply with these provisions in connection with their activities involving non-excluded CDS because these provisions are especially important to helping protect customer funds and securities, ensure proper credit practices, and safeguard against fraud and abuse.[61]

CME clearing members that are BD–FCMs and that receive or hold customer funds or securities for the purpose of purchasing, selling, clearing, settling, or holding CDS positions cleared by CME in a futures account (as that term is defined in Rule 15c3–3(a)(15)[62]) also shall be exempt from Exchange Act Rule 15c3–3, subject to conditions that are similar to those—discussed above—that are applicable to CME that are not broker-dealers and that hold customer funds and securities in connection with Cleared CDS transactions. Thus, such BD–FCMs must be in material compliance with CME rules, as well as and applicable laws and regulations relating to capital, liquidity, and segregation of customers' funds and securities (and related books and records provisions) with respect to Cleared CDS. A BD–FCM may not receive or hold funds or securities relating to Cleared CDS transactions and positions for customers who are natural persons. In addition, the BD–FCM must make certain risk disclosures to each such customer.[63] Further, the BD–FCM must hold the customer funds or securities in the same type of account (*e.g.*, in a 4d account) as is required for other clearing members that hold customer funds and securities in connection with Cleared CDS transactions.[64] The BD–FCM also must

[48] The temporary exemptions addressed above—with regard to CME, certain clearing members, and certain eligible contract participants—are not available to persons that are registered as broker-dealers with the Commission (other than those that are notice registered pursuant to Exchange Act Section 15(b)(11)). Exchange Act Section 15(b)(11) provides for notice registration of certain persons that effect transactions in security futures products. 15 U.S.C. 78o(b)(11).

[49] *See* notes 23 and 28, *supra.* As noted above, broker-dealers also would be subject to Section 15(c)(1) of the Exchange Act, which prohibits brokers and dealers from using manipulative or deceptive devices, because that provision explicitly applies in connection with security-based swap agreements. In addition, to the extent the Exchange Act and any rule or regulation thereunder imposes any other requirement on a broker-dealer with respect to security-based swap agreements (*e.g.*, requirements under Rule 17h–1T to maintain and preserve written policies, procedures, or systems concerning the broker or dealer's trading positions and risks, such as policies relating to restrictions or limitations on trading financial instruments or products), these requirements would continue to apply to broker-dealers' activities with respect to Cleared CDS.

[50] *See* notes 29 through 31, *supra,* and accompanying text. We also are not exempting those members from provisions related to government securities, as discussed above. *See* note 32, *supra.*

[51] 15 U.S.C. 78g(c).

[52] 15 U.S.C. 78o(c)(3).

[53] 15 U.S.C. 78q(a).

[54] 15 U.S.C. 78q(b).

[55] 12 CFR 220.1 *et seq.*

[56] 17 CFR 240.15c3–1.

[57] 17 CFR 240.15c3–3.

[58] 17 CFR 240.17a–3 through 240.17a–5.

[59] 17 CFR 240.17a–13.

[60] Solely for purposes of this temporary exemption, in addition to the general requirements under the referenced Exchange Act sections, registered broker-dealers shall only be subject to the enumerated rules under the referenced Exchange Act sections.

[61] Indeed, Congress directed the Commission to promulgate broker-dealer financial responsibility rules, including rules relating to custody, the use of customer securities, the use of customers' deposits or credit balances, and the establishment of minimum financial requirements. *See* Exchange Act Section 15(c)(3).

[62] 17 CFR 240.15c3–3(a)(15).

[63] The BD–FCM must disclose that U.S. broker-dealer segregation requirements and protections under the Securities Investor Protection Act will not apply to any funds or securities held by the clearing member to collateralize Cleared CDS positions, and that the applicable insolvency law may affect such customers' ability to recover funds and securities, or the speed of any such recovery, in an insolvency proceeding.

This BD–FCM condition differs from the analogous disclosure condition related to other CME clearing members that hold customer funds and securities, in that the other condition also requires disclosure that the clearing member is not regulated by the Commission.

[64] As with the exemption applicable to those other CME clearing members, in the absence of a 4d order from the CFTC, the BD–FCM may hold the funds and securities in an account that is part of a separate account class, specified by CFTC Bankruptcy Rules, established for an FCM to hold its customers' positions in cleared OTC derivatives (and funds and securities posted to margin,

segregate the funds and securities of customers from the CME clearing member's own assets (*i.e.*, the member may not permit the customers to "opt out" of applicable segregation requirements for such funds and securities even if regulations or laws would permit the customer to "opt out"). In addition, the BD–FCM also must annually provide CME with a self-assessment that it is in compliance with the requirements, along with a report by the clearing member's independent third-party auditor that attests to that assessment.[65]

Finally—and in addition to the conditions that are applicable to CME that are not broker-dealers and that hold customer funds and securities in connection with Cleared CDS transactions—the CME clearing member must comply with the margin rules for Cleared CDS of the self-regulatory organization that is its designated examining authority[66] (*e.g.*, FINRA).

G. Solicitation of Comments

When we granted the March 2009 and December 2009 orders extending the exemptions granted in connection with CDS clearing by CME, we requested comment on all aspects of the exemptions. We received no comments in response to these requests.

In connection with this Order extending the exemptions granted in connection with CDS clearing by CME, we reiterate our request for comments on all aspects of the exemptions. We particularly request comment on the adequacy of the proposed conditions for the protection of customer assets, including whether it is appropriate to permit such assets to be protected in an account that is subject to the framework provided by CFTC Rule 30.7, and, if so, whether the conditions associated with the use of that account are adequate.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/other.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number S7–06–09 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov/*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–06–09. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. We will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/other.shtml*). Comments are also 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. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

III. Conclusion

It is hereby ordered, pursuant to Section 36(a) of the Exchange Act, that, until November 30, 2010:

(a) Exemption from Section 17A of the Exchange Act.

The Chicago Mercantile Exchange Inc. ("CME") shall be exempt from Section 17A of the Exchange Act solely to perform the functions of a clearing agency for Cleared CDS (as defined in paragraph (f) of this Order), subject to the following conditions:

(1) CME shall make available on its Web site its annual audited financial statements.

(2) CME shall keep and preserve records of all activities related to the business of CME as a central counterparty for Cleared CDS. These records shall be kept for at least five years and for the first two years shall be held in an easily accessible place.

(3) CME shall supply such information and periodic reports relating to its Cleared CDS clearance and settlement services as may be reasonably requested by the Commission. CME shall also provide access to the Commission to conduct on-site inspections of all facilities (including automated systems and systems environment), and records related to its Cleared CDS clearance and settlement services. CME will provide the Commission with access to its personnel to answer reasonable questions during any such inspections related to its Cleared CDS clearance and settlement services.

(4) CME shall notify the Commission, on a monthly basis, of any material disciplinary actions taken against any CME clearing members utilizing its Cleared CDS clearance and settlement services, including the denial of services, fines, or penalties. CME shall notify the Commission promptly when CME involuntarily terminates the membership of an entity that is utilizing CME's Cleared CDS clearance and settlement services. Both notifications shall describe the facts and circumstances that led to CME's disciplinary action.

(5) CME shall notify the Commission of all changes to rules as defined under the CFTC rules, fees, and any other material events affecting its Cleared CDS clearance and settlement services, including material changes to risk management models. In addition, CME will post any rule or fee changes on the CME Web site. CME shall provide the Commission with notice of all changes to its rules not less than one day prior to effectiveness or implementation of such rule changes or, in exigent circumstances, as promptly as reasonably practicable under the circumstances. Such notifications will not be deemed rule filings that require Commission approval.

(6) CME shall provide the Commission with annual reports and any associated field work concerning its Cleared CDS clearance and settlement services prepared by independent audit personnel that are generated in accordance with risk assessment of the areas set forth in the Commission's Automation Review Policy Statements. CME shall provide the Commission (beginning in its first year of operation) with its annual audited financial statements prepared by independent audit personnel for CME.

(7) CME shall report to the Commission all significant outages of clearing systems having a material impact on its Cleared CDS clearance and settlement services. If it appears that the outage may extend for 30 minutes or longer, CME shall report the systems outage immediately. If it appears that the outage will be resolved in less than

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guarantee, or secure such positions). *See* Part II.E, *supra.*

If that alternative also is not available, the BD–FCM must hold the funds and securities in an account established in accordance with CFTC Rule 30.7. In that situation, the clearing member must disclose to Cleared CDS customers that uncertainty exists as to whether they would receive priority in bankruptcy (vis-à-vis other customers) with respect to any funds or securities held by the clearing member to collateralize Cleared CDS positions.

As above, the conditions in this Order require that BD–FCM (as well as any other FCM) that holds Cleared CDS customer funds and securities in a 30.7 account must segregate *all* such customer funds and securities in a 30.7 account.

[65] The report must be dated the same date as the clearing member's annual audit report (but may be separate from it), and must be produced in accordance with the standards that the auditor follows in auditing the clearing member's financial statements. *See* text accompanying note 57, *supra.*

[66] *See* 17 CFR 240.17d–1 for a description of a designated examining authority.

30 minutes, CME shall report the systems outage within a reasonable time after the outage has been resolved.

(8) CME, directly or indirectly, shall make available to the public on terms that are fair and reasonable and not unreasonably discriminatory: (i) All end-of-day settlement prices and any other prices with respect to Cleared CDS that CME may establish to calculate settlement variation or margin requirements for CME clearing members; and (ii) any other pricing or valuation information with respect to Cleared CDS as is published or distributed by CME.

(9) CME shall not materially change its methodology for determining Cleared CDS margin levels without prior written approval from the Commission staff, and from FINRA with respect to customer margin requirements that would apply to broker-dealers.

(b) Exemption from Sections 5 and 6 of the Exchange Act.

(1) CME shall be exempt from the requirements of Sections 5 and 6 of the Exchange Act and the rules and regulations thereunder in connection with its calculation of settlement prices for Cleared CDS, subject to the following conditions:

(i) CME shall report the following information with respect to its determination of daily settlement prices for Cleared CDS to the Commission within 30 days of the end of each quarter, and preserve such reports for as long as CME offers CDS clearing services and for a period of at least five years thereafter:

(A) The total dollar volume of CDS transactions executed during the quarter pursuant to CME's price quality auction methodology, broken down by reference entity, security, or index; and

(B) The total unit volume or notional amount executed during the quarter pursuant to CME's price quality auction methodology, broken down by reference entity, security, or index;

(ii) CME shall establish and maintain adequate safeguards and procedures to protect participants' confidential trading information related to Cleared CDS. Such safeguards and procedures shall include:

(A) Limiting access to the confidential trading information of participants to those CME employees who have a need to access such information in connection with the provision of CME CDS clearing services or who are responsible for compliance with this exemption or any other applicable rules; and

(B) Implementing policies and procedures for CME employees with access to such information with respect to trading for their own accounts. CME shall adopt and implement adequate oversight procedures to ensure that the policies and procedures established pursuant to this condition are followed; and

(iii) CME shall satisfy the conditions of the temporary exemption from Section 17A of the Exchange Act set forth in paragraphs (a)(1)–(9) of this Order.

(2) Any CME clearing member shall be exempt from the requirements of Section 5 of the Exchange Act to the extent such CME clearing member uses any facility of CME to effect any transaction in Cleared CDS, or to report any such transaction, in connection with CME's clearance and risk management process for Cleared CDS.

(c) Exemption for CME and certain eligible contract participants.

(1) Persons eligible. The exemption in paragraph (c)(2) is available to:

(i) CME; and

(ii) Any eligible contract participant (as defined in Section 1a(12) of the Commodity Exchange Act as in effect on the date of this Order (other than a person that is an eligible contract participant under paragraph (C) of that section)), other than:

(A) An eligible contract participant that receives or holds funds or securities for the purpose of purchasing, selling, clearing, settling, or holding Cleared CDS positions for other persons;

(B) An eligible contract participant that is a self-regulatory organization, as that term is defined in Section 3(a)(26) of the Exchange Act; or

(C) A broker or dealer registered under Section 15(b) of the Exchange Act (other than paragraph (11) thereof).

(2) Scope of exemption.

(i) In general. Subject to the condition specified in paragraph (c)(3), such persons generally shall, solely with respect to Cleared CDS, be exempt from the provisions of the Exchange Act and the rules and regulations thereunder that do not apply in connection with security-based swap agreements. Accordingly, under this exemption, those persons would remain subject to those Exchange Act requirements that explicitly are applicable in connection with security-based swap agreements (*i.e.,* paragraphs (2) through (5) of Section 9(a), Section 10(b), Section 15(c)(1), subsections (a) and (b) of Section 16, Section 20(d), and Section 21A(a)(1), and the rules thereunder that explicitly are applicable to security-based swap agreements). All provisions of the Exchange Act related to the Commission's enforcement authority in connection with violations or potential violations of such provisions also remain applicable.

(ii) Exclusions from exemption. The exemption in paragraph (c)(2)(i), however, does not extend to the following provisions under the Exchange Act:

(A) Paragraphs (42), (43), (44), and (45) of Section 3(a);

(B) Section 5;

(C) Section 6;

(D) Section 12 and the rules and regulations thereunder;

(E) Section 13 and the rules and regulations thereunder;

(F) Section 14 and the rules and regulations thereunder;

(G) Paragraphs (4) and (6) of Section 15(b);

(H) Section 15(d) and the rules and regulations thereunder;

(I) Section 15C and the rules and regulations thereunder;

(J) Section 16 and the rules and regulations thereunder; and

(K) Section 17A (other than as provided in paragraph (a)).

(3) Condition for CME clearing members. Any CME clearing member relying on this exemption must be in material compliance with the rules of CME.

(d) Exemption for certain CME clearing members.

Any CME clearing member registered as a futures commission merchant pursuant to Section 4f(a)(1) of the Commodity Exchange Act (but that is not registered as a broker or dealer under Section 15(b) of the Exchange Act (other than paragraph (11) thereof)) that receives or holds funds or securities for the purpose of purchasing, selling, clearing, settling, or holding Cleared CDS for other persons shall be exempt from the provisions of the Exchange Act and the rules and regulations thereunder specified in paragraph (c)(2), solely with respect to Cleared CDS, subject to the following conditions:

(1) The clearing member shall be in material compliance with the rules of CME (including Rules 971 and 973 relating to Segregation and Secured Requirements and Customer Accounts with the Clearing House), and also shall be in material compliance with applicable laws and regulations, relating to capital, liquidity, and segregation of customers' funds and securities (and related books and records provisions) with respect to Cleared CDS;

(2) The customers for whom the clearing member receives or holds such funds or securities shall not be natural persons;

(3) The clearing member shall disclose to such customers that the clearing member is not regulated by the

Commission, that U.S. broker-dealer segregation requirements and protections under the Securities Investor Protection Act will not apply to any funds or securities held by the clearing member to collateralize Cleared CDS positions, and that the applicable insolvency law may affect such customers' ability to recover funds and securities, or the speed of any such recovery, in an insolvency proceeding;

(4) Customer funds and securities received or held by the clearing member for the purpose of purchasing, selling, clearing, settling, or holding Cleared CDS positions for such customers shall be held in one of the following manners:

(i) In an account established in accordance with section 4d of the Commodity Exchange Act and CFTC Rules 1.20 through 1.30 and 1.32 [17 CFR 1.20 through 1.30 and 1.32] thereunder;

(ii) In the absence of an Order from the Commodity Futures Trading Commission ("CFTC") permitting the use of an account specified in subparagraph (d)(4)(i) for holding such funds and securities, in an account that is part of a separate account class, specified by CFTC Bankruptcy Rules [17 CFR 190.01 *et seq.*], established for a futures commission merchant to hold its customers' positions in cleared OTC derivatives (and funds and securities posted to margin, guarantee, or secure such positions); or

(iii) If the clearing member is unable to hold such funds and securities as specified in subparagraph (d)(4)(i) or (ii), the clearing member shall:

(A) Hold such funds and securities in a separate account that is established in accordance with CFTC Rule 30.7 [17 CFR 30.7], and

(B) Disclose to such customers that uncertainty exists as to whether they would receive priority in bankruptcy (vis-à-vis other customers) with respect to any funds or securities held by the clearing member to collateralize Cleared CDS positions.

(5) The clearing member annually shall provide CME with

(i) An assessment by the clearing member that it is in compliance with all the provisions of subparagraphs (d)(4)(i) through (iii) in connection with such activities, and

(ii) A report by the clearing member's independent third-party auditor that attests to, and reports on, the clearing member's assessment described in subparagraph (d)(5)(i) and that is:

(A) Dated as of the same date as, but which may be separate and distinct from, the clearing member's annual audit report;

(B) Produced in accordance with the auditing standards followed by the independent third-party auditor in its audit of the clearing member's financial statements.

(6) To the extent that the clearing member receives or holds funds or securities of customers for the purpose of purchasing, selling, clearing, settling, or holding Cleared CDS positions, the clearing member shall segregate such funds and securities of customers from the clearing member's own assets (*i.e.,* the member may not permit such customers to "opt out" of applicable segregation requirements for such funds and securities even if regulations or laws would permit the customer to "opt out").

(e) Exemption for certain registered broker-dealers.

(1) In general. A broker or dealer registered under Section 15(b) of the Exchange Act (other than paragraph (11) thereof) shall be exempt from the provisions of the Exchange Act and the rules and regulations thereunder specified in paragraph (c)(2), solely with respect to Cleared CDS, except:

(i) Section 7(c);
(ii) Section 15(c)(3);
(iii) Section 17(a);
(iv) Section 17(b);
(v) Regulation T, 12 CFR 200.1 *et seq.;*
(vi) Rule 15c3–1;
(vii) Rule 15c3–3;
(viii) Rule 17a–3;
(ix) Rule 17a–4;
(x) Rule 17a–5; and
(xi) Rule 17a–13.

(2) Broker-dealers that also are futures commission merchants. A CME clearing member that is a broker or dealer registered under Section 15(b) of the Exchange Act (other than paragraph (11) thereof) and that is also registered as a futures commission merchant pursuant to Section 4f(a)(1) of the Commodity Exchange Act and that receives or holds customer funds and securities for the purpose of purchasing, selling, clearing, settling, or holding Cleared CDS in a futures account (as that term is defined in Rule 15c3–3(a)(15) [17 CFR 240.15c3–3(a)(15)]) also shall be exempt from Exchange Act Rule 15c3–3, subject to the following conditions:

(i) The clearing member shall comply with the conditions set forth in paragraphs (d)(1), (2), (4), (5), and (6) above;

(ii) The clearing member shall disclose to Cleared CDS customers that the U.S. broker-dealer segregation requirements and protections under the Securities Investor Protection Act will not apply to funds or securities held by the clearing member to collateralize Cleared CDS positions, and that the applicable insolvency law may affect such customers' ability to recover funds and securities, or the speed of any such recovery, in an insolvency proceeding; and

(iii) The CME clearing member shall collect from each customer the amount of margin that is not less than the amount required for Cleared CDS under the margin rule of the self-regulatory organization that is its designated examining authority.

(f) For purposes of this Order, "Cleared CDS" shall mean a credit default swap that is submitted (or offered, purchased, or sold on terms providing for submission) to CME, that is offered only to, purchased only by, and sold only to eligible contract participants (as defined in Section 1a(12) of the Commodity Exchange Act as in effect on the date of this Order (other than a person that is an eligible contract participant under paragraph (C) of that section)), and in which:

(1) The reference entity, the issuer of the reference security, or the reference security is one of the following:

(i) An entity reporting under the Exchange Act, providing Securities Act Rule 144A(d)(4) information, or about which financial information is otherwise publicly available;

(ii) A foreign private issuer whose securities are listed outside the United States and that has its principal trading market outside the United States;

(iii) A foreign sovereign debt security;

(iv) An asset-backed security, as defined in Regulation AB, issued in a registered transaction with publicly available distribution reports; or

(v) An asset-backed security issued or guaranteed by Fannie Mae, Freddie Mac, or Ginnie Mae; or

(2) The reference index is an index in which 80 percent or more of the index's weighting is comprised of the entities or securities described in subparagraph (f)(1).

IV. Paperwork Reduction Act

Certain provisions of this Order contain "collection of information requirements" within the meaning of the Paperwork Reduction Act of 1995.[67] The Commission has submitted the proposed amendments to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

[67] 44 U.S.C. 3501 *et seq.*

A. Collection of Information

As discussed above, the Commission has found it to be necessary or appropriate in the public interest and consistent with the protection of investors to grant the temporary conditional exemptions discussed in this Order until November 30, 2010. Among other things, the Order requires CME clearing members that receive or hold customers' funds or securities for the purpose of purchasing, selling, clearing, settling, or holding Cleared CDS positions to: (a) Make certain disclosures to those customers; (b) make additional disclosures to those customers if the clearing member holds such funds and securities in an account established in accordance with Commodity Futures Trading Commission Rule 30.7 (which would be permitted only if certain other types of accounts are not available for holding the collateral); and (c) provide CME with a self-assessment as to its compliance with certain exemptive conditions, and obtain a separate report, as part of its annual audit report, as to its compliance with the conditions of the Order regarding protection of customer assets.

B. Proposed Use of Information

These collection of information requirements are designed to inform Cleared CDS customers that their ability to recover assets placed with the clearing member are dependent on the applicable insolvency regime, to provide additional information about the potential risks associated with 30.7 accounts, provide Commission staff with access to information regarding whether clearing members are complying with the conditions of this Order, and provide documentation helpful for the protection of Cleared CDS customers' funds and securities.

C. Respondents

Based on conversations with industry participants, the Commission understands that approximately 12 firms may be presently engaged as CDS dealers and thus may seek to become a clearing member of CME. In addition, 8 more firms may enter into this business. Consequently, the Commission estimates that CME, like the other CCPs that clear CDS transactions, may have up to 20 clearing members.

D. Total Annual Reporting and Recordkeeping Burden

Paragraph III.(d)(3) of the Order requires that any CME clearing member holding customer collateral in connection with cleared customer CDS transactions that seeks to rely on the exemptive relief specified in paragraph III.(d) of the Order to disclose to those customers that the clearing member is not regulated by the Commission, that U.S. broker-dealer segregation requirements and protections under the Securities Investor Protection Act will not apply to any funds or securities it holds, and that the applicable insolvency law may affect the customers' ability to recover funds and securities, or the speed of any such recovery, in an insolvency proceeding. The Commission believes that clearing members could use the language in the Order that describes the disclosure that must be made as a template to draft the disclosure. Consequently the Commission estimates, based on staff experience, that it would take a clearing member approximately one hour to draft the disclosure. Further, the Commission believes clearing members will include this disclosure with other documents or agreements provided to cleared CDS customers, and estimates (based on staff experience) that a clearing member may take approximately one half hour to determine how the disclosure should be integrated into those other documents or agreements, resulting in a one-time aggregate burden of 30 hours for all 20 clearing members to comply with this requirement.[68]

Paragraph III.(d)(4)(iii)(B) of this Order further provides that if a CME clearing member holds customer collateral in connection with cleared CDS transactions in an account established in accordance with CFTC Rule 30.7, the clearing member must disclose to those customers that uncertainty exists as to whether they would receive priority in bankruptcy (vis-à-vis other customers) with respect to any funds or securities held by the clearing member to collateralize cleared CDS positions.[69] Here too, the Commission believes that clearing members could use the language in this Order that describes the disclosure that must be made as a template to draft the disclosure. Consequently the Commission estimates, based on staff experience, that it would take a CME clearing member approximately one hour to draft the disclosure. Further, the Commission believes clearing members will include this disclosure with other documents or agreements provided to cleared CDS customers, and estimates (based on staff experience) that a clearing member may take approximately one half hour to determine how the disclosure should be integrated into those other documents or agreements, resulting in a one-time aggregate burden of 30 hours for all 20 clearing members to comply with this requirement.[70]

Paragraph III.(d)(5) of the Order requires CME clearing members that receive or hold customers' funds or securities for the purpose of purchasing, selling, clearing, settling, or holding Cleared CDS positions annually to provide CME with an assessment that it is in compliance with all the provisions of paragraphs III.(d)(4)(i) through (iii) of that order in connection with such activities, and a report by the clearing member's independent third-party auditor, as of the same date as the firm's annual audit report,[71] that attests to, and reports on, the clearing member's assessment. The Commission estimates that it will take each clearing member approximately five hours each year to assess its compliance with the requirements of the order relating to segregation of customer assets and attest that it is in compliance with those requirements.[72] Further, the Commission estimates that it will cost each clearing member approximately $100,000 more each year to have its auditor prepare this special report as part of its audit of the clearing member.[73] Consequently, the Commission estimates that compliance with this requirement will result in an

[68] 30 hours = (1 hour per clearing member to draft the disclosure + ½ hour per clearing member to determine how the disclosure should be integrated into those other documents or agreements) × 20 clearing members.

[69] CME clearing members will not be allowed to hold customer assets relating to cleared CDS in a 30.7 account if certain other options for segregating cleared CDS customer assets (e.g., an account established in accordance with Section 4d of the Commodity Exchange Act) become available.

[70] 30 hours = (1 hour per clearing member to draft the disclosure + ½ hour per clearing member to determine how the disclosure should be integrated into those other documents or agreements) × 20 clearing members.

[71] The Commission intends for this requirement to be performed in conjunction with the firm's annual audit report.

[72] This estimate is based on burden estimates published with respect to other Commission actions that contained similar certification requirements (*see e.g.,* Securities Act Release No. 8138 (Oct. 9, 2002), 67 FR 66208 (Oct. 30, 2002), and the burden associated with the Disclosure Required by the Sarbanes-Oxley Act of 2002, including requirements relating to internal control reports).

[73] This estimate is based on staff conversations with an audit firm. That firm suggested that the cost of such an audit report could range from $10,000 to $1 million, depending on the size of the clearing member, the complexity of its systems, and whether the work included a review of other systems already being reviewed as part of audit work the firm is already providing to the clearing member. While this condition would require that the auditor create a separate report, the auditor already must review custody of customer assets pursuant to CFTC Rule 17 CFR 1.16(d)(1). Consequently, the Commission believes the cost of this requirement for FCMs will be lower than it would be for other types of entities that are not subject to a specific audit requirement to review custody of customer assets.

aggregate annual burden of 100 hours for all 20 clearing members, and that the total additional cost of this requirement will be approximately $2,000,000 each year.[74]

In sum, the Commission estimates that the total additional burden associated with all of the conditions contained in the exemptive order would be approximately 160 hours,[75] and that the total additional cost associated with compliance with the exemptive order would be approximately $2 million.[76]

E. Collection of Information is Mandatory

The collections of information contained in the conditions to this Order are mandatory for any entity wishing to rely on the exemptions granted by that order.

F. Confidentiality

Certain of the conditions of the this Order that address collections of information require CME clearing members to make disclosures to their customers, or to provide other information to CME.

G. Request for Comment on Paperwork Reduction Act Issues

The Commission requests, pursuant to 44 U.S.C. 3506(c)(2)(B), comment on the collections of information contained in this Order to:

(i) Evaluate whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information would have practical utility;

(ii) Evaluate the accuracy of the Commission's estimates of the burden of the collections of information;

(iii) Determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and

(iv) Evaluate whether there are ways to minimize the burden of the collections of information on those required to respond, including through the use of automated collection techniques or other forms of information technology.

Persons who desire to submit comments on the collection of information requirements should direct their comments to the OMB, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090, and refer to File No. S7–06–09. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication of this document in the **Federal Register;** therefore, comments to OMB are best assured of having full effect if OMB receives them within 30 days of this publication. The Commission has submitted the proposed collections of information to OMB for approval. Requests for the materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–06–09, and be submitted to the Securities and Exchange Commission, Records Management Office, 100 F Street, NE., Washington, DC 20549.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–7629 Filed 4–2–10; 8:45 am]

BILLING CODE 8011–01–P

[74] 100 hours = (5 hours for each clearing member to assess its compliance with the requirements of the order relating to segregation of customer assets and attest that it is in compliance with those requirements × 20 clearing members). $2 million = $100,000 per clearing member × 20 clearing members.

[75] 160 hours = (30 hours to draft the general disclosure and determine how the disclosure should be integrated into those other documents or agreements + 30 hours to draft the 30.7-specific disclosure and determine how the disclosure should be integrated into those other documents or agreements + 100 hours per year to assess its compliance with the requirements of the order relating to segregation of customer assets and attest that it is in compliance with those requirements). This total burden includes one-time burdens of 60 hours (= 30 hours to draft the general disclosure and determine how the disclosure should be integrated into those other documents or agreements + 30 hours to draft the 30.7-specific disclosure and determine how the disclosure should be integrated into those other documents or agreements) and annual burdens of 100 hours (100 hours per year to assess its compliance with the requirements of the order relating to segregation of customer assets and attest that it is in compliance with those requirements).

[76] The estimated cost of the additional audit report. *See* footnote 74 and accompanying text.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61802; File No. SR–Phlx–2010–05]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of the Proposed Rule Change, as Modified by Amendment No. 2 Thereto, Relating to Professional Orders

March 30, 2010.

I. Introduction

On January 12, 2010, the 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 thereunder [2] to amend the Exchange's priority rules to treat certain non-broker-dealers in the same manner as off-floor broker-dealers with respect to priority. The proposed rule change was published for comment in the **Federal Register** on February 2, 2010.[3] The Exchange filed Amendment No. 1 to the proposed rule change on March 26, 2010.[4] The Exchange filed Amendment No. 2 to the proposed rule change on March 30, 2010.[5] This order provides notice of Amendment No. 2 and approves the proposal, as modified by Amendment No. 2, on an accelerated basis.

II. Description of Phlx's Proposal

Phlx proposes to adopt a new term, "professional," which would be defined in paragraph (b)(14) of Phlx Rule 1000

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 61426 (January 26, 2010), 75 FR 5360 (February 2, 2010) ("Notice").

[4] Amendment No. 2 replaces and supersedes Amendment No. 1 in its entirety.

[5] Amendment No. 2 adds Phlx Rule 1033(e), which provides for public customer priority in synthetic options orders in open outcry, and Options Floor Procedure Advices ("Advices") B–6, B–11 and F–5 to the list of Phlx rules in which a Professional (as defined below) would be treated in the same manner as an off-floor broker-dealer. In Amendment No. 2, Phlx also clarifies that Professional orders may be considered customer orders subject to facilitation for purposes of Phlx Rule 1064.02, and corrects a technical error by revising the reference to Advice C–3 to Advice C–2. Phlx further states in this amendment that it would issue a notice outlining the procedures for the implementation of the proposal. Amendment No. 2 also deletes a sentence in the Purpose section of the proposal, in which the Exchange stated that Professional orders would be subject to the same transactions fees as customers today; changes "may" to "will" in the parenthetical regarding the definition of "professional" for Phlx Rule 1064.02; and changes "five days" to "five business days" in footnote 8 in the Purpose Section and the Exhibit.

as a person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) ("Professional"). Under the proposal, a Professional would be treated in the same manner as an off-floor broker-dealer for purposes of certain order execution rules of the Exchange. Specifically, the orders of Professionals generally would be treated like off-floor broker-dealer orders for the purposes of Phlx Rules 1014(g), which governs, among other things, the allocation of orders and, thus, priority and parity among orders and quotations;[6] 1033(e), concerning synthetic options orders; and 1064.02, concerning facilitation orders and firm participation guarantees;[7] in addition to other, mostly conforming changes.[8]

Under the proposal, Professionals would participate in Phlx's allocation process on equal terms with off-floor broker-dealers—*i.e.*, Professionals would not receive priority over broker-dealers in the allocation of orders on the Exchange. The Exchange states that the proposal would not otherwise affect non-broker-dealer individuals or entities under Phlx rules. All customer orders, including non-broker-dealer orders included in the definition of "Professional" orders, would continue to be treated equally for purposes of the Exchange's rules concerning routing of orders and order protection.[9] The Exchange, which currently routes only eligible customer orders, would route eligible Professional orders.

In addition, the proposal would require members to indicate whether customer orders are Professional orders.[10] To comply with this requirement, member organizations would be required to review their customers' activity on at least a quarterly basis to determine whether orders that are not for the account of a broker-dealer should be represented as customer orders or Professional orders.[11] The Exchange states that it intends to file a separate proposed rule change to adopt fees for professional orders.[12]

III. Commission Findings and Order Granting Approval of the Proposed Rule Change as Modified by Amendment No. 2

After careful consideration of the proposed rule change, the Commission finds that the proposed rule change is consistent with the Act. Specifically, the Commission finds that the proposed rule change is consistent with section 6(b)[13] of the Act and the rules thereunder,[14] and in particular with:

Section 6(b)(5) of the Act, which requires that the rules of a national securities exchange, among other things, be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest; and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers;[15] and

Section 6(b)(8) of the Act, which requires the rules of an exchange not to impose any burden on competition not necessary or appropriate in furtherance of the Act.[16]

Under the proposed rule change, customers who place orders on the level of frequency specified in proposed Phlx Rule 1000(b)(14) would be deemed Professionals and would no longer receive the priority treatment currently granted to all public customers. The Commission has previously approved similar proposals to give the orders of certain customers, identified as "Professional Orders"[17] or "Professionals",[18] no greater priority than that given to broker-dealer orders.[19] Under the Professional Customer Approval Orders, the orders of public customers that are deemed Professional orders are no longer accorded the priority granted to the orders of all other public customers.[20] While Phlx Rule 1000(b)(14) differs slightly from the rules adopted in the Professional Customer Approval Orders, the Commission believes that the Exchange's proposed rule change is comparable to rules of the ISE and CBOE, which the Commission found to be consistent with the Act.

In the ISE Approval Order, the Commission reviewed the background and history of customer order priority rules on national securities exchanges, and analyzed the role played in the shaping of these rules by various considerations and principles. In this regard, the Commission discussed the requirement of section 6(b)(5) of the Act that the rules of an exchange be designed to protect investors and the public interest; traditional notions of customer priority in exchange trading; the agency obligations of exchange specialists; and the requirements of section 11(a) of the Act.[21] In approving the ISE proposal, the Commission articulated its view that priority for public customer orders is not an essential attribute of an exchange,[22] and noted that in the past it has approved trading rules at options exchanges that do not give priority to orders of public customers that are priced no better than the orders of other market participants.[23]

In the ISE Approval Order, the Commission concluded that section 6(b)(5) of the Act does not require an exchange to treat the orders of public

[6] An exception is made, however, with respect to all-or-none orders, which would be treated like customer orders.

[7] Professional orders, however, would be considered customer orders subject to facilitation.

[8] These include changes to Rule 1080.08, concerning complex orders, as well as to Advices B–6, B–11 and F–5. The Exchange is also proposing to amend Rule 1063(e) and the corresponding Advice C–2, Options Floor Broker Management System, to require Floor Brokers to record a "Professional" designator in the Floor Broker Management System. *See also infra,* note 10. Advice C–2 is part of the Exchange's minor rule plan. *See* Phlx Rule 970.

[9] *See* Phlx Rules 1080(m), 1083, 1084, and 1086.

[10] *See* Phlx Rule 1000(b)(14). The Exchange states that it intends to utilize a special order origin code for Professional orders. The Exchange also proposes to disseminate the Professional designator over its new Top of Phlx Options Plus Orders, which includes disseminated Exchange top-of-market data (including orders, quotes and trades) together with all of the data currently available on the Specialized Order Feed. *See* Securities Exchange Act Release No. 60877 (October 26, 2009), 74 FR 56255 (October 30, 2009) (SR–Phlx–2009–92).

[11] Orders for any customer that had an average of more than 390 orders per day during any month of a calendar quarter would be required to be represented as Professional orders for the next calendar quarter. Member organizations would be required to conduct a quarterly review and make any appropriate changes to the way in which they are representing orders within five business days after the end of each calendar quarter. While member organizations would only be required to review their accounts on a quarterly basis, if during a quarter the Exchange identifies a customer for which orders are being represented as customer orders but that has averaged more than 390 orders per day during a month, the Exchange would notify the member organization and the member organization would be required to change the manner in which it is representing the customer's orders within five business days. *See* Notice, *supra* note 3 at 5361, n. 8.

[12] *See* Amendment No. 2, *supra* note 4 at 4.

[13] 15 U.S.C. 78f(b).

[14] In approving the proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78f(b)(8).

[17] *See* International Securities Exchange, LLC ("ISE") Rule 100(a)(37C).

[18] *See* Chicago Board Options Exchange, Incorporated ("CBOE") Rule 1.1 (ggg).

[19] *See* Securities Exchange Act Release No. 59287 (January 23, 2009), 74 FR 5694 (January 30, 2009) ("ISE Approval Order"); 61198 (December 17, 2009), 74 FR 68880 (December 29, 2009) ("CBOE Approval Order") (together, the "Professional Customer Approval Orders").

[20] *See* ISE Approval Order, *supra* note 19 and CBOE Approval Order, *supra* note 19.

[21] ISE Approval Order, *supra* note 16. For a brief synopsis of the requirements of Section 11(a), *see infra,* note 25.

[22] *See* ISE Approval Order, *supra* note 19, at 5697.

[23] *See* ISE Approval Order, *supra* note 19, at 5697, n. 41–44.

customers who place orders at the frequency of more than 390 orders per day on average identically to the orders of public customers who do not meet that threshold.[24] For the same reason, the Commission believes that Phlx's proposed rule change is consistent with Section 6(b)(5) of the Act.

The Commission believes that its view with respect to the ISE Approval Order is equally applicable to the Phlx proposal. In this regard, the Commission does not believe that the Act requires that the orders of a public customer or any other market participant be granted priority. Historically, in developing their trading and business models, exchanges have adopted rules, with Commission approval, that grant priority to certain participants over others, in order to attract order flow or to create more competitive markets. However, the Act does not entitle any participant to priority as a right. The requirement of section 6(b)(8) of the Act that the rules of an exchange not impose an unnecessary or inappropriate burden upon competition does not necessarily mandate that a Professional (as defined in the Phlx proposal) be granted priority at a time that a broker-dealer is not granted the same right. The Phlx proposal simply restores the treatment of persons who would be deemed Professionals to a base line where no special priority benefits are granted.[25] Thus, the Commission believes that it is consistent with the Act for Phlx to amend its rules so that Professional orders, like the orders of broker-dealers, are not granted special priority.[26]

Pursuant to section 19(b)(2) of the Act,[27] the Commission may not approve any proposed rule change, or amendment thereto, prior to the 30th day after the date of publication of notice of the filing thereof, unless the Commission finds good cause for so doing and publishes its reasons for so finding. The Commission hereby finds good cause for approving the proposed rule change, as modified by Amendment No. 2, before the 30th day after the date of publication of notice of filing thereof in the **Federal Register.**[28] The Commission notes that the proposal was published for comment in the **Federal Register** on February 2, 2010. The Commission did not receive any comments on the proposed rule change. The Commission does not believe that Amendment No. 2 significantly alters the proposal. In the amendment, the Exchange deleted an Exchange rule from and added several Exchange rules and Advices to the list of rules that would be affected by the proposal; identified in one instance where a specific provision of a rule would be affected by the proposal; and made a few technical or clarifying changes to the rule text, Purpose section, and/or Exhibit to the proposed rule change. The Commission believes that these revisions are consistent with the proposal's purpose and raise no new significant issues. The amendment also indicated that the Phlx intends to file a separate proposed rule change to adopt fees for Professional orders. Finally, Phlx noted that it would issue a notice outlining the procedures for implementation of the proposal.

As noted above, the Commission previously found that exchange rules that distinguish between the orders of customers who place orders at the frequency of more than 390 orders per day on average during a calendar month for its own beneficial account(s) and the orders of customers who do not meet that threshold are consistent with the Act.[29] Accordingly, pursuant to section 19(b)(2) of the Act,[30] the Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment No. 2, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2010–05 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2010–05. 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,[31] all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will

[24] *See* ISE Approval Order, *supra* note 19, at 5697. *See also* CBOE Approval Order, *supra* note 19.

[25] In its proposal, the Exchange addressed compliance with Section 11(a) of the Act and the rules thereunder as applied to the Exchange's electronic trading platform, Phlx XL II. Section 11(a) prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises discretion unless an exception applies. Section 11(a)(1) and the rules thereunder contain a number of exceptions for principal transactions by members and their associated persons, including the exceptions in subparagraph (G) of Section 11(a)(1) and in Rule 11a1–1(T), as well as Rule 11a2–2(T) under the Act. The Exchange represents that, as applied to Phlx XL II, it does not believe that the proposal would affect the availability of the exceptions to Section 11(a) of the Act, including the exceptions in subparagraph (G) of Section 11(a) and in Rules 11a1–1(T) and 11a2–2(T), as are currently available. *See* Notice, *supra* note 3.

[26] The Commission notes that certain trading practices that could be affected by the proposed rule change may raise issues outside the scope of its review of the proposal itself. Specifically, any entity that acts as "dealer," as defined in Section 3(a)(5) of the Act, 15 U.S.C. 78c(a)(5), is required to register with the Commission under Section 15 of the Act, 15 U.S.C. 78o, and the rules and regulations thereunder, or qualify for any exception or exemption from registration. Activity that may cause a person to be deemed a dealer includes "'quoting a market in or publishing quotes for securities (other than quotes on one side of the market on a quotations system generally available to non-broker-dealers, such as a retail screen broker for government securities)." *See* Definitions of Terms in and Specific Exemptions for Banks, Savings Associations, and Savings Banks Under Sections 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934, Securities Exchange Act Release No. 47364, 68 FR 8686, 8689, note 26 (February 24, 2003) (quoting OTC Derivatives Dealers, Securities Exchange Act Release No. 40594 (October 23, 1998), 63 FR 59362, 59370, note 61 (November 3, 1998)).

[27] 15 U.S.C. 78s(b)(2).

[28] *See supra* note 3.

[29] *See* Professional Customer Approval Orders, *supra* note 19.

[30] 15 U.S.C. 78s(b)(2).

[31] The text of the proposed rule change is available on Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/*, on the Commission's Web site at *http://www.sec.gov,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2010–05 and should be submitted on or before April 26, 2010.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[32] that the proposed rule change (SR–Phlx–2010–05), as modified by Amendment No. 2, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[33]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–7630 Filed 4–2–10; 8:45 am]

BILLING CODE 8011–01–P

[32] 15 U.S.C. 78s(b)(2).

[33] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61800; File No. SR–DTC–2010–03]

Self-Regulatory Organizations; The Depository Trust Company; Order Granting Approval of a Proposed Rule Change To Eliminate the Option To Receive a Physical Certificate From DTC for Unsponsored American Depositary Receipts That Are Part of the Fast Automated Transfer Program

March 30, 2010.

I. Introduction

On January 19, 2010, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR–DTC–2010–03 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on February 22, 2010.[2] The Commission received no comment letters. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

An ADR is a security that trades in the United States but represents a specified number of shares in a foreign corporation. ADRs are issued in the U.S. by depositary banks. An ADR issuance is "unsponsored" when there is no formal agreement between the depositary bank(s) issuing the ADR and the foreign company whose underlying shares are the basis for the ADR. Because in unsponsored programs there is no agreement between the issuer and a specific depositary, more than one depositary can be involved in the issuance and cancellation of ADR programs. Unsponsored ADRs trade in the over-the-counter market.

Currently, in order to deposit an unsponsored ADR at DTC, a depositary bank that is also a DTC participant will have its transfer agent create a certificate for the new issue ADR, which is then deposited at DTC by the depositary bank. In an effort to eliminate some of the risks and costs related to the processing of securities certificates,[3] DTC recently made unsponsored ADRs eligible for DTC's Fast Automated Securities Transfer Program ("FAST").[4]

DTC's withdrawal-by-transfer ("WT") service allows a participant to instruct DTC to have securities assets that are held in the participant's DTC account reregistered in the name of the participant, an investor, or a third party. Upon receipt of a WT instruction from a participant, DTC either sends a certificate to the transfer agent for reregistration in the name of the person or entity identified in the WT instruction or instructs the transfer agent to debit DTC's FAST position and to issue securities in the name of the person or entity identified in the WT instruction.

As part of DTC's response to an industry effort to reduce the number of securities certificates in the U.S. market (sometimes referred to as "dematerialization"),[5] DTC initiated a program of steadily increasing its fees for WTs and other withdrawals to create strong disincentives for the use of physical certificates. Consistent with that program, DTC is now eliminating participants' ability to use the WT service to have physical certificates issued for unsponsored ADRs that are a part of the FAST Program. DTC believes that this modification of its WT service reaffirms its goals of reducing the number of securities certificates in the U.S. markets. DTC participants will continue to have the ability to request a physical certificate directly from the transfer agent by using the DWAC process.[6]

III. Discussion

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest.[7] The rule change modifies a DTC service by discontinuing the WT services for unsponsored ADRs that are part of the FAST program, which should in turn decrease the use of securities certificates. As a result, DTC's rule change, as approved, should make processing securities transactions more safe and efficient by discouraging the use of securities certificates, which increase the risks and costs associated with processing securities transactions.

Accordingly, for the reasons stated above the Commission believes that the rule change is consistent with DTC's obligation under Section 17A of the Exchange Act, as amended, and the rules and regulations thereunder.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 61507 (February 5, 2010), 75 FR 7641 (February 22, 2010).

[3] The costs and risks associated with physical certificates include, among other things, those associated with safekeeping, transfer, shipping and insurance costs.

[4] FAST was designed to eliminate some of the risks and costs related to the creation, movement, processing, and storage of securities certificates. Under the FAST program, FAST transfer agents hold FAST eligible securities in the name of Cede & Co. in custody and for the benefit of DTC. As additional securities are deposited or withdrawn from DTC, the FAST transfer agents adjust the size of DTC's position as appropriate and electronically confirm theses changes with DTC. For more information relating to FAST, see Securities Exchange Act Release Nos. 13342 (March 8, 1977) [File No. SR–DTC–76–3]; 14997 (July 26, 1978) [File No. SR–DTC–78–11]; 21401 (October 16, 1984) [File No. SR–DTC–84–8]; 31941 (March 3, 1993) [SR–DTC–92–15]; and 46956 (December 6, 2002) [File No. SR–DTC–2002–15].

[5] For more information on dematerialization, see Securities Exchange Act Release No. 49405 (March 11, 2004), 69 FR 12922 (March 18, 2004), (File No. S7–13–04).

[6] For more information about the DWAC service, see Securities Exchange Act Release No. 30283 (January 23, 1992), 57 FR 3658 (January 30, 1992) (SR–DTC–91–16) (order granting approval of the DWAC service).

[7] 15 U.S.C. 78q–1(b)(3)(F).

proposed rule change (File No. SR–DTC–2010–03) be and hereby is approved.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–7553 Filed 4–2–10; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice 6940]

Culturally Significant Objects Imported for Exhibition Determinations: "Cyprus: Crossroads of Civilizations"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "Cyprus: Crossroads of Civilizations," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at the Smithsonian Institution, National Museum of Natural History, Washington, DC, from on or about September 1, 2010, until on or about April 15, 2011, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: March 26, 2010.

Maura M. Pally,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2010–7632 Filed 4–2–10; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6941]

Certification Related to the Khmer Rouge Tribunal Under Section 7071(c) of the Department of State, Foreign Operations and Related Programs Appropriations Act, 2010 (Division F, Pub. L. 111–117)

Pursuant to the authority vested in the Secretary of State, including under Section 7071(c) of the Department of State, Foreign Operations, and Related Programs Appropriations Act (SOFAA), 2010, and Delegation of Authority 245–1, I hereby certify that the United Nations and Government of Cambodia are taking credible steps to address allegations of corruption and mismanagement within the Khmer Rouge Tribunal.

This Certification and related Memorandum of Justification shall be provided to the appropriate committees of the Congress and published in the **Federal Register**.

Dated: March 23, 2010.

Jacob J. Lew,

Deputy Secretary of State.

Memorandum of Justification Under Section 7071(c) of the Department of State, Foreign Operations and Related Programs Appropriations Act, 2010

Section 7071(c) of the Department of State, Foreign Operations and Related Program Appropriations Act, 2010 (Div. F Pub. L. 111–117) provides that funds appropriated in the Act for a United States contribution may only be made available if the Secretary of State certifies to the Committees on Appropriations that the United Nations and Government of Cambodia are taking credible steps to address allegations of corruption and mismanagement within the Extraordinary Chambers in the Courts of Cambodia (ECCC), also commonly known as the "Khmer Rouge Tribunal" (KRT). Deputy Secretary Lew has signed the certification pursuant to State Department Delegation of Authority 245–1.

Factors Justifying Determination and Certification

In late 2008 the former Director in the ECCC Office of Administration, the person in charge when allegations of administrative corruption at the court first surfaced, was put on indefinite medical leave, effectively removing him from the court. His replacement, the current Acting Director, is considered to have shown himself a competent Administrator who has cooperated well with the donor community, other court officials, and the United Nations Office of Legal Affairs. The Deputy Administrator, selected by the UN and a person with many years of administrative experience, has a constructive working relationship with the Acting Director and plays an active and positive role with the UN and the donor community. Since before the departure of the ECCC Director of Administration, there have been no reports alleging new instances of corruption at the Khmer Rouge Tribunal. In the view of the State Department, other countries in the donor community, prominent court officials, and non-governmental organizations (NGOs), the court appears corruption-free at this time.

These administrative corruption allegations did not compromise the fundamental integrity of the court. In November of 2009 the court successfully concluded Case 001—the trial against the former chief of the Tuol Sleng torture center, Kaing Guek Eav ("Duch"). His trial was the first meaningful attempt to hold a Khmer Rouge official accountable for war crimes committed under the Khmer Rouge regime. The United States, foreign governments, and NGOs monitoring the court agree that proceedings met international standards of justice.

Most recently, the investigative phase of Case 002, against four surviving senior leaders of the Khmer Rouge regime, was closed. Motions and appeals are now being heard in accordance with the rules of the court, and an indictment is expected in the fall of 2010.

In August 2009 the United Nations Office of Legal Affairs and the Government of Cambodia reached agreement to establish an Independent Counsellor to serve as a deterrent against corruption and address potential future incidents of corruption or other forms of misconduct at the court. By mutual agreement Uth Chhorn, the Cambodian Auditor General, was selected to serve this role. To date the Independent Counsellor has established his own office, with a direct phone line and e-mail for receiving complaints confidentially. Last November he released a "Meet the Independent Counsellor" document to all court staff explaining his role, how he can be

[8] 17 CFR 200.30–3(a)(12).

reached, and when he should be contacted. The circular outlined his roles and responsibilities, which include provision of an annual report to the UN Office of Legal Affairs and the Cambodian Government. Recently these two parties have also finalized more detailed operational guidelines, and the Independent Counsellor met with administrators, court staff, and the diplomatic community to further explain his role and highlight his commitment to protecting the identities of complainants and ensuring that there would be no reprisals against whistle-blowers. The United States, in coordination with other donor nations, is conducting ongoing diplomatic efforts with both the United Nations Office of Legal Affairs and Government of Cambodia to assist in making the Independent Counsellor fully operational.

The United Nations Office of Legal Affairs and Government of Cambodia have also recently reached agreement on a new international co-prosecutor—Andrew Cayley of the United Kingdom. He has been well received by the donor community and NGOs, and has over a decade of experience in international justice, having worked at the International Criminal Tribunal for the former Yugoslavia, International Criminal Court, and Special Court for Sierra Leone. The selection of Andrew Cayley is another indicator of ongoing cooperation between the two parties and their willingness to work constructively together to advance the court.

As a result of its first contribution of $1.8 million in 2009, the United States is playing a leadership role with respect to oversight of the court by currently serving as the chair of the KRT Steering Committee, a position which rotates on a quarterly basis. The United States also plays a leading role in the donors group in Phnom Penh, Cambodia. An additional contribution will indicate an ongoing commitment to the work of the court, and improve our position in discussions at the Steering Committee and with other current and potential donors.

Last month, the KRT's budget was approved. The budget reflected good management practices, including meaningful and realistic projections of the timelines for completion of the court's caseload. The State Department had an opportunity to review and approve the budget during its consideration by the Steering Committee and was satisfied that it was administratively and financially sound.

The KRT provides a monthly report to the UN Controller and the UN Department of Economic and Social Affairs, which closely monitors the activities of the court including its expenditures. In addition, all hiring on the international side of the court is vetted by the UN Department of Economic and Social Affairs. The UN Office of Legal Affairs actively engages on judicial management issues, such as shifting the pre-trial Chamber to sit on a full-time basis in order to improve the efficiency of the court and to expedite its decision-making.

Certification and United States Policy Objectives

Certification recognizes the efforts of the United Nations and the Government of Cambodia to address allegations of corruption and mismanagement within the tribunal. It is not an indication, however, that no further work needs to be done. Both parties must continue to exercise oversight of court operations, and the donor community and NGOs must continue their vigilant engagement with the United Nations and Cambodian government to ensure that the Khmer Rouge Tribunal remains corruption-free and well-managed.

[FR Doc. 2010–7631 Filed 4–2–10; 8:45 am]

BILLING CODE 4710–30–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee: Public Comments Regarding Granting Suriname Eligibility for Benefits Under the Caribbean Basin Economic Recovery Act and the Caribbean Basin Trade Partnership Act

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for public comment.

SUMMARY: The Trade Policy Staff Committee (TPSC) is seeking comments from the public on whether Suriname should be designated as eligible to receive benefits under the Caribbean Basin Economic Recovery Act (CBERA), as amended by the Caribbean Basin Trade Partnership Act (CBTPA) (19 U.S.C. 2701 *et seq.*). Although Congress has identified Suriname as potentially eligible for benefits, the government of Suriname did not request beneficiary status under either the CBERA or the CBTPA until December 2009. The TPSC invites written comments concerning whether Suriname meets the criteria described in sections 212(b), 212(c), and 213(b)(5)(B) of the CBERA, as amended. The TPSC will consider these comments in developing its recommendation to the President regarding Suriname's eligibility for benefits under CBERA and CBTPA.

DATES: Public comments are due at USTR no later than 5 p.m., May 17, 2010.

ADDRESSES: Comments should be submitted electronically via the Internet at *http://www.regulations.gov*. For alternatives to on-line submissions please contact Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395–3475.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning written comments, contact Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395–3475. All other questions should be directed to Kent Shigetomi, Office of the Americas, Office of the United States Trade Representative, 600 17th Street, NW., Room 523, Washington, DC 20508. His telephone number is (202) 395–3412.

SUPPLEMENTARY INFORMATION: Interested parties are invited to submit comments on whether Suriname meets or fails to satisfy the eligibility criteria described in sections 212(b), 212(c), and 213(b)(5)(B) of the CBERA, as amended. Those criteria may be accessed at *http://www.tinyurl.com/yelwmc5,* and are summarized below.

Eligibility Criteria for Designation as a Beneficiary Country Under CBERA and CBTPA (Sections 212(b) and (c) of CBERA)

After a country identified in the statute as a potential beneficiary country requests benefits under CBERA and CBTPA, the President must determine whether to designate the country as a beneficiary under the two programs. In determining whether to designate a country as a CBERA beneficiary country, the President must take into account the criteria contained in section 212(b) of the CBERA, which include whether the country: (1) Is a Communist country; (2) has nationalized, expropriated or otherwise seized ownership or control of property owned by a United States citizen or by a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens, or taken certain steps that have such an effect, without proper compensation or arbitration of the dispute; (3) fails to act in good faith in enforcing arbitral awards in favor of United States citizens or a corporation, partnership or association which is 50 percent or more beneficially owned by United States citizens; (4) affords preferential treatment to the products of a developed country, other than the United States, which has, or is likely to have, a

significant adverse effect on United States commerce; (5) owns an entity that engages in the broadcast of copyrighted material belonging to United States copyright owners without their express consent; (6) is a signatory to a treaty, convention, protocol, or other agreement regarding the extradition of United States citizens; and (7) has not or is not taking steps to afford internationally recognized worker rights (as defined in section 507(4) of the Trade Act of 1974 (19 U.S.C. 2467(4))) to workers in the country.

The President must also take into account the criteria contained in section 212(c) of the CBERA, which include: (1) The economic conditions in such country; (2) the extent to which such country has assured the United States it will provide equitable and reasonable access to the markets and basic commodity resources of such country; (3) the degree to which such country follows the accepted rules of international trade provided for under the World Trade Organization (WTO) Agreement and the multilateral trade agreements; (4) the degree to which such country uses export subsidies or imposes export performance requirements or local content requirements which distort international trade; (5) the degree to which the trade policies of such country as they relate to other beneficiary countries are contributing to the revitalization of the region; (6) the degree to which such country is undertaking self-help measures to promote its own economic development; (7) whether or not such country has taken or is taking steps to afford to workers in that country internationally recognized worker rights; (8) the extent to which such country provides under its law adequate and effective means for foreign nationals to secure, exercise, and enforce exclusive rights in intellectual property; (9) the extent to which such country prohibits its nationals from engaging in the broadcast of copyrighted material belonging to United States copyright owners without their express consent; (10) and the extent to which such country is prepared to cooperate with the United States in the administration of the provisions of the CBERA.

Eligibility Criteria for CBTPA Beneficiary Countries (Section 213(b)(5)(B) of the CBERA)

In determining whether to designate a country as a CBTPA beneficiary country, the President must take into account the criteria contained in sections 212(b) and (c) of CBERA described above, and other appropriate criteria, including the following criteria contained in section 213(b)(5)(B) of the CBERA: (1) Whether the beneficiary country has demonstrated a commitment to undertake its obligations under the WTO Agreement and participate in negotiations toward the completion of the Free Trade Area of the Americas or another free trade agreement; (2) the extent to which the country provides protection of intellectual property rights consistent with or greater than the protection afforded under the Agreement on Trade-Related Aspects of Intellectual Property Rights described in section 101(d)(15) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(15)); (3) the extent to which the country provides internationally recognized worker rights; (4) whether the country has implemented its commitments to eliminate the worst forms of child labor; (5) the extent to which the country has met U.S. counter-narcotics certification criteria under the Foreign Assistance Act of 1961; (6) the extent to which the country has taken steps to become a party to and implement the Inter-American Convention Against Corruption; and (7) the extent to which the country applies transparent, nondiscriminatory and competitive procedures in government procurement and contributes to efforts in international fora to develop and implement rules on transparency in government procurement.

Additionally, before a country can receive benefits under the CBTPA, the President must also determine that the country has satisfied the requirements of section 213(b)(4)(A)(ii) of CBERA (19 U.S.C. 2703(b)(4)(A)(ii)) relating to the implementation of procedures and requirements similar to the relevant procedures and requirements contained in chapter 5 of the North American Free Trade Agreement.

Requirements for Submissions. Persons submitting comments must do so in English and must identify (on the first page of the submission) the "Suriname CBERA and CBTPA Eligibility." Written comments must be received by May 17, 2010.

In order to ensure the most timely and expeditious receipt and consideration of comments, USTR has arranged to accept on-line submissions via *http://www.regulations.gov.* To submit comments via *http://www.regulations.gov,* enter docket number USTR–2010–0011 on the home page and click "go". The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting "Notice" under "Document Type" on the left side of the search-results page, and click on the link entitled "Send a Comment or Submission." (For further information on using the *http://www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on "How to Use This Site" on the left side of the home page.)

The *http://www.regulations.gov* Web site provides the option of making submissions by filling in a "General Comments" field, or by attaching a document. We expect that most submissions will be provided in an attached document. If a document is attached, it is sufficient to type "See attached" in the "General Comments" field.

Submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf) are preferred. If an application other than those two is used, please identify in your submission the specific application used. For any comments submitted electronically containing business confidential information, the file name of the business confidential version should begin with the characters "BC" and must be submitted separately from the public version. Any page containing business confidential information must be clearly marked "BUSINESS CONFIDENTIAL" on the top of that page. If you file comments containing business confidential information you must also submit a public version of the comments under a separate submission. The file name of the public version should begin with the character "P". The "BC" and "P" should be followed by the name of the person or entity submitting the comments. If you submit comments that contain no business confidential information, the file name should begin with the character "P", followed by the name of the person or entity submitting the comments. Electronic submissions should not attach separate cover letters; rather, information that might appear in a cover letter should be included in the comments you submit. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments to a submission in the same file as the submission itself and not as separate files.

We strongly urge submitters to use electronic filing. If an on-line submission is impossible, alternative arrangements must be made with Ms. Blue prior to delivery for the receipt of such submissions. Ms. Blue may be contacted at (202) 395–3475. General information concerning the Office of the United States Trade Representative may

be obtained by accessing its Internet Web site (*http://www.ustr.gov*).

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. 2010–7513 Filed 4–2–10; 8:45 am]

BILLING CODE 3190–W0–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–103 (Sub-No. 22X)]

The Kansas City Southern Railway Company—Abandonment Exemption—in East Feliciana Parish, LA

The Kansas City Southern Railway Company (KCSR) filed a notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon a 1.63-mile line of railroad extending from milepost D–202.70 to milepost D–204.33, in East Feliciana Parish, LA. The line traverses United States Postal Service Zip Code 70748.

KCSR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line that has been or would need to be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on or after May 5, 2010, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by April 15, 2010. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by April 26, 2010, with: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to KCSR's representative: Robert A. Wimbish, Baker & Miller PLLC, 2401 Pennsylvania Avenue, NW., Suite 300, Washington, DC 20037.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

KCSR has filed environmental and historic reports which address the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by April 9, 2010. Interested persons may obtain a copy of the EA by writing to SEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), KCSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by KCSR's filing of a notice of consummation by April 5, 2011, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: March 29, 2010.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2010–7377 Filed 4–2–10; 8:45 am]

BILLING CODE 4915–01–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,500. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Compliance and Enforcement Bulletin No. 2010–1

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of enforcement policy.

SUMMARY: This notice announces a limited program to forgo enforcement action for persons who disclose before September 30, 2010, previous falsification on applications for airman medical certification regarding the use of antidepressant medication, the underlying condition for which the antidepressant was prescribed, and visits to health professionals in connection with the antidepressant use or underlying condition.

DATES: *Effective Dates:* Effective date April 5, 2010. This Notice is issued simultaneously with "Special Issuance Medical Certificates to Applicants Being Treated with Certain Types of Antidepressants," [Docket No. FAA–2009–0773].

FOR FURTHER INFORMATION CONTACT: Susan S. Caron, Enforcement Division, FAA Office of the Chief Counsel, 800 Independence Avenue, SW., Washington, DC 20591; 202–267–7721; e-mail address; *susan.caron@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Compliance and Enforcement Bulletin 2010–1, which amends FAA Order 2150.3B, Compliance and Enforcement Programs, is being issued in connection with FAA policy statement, "Special Issuance Medical Certificates to Applicants Being Treated with Certain Types of Antidepressants," [Docket No. FAA–2009–0773]. The Bulletin is intended to encourage airmen to make a complete disclosure regarding a history of or current use of antidepressant medications, the underlying condition for which the antidepressant medication was prescribed, and associated visits to health professionals so that they can be considered for special issuance medical certification under the new policy on the use of certain antidepressants. Under the terms of Bulletin 2010–1, the FAA will not initiate legal enforcement

action against applicants for violations of 14 CFR 67.403 regarding past medical applications if the applicant discloses a history of antidepressant use, the underlying condition for which the medication was prescribed, and visits to health professionals in connection with the antidepressant use or underlying condition on an application for medical certification made between April 5, 2010 and September 30, 2010.

The Notice

Compliance and Enforcement Bulletin No. 2010–1

Subject: Forgoing enforcement action for persons who disclose previous falsification on applications for airman medical certification regarding the use of antidepressant medication, the underlying condition for which the antidepressant was prescribed, and visits to health professionals in connection with the antidepressant use or underlying condition.

Discussion: This Bulletin is issued in connection with FAA policy statement, "Special Issuance Medical Certificates to Applicants Being Treated with Certain Types of Antidepressants," [Docket No. FAA–2009–0773], published in the **Federal Register** on April 5, 2010. In that policy statement, the Federal Air Surgeon reiterates his conclusion that the use of antidepressant medication is disqualifying for airman medical certification under the standards in subparts B, C, or D of 14 CFR part 67 and, therefore, a basis for denial of medical certification for airmen using such medication. Until now, the Federal Air Surgeon generally also has been unwilling to grant the special issuance of airman medical certificates under 14 CFR 67.401 to airmen who take antidepressant medications. In his policy statement, however, the Federal Air Surgeon has announced that he is now prepared to consider, on a case-by-case basis, applicants who take certain antidepressant medications identified in the policy for the special issuance of all classes of medical certification. This change in policy is explained in the Federal Air Surgeon's policy statement.

The Federal Air Surgeon is aware that some airmen who take antidepressant medications may have knowingly concealed their use of the medications on past applications for airman medical certification in order to obtain a medical certificate. Under FAA's sanction guidance, the ordinary sanction for intentional falsification of an application for airman medical certification, an act prohibited by 14 CFR 67.403, is revocation of the airman's medical certificate and all other airman or ground instructor certificates held by the airman.

The FAA wants to encourage airmen to make a complete disclosure regarding a history of or current use of antidepressant medications, the underlying condition for which the antidepressant medication was prescribed, and associated visits to health professionals so that they can be considered for special issuance medical certification. Therefore, the FAA will not initiate legal enforcement action against applicants for violations of 14 CFR 67.403 regarding past medical applications if the applicant discloses a history of antidepressant use, the underlying condition for which the medication was prescribed, and visits to health professionals in connection with the antidepressant use or underlying condition on an application for medical certification made between April 5, 2010 and September 30, 2010. The FAA believes that safety requires that any airman taking antidepressant medication must be properly evaluated, and if appropriate, followed, which can be accomplished through the special issuance certification process. The FAA believes that in the limited circumstances described in this Bulletin, the benefit of facilitating the disclosure of antidepressant use will outweigh any harm to the public interest caused by forgoing FAA enforcement action for falsification.

The FAA does not have the authority to offer immunity from criminal prosecution under 18 U.S.C. 1001 for making any materially false, fictitious, or fraudulent statement or entry on the medical application (FAA Form 8500–8) because immunity can only be offered by the Department of Justice (DOJ). However, the FAA and the Department of Transportation's Office of Inspector General (DOT OIG), the office through which the FAA makes referrals for possible criminal prosecution, have agreed that the FAA will not refer cases of apparent intentional falsification covered by this Bulletin to the DOT OIG for criminal investigation or prosecution.

The policy set forth in this Bulletin is limited to disclosure of past and present antidepressant use, the underlying condition for which the antidepressant medication was prescribed, and visits to health professionals in connection with the antidepressant use and underlying condition. It in no way is intended to undermine the FAA's lack of tolerance for airmen who intentionally falsify applications for airman medical certification. This Bulletin does not provide any protection from enforcement action to individuals who may have falsified other information on FAA Form 8500–8 than that described in this Bulletin.

To benefit from the protection offered under this Compliance and Enforcement Bulletin, an airman must surrender for cancellation to the Federal Air Surgeon any current medical certificates. The airman must apply for a medical certificate between April 5, 2010 and midnight on September 30, 2010. On the application, the applicant must disclose his or her complete history of antidepressant use, the underlying condition for which the medication was prescribed, and visits to health professionals in connection with antidepressant use or the underlying condition. If an applicant falsifies any of this information on an application made on or after April 5, 2010, the FAA may take enforcement action based on that application and the previously falsified applications.

The protection from FAA enforcement action for intentional falsification provided by this Compliance and Enforcement Bulletin applies to all airmen who meet the requirements of this Bulletin before midnight on September 30, 2010, regardless of whether the Federal Air Surgeon is able to find the applicant qualified for the special issuance of a medical certificate under 14 CFR 67.401. Applicants need to be aware that the special issuance of a medical certificate is a decision made at the discretion of the Federal Air Surgeon to individuals who do not meet the medical standards for an unrestricted certificate under 14 CFR part 67, subparts B, C, and D only when the Federal Air Surgeon finds that the individual can perform the duties authorized by the class of medical certificate applied for without endangering public safety. It is not likely that all applications will result in the issuance of a certificate under section 67.401. The Federal Air Surgeon will consider an airman's individual medical and psychiatric history and all supporting documentation submitted with the application on a case-by-case basis before determining whether to grant the special issuance of a certificate. If the Federal Air Surgeon finds after completing his assessment that he cannot safely issue an applicant who has complied with the terms of this Compliance and Enforcement Bulletin a special issuance medical certificate, the applicant will receive a final denial letter notifying the applicant that he or she is not qualified under the part 67 medical standards and that a special issuance certificate has also been denied. An airman may petition the National Transportation Safety Board

for review of the denial under the part 67 medical standards. A denial of a special issuance certificate may be appealed to an appropriate United States court of appeals.

FOR FURTHER INFORMATION CONTACT: Susan S. Caron, Enforcement Division, AGC–300, 800 Independence Avenue, SW., Washington, DC 20591; *susan.caron@faa.gov.*

Issued in Washington, DC, on March 30, 2010.

J. Randolph Babbitt,

Administrator.

[FR Doc. 2010–7658 Filed 4–2–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Cancellation of Environmental Impact Statement: Clackamas County, OR

AGENCIES: Federal Highway Administration, Oregon Department of Transportation, and Clackamas County, Oregon.

ACTION: Cancellation of notice of intent for Harmony Road EIS.

SUMMARY: The FHWA is issuing this notice of cancellation to advise the public that we are no longer lead Federal Agency for preparation of an Environmental Impact Statement (EIS) for the proposed Harmony Road project in Clackamas County, Oregon. This is formal cancellation of the notice of intent that was published in the **Federal Register**, Volume 72, Number 67, on Monday, April 9, 2007. The project is now cancelled; therefore, no further project activities will occur.

FOR FURTHER INFORMATION CONTACT: Michelle Eraut, Environmental Program Manager, Federal Highway Administration, 530 Center Street, NE., Suite 100, Salem, Oregon 97301, Telephone: (503) 587–4716.

SUPPLEMENTARY INFORMATION: The notice of intent to prepare an EIS was for proposed improvements to the transportation system in the SE Harmony Road corridor, from SE 82nd Avenue to State Highway 224 (approximately 1.5 miles). The notice of intent to prepare an EIS is rescinded.

Authority: 23 U.S.C. 315.

Issued on: March 26, 2010.

Michelle Eraut,

Environmental Program Manager, Salem, Oregon.

[FR Doc. 2010–7589 Filed 4–2–10; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Establishment of Long Beach, CA, Class C Airspace Area and Revision of Santa Ana (John Wayne), CA, Class C Airspace Area; Public Meetings

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meetings.

SUMMARY: This notice announces two fact-finding informal airspace meetings to solicit information from airspace users and others, concerning a proposal to establish Class C airspace at Long Beach, CA, and revise the Santa Ana (John Wayne) Class C airspace area, CA. The purpose of these meetings is to provide interested parties an opportunity to present views, recommendations, and comments on the proposal. All comments received during these meetings will be considered prior to any issuance of a notice of proposed rulemaking.

DATES: The informal airspace meetings will be held on Tuesday, June 22, 2010, and Wednesday, June 23, 2010. Meetings will run from 6 p.m. until 9 p.m. Comments must be received on or before July 31, 2010.

ADDRESSES: The meetings will be held at the Holiday Inn Hotel (Conference Center) Long Beach Airport, 2640 North Lakewood Blvd., Long Beach, CA 90815.

Comments: Send comments on the proposal, in triplicate, to: Clark Desing, Operations Support Group, AJV–W2, Western Service Area, Air Traffic Organization, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA 98057.

FOR FURTHER INFORMATION CONTACT: Francie Hope, Operations Support Group, Western Service Area, Air Traffic Organization, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA 98057; telephone: (425–203–4500).

SUPPLEMENTARY INFORMATION:

Meeting Procedures

(a) The meetings will be informal in nature and will be conducted by one or more representatives of the FAA Western Service Area. A representative from the FAA will present a briefing on the planned Class C airspace areas. Each participant will be given an opportunity to deliver comments or make a presentation, although a time limit may be imposed. Only comments concerning the plan to establish the Long Beach Class C airspace or the revision of Santa Ana (John Wayne), CA, Class C airspace area will be accepted.

(b) The meetings will be open to all persons on a space-available basis. There will be no admission fee or other charge to attend and participate.

(c) Any person wishing to make a presentation to the FAA panel will be asked to sign in and estimate the amount of time needed for such presentation. This will permit the panel to allocate an appropriate amount of time for each presenter. These meetings will not be adjourned until everyone on the list has had an opportunity to address the panel.

(d) Position papers or other handout material relating to the substance of these meetings will be accepted. Participants wishing to submit handout material should present an original and two copies (3 copies total) to the presiding officer. There should be additional copies of each handout available for other attendees.

(e) These meetings will not be formally recorded. However, a summary of comments made at the meetings will be filed in the docket.

Agenda for the Meetings

—Sign-in.
—Presentation of Meeting Procedures.
—Informal Presentation of the planned Class C Airspace areas.
—Public Presentations and Discussions.
—Closing Comments.

Issued in Washington, DC, on March 31, 2010.

Paul Gallant,

Acting Manager, Airspace and Rules Group.

[FR Doc. 2010–7652 Filed 4–2–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Eighth Meeting: Joint RTCA Special Committee 213: EUROCAE WG–79: Enhanced Flight Vision Systems/ Synthetic Vision Systems (EFVS/SVS)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Joint RTCA Special Committee 213: EUROCAE WG–79: Enhanced Flight Vision Systems/ Synthetic Vision Systems (EFVS/SVS).

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of Joint RTCA Special Committee 213: EUROCAE WG–79: Enhanced Flight Vision Systems/Synthetic Vision Systems (EFVS/SVS).

DATES: The meeting will be held April 27–29, 2010. Sign-in: 8:30 a.m. (0830)

on April 27, 2010. Meeting: 9 a.m.–5 p.m. (0900–1700).

ADDRESSES: The meeting will be held at Dan Tel-Aviv Hotel, Hayarkon 99 St., Tel Aviv, IS 63432. *Objective:* Primary objective is comment disposition from Final Review and Comment (FRAC) period of draft MASPS for EFVS approach and landing. Secondary objective is plenary review of subsequent MASPS update for SVS.

FOR FURTHER INFORMATION CONTACT: (1) 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 Joint RTCA Special Committee 213: EUROCAE WG–79: Enhanced Flight Vision Systems/Synthetic Vision Systems (EFVS/SVS) meeting. The agenda will include:

Tuesday, 27 April

- Sign-in at 8:30 a.m.
- 9 a.m.–5 p.m.—Plenary (including breaks and lunch).
  - Welcome, introductions, review agenda, minutes approval, and objectives.
  - Plenary work group updates, action item review.
  - Plenary review/comment disposition of draft MASPS for EFVS approach and landing.

Wednesday, 28 April

- 9 a.m.–5 p.m.—Plenary (including breaks and lunch).
  - Continue: Plenary review/comment disposition of draft MASPS for EFVS.
  - Begin: Plenary review of MASPS update for SVS.

Thursday, 29 April

- 9 a.m.–3 p.m.—Plenary (including breaks and lunch).
  - Continue: Plenary review of MASPS update for SVS.
  - Review administrative items.
  - Assign action items.
  - Agree on next meeting date and location.

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 30, 2010.

Meredith Gibbs,

RTCA Advisory Committee.

[FR Doc. 2010–7650 Filed 4–2–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2010–0020]

National Rail Plan

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Request for comments and establishment of public docket.

SUMMARY: This notice requests public comment for input into the development of the long-range National Rail Plan (NRP) through an open docket. In addition, the notice presents the overall plan design, Federal Railroad Administration's (FRA) goals in preparing the NRP, and issues that are expected to be addressed. This is FRA's first NRP. Public comments are solicited on the plan design, long-term goals of the NRP, and policy issues and questions noted below.

DATES: Public comments on this notice are due no later than June 4, 2010. However, since Congress has requested the completed plan by September 15, 2010, an aggressive timeline and schedule has been undertaken. For comments to be considered during the critical stages of plan development, they should be received no later than May 3, 2010.

ADDRESSES: *Public comments.* To ensure that comments are not entered into the docket more than once, please submit comments, identified by docket number [FRA–2010–0020], by only one of the following methods:

- *Web site:* The U.S. Government electronic docket site is *http://www.regulations.gov*. Go to this Web site and follow the instructions for submitting comments into docket number [FRA–2010–0020];
- *Mail:* Mail comments to U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Docket Operations, MS–30, Room W12–140, Washington, DC 20590;
- *Hand delivery or courier:* Bring comments to the U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Docket Operations, West Building Ground Floor, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions for submitting public comments: The agency name (Federal Railroad Administration) and the docket number [FRA–2010–0020] for this notice must be submitted with any comments. If comments are submitted by mail or by hand, please submit two copies of the comments. For confirmation that the FRA has received the comments, a self-addressed stamped postcard must be included. Note that all comments received by any method will be posted without change to *http://www.regulations.gov,* including any personal information provided, and will be available to Internet users. The Department's complete Privacy Act Statement is available for review in the **Federal Register** published April 11, 2000 (65 FR 19477), or by visiting *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Joel Palley, Office of Railroad Policy and Development, at (202)493–6409, Department of Transportation, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background: The Passenger Rail Investment and Improvement Act of 2008 (PRIIA) requires that the FRA develop a NRP. Prior to the development of the NRP, PRIIA also directed the FRA to develop a *Preliminary National Rail Plan.* That plan was submitted to Congress on October 15, 2009. (That plan is available at *http://www.fra.dot.gov/Downloads/RailPlanPrelim10-15.pdf.*) The Preliminary Plan laid the groundwork for developing policies to improve the U.S. transportation system and was developed in consultation with state and local government officials, the railroad industry, and other stakeholders. The Preliminary Plan set forth FRA's proposed approach to developing the long-range NRP, including goals and objectives for the greater inclusion of rail in the national transportation system. Although the Preliminary Plan did not generally offer specific recommendations, it did identify a number of issues that FRA believes should be considered in formulating the NRP. In short, it is designed to create a springboard for further discussion.

Following on this theme, FRA invites comment and discussion from parties interested in the development of a comprehensive NRP. Only through participation of all levels of government, carriers, shippers, commuter and passenger groups, rail labor, communities, and other stakeholders can FRA develop a complete and

effective NRP. No specific format is required.

Plan Design: Both freight and passenger rail play a significant role in meeting the transportation needs of the U.S. economy. As the economy has expanded, rail in conjunction with the other modes and their infrastructure, which includes highway, waterway, pipeline, and air, work together to provide a cohesive network to deliver transportation services to customers. The efficiencies of this network have improved over the past decades and transportation customers have sought to lower transportation costs and those costs associated with transportation. The regulatory climate has also played a significant role in fueling those transportation improvements and subsequent efficiencies.

In addition to its role in meeting the needs of passenger and freight customers, rail is also proving that it can assist in meeting many of the nation's safety, energy, and environmental goals. And along with improved and new opportunities for intercity passenger and high-speed rail service, rail can help in reducing congestion in major corridors that have witnessed diminishing transportation capacity from evermore use.

The NRP will be composed of three principal components. These will include: First, a review of the current rail system and how it serves the nation. This will also include a summary of the rail system of each state based upon state rail plans and from other sources. This component will also look at projected demographic and traffic trends so an evaluation can be made with regard to future demand and needs for rail. This will lead into the second component of the plan; consideration of issues and policies that can ensure that the nation's rail system is truly considered in surface transportation discussions about moving people and goods. The third component of the plan will be a recommendation of programs, policies, and investments that will be required so the nation can be served with a transportation system that is safe and efficient.

In sum, the NRP must consider rail's increasing role in meeting the strategic goals of the nation and must provide a long-range outlook for programs and investments that can improve corridors and connections for passenger and freight use. Those goals include: Improving safety; improving fuel economy; fostering livable communities; increasing the competitiveness of the United States; better understanding and integrating the unique economics of the rail industry; helping to bolster the domestic passenger rail industry and create jobs; developing passenger high-speed rail; improving freight rail.

Policy Questions and Comments: As noted above in the plan design, the second component of the NRP will consider a broad array of issues and address a number of policy questions. In addition to comments on the plan design, FRA is soliciting responses from interested parties on these issues and questions, which are noted below:

1. What strategies are appropriate for funding freight transportation investments? What strategies are appropriate for funding passenger rail and high-speed passenger rail investments? How do we find sustainable sources of funding among Federal/State/Local/private sectors for passenger operations? How do we better assess the public benefits of railroad infrastructure improvements?

2. When assessing opportunities and challenges for implementing passenger rail service on freight rail lines and rights-of-way, what are the issues and concerns of infrastructure access and liability (owner vs. user)? In shared use rights-of-way (freight and passenger use), what are the best examples of access agreements with freight railroads? How can rail corridor development for passenger service be balanced with freight railroad service requirements to assure that freight service will not be impeded?

3. What are the issues that should be considered with Governance, such as roles and responsibilities, including national leadership as well as those of State, and local governments? What is the proper framework for multi-State/regional agreements when corridors extend beyond the boundaries of a single State?

4. What issues should be considered in network design and network development (corridors and connectivity)? What role should rail play? What modal issues arise —cooperation vs. competition? What are the best approaches to assess system performance? Should national standards be considered?

5. Identify areas where transportation safety can continue to improve (include technological and operational changes)? What consideration should be given to equipment improvement? What are the issues in joint freight and passenger use of track/corridors?

6. What issues should be addressed to continue and advance the rail system to effectively meet defense, emergency, and security transportation requirements?

7. What are the land use issues that must be considered in making transportation infrastructure investments? How can rail promote livable communities?

8. What opportunities does rail provide to improve energy use and the environment (include both technological and operational changes)?

9. What are the opportunities and challenges for professional capacity building—passenger and freight? What are the challenges facing the nation in developing a labor force to meet the needs of a highly technical rail network considering implementation of high-speed rail and technological advances such as positive train control and electronically controlled pneumatic brakes?

10. When making infrastructure investments, how can project delivery be expedited and costs controlled?

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

Karen J. Rae,

Deputy Administrator.

[FR Doc. 2010–7543 Filed 4–2–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 29, 2010.

The Department of Treasury is planning to submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11020, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before June 4, 2010 to be assured of consideration.

HR Connect

OMB Number: 1505–XXXX.

Type of Review: New Collection.

Title: Voluntary Survey—Application Website Content and Usability.

Description: Information will be collected on a voluntary basis from new Treasury hires for the purpose of assessing the content and usability of the application Web site.

Respondents: Individuals.

Estimated Total Reporting Burden: 50 hours.

Agency Contact: Gladys Wiggins, (202) 622–3685, Room 13483, 1750 Pennsylvania Avenue, Washington, DC 20220.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. 2010–7542 Filed 4–2–10; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Securities Offering Disclosures

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on its proposal to extend this information collection.

DATES: Submit written comments on or before June 4, 2010.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: You can request additional information about this proposed information collection from Gary Jeffers (202) 906–6457, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS's estimate of the burden of the proposed information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use of information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

Title of Proposal: Securities Offering Disclosures.

OMB Number: 1550–0035.

Form Numbers: SEC Forms S–1, S–3, S–4, S–8, 144, and OTS Form G–12.

Regulation requirement: 12 CFR part 563g.

Description: The Securities Offering regulation provides necessary information, including financial disclosure, to persons to make an informed investment decision regarding a possible purchase or sale of a savings association's securities. Further, OTS's regulation sets standards for disclosure to reduce the risk of a fraudulent securities offering that could adversely affect the public or the safety and soundness of a savings association.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 13.

Estimated Burden Hours per Responses: 20 to 208 hours for the SEC Forms and 1 hour for the OTS Form G–12.

Estimated Frequency of Response: On occasion.

Estimated Total Burden: 860 hours.

Dated: March 30, 2010.

Ira L. Mills,

Paperwork Clearance Officer, Office of Chief Counsel, Office of Thrift Supervision.

[FR Doc. 2010–7533 Filed 4–2–10; 8:45 am]

BILLING CODE 6720–01–P

Federal Register

Monday,
April 5, 2010

Part II

Department of Transportation

Federal Motor Carrier Safety Administration

49 CFR Parts 350, 385, 395, et al.
Electronic On-Board Recorders for Hours-of-Service Compliance; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 350, 385, 395, and 396

[Docket No. FMCSA–2004–18940]

RIN 2126–AA89

Electronic On-Board Recorders for Hours-of-Service Compliance

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) amends the Federal Motor Carrier Safety Regulations (FMCSRs) to incorporate new performance standards for electronic on-board recorders (EOBRs) installed in commercial motor vehicles (CMVs) manufactured on or after June 4, 2012. On-board hours-of-service (HOS) recording devices meeting FMCSA's current requirements and installed in CMVs manufactured before June 4, 2012 may continue to be used for the remainder of the service life of those CMVs.

Motor carriers that have demonstrated serious noncompliance with the HOS rules will be subject to mandatory installation of EOBRs meeting the new performance standards. If FMCSA determines, based on HOS records reviewed during a compliance review, that a motor carrier has a 10 percent or greater violation rate ("threshold rate violation") for any HOS regulation listed in the new Appendix C to part 385, FMCSA will issue the carrier an EOBR remedial directive. The motor carrier will then be required to install EOBRs in all of its CMVs regardless of their date of manufacture and use the devices for HOS recordkeeping for a period of 2 years, unless the carrier (i) already equipped its vehicles with automatic on-board recording devices (AOBRDs) meeting the Agency's current requirements under 49 CFR 395.15 prior to the finding, and (ii) demonstrates to FMCSA that its drivers understand how to use the devices.

The FMCSA also changes the safety fitness standard to take into account a remedial directive when determining fitness. Additionally, to encourage industry-wide use of EOBRs, FMCSA revises its compliance review procedures to permit examination of a random sample of drivers' records of duty status after the initial sampling, and provides partial relief from HOS supporting documents requirements, if certain conditions are satisfied, for motor carriers that voluntarily use compliant EOBRs.

Finally, because FMCSA recognizes that the potential safety risks associated with some motor carrier categories, such as passenger carriers, hazardous materials transporters, and new motor carriers seeking authority to conduct interstate operations in the United States, are such that mandatory EOBR use for such operations might be appropriate, the Agency will initiate a new rulemaking to consider expanding the scope of mandatory EOBR use beyond the "1 x 10" carriers that would be subject to a remedial directive as a result of today's rule.

DATES: *Effective Date:* This final rule is effective on June 4, 2010.

Compliance Date: Motor carriers must comply with this final rule by June 4, 2012. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of June 4, 2010.

ADDRESSES:

Docket: For access to the docket to read background documents including those referenced in this document, or to read comments received, go to *http://www.regulations.gov* at any time or to the ground floor, room W12–140, DOT Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

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SUPPLEMENTARY INFORMATION: This rulemaking notice is organized as follows:

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I. Table of Abbreviations

Following is a list of abbreviations used in this document.

Advocates Advocates for Highway and Auto Safety
AMSA American Moving and Storage Association
ANPRM Advance Notice of Proposed Rulemaking
ANSI American National Standards Institute
AOBRDS Automatic On-Board Recording Devices
ASCII American Standard Code for Information Interchange
ATA American Trucking Associations
ATRI American Transportation Research Institute
Boyle Boyle Transportation
CFR Code of Federal Regulations
CMV Commercial Motor Vehicle
CR Compliance Review
CSA 2010 Comprehensive Safety Analysis 2010
CVSA Commercial Vehicle Safety Alliance
D Driving
DOE U.S. Department of Energy
DOT U.S. Department of Transportation
EA Environmental Assessment
ECM Electronic Control Module
E.O. Executive Order
EOBR Electronic On-Board Recorder
EU European Union
FedEx FedEx Corporation
FHWA Federal Highway Administration
FIPS Publications Federal Information Processing Standards Publications
FMCSA Federal Motor Carrier Safety Administration
FMCSR Federal Motor Carrier Safety Regulations
FMI Food Marketing Institute
FOIA Freedom of Information Act
FONSI Finding of No Significant Impact
FR **Federal Register**
GAO Government Accountability Office
GNIS Geographic Names Information System
GPS Global Positioning System
Hazmat Hazardous Materials
HMTAA Hazardous Materials Transportation Authorization Act of 1994
HOS Hours of Service
IBT International Brotherhood of Teamsters
ICC Interstate Commerce Commission
ICCTA ICC Termination Act of 1995
ICR Information Collection Request
IEEE Institute of Electrical and Electronic Engineers
IIHS Insurance Institute for Highway Safety
IRFA Initial Regulatory Flexibility Analysis
ITEC International Truck and Engine Corporation
J.B. Hunt J.B. Hunt Transport, Inc.
KonaWare KonaWare Transportation and Logistics
LH Long Haul
Maryland SHA Maryland State Highway Administration
Maverick Maverick Transportation, LLC
MCMIS Motor Carrier Management Information System
MCSAP Motor Carrier Safety Assistance Program
MCSIA Motor Carrier Safety Improvement Act of 1999

MTA Minnesota Trucking Association
NEPA National Environmental Policy Act
NHTSA National Highway Traffic Safety Administration
1984 Act Motor Carrier Safety Act of 1984
1935 Act Motor Carrier Act of 1935
NPGA National Propane Gas Association
NPRDA Notice of Potential Remedial Directive Applicability
NPRM Notice of Proposed Rulemaking
NPTC National Private Truck Council, Incorporated
NTSB National Transportation Safety Board
NRMCA National Ready Mixed Concrete Association
OBD On-Board Diagnostic
ODND On Duty Not Driving
OFF Off Duty
Ohio PUC Public Utilities Commission of Ohio
OIG Office of the Inspector General
OMB Office of Management and Budget
ON On Duty
OOIDA Owner-Operator Independent Drivers Association, Inc.
PDA Personal Digital Assistant
PII Personally Identifiable Information
PIA Privacy Impact Assessment
PMAA Petroleum Marketers Association of America
PRA Paperwork Reduction Act of 1995
Pub. L. Public Law
Qualcomm Qualcomm Wireless Business Solutions
RapidLog RapidLog Corporation
RF Radio Frequency
RIA Regulatory Impact Analysis
RITA Research and Innovative Technology Administration
RODS Records of Duty Status
RP Recommended Practice
SafeStat Motor Carrier Safety Status Measuring System
SAFETEA–LU Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users
SB Sleeper Berth
SBA Small Business Association
SC&RA Specialized Carriers & Rigging Association
SEA Safety Evaluation Area
SEISNOSE Significant Economic Impact on a Substantial Number of Small Entities
SFRM Safety Fitness Rating Methodology
SH Short Haul
Siemens Siemens AG
SNPRM Supplemental Notice of Proposed Rulemaking
Stat. Statutes
TCA Truckload Carriers Association
TEA–21 Transportation Equity Act for the 21st Century
TMC TPA Technology and Maintenance Council's Technical Policy Advisory Tripmaster Tripmaster Corporation
UMTRI University of Michigan Transportation Institute
U.S.C. United States Code
UTC Coordinated Universal Time
Verigo Verigo Incorporated
VSL Value of a Statistical Life
Werner Werner Enterprises, Incorporated
XATA XATA Corporation
Xora Xora, Incorporated

II. Legal Basis for the Rulemaking

The Motor Carrier Act of 1935 (Pub. L. 74–255, 49 Stat. 543, August 9, 1935, now codified at 49 U.S.C. 31502(b)) (the 1935 Act) provides "the Secretary of Transportation may prescribe requirements for (1) qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier; and (2) qualifications and maximum hours of service of employees of, and standards of equipment of, a motor private carrier, when needed to promote safety of operation." This final rule addresses "safety of operation and equipment" of motor carriers and "standards of equipment" of motor private carriers and, as such, is well within the authority of the 1935 Act. Today's final rule allows motor carriers to use Electronic On-Board Recorders (EOBRs) in their commercial motor vehicles (CMVs) to document drivers' compliance with the HOS requirements; requires some noncompliant carriers to install, use, and maintain EOBRs for this purpose; and updates existing performance standards for on-board recording devices.

The Motor Carrier Safety Act of 1984 (Pub. L. 98–554, Title II, 98 Stat. 2832, October 30, 1984) (the 1984 Act) provides concurrent authority to regulate drivers, motor carriers, and vehicle equipment. It requires the Secretary to "prescribe regulations on commercial motor vehicle safety. The regulations shall prescribe minimum safety standards for commercial motor vehicles. At a minimum, the regulations shall ensure that—(1) Commercial motor vehicles are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of commercial motor vehicles do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely * * *; and (4) the operation of commercial motor vehicles does not have a deleterious effect on the physical condition of the operators" (49 U.S.C. 31136(a)).

Section 211(b) of the 1984 Act also grants the Secretary broad power, in carrying out motor carrier safety statutes and regulations, to "prescribe recordkeeping and reporting requirements" and to "perform other acts the Secretary considers appropriate" (49 U.S.C. 31133(a)(8) and (10)).

The HOS regulations are designed to ensure that driving time—one of the principal "responsibilities imposed on operators of commercial motor vehicles"—does "not impair their ability to operate the vehicles safely." (49 U.S.C. 31136(a)(2)). EOBRs that are properly designed, used, and maintained will enable motor carriers to track their drivers' on-duty driving hours accurately, thus minimizing regulatory violations or excessive driving, and schedule vehicle and driver operations more efficiently. Driver compliance with the HOS rules helps ensure "the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely" (49 U.S.C. 31136(a)(3)). To assist in the enforcement of the HOS regulations generally, FMCSA is requiring EOBR use by motor carriers with the most serious HOS compliance deficiencies ("threshold rate violations"), as described elsewhere in this final rule. The Agency considered whether this final rule would impact driver health under 49 U.S.C. 31136(a)(3) and (a)(4). To the extent the final rule has any effect on the physical condition of drivers, because the rule is expected to increase compliance with the HOS regulations the effect is unlikely to be deleterious. (*See* the discussion regarding health impacts at section 8.4. and Appendix A in the Environmental Assessment (EA).)

The requirements in 49 U.S.C. 31136(a)(1) concerning safe motor vehicle maintenance, equipment, and loading are not germane to this final rule, as EOBRs influence driver operational safety rather than vehicular and mechanical safety. Consequently, the Agency has not explicitly assessed the final rule against that requirement. However, to the limited extent 49 U.S.C. 31136(a)(1) pertains specifically to driver safety and safe operation of commercial vehicles, the Agency has taken this statutory requirement into account throughout the final rule. Also, before prescribing any regulations, FMCSA must also consider their "costs and benefits." (49 U.S.C. 31136 (c)(2)(A) and 31502(d)). The Agency has taken these statutory requirements into account throughout the final rule.

In addition, section 408 of the ICC Termination Act of 1995 (Pub. L. 104–88, 109 Stat. 803, 958, December 29, 1995) (ICCTA) requires the Agency to issue an advance notice of proposed rulemaking (ANPRM) "dealing with a variety of fatigue-related issues pertaining to commercial motor vehicle safety (including * * * automated and tamper-proof recording devices * * *) not later than March 1, 1996." The original ANPRM under section 408 of ICCTA was published on November 5,

1996 (61 FR 57252), the notice of proposed rulemaking (NPRM) on May 2, 2000 (65 FR 25540), and the final rule on April 28, 2003 (68 FR 22456). For a number of reasons, including lack of adequate cost and benefit data, FMCSA decided not to adopt EOBR regulations in 2003. FMCSA noted, however, that it planned "to continue research on EOBRs and other technologies, seeking to stimulate innovation in this promising area" (68 FR 22456, 22488, April 28, 2003).

Section 113(a) of the Hazardous Materials Transportation Authorization Act of 1994 (Pub. L. 103–311, 108 Stat. 1673, 1676, August 26, 1994) (HMTAA) required the Secretary to prescribe regulations to improve (A) compliance by commercial motor vehicle drivers and motor carriers with HOS requirements; and (B) the effectiveness and efficiency of Federal and State enforcement officers reviewing such compliance. HMTAA section 113(b)(1) states that such regulations must allow for a written or electronic document "* * * to be used by a motor carrier or by an enforcement officer as a supporting document to verify the accuracy of a driver's record of duty status." Today's rule sets forth performance standards, incentives measures, and remedial requirements for use of devices that generate electronic documents, and addresses the HMTAA mandate.

Section 9104 of the Truck and Bus Safety and Regulatory Reform Act (Pub. L. 100–690, title IX, subtitle B, 102 Stat. 4181, 4529, November 18, 1988) also anticipates the Secretary prescribing "a regulation about the use of monitoring devices on commercial motor vehicles to increase compliance by operators of the vehicles with HOS regulations," and requires the Agency to ensure any such device is not used to "harass vehicle operators" (49 U.S.C. 31137(a)). Section 4012 of the Transportation Equity Act for the 21st Century (Pub. L. 105–178), 112 Stat. 107, 408–409, June 9, 1998) (TEA–21) makes inapplicable to drivers of utility service vehicles, during an emergency period of not more than 30 days, regulations issued under 49 U.S.C. 31502 or 31136 regarding "the installation of automatic recording devices associated with establishing the maximum driving and on-duty times" (49 U.S.C. 31502(e)(1)(C)). The Agency has taken these statutory requirements into account throughout the final rule.

Based on the legislative framework reviewed previously, FMCSA has statutory authority to adopt an industry-wide requirement that all motor carriers subject to HOS requirements under 49 CFR part 395 install and use EOBR-based systems. The Agency has adopted a more targeted approach in this final rule, consistent with the scope of the NPRM which limits the current rulemaking proceeding to compliance-based regulatory approaches implemented through a remedial directive. However, the Agency will publish a separate notice initiating a new rulemaking in the near future to consider expanding the scope of mandatory EOBR use beyond the standard set in this rule, consistent with its full authority and based upon new data and analyses.

In this final rule, the Agency establishes criteria for identifying carriers with threshold rates of HOS violations. We also establish changes to the safety fitness standard to ensure imposition of a remedial directive to install, use and maintain EOBRs is taken into account when determining a carrier's safety fitness.

The determination of a carrier's safety fitness is well within the Secretary's authority. Section 215 of the 1984 Act requires the Secretary to "determine whether an owner or operator is fit to operate safely commercial motor vehicles," (49 U.S.C. 31144(a)(1)) and to "maintain by regulation a procedure for determining the safety fitness of an owner or operator" (49 U.S.C. 31144(b)). The procedure must include "specific initial and continuing requirements with which an owner or operator must comply to demonstrate safety fitness" (49 U.S.C. 31144(b)(1)).

Section 4009 of TEA–21 prohibits motor carriers found to be unfit, according to a safety fitness determination, from operating commercial motor vehicles in interstate commerce. With limited exceptions, owners and operators determined to be unfit may not operate commercial motor vehicles in interstate commerce beginning on the 61st day after the date of such fitness determination, or the 46th day after such determination in the case of carriers transporting passengers or hazardous materials, "and until the Secretary determines such owner or operator is fit" (49 U.S.C. 31144(c)).

Section 4104 of the Safe, Accountable, Flexible, Efficient Transportation Act: A Legacy for Users (Pub. L. 109–59, 119 Stat. 1144, August 10, 2005) (SAFETEA–LU) directs FMCSA to revoke the registration of a motor carrier that has been prohibited from operating in interstate commerce for failure to comply with the safety fitness requirements of 49 U.S.C. 31144. Section 4114(b) of SAFETEA–LU expands FMCSA jurisdiction into intrastate operations by amending 49 U.S.C. 31144(c) to further prohibit owners or operators of CMVs prohibited from operating in interstate commerce because FMCSA has determined they do not meet the safety fitness requirement, from operating any CMV that affects interstate commerce until the Secretary determines that such owner or operator is fit.

III. Executive Summary

In its January 18, 2007 NPRM (72 FR 2340), FMCSA proposed three related elements to address on-board electronic devices for recording HOS information: (1) An updated equipment standard in light of technological advances; (2) mandated use of EOBRs for motor carriers that demonstrated a history of severe noncompliance with the HOS regulations; and (3) certain incentives to encourage EOBR use by all motor carriers. The second element, concerning the mandated use of EOBRs, was of greatest concern to commenters.

The FMCSA acknowledges the safety concerns of Congress, the National Transportation Safety Board (NTSB), and the many organizations and individuals that submitted comments to the NPRM in support of a broader EOBR mandate. The Agency has begun work to evaluate regulatory options for significantly expanding the population of carriers covered by an EOBR mandate.

However, the Agency cannot extend the EOBR mandate beyond those covered by this final rule because the scope of the current rulemaking proceeding is limited to compliance-based regulatory approaches, implemented through a remedial directive. Therefore, FMCSA will examine the issue of a broader mandate under a new rulemaking proceeding in response to the safety concerns raised by Congress, the NTSB, and commenters to the docket.

As part of this activity, FMCSA also intends to gather more information on the voluntary use of EOBRs and to assess how increases in the number of units installed are influencing the costs of purchase and operation.

In the meantime, focusing on motor carriers with significant HOS compliance problems is likely to improve the safety of the motoring public on the highways in the near term. Consistent with the scope of the NPRM, we are therefore adopting procedures for issuance of remedial directives requiring EOBR installation, maintenance, and use by those motor carriers with serious HOS noncompliance.

As discussed in the EOBR Remedial Directives section of this preamble, FMCSA examined a variety of

parameters that might be used to establish subpopulations of motor carriers with poor HOS compliance to which an EOBR mandate might apply. In focusing on the most severe violations and the most chronic violators, we are adopting a mandatory-installation "trigger" designed to single out motor carriers that have a demonstrated record of poor compliance with HOS regulations. In today's rule, as proposed in the NPRM, we adopt an EOBR mandatory-use requirement with a compliance-based trigger. It applies to motor carriers across all sectors that have demonstrated poor compliance with the HOS regulations. The NPRM details the history of this rulemaking and the alternatives considered (72 FR 2343).

Previously, an Agency proposal to mandate EOBRs for CMVs used in long-haul and regional operations was withdrawn (68 FR 22456, Apr. 28, 2003). The 2004 ANPRM (69 FR 53386) invited comment on a sector-based mandate (*e.g.,* long-haul carriers only). FMCSA considered such broader mandates and discussed them again in the NPRM, although they were not ultimately pursued as regulatory options. Instead, the NPRM focused on which remedial directive option to adopt (72 FR 2372–2374).

The Agency proposed mandating EOBR installation, maintenance, and use for a relatively small population of companies and drivers with a recurrent HOS compliance problem. EOBRs would be required for those carriers determined—based on HOS records reviewed during each of two compliance reviews conducted within a 2-year period—to have had a 10 percent or greater violation rate ("pattern violation") for any regulation in the proposed Appendix C to 49 CFR part 385 ("2 x 10" Remedial Directive Carriers). As described in more detail in this preamble, in the final rule the Agency has chosen the more stringent 1 x 10 remedial approach—whereby motor carriers with a 10 percent violation rate of any Appendix C HOS regulation in any single compliance review would be subject to a remedial directive ("1 x 10" Remedial Directive Carriers)—instead of the 2 x 10 approach proposed in the NPRM.

In the development of this final rule, the Agency found the overall crash rates of 1 x 10 and 2 x 10 motor carriers are considerably higher than the crash rates of the general motor carrier population. Using data from the FMCSA Motor Carrier Management Information System (MCMIS) database and compliance review databases, crash rates were computed by dividing total crashes by each carrier's number of power units. Crash rates were compared between the 1 x 10 and 2 x 10 motor carrier population and motor carriers in the general population. The 1 x 10 motor carriers were found to have a 40 percent higher crash rate than the general motor carrier population, and 2 x 10 motor carriers a 90 percent higher crash rate than the general motor carrier population. Many elements of the analyses of benefits and costs of this rule use estimates that were derived from FMCSA's 2003 estimates concerning the effects of HOS rules. This was done to provide analytical continuity through the 2004–2010 timeframe of the EOBR rulemaking actions.[1] Also, due to data limitation, FMCSA used outdated studies in the analysis for this rule. For future HOS rulemakings, FMCSA will use updated studies and reports to analyze impacts.

Numerous commenters to the NPRM stated that the proposal still would not require EOBR use by enough carriers to make a meaningful difference in highway safety, relative to the total carrier population. The FMCSA acknowledges the safety concerns of the commenters. In response to those concerns, the Agency will explore the safety benefits of a broader EOBR mandate in a new rulemaking proceeding that will begin in the near future. In the meantime, the final rule's application of a remedial directive to the 1 x 10 motor carriers makes the best immediate use of Agency resources and provides immediate safety benefits to society.

The number of motor carriers that will be required to install, use and maintain EOBRs is significantly greater under this final rule than was proposed in the NPRM. If FMCSA determines, based on HOS records reviewed during a single compliance review, that a motor carrier had a 10 percent or greater violation rate for any regulation in the new Appendix C to Part 385 ("threshold rate violation"), FMCSA will issue the carrier an EOBR remedial directive. The motor carrier will be required to install EOBRs meeting the performance requirements of this final rule in all of the carrier's CMVs, regardless of their date of manufacture, and to use the devices for HOS recordkeeping purposes for a period of 2 years. An exception is provided for carriers that, prior to the compliance review determination, already equipped their vehicles with automatic on-board recording devices (AOBRDs) meeting the Agency's current requirements under 49 CFR 395.15 and can demonstrate to FMCSA that their drivers understand how to use the devices.

FMCSA amends the FMCSRs to provide new performance requirements for EOBRs used to monitor drivers' HOS recording devices. EOBRs will be required to automatically record the CMV's location at each change of duty status and at intervals while the CMV is in motion. Current on-board recorders are not required to do this. EOBRs must also conform to specific information processing standards to ensure the security and integrity of the data that is recorded. Drivers will be able to add information to the EOBR record ("annotate") while the EOBR maintains the original recorded information and tracks these annotations. The EOBR support system must be able to provide a digital file in a specified format for use by motor carrier safety enforcement officials.

FMCSA requires on-board recording devices be integrally synchronized to the engine. Although the January 2007 NPRM proposed allowing non-synchronized devices, the Agency decided to continue requiring that on-board recording devices be integrally synchronized to ensure the accuracy of electronic records of duty status.

The Agency also adopts other performance specifications, in response to comments that differ from specifications proposed. These include, but are not limited to: Increasing the time interval for recording the geographic location of a CMV in motion from 1 minute to 60 minutes; making the recording of State-line-crossing information optional; removing the requirement to record a driver's acknowledgement of advisory messages; reducing the amount of time a CMV is stationary before the EOBR defaults to on-duty not driving duty status; removing the daily ceiling on EOBR accumulated time inaccuracy or "time drift"; revising the requirements to allow a driver to enter annotations to denote use of a CMV as a personal conveyance and for yard movement; removing the requirement for an EOBR to display HOS data in a graph-grid format; specifying information technology security and integrity requirements; and adding and strengthening provisions concerning driver and motor carrier responsibilities relating to accurate EOBR records and support system performance. The details of the changes are discussed later in this document.

To ensure a smooth transition from AOBRDs to EOBRs, the final rule requires that for CMVs manufactured

[1] Estimates of benefits and costs that will be developed for future HOS-related rulemaking actions will use more recent baseline data.

after June 4, 2012, devices installed by a manufacturer or motor carrier to record HOS must meet the requirements of § 395.16. Commercial motor vehicles manufactured prior to June 4, 2012 may be equipped with an HOS recording device that meets the requirements of either § 395.15 (AOBRD) or § 395.16 (EOBR).

Finally, the final rule provides incentives for motor carriers to voluntarily use EOBRs. These include elimination of the requirement to retain and maintain supporting documents related to driving time as this information will be maintained and accessible from the EOBR. Additionally, compliance reviews that reveal a proposed 10 percent or higher violation rate based on the initial focused sample would be expanded to assess a random sampling of the motor carrier's overall HOS records.

Summary of FMCSA's January 2007 Proposal

On January 18, 2007, FMCSA proposed amending the FMCSRs to incorporate new performance standards for EOBRs installed in commercial motor vehicles manufactured on or after the date 2 years following the effective date of a final rule. On-board HOS recording devices meeting FMCSA's current requirements and voluntarily installed in CMVs manufactured before the implementation date of a final rule will be permitted for use for the remainder of the service life of those CMVs.

Under the proposal, motor carriers that demonstrated a pattern of serious noncompliance with FMCSA's HOS rules would be subject to mandatory installation of EOBRs meeting the new performance standards. If FMCSA determined, based on HOS records reviewed during each of two compliance reviews conducted within a 2-year period, that a motor carrier had a 10 percent or greater violation rate ("pattern violation") for any regulation in proposed Appendix C to part 385 of Title 49, CFR, FMCSA would issue the carrier an EOBR remedial directive. The motor carrier would be required to install EOBRs in all of its CMVs regardless of their date of manufacture and to use the devices for HOS recordkeeping for a period of 2 years, unless the carrier already had equipped its vehicles with AOBRDs meeting the Agency's current requirements under 49 CFR 395.15 and could demonstrate to FMCSA that its drivers understand how to use the devices.

We also proposed changes to the safety fitness standard to ensure imposition of a remedial directive to install, use and maintain EOBRs as taken into account when determining a carrier's safety fitness. Finally, FMCSA proposed the same incentives for motor carriers to voluntarily use EOBRs in their CMVs as are adopted in today's final rule: (1) Random sampling of drivers' records of duty status; and (2) partial relief from HOS supporting documents requirements.

IV. Discussion of Comments to the NPRM

Overview of Comments

The Agency received 752 comments on the proposed rule. Of these, 609 expressed opinions without additional supporting material.

Organizations that provided comments included the following.

Safety advocacy groups: Advocates for Highway and Auto Safety (Advocates); Public Citizen; and Insurance Institute for Highway Safety (IIHS).

Drivers' organizations: International Brotherhood of Teamsters (IBT) and Owner-Operator Independent Drivers Association, Inc. (OOIDA).

National trucking industry associations: Canadian Trucking Alliance; Truckload Carriers Association (TCA); American Trucking Associations (ATA); National Private Truck Council, Inc. (NPTC); the Specialized Carriers & Rigging Association (SC&RA), and the American Moving and Storage Association (AMSA). Additionally, although several commenters referenced a Technical Policy Advisory (TPA) developed by the ATA Technology and Maintenance Council (TMC), TMC did not comment independently to the docket.

State trucking associations: Minnesota Trucking Association (MTA).

EOBR, software, and system providers: RapidLog Corp. (RapidLog); PeopleNet; Siemens AG (Siemens); Tripmaster Corp. (Tripmaster); Xora, Inc. (Xora); First Advantage; Verigo Inc. (Verigo); XATA Corp. (XATA); Qualcomm Wireless Business Solutions (Qualcomm); KonaWare Transportation and Logistics (KonaWare), and Report on Board.

U.S. Government agencies: National Transportation Safety Board (NTSB) and the U.S. Department of Energy (DOE).

CMV safety officials' organization: Commercial Vehicle Safety Alliance (CVSA).

State government agencies: Maryland State Police, Maryland State Highway Administration (Maryland SHA), and Public Utilities Commission of Ohio (Ohio PUC).

Motor carriers: J.B. Hunt Transport, Inc. (J.B. Hunt); FedEx Corp. (FedEx); Werner Enterprises, Inc. (Werner); Calvary Mountain Express Inc.; River Transport, Inc.; Boyle Transportation (Boyle); OTR Transportation; Maverick Transportation, LLC (Maverick); Metro Express Inc.; Brenny Specialized, Inc.; Foreman Transport; Horizontal Boring & Tunneling Co.; and N&M Transfer Co., Inc.

National associations with transportation interests: International Foodservice Distributors Association; National Propane Gas Association (NPGA); National Ready Mixed Concrete Association (NRMCA); Petroleum Transportation and Storage Association; Petroleum Marketers Association of America (PMAA); and, the Food Marketing Institute (FMI).

State association with transportation interests: Colorado Ready Mixed Concrete Association.

CMV manufacturer: International Truck and Engine Corp.

1 Industry-Wide Mandate for EOBRs

FMCSA received 57 comments, mainly from drivers or individuals, who believe the Agency should require the use of EOBRs. Thirty-nine commenters supported a broader mandate than was proposed in the NPRM, though not an industry-wide mandate. Nineteen commenters supported mandating EOBRs for all carriers.

Advocates commented, "enforcement efficiencies would soar with universal use of accurate, tamper-proof EOBRs," and argued that the increased productivity of roadside inspection officials could significantly improve motor carrier safety. Several commenters, including CVSA, NTSB, and Public Citizen, asserted European Union nations, Japan, and other countries that require EOBRs have seen positive safety results.

Ohio PUC stated a mandate would greatly increase compliance with the HOS rules, increase safety, and reduce the potential for fraud.

Public Citizen, Advocates, and two vendors stated the proposed rule did not meet the statutory mandate or individual guidance concerning an evaluation of EOBRs, and that the administrative record of FMCSA's own rulemakings contradicted the proposal. They noted the Agency was required to consider safety as its highest priority and to further the highest degree of safety in motor carrier transportation.

IIHS stated the proposed rule was "completely at odds with the data on truck driver fatigue." IIHS cited its research that found that one in five drivers fell asleep at the wheel in the previous month.

DOE supported the NPRM, but preferred an industry-wide mandate for EOBR use to enhance the safety, security and cost effectiveness of the transportation of hazardous materials. DOE believes installation of EOBRs on all CMVs would enhance highway safety and HOS compliance of all motor carriers, including those that DOE uses to transport shipments of radioactive materials and waste.

Numerous commenters argued that EOBRs are needed to improve safety, but motor carriers will not voluntarily choose to use EOBRs. In a related vein, CVSA, NTSB, Siemens, and Report on Board believed a mandate for all motor carriers to use EOBRs would be necessary to obtain the customer base and economies of scale for vendors to offer lower-cost EOBRs.

An individual who identified himself as a safety consultant argued that motor carriers would not see sufficient advantages—either through reduced instances of noncompliance or reductions in paperwork burdens—to encourage them to use EOBRs voluntarily, especially since their chance of being subjected to a compliance review is low. He stated many progressive motor carriers have installed onboard systems with Global Positioning System (GPS) tracking capabilities but do not use them for HOS recording because drivers object to it. The consultant contended that by not mandating universal EOBR use, the DOT is, in effect, rewarding those who are unwilling to invest in safety.

IIHS stated that although AOBRDs have been allowed since 1988 and a substantial number of motor carriers use various types of on-board systems, only a small proportion of carriers use them to collect HOS data. As evidence that many motor carriers find EOBRs affordable and provide many operational benefits, IIHS cited surveys of truck drivers indicating about 45 percent of the long-distance drivers in 2005 said there were EOBRs or other on-board computers in their trucks, up from about 18 percent in 2003 and about 38 percent in 2004.

Some of the commenters believed a universal EOBR mandate would create a "level playing field" in the motor carrier business environment. They also stated it would protect drivers from adverse actions by their employers in retaliation for refusing to violate HOS regulations. Some of the commenters also mentioned improved readability and simplified recordkeeping associated with EOBRs when compared to handwritten records, as well as assisting motor carrier safety enforcement personnel in performing their roadside reviews more efficiently and effectively.

Advocates stated FMCSA had ignored potential health impacts of using EOBRs and improving HOS compliance. It said FMCSA's concern about the stress on drivers from using EOBRs distorted the research results of several studies. Furthermore, Advocates held, by not proposing to mandate EOBR use, the Agency was not helping "to ameliorate the adverse health impacts of exceptionally long working and driving hours triggered by the Agency's final rules in 2003 and in 2005."

Response: We understand the concerns of ATA and J.B. Hunt, among others, who believe the proposal did not cover enough carriers. While FMCSA acknowledges the safety concerns of those that support an industry-wide EOBR mandate, the Agency cannot extend the EOBR mandate in that manner in this final rule because the scope of the current rulemaking proceeding is limited to a compliance-based regulatory approach, implemented through a remedial directive. However, the number of motor carriers that will be required to install, use and maintain EOBRs is significantly greater under this final rule—using the 1 x 10 trigger—than under the 2 x 10 trigger that was proposed in the NPRM.

FMCSA recognizes that the potential safety risks associated with some motor carrier categories, including passenger carriers, hazardous materials transporters, and new entrants, are such that mandatory EOBR use for such populations might be appropriate. However, as noted above, in today's rule, we adopt a compliance-based trigger that focuses on all HOS-violating motor carriers across all sectors as proposed in the NPRM. In addition, as some commenters to the 2007 NPRM docket indicated, a regulation that promotes voluntary use of EOBRs, but that does not mandate it for the majority of carriers, will not persuade many carriers to adopt the devices, even though the devices may generate improvements in operational productivity. And, as other commenters noted, a more universal approach to EOBR use may create a more level playing field in the industry.

As stated earlier in this document, the Agency will initiate a new rulemaking to consider expanding the scope of mandatory EOBR use beyond the "1 x 10" carriers that will be subject to a remedial directive as a result of today's rule.

FMCSA acknowledges that some foreign countries have an industry-wide mandate for HOS recording devices. However, the Agency is not aware of any published information that demonstrates that the specific mandate imposed by those countries has contributed to any discernible benefits in safety. Still, the absence of published information by those governments should not preclude consideration of that regulatory option for the U.S. What is clear is certain motor carriers with threshold rates of serious HOS violations have much higher than average crash rates, and the mandatory use of EOBRs via a remedial directive for these high-risk carriers provides a means to compel such carriers to achieve compliance with the HOS rules.

In terms of the benefits to motor carriers arising from EOBR use, FMCSA agrees that the savings in collecting, reviewing, and storing paper-based information alone can make EOBRs (and AOBRDs) attractive to many motor carriers. Furthermore, advances in information technology (particularly Web-based applications) and wireless telecommunications are making HOS monitoring applications—either in stand-alone form or as part of fleet management systems—far less costly on a per-power-unit basis than they were in the past.

Until several years ago, many on-board recording systems suppliers did not serve the small-fleet market, which, according to FMCSA's motor carrier census, makes up most of the population of motor carriers: approximately 90 percent of motor carriers operate fewer than 20 power units. The picture is vastly different today. It is not only more economical for motor carriers to use on-board recording and monitoring systems, but there are far more suppliers of these systems to choose from. Vendors anticipate that customers have a substantial demand that they can meet, and they are meeting that demand without an FMCSA mandate. The revised EOBR systems cost estimates discussed in the Rulemaking Analyses and Notices section of this document and the RIA reflect these advancements.

In response to Advocates' comments on potential health impacts of EOBR use, the Agency has addressed both positive and negative health impacts in Appendix A of the EA for this rule, which has been placed in the docket. The Agency carefully reviewed research on the potentially negative impacts of electronic monitoring and concluded that use of EOBRs required in today's final rule will not result in negative impacts on driver health for two reasons: First, because monitoring of HOS compliance is an existing, not a new, requirement; and second, because

the Agency is requiring EOBRs to monitor safety, not workplace productivity. The underlying HOS regulations are the subject of a separate rulemaking action. Cost and benefit estimates of the HOS regulations are included in the analysis for that separate rulemaking (72 FR 71247, December 17, 2007).

2 General Opposition to Mandated Use of EOBRs

One hundred thirty-six commenters, the majority of whom were drivers or individuals, generally opposed any mandated use of EOBRs. The SC&RA, TCA, IBT, AMSA, and a driver claimed that FMCSA had not demonstrated EOBR use would improve highway safety. SC&RA questioned FMCSA's estimates in the RIA, concerning relationships between improvements in HOS compliance and improvements in safety outcomes resulting from use of EOBRs.

Several commenters criticized the Agency for failing to produce any definitive studies demonstrating the safety benefits of EOBRs. Some of these commenters cited the University of Michigan Transportation Institute (UMTRI) or American Transportation Research Institute (ATRI) studies which concluded that safety benefits were difficult to assess due to lack of empirical data. SC&RA stated that a 2006 study by ATRI did not identify safety benefits. OOIDA likewise criticized the RIA for assuming EOBRs would improve compliance rather than demonstrating that improvement would, in fact, occur. It also quoted a 1998 UMTRI study concluding EOBRs would have little or no effect on safety.

Forty of the 136 commenters stated FMCSA failed to prove that using EOBRs reduced driver fatigue, prevented or reduced the severity of accidents, or lowered operational costs. IBT expressed concern that employers would use EOBR data to pressure drivers to improve their operational productivity by driving faster and making shorter stops.

Gantec Trucking stated FMCSA has not shown that strict compliance with HOS limits improves safety, considering that accidents in which the CMV driver is at fault and fatigue-related accidents make up a very small percentage of CMV-involved accidents. Gantec criticized FMCSA for citing a lack of evidence to support strengthening driver training regulations but not holding itself to the same standard for proposing EOBR use. Some drivers believe EOBRs could make drivers less safe because they believe the accuracy of an EOBR's record would force them to continue driving when they would prefer to take a break: With paper Records of Duty Status (RODS), drivers can take breaks as needed but not necessarily record them. Others questioned how EOBRs could improve safety because they cannot automatically detect or record non-driving activity. IBT stated because drivers would still need to enter non-driving time, they would still falsify their electronic records, because it is to their benefit to do so.

Response: FMCSA disagrees with commenters that believe there are no circumstances under which the use of EOBRs should be mandated. The Agency believes the safety records of carriers found to have certain threshold rates of violations of the HOS rules are a strong indicator of the need to do more than issue civil penalties. The final rule requires such carriers to install, use and maintain EOBRs to better ensure their drivers comply with the applicable HOS requirements and provides a means for prohibiting these motor carriers from continuing to operate CMVs in interstate commerce if they fail to comply with the remedial directive. This action is a significant first step toward strengthening the enforcement of the HOS rules for carriers with threshold rates of noncompliance.

The use of electronic records allows deviations from safety and operational norms to be made more visible because they can be detected far more rapidly than with paper records. Also, the electronic records will enable motor carriers to develop safety or operational countermeasures to address these deviations more efficiently and effectively. However, the Agency does not accept the assertion that drivers would not take breaks from driving because those breaks would be recorded.

3 EOBR Remedial Directive

3.1. Applicability of the Remedial Directive

The Minnesota Trucking Association, AMSA, and one individual supported requiring EOBRs only for motor carriers with a demonstrated a history of serious noncompliance with the HOS rules.

In contrast, J.B. Hunt and many other commenters stated the proposed threshold would not capture enough carriers to serve as a meaningful deterrent to noncompliance or to positively influence highway safety outcomes. ATA stated that the method described in the NPRM for determining whether a remedial directive should be issued is not likely to dissuade the bulk of the egregious or defiant HOS offenders. ATA recommended focusing on at least the top 10 percent most egregious HOS violators. This population could be determined by use of valid compliance review data and, potentially, driver out-of-service rates for HOS violations from roadside inspection data. ATA further recommended, prior to taking remedial action, FMCSA provide motor carriers an adequate warning period to give them an opportunity to institute improved safety management controls. If improvement benchmarks were not adequately attained, then more severe enforcement action would be warranted.

OOIDA stated the proposed rule would punish only those carriers that keep accurate records of their noncompliance and would not punish the worst offenders who do not comply and who disguise their violations.

Numerous commenters including Maverick and Werner stated the requirement should apply to the driver rather than to the carrier. Such commenters argued that if most of a carrier's drivers are not in violation, mandating an EOBR for the carrier penalizes compliant drivers, which increases the cost. Also, if the remedial directive is applied to a carrier, the non-compliant drivers will simply go to another carrier to avoid using the EOBR, which effectively nullifies the potential benefits from mandating EOBR use.

Werner stated carriers are limited to taking after-the-fact compliance and enforcement actions against their drivers. The carrier should not be penalized for the actions of non-compliant drivers whom it no longer employs if the carrier has made an effort to deal with the drivers' HOS issues during their employment. ATA stated a record of HOS noncompliance should follow the driver and should only be considered in assessing the compliance status of the motor carrier where the driver is currently employed. ATA argued, "Penalties for EOBR violations should be proportional for all responsible parties, with special attention for tampering with the devices and the data."

The National Propane Gas Association (NPGA)) asserted motor carriers transporting placardable quantities of hazardous materials, taken as a whole, do not represent a risk greater than non-hazmat carriers and should not be required to use EOBRs. Conversely, Advocates believes the inherently higher safety and security risks posed by hazardous materials transportation and the special safety concerns related to passenger motorcoach transportation, justify mandatory EOBR use for both categories of motor carriers.

OOIDA and three individuals objected to the trigger for imposition of a remedial directive because they believe the directives would disproportionately affect smaller companies. The individuals noted a company with very few trucks could be required to install EOBRs if only one driver is put out-of-service, while a large company could have many such drivers and not be targeted. Moreover, where a minority of drivers is out of compliance, the innocent majority of the carrier's drivers would be punished by a company-wide mandate. OOIDA asked if new entrant safety audits would be included in the compliance reviews (CRs) considered for the trigger; if so, it argued, small businesses would be severely affected because most new entrants are small operations. J.B. Hunt suggested FMCSA consider requiring new entrants to use EOBRs for a minimum period.

NTSB stated encouraging carriers to view EOBRs as a means of punishment would undermine the goal of industry-wide acceptance; such broad acceptance would result in greater safety for all motorists. Boyle Transportation agreed the punitive nature of the remedy would be a disincentive for carriers to install them.

Some commenters focused on the perceived underlying problem—the need for stronger HOS enforcement. According to Public Citizen, the onus is still on the Agency to commit to improving enforcement of HOS compliance. Advocates stated the rule would not address the pervasive nature of HOS violations. It stated RoadCheck 2006 found there was an upward trend in the number of HOS violations even though the new HOS rules adopted in 2003 allowed drivers to work longer hours. CVSA agreed that a more effective option for dealing with the habitual HOS offenders is stronger enforcement. They also noted HOS noncompliance is indicative of a systemic management problem within the carrier's operation, and the mere installation of EOBRs will not correct this problem. Finally, CVSA noted that government resources needed to monitor carriers subject to mandatory EOBR use will be substantial, and the benefits will not outweigh the costs.

Response: In its September 2004 ANPRM (69 FR 53386), the Agency requested commenters to address the scope of the EOBR requirement. Specifically, the Agency requested comment on whether it should: "Propose requiring that motor carriers in general, or only certain types of motor carrier operations, use EOBRs." 69 FR 53395. The Agency received numerous comments on this issue. In the 2007 NPRM the Agency noted it had the legal authority to adopt an industry-wide standard that all motor carriers subject to the HOS requirements use EOBRs. The Agency announced it would not exercise "the full extent of its authority at this time, however, and [would] instead propose a more targeted approach of mandating EOBR use for only those carriers with deficient safety management controls, as demonstrated by repeated patterns of hours-of-service violations." 72 FR 2341. The final rule, similarly, does not require all carriers to install and use EOBRs, but, consistent with the NPRM, targets only those carriers with substantial HOS noncompliance and associated deficient safety management controls. This final rule makes one significant change to the remedial directive provisions in the proposed rule, concerning the HOS noncompliance threshold triggering a remedial directive for a motor carrier. The NPRM proposed a so-called "2 x 10" approach as the "trigger" for a remedial directive. That approach would have required a final determination of one or more "pattern violations" of any regulation in proposed new Appendix C to part 385 ("Appendix C regulations") during a CR, followed by the discovery of one or more pattern violations of any Appendix C regulation during a CR completed within 2 years after the closing date of the CR that produced the first determination. We explained in the NPRM that a pattern violation would be "a violation rate equal to or greater than 10 percent of the number of records reviewed. For example, 25 violations out of 100 records reviewed would be a 25 percent violation rate and therefore a pattern violation. This trigger, if adopted, would result in the issuance of approximately 465 remedial directives to install EOBRs annually." 72 FR 2364. The Agency justified mandating EOBRs on this subpopulation of carriers, given that these carriers' "severe" HOS compliance deficiencies "pose a disproportionate risk to public safety." *Id.*

After reconsidering the alternatives discussed in the NPRM (72 FR 2374) including the proposed "2 x 10" remedial directives trigger, and based on comments received, the Agency adopts the considerably more stringent "1 x 10" requirement. As discussed in more detail below, we agree with the numerous commenters, including government agencies, carriers, industry associations, and safety groups, that the proposed 2 x 10 trigger would not mandate EOBR use by enough carriers, given the total population. Under the requirement adopted today, carriers with a 10 percent violation rate of any HOS Appendix C regulations in any *single* CR will be subject to a remedial directive. Approximately 5,419 carriers and 104,428 power units on average will be subject to this directive per year. This represents a substantial increase in the number of remediated carriers compared to the 2 x 10 proposal, as further explained in the RIA and section 8, below. The crash rate for such carriers is more than double the industry average, (although the crash rate is slightly lower for the entire 1 x 10 group than it was for the 2 x 10 group because of the larger pool of carriers subject to the remedial directive). However, FMCSA anticipates the 1 x 10 approach finalized today will result in greatly increased HOS compliance, and therefore safety, in a cost-effective manner.

The Agency is revising the new 49 CFR 385.803 definitions and acronyms section and other affected rule text to replace the term "pattern" violation with the term "threshold rate" violation. Concern was raised that use of the term "pattern violation" in the final rule might lead to confusion with other "patterns" of violations in the FMCSRs and the Agency's enforcement structure. In addition, the Agency believes the term "pattern" is more aptly applied to the proposed 2 x 10 trigger, which required a finding of serious HOS violations in multiple CRs. Under the final rule, the finding of a 10 percent violation rate for an Appendix C regulation in a single CR will serve as the trigger for issuance of a remedial directive.

Two factors that were not operative in the NPRM analysis influenced the final rule. First, section 4114 of SAFETEA–LU was codified in the FMCSRs on July 5, 2007, approximately 6 months after the EOBR NPRM was published (72 FR 36762 (preamble) and 36788 (regulatory text) amending 49 CFR 385.7(c), (d), (f), and (g)). Prior to the enactment of section 4114, although motor carriers were required under 49 CFR 390.15 to record intrastate accidents on their accident registers, FMCSA did not take intrastate accidents or safety violations into account when determining motor carriers' safety ratings. Under section 4114, FMCSA must now utilize interstate motor carriers' accident and safety inspection data from intrastate operations (and from operations in Mexico or Canada if the carrier also has U.S. operations) in determining carriers' safety fitness under 49 U.S.C. 31144. This includes safety inspection data on HOS violations while operating in intrastate commerce. As a result of this larger universe of violations under

consideration in the safety fitness determination process, the number of carriers subject to the 1 x 10 remedial directive is now slightly higher than it would have been prior to enactment of section 4114.

Second, after issuance of the NPRM, DOT made an important change to its evaluation of safety benefits for all safety rules. This policy has caused the Agency to revisit the cost benefit analyses for all rules being developed, including the EOBR rule. Specifically, on February 5, 2008, DOT issued a memorandum to its modal agencies instructing them to estimate the economic value of preventing a human fatality at $5.8 million. *See* "Economic Value of a Statistical Life in Departmental Analyses" (available at *http://ostpxweb.dot.gov/policy/reports/080205.htm*). FMCSA also published a notice in the **Federal Register** describing this policy change (73 FR 35194, June 20, 2008). The previous value of a statistical life (VSL), which was used in the RIA for the EOBR NPRM, was $3.0 million. Given that the VSL nearly doubled, the net benefits of this rule, as well as those of other FMCSA rules under development, were recalculated using the new figures. This recalculation resulted in a reappraisal of all appropriate alternatives by the Agency, taking into account Agency analyses concerning safety impacts, enforcement resources, and data and comments received.

We fundamentally disagree with OOIDA's comment that this rule mandates EOBRs merely for those carriers who keep records. In addition to other HOS violations, failure to maintain and preserve records of duty status in accordance with part 395 and falsification of records are among the 24 separate violations in new Appendix C that will trigger a remedial directive if violated at the threshold rate of 10 percent or greater. Other issues related to supporting documents are discussed under the heading "Incentives," section 7, below. Also, the revised trigger applies to the same carriers as proposed in the NPRM, namely those that fail to meet their part 395 compliance obligations. But we anticipate the final rule will result in the issuance of a significantly larger number of remedial directives because directives can be triggered after a single compliance review in which the motor carrier is found to meet or exceed the violation rate threshold, rather than after a second CR that would take place as much as 24 months after the initial set of threshold violations are found.

As previously mentioned, some carriers objected to having EOBRs imposed based on the actions of HOS-noncompliant drivers who might no longer be employed at the motor carrier affected. FMCSA disagrees with this position. A key to addressing the issue of non-compliant drivers is for motor carriers to exercise proper management controls. These controls should include, for example, a process for conducting adequate background checks prior to employing a new driver and ensuring that new drivers are adequately trained. Likewise, if a carrier has adequate management controls over driving operations, HOS violations at a rate greater than 10 percent should not occur in the first place. To ensure consistent oversight, FMCSA and its State enforcement partners must conduct compliance reviews based on the drivers employed during the review period in question. Subsequent adjustments in a non-compliant driver's employment status or a motor carrier's pool of employees should not influence the remedial directive determination.

At this time, the Agency elects not to require EOBRs for all new entrants or hazardous material (hazmat) carriers because these regulatory options are beyond the compliance-based scope of the current rulemaking proceeding. The Agency acknowledges the concerns of commenters, and plans to consider these options in preparation for a new rulemaking examining the expansion the EOBR mandate.

The remedial directive element of this final rule treats hazmat carriers, along with passenger carriers, differently from other carriers, consistent with our authority to determine safety fitness of carriers under 49 U.S.C. 31144 (c)(2)–(3) and 49 CFR part 385. As discussed in our NPRM (72 FR 2376) and set forth in this final rule, passenger and hazmat carriers will have only 45 days to install EOBRs after receiving a remedial directive under § 385.807(b)(1). As with the current regulations under part 385, the shorter period reflects the relatively higher risk to the traveling public (passenger carriers) and to safety and security (hazmat) of these carriers' operations. Non-hazmat property carriers will have 60 days to comply under § 385.807(b)(2). Both provisions are adopted as proposed.

As to applicability of the rule to new entrant carriers, CRs are not normally conducted on new entrant carriers, which are subject to a safety audit within the 18-month duration of the new entrant program. However, enforcement personnel have the discretion to follow up on a poor safety audit by conducting a separate CR. Therefore, new entrants, like other carriers that must comply with part 395, can be subject to a remedial directive under a scenario where the audit leads to a CR.

We disagree with the characterization of a remedial directive to install EOBRs company-wide as a "punishment" for the innocent drivers who had no violations. The directive is intended to correct a demonstrated deficiency in the motor carrier's safety management controls and is therefore remedial, not punitive, in nature. This rule does not revise or impose any new civil penalties, including penalties for HOS violations. Moreover, drivers required to use EOBRs will actually benefit from a technology that allows for automation of a manual task that would otherwise burden the driver. As noted elsewhere, this rule also does not "target" any specific industry sector or particular size of motor carrier operation; instead, it focuses on carriers with substantial HOS compliance issues.

We respectfully disagree that this final rule on EOBRs will have no impact on HOS enforcement, since the rule improves the means of detecting HOS violations within a problem motor carrier population and thus enhances HOS enforcement.

3.2 Trigger for Remedial Directive

J.B. Hunt stated that, although the idea of mandating the least compliant and least safe carriers to use an EOBR appears to be a logical approach, there are problems with this method. It relies on the premise that all of the "least compliant" carriers have undergone, or soon will undergo, a CR. They disagreed with this premise, noted many carriers are unrated, and asserted the NPRM approach assumes the Agency is uncovering the least safe carriers through its log book sampling. However, according to J.B. Hunt, the Agency is merely selecting from a group of drivers, not carriers, who have had past compliance problems.

NTSB objected to using CRs to trigger remedial directives because so few CRs are done relative to the number of carriers and because carriers may be rated Satisfactory despite long and consistent histories of violations. Advocates and Public Citizen also cited the limited number of CRs conducted each year, which they said meant that the "pattern of violations" cannot be meaningful. Siemens agreed with this position.

Advocates added that carriers are selected for CRs using data from SafeStat, which is deficient in several ways, as noted by the DOT Office of the Inspector General (OIG) and the Government Accountability Office (GAO). Advocates contend that relying

on CR data results in severe underestimation of HOS violations. Advocates cite OIG's 2006 conclusion that without the critical data, FMCSA cannot accurately identify the high-risk motor carriers for CRs and enforcement actions (*see* "Significant Improvements in Motor Carrier Safety Program Since 1999 Act But Loopholes For Repeat Violators Need Closing," FMCSA Report Number MH–2006–046, issued April 21, 2006). They also noted small carriers are not included in SafeStat, yet may be at high risk of safety violations. Advocates also assert that the 2 x 10 criterion further reduces the pool of potential carriers subject to mandatory use of EOBRs.

A safety consultant stated CRs are an inadequate basis for identifying non-compliant carriers. Most carriers are not rated. Safety inspectors miss violations because of the volume of CRs they need to conduct. He also objected to the distinction between intentional and non-intentional errors in logs. He noted "DOT's own HOS study in 2004" suggested as many as 70 percent of long-haul carriers may have utilized false logs; his experience as auditor indicates that the figure may be accurate.

J.B. Hunt argued the methodology for selecting drivers in a CR does not reflect the overall compliance of the carrier. Rather, it indicates noncompliance among the particular drivers selected (from a population previously identified as having problems): It does not ensure that the least safe and compliant companies are required to install EOBR units. The NPRM states, "The overall safety posture of the motor carrier is not being measured during the CR." J.B. Hunt is concerned this means the desired safety impact of EOBR installations will not be maximized.

Maryland SHA asked that roadside inspection data be used to augment data obtained through a CR. If a carrier fails a CR, a second CR should not be needed before the remedial directive is imposed. Advocates supported this position. An individual supported using inspection data, suggesting FMCSA should set a threshold ratio for HOS violations found during inspections as the trigger. One individual recommended applying the requirement to carriers that are over 75 percent on SafeStat. J.B. Hunt recommended targeting at least carriers in categories A and B in SafeStat or some other reasonable measure that would impact a larger population.

OOIDA also stated until FMCSA completes its revision of SafeStat and issues a supporting document final rule, it will be nearly impossible for OOIDA to comment on the impact. OOIDA believes the public should have another chance to comment on the trigger when the new scoring system is in place. In OOIDA's view, the Initial Regulatory Flexibility Analysis (IRFA) must also be revised at that time.

Response: Consistent with our NPRM, the Agency will use CR results to determine whether to issue remedial directives to carriers, requiring them to utilize EOBRs. The CR, typically conducted at the carrier's place of business, focuses on carrier management control as a metric for determining carrier safety fitness under 49 U.S.C. 31144. 72 FR 2373. As stated in part 385, noncompliance with critical regulations, which include all 24 HOS violations in the new Appendix C to part 385, "are quantitatively linked to inadequate safety management controls and usually higher than average accident rates. FMCSA has used noncompliance with acute regulations and patterns of noncompliance with critical regulations since 1989 to determine motor carriers' adherence to the Safety fitness standard in § 385.5" Part 385, App. B II(e). The rationale for using HOS violations under new Appendix C is consistent with the current safety fitness determination process and logically related to current part 385.

FMCSA believes the CR is the best assessment method to determine which carriers should be required to install EOBRs, since, rather than focusing on single violations, FMCSA is looking for threshold rates of noncompliance. The new definition of *threshold rate violation* at § 385.803, applicable to remedial directives, is entirely consistent with our current rules governing safety fitness determinations in part 385. The current regulations also require "more than one violation" for a "pattern of noncompliance," and, where a number of documents are reviewed, a finding of violations in 10 percent or more documents reviewed. Part 385 App. B II(g). Obtaining this large sampling of records can be best accomplished during a CR at the carrier's place of business. Such an overview of carrier management and operational safety oversight is not possible during a roadside inspection, as the review is confined to a single CMV and its driver (or team of drivers), at a single point in time. Indeed, CRs are designed to provide a sweeping assessment of carrier operations and safety management controls, and the assessments conducted, based on the Safety Fitness Rating Methodology (SFRM), form the basis for carrier safety ratings. Given the serious nature of the remedial directive and its potential to place a financial burden on the carrier, we believe such a directive should be issued only after a broad operational examination and extensive record review inherent to the CR process. 72 FR 2373.

A number of commenters criticized the use of CR results as the trigger for a remedial directive. Many contended the use of the CR was inappropriate because the SafeStat algorithm used as part of the process of selecting carriers for CRs does not reliably predict high-risk carriers. These commenters believe other data, such as that received from roadside inspections, should be more fully utilized to determine which carriers receive CRs at the outset. In fact, SafeStat does incorporate motor carriers' roadside inspection outcomes, accident involvement, CR results, and enforcement history.

We cannot agree with J.B. Hunt's assertion that our basic methodology for selecting carriers for CRs is flawed. The SafeStat program continues to be upgraded to address issues raised by the GAO and the OIG. According to OIG, "FMCSA has made improvements in the data relied upon in SafeStat." (*See* letter from Calvin L. Scovel III, Inspector General, Department of Transportation, to the Honorable Thomas E. Petri, U.S. House of Representatives, June 19, 2007. *http://www.oig.dot.gov/item.jsp?id=2072.*) Moreover, a 2007 report from GAO, while suggesting improvements, nonetheless noted that SafeStat does a better job of identifying motor carriers that pose high crash risks than does a random selection. (*See* "Motor Carrier Safety: A Statistical Approach Will Better Identify Commercial Carriers That Pose High Crash Risks Than Does the Current Federal Approach, U.S. Government Accountability Office," June 2007, *http://www.gao.gov/new.items/d07585.pdf.*) FMCSA likewise disagrees with the Advocates' comment that SafeStat does not include small motor carriers. To the contrary, SafeStat does not exclude carriers based on size, and the system currently reflects data on even 1- and 2-truck operators.

As noted in our NPRM, we considered and rejected using only roadside inspection data for the remedial directives trigger because roadside inspections fail to measure carrier operations as comprehensively as CRs. Nevertheless, we acknowledge that far more roadside inspections are conducted compared to CRs, and they are a key and voluminous source of HOS compliance data. We will continue to use this valuable roadside data indirectly in the remedial directives selection process to inform SafeStat

selection rankings (72 FR at 2373 n. 5). Some commenters urged the Agency to use the Driver Safety Evaluation Area (SEA) component of SafeStat, which is based on roadside data, for a remedial directives trigger. The Driver SEA, however, combines both HOS and non-HOS violations, rendering its current use infeasible for a remedial directives trigger based exclusively on HOS violations. The Agency is actively exploring additional ways to tap into the enormous wealth of roadside data through its Comprehensive Safety Analysis (CSA) 2010 initiative.[2] In summary, CR findings will be the only direct basis to trigger a remedial directive under today's final rule. However, the follow-on rulemaking, discussed earlier, will explore this and other methodologies for determining whether a motor carrier would be required to install and use EOBRs.

3.3 Implementation of Remedial Directives

Maryland State Police commented the remedial directives concept will work only if there are follow-up actions for failure to comply with a directive. Report on Board stated the remedial directive would have no impact on problem drivers because police would not know which carriers are required to use an EOBR.

Others described the challenges of measuring impacts. For instance, Boyle Transportation contended, any benefits gained could not be extrapolated to the population at large because only bad carriers would be included. Public Citizen declared the number of carriers affected by the EOBR requirement is too small a sample to make statistically significant statements about the effectiveness of the number of devices installed. Maryland SHA stated imposing the requirement should affect the carrier's safety fitness determination. They noted carriers' ratings are affected by crashes for which they are not at fault.

J.B. Hunt, AMSA, and two individuals supported the two-year period for which a remedial directive would be required. These commenters generally did not provide detailed rationales for their support; however, generally, they deemed the two-year period adequate to enable carriers to come into compliance. AMSA also added that this period would allow for carriers to adopt management controls and corrective action. Advocates opposed the two-year period, since once the period expired carriers could remove the devices; consequently, carriers will view EOBR not as an asset, but as a punishment.

Maryland SHA and Advocates stated the 60-day period (with a possible 60-day extension) to require EOBR installation once a remedial directive has been issued is too long. Carriers could continue unsafe practices during this period. Werner and an individual commenter thought the 60-day period was too short. Werner stated for all but the smallest carriers, the 60-day period would be used to locate a vendor, negotiate contracts, obtain delivery, route all trucks to the terminal for installation, and train the drivers. Some of these factors are beyond the carrier's control. Flexibility is needed to give more than 60 days if the carrier is making a good faith effort to comply.

Response: In response to the Maryland State Police's assertion that follow-up action is needed to enforce remedial directives, proof of compliance will be required (*e.g.,* receipts), and FMCSA will disseminate information to enforcement personnel nationwide identifying which carriers are required to use EOBRs. Carriers who do not comply with a remedial directive will be ordered out of service. We believe the prospect of such an order will ensure compliance for carriers subject to a remedial directive.

We appreciate that issuance of a remedial directive requiring installation of EOBRs for an entire fleet of CMVs within 60 days may place a serious burden on certain carriers. Consequently, we appreciate Werner's concern that some factors, such as picking a vendor, are sometimes beyond a carrier's control, and, therefore, flexibility is needed where a carrier is making a good faith effort to comply. We note that, as proposed, today's rule allows FMCSA to extend the period during which carriers subject to a remedial directive may operate without EOBRs for up to an additional 60 days where the Agency determines a carrier is making a good faith effort to comply with a remedial directive. As a result, while the Agency expects compliance within 60 days, some carriers may have up to 120 days, at the Agency's discretion. Passenger and hazmat carriers, however, are limited to a single, non-extendable 45-day period.

We disagree with ATA's suggestion to provide a warning opportunity to allow for compliance improvements prior to issuing a remedial directive. Such improvements, in practice, are difficult to assess. For instance, would simply hiring a new safety officer be sufficient? Or would merely hiring a consultant for a short time period to conduct a "quick fix" assessment of the situation be adequate? And how quickly would improvement need to be initiated and implemented, and for how long would it need to be sustained? These questions illustrate some of the challenges to the Agency of verifying if such mitigation measures are adopted and, if so, measuring their effectiveness at addressing the underlying safety concerns. Discovery of HOS threshold rate violations indicates a carrier has serious management control issues which need to be addressed promptly and decisively. If the Agency has made an erroneous finding, that finding can be challenged under the administrative review process proposed in the NPRM and finalized today.

Because the 1 x 10 approach requires the finding of an HOS Appendix C threshold rate violation in only a single CR, the proposed notice of potential remedial directive applicability (NPRDA) is no longer necessary and thus is not included in this final rule. The administrative review procedures apply only upon issuance of a remedial directive. Otherwise, the administrative review process proposed in the NPRM is adopted without change in today's final rule.

If a motor carrier believes the Agency committed an error in issuing a notice of remedial directive and proposed unfitness determination, the carrier may request administrative review under § 385.817. Challenges to the notice of remedial directive and proposed unfitness determination should be brought within 15 days of the date of the notice of remedial directive. This timeframe will allow FMCSA to issue a written decision before the prohibitions in § 385.819 go into effect. The filing of a request for administrative review under § 385.817 within 15 days of the notice of remedial directive will stay the finality of the proposed unfitness determination until the Agency rules on the request. Failure to petition the Agency within the 15-day period may prevent FMCSA from ruling on the request before the prohibitions go into effect. The carrier may still file a request for administrative review within 90 days of the date of issuance of the notice of remedial directive and proposed unfitness determination, although if such request is not filed within the first 15 days, the Agency may not necessarily issue a final determination before the prohibitions go into effect. Challenges to

[2] The goal of CSA 2010 is to develop and implement more effective and efficient ways for FMCSA, its State partners and industry to reduce commercial motor vehicle crashes, fatalities, and injuries. CSA 2010 will help FMCSA and its State partners contact more carriers and drivers, use improved data to better identify high risk carriers and drivers and apply a wider range of interventions to correct high risk behavior. *See http://www.fmcsa.dot.gov/safety-security/csa2010/home.htm.*

issuance of the remedial directive and proposed unfitness determination are limited to findings of error relating to the CR immediately preceding the notice of remedial directive.

The final rule does not affect current procedures under § 385.15 for administrative review of proposed and final safety ratings issued in accordance with § 385.11. The Agency is adopting non-substantive revisions to § 385.15(a), however, solely to correct two typographical errors.

A motor carrier subject to a remedial directive will not be permitted to request a change to the remedial directive or proposed determination of unfitness based upon corrective actions. In contrast to § 385.17, under which the Agency considers corrective actions taken in reviewing a carrier's request for a safety rating change, the only "corrective action" the Agency will take into account in conditionally rescinding a proposed unfitness determination under subpart J will be the carrier's installation of § 395.16-compliant EOBRs and satisfaction of the other conditions of the remedial directive. The Agency takes this position due to the severity of the violations upon which the remedial directive is based, the need for certainty in remediation of the motor carrier's proven safety management deficiencies, the challenges of ongoing monitoring of corrective action, the likely added deterrent effect, and the Agency's desire to promote use of EOBRs in the motor carrier industry generally.

The Agency may, nevertheless, consider a carrier's installation and use of EOBRs as relevant information that could, under certain circumstances, contribute to an improvement of a carrier's safety rating under § 385.17(d). An upgraded safety rating based upon corrective action under § 385.17 will have no effect, however, on an otherwise applicable remedial directive or proposed unfitness determination. As noted above, a carrier may be found unfit based on either failing to meet the safety rating component of the safety fitness standard under §§ 385.5(a) and 385.9, or under § 385.5(b), by failing to install, use or maintain an EOBR, when subject to a remedial directive under § 385.807.

Appeal rights and administrative review, and the relationship between the modified fitness determination rule in § 385.5 and the existing SFRM in Appendix B to part 385, were discussed at length in the NPRM. *See* 72 FR 2376–2378. Except for the elimination of the notice of potential remedial directive applicability, caused by the shift from a 2 x 10 to 1 x 10 trigger, the administrative review procedures in the final rule are unchanged from those in the proposed rule. The relationship between the safety fitness determination and the SFRM likewise is not modified by any changes made between the proposed and final rules.

The Agency adds a new paragraph (e) to § 385.13 to clarify that motor carriers receiving a final determination of unfit or a final unsatisfactory safety rating will receive notice that their motor carrier registration under 49 U.S.C. 13902 is being revoked.

4 Transition From an AOBRD to EOBR System

Several commenters, including a motor carrier and two system providers, addressed potential challenges for motor carriers currently using AOBRDs and other automated HOS monitoring systems. They were concerned with how the compliance dates would affect their use of current AOBRD systems and expressed concern that the proposed EOBR regulation would prevent transferring proprietary systems to new trucks manufactured after the proposed compliance date.

Commenters predicted the period of transitioning could adversely affect fleets' adoption of the new devices. For this reason, a provider suggested the phase-in period should be fleet-based rather than vehicle-based, and that "breaks" should be offered to early adopters of EOBRs.

Response: It is not the Agency's intention to make AOBRDs obsolete or to require compliant motor carriers to replace their current systems of maintaining RODS. Only motor carriers that are subject to a remedial directive will be required to install, use, and maintain EOBRs—and those EOBRs will need to comply with the new performance requirements. Any carrier that voluntarily installs an EOBR after the compliance date must use a device that meets FMCSA's new requirements. Therefore, the Agency does not consider it appropriate or practical to institute a "fleet based" compliance schedule for motor carriers that currently use AOBRDs and are not subject to a remedial directive. The Agency does not wish to penalize HOS-compliant motor carriers by setting an arbitrary phase-out date for AOBRDs.

FMCSA is aware of many current systems with capabilities and features that exceed those required for AOBRDs and likely meet most if not all of the new EOBR requirements. Additionally, AOBRDs and EOBRs record the same key information and use the same duty-status codes, so FMCSA does not believe drivers or motor carriers will require a long transition period. In any event, FMCSA will monitor developments related to EOBR system availability associated with the implementation of this rule.

5 Privacy

Numerous commenters expressed concerns about non-HOS uses of the data being collected by EOBRs. Some commenters suggested the rule have more restrictions on access to and use of the data. Some of these commenters (primarily carriers or carrier associations) said the rule should prohibit law enforcement from using the data for any purposes other than enforcing HOS rules, such as issuing speeding tickets. They also said agencies not involved in enforcing HOS should be denied access to EOBR data unless they obtain the consent of the carrier or driver. Werner Enterprises said the rule should clarify how long law enforcement agencies may retain EOBR data and whether the agencies may disclose the data to other parties. ATA, the Canadian Trucking Alliance, and AMSA suggested carriers are unlikely to voluntarily adopt EOBRs unless there are restrictions on the use of data for purposes other than enforcing HOS rules. ATA recommended statutory protections be provided to carriers pertaining to the control, ownership, and admissibility/discoverability of data generated and derived from EOBRs, and to assure the privacy rights of drivers.

Some commenters expressed concern competitors would gain access to data recorded by EOBRs. One of them was also concerned shippers or receivers would start demanding real-time monitoring of shipments as part of any contract. Another commenter was concerned employers would use the data recorded by EOBRs to push drivers to drive when it may not be safe to do so.

Some parties raised the concern that data recorded by an EOBR could be used in post-accident litigation. One commenter favored using EOBR data to investigate accidents involving tractor-trailers, including vehicle speed, braking, and steering for the last 30–60 seconds of vehicle travel. The Maryland SHA said only the following entities should have access to EOBR data for investigating tractor-trailers accidents: The Secretary of the U.S. Department of Transportation, FMCSA, the enforcement agency that investigates the crash, the carrier, and the driver or the driver's personal representative.

Several commenters contended EOBRs would violate the privacy of drivers. Some of these commenters said

the proposed EOBR requirement would be unconstitutional in that use of EOBRs would violate the Fourth Amendment's prohibition against searches absent a warrant or probable cause. Company drivers employed by carriers with high HOS violation rates would find themselves subject to EOBR monitoring because of the actions of others, which would not satisfy a requirement of probable cause.

OOIDA provided extensive comments asserting that required use of EOBRs would constitute an unconstitutional invasion of privacy as drivers have a legitimate expectation of privacy when they sleep, eat, and conduct personal business in their truck while not driving. OOIDA said despite FMCSA's assurances to the contrary, EOBRs would capture, store, and make available a variety of personal and proprietary information on drivers and carriers (*e.g.,* routes, customer locations, *etc.*) not captured or not accessible through paper logs. The proposed rule would require EOBRs to capture the location and time of a truck in motion every minute. This information would be electronically transferable and capable of being stored for later retrieval. Because a driver can operate a truck for personal conveyance, the EOBR would record where the driver spends his private time. OOIDA asserted the contemplated use of EOBRs fails to meet the legal requirements for a warrantless search. Such constant electronic surveillance would amount to a search of the driver as defined by the Fourth Amendment. Therefore, the use of EOBRs implicates core privacy interests, including the right to privacy in personal information and in associations. OOIDA further asserted it is impossible to understand the full impact of the proposed EOBR rule on privacy without knowing more about the pending rulemaking on HOS supporting documents.

OOIDA said the data captured by EOBRs is at far greater risk for dissemination and misuse than data recorded by log books. It said any data created by an EOBR that are collected by the government for investigation or enforcement or any other reason would be subject to requests under the Freedom of Information Act (FOIA) and could be available by request to anyone, including the general public. OOIDA said the U.S. Department of Transportation's Research and Innovative Technology Administration (RITA) Volpe Center's report ("Recommendations Regarding the Use of Electronic On-Board Recorders (EOBRs) for Reporting Hours of Service," September 26, 2005, available at *http://www.regulations.gov,* ID FMCSA–2004–18940–0351) agreed with this conclusion. A commenter said because data collected by Federal agencies are subject to FOIA, carriers should not have to report GPS location data. ATA asked FMCSA to work with the trucking industry to seek enactment of Federal statutory protections of EOBR data. ATA said Federal law should support and clarify that motor carriers are the owners of the data recorded by EOBRs and thus they should have exclusive control over the data.

Response: This final rule does not change the Agency's treatment of HOS records concerning access, use and retention. FMCSA's predecessor agencies have had the authority to review drivers' and motor carriers' documents since 1937, when the first HOS regulations were promulgated (3 MCC 665, Dec. 29, 1937; 3 FR 7, Jan. 4, 1938). From the Motor Carrier Act of 1935 onward, Congress has recognized the Federal Government's interest in providing a higher level of safety oversight to CMV drivers. CMV driver licensing, driver's physical qualifications, training, and performance of driving and other safety sensitive duties are subject to Federal regulation. The Federal Government also requires records to document the results of various types of assessments (such as assessment of physical qualifications and controlled substances and alcohol testing) and compliance with regulations concerning CMV operations (such as RODS to document HOS).

The HOS information recorded on EOBRs will be examined by Federal and State enforcement personnel when they conduct compliance reviews or roadside inspections. Motor carriers will not be required to upload this HOS information into Federal or State information system accessible to the public. Furthermore, enforcement agencies will request and retain copies of HOS information to document violations and will not disclose private personal or proprietary information.

The final rule maintains current uses of HOS data to determine compliance with the HOS regulations. While we recognize the important privacy concerns raised by carriers and drivers, we believe this final rule carefully fulfills the Agency's need for accurate compliance data without creating any undue intrusion upon a CMV driver's privacy. The only information FMCSA is requiring EOBRs to collect is that information necessary to determine driver and motor carrier compliance with the HOS regulations. Consequently, FMCSA did not propose in the NPRM, nor will it require in the final rule, that EOBRs record data on vehicle speed, braking action, steering function, or other vehicle performance parameters necessary for accident reconstruction. Regarding the concern over potential use of EOBR data in post-crash litigation, this rule does not affect the rights of private litigants to seek discovery. Similarly, existing provisions governing FMCSA disclosure of motor carrier and driver information under FOIA are not affected by this rulemaking.

The Agency understands some drivers view their off-duty time and related information pertaining to their CMV's location as being sensitive information. Although the Agency does not find a legitimate expectation of privacy in the public location of a commercial motor vehicle, it will require automatic recording of CMV location information only to the level of precision (State, county, and Populated Place) shown in the Geographic Names Information System (GNIS) maintained by the United States Geological Survey. FMCSA is also declining to require locational tracking more frequently than once every 60 minutes while the truck is in motion. The main reason enforcement personnel would need to determine a history of a CMV's location would be to verify the driver's HOS compliance. This can normally be accomplished by reference to the name of the nearest city, town, or village, without the precise geographic coordinates necessary to identify, for example, a particular restaurant where a driver stopped for a meal. This is the requirement today with AOBRDs, and it also will be required under new § 395.16(f)(4). Except in the context of an investigation of a crash or a complaint of alleged FMCSR violations (when the Agency might inquire into off-duty time to learn if a driver was working for another motor carrier or performing other work during an alleged off-duty period), FMCSA generally does not inquire into a driver's off-duty activities. The Agency's interest in records of duty status that identify the date, time, and location at each change of duty status is based on its need to reconstruct the sequence of events for trips to determine compliance with the HOS regulations, including whether the driver was provided an off-duty period that could be used to obtain restorative sleep. If during this enforcement process FMCSA found evidence of vehicle activity during a claimed off-duty period, we would inquire further to establish the veracity of the RODS.

Briefly described are new provisions previously proposed in the January 2007

NPRM regarding default status for EOBRs and audit trails. FMCSA will require the "default" status for an EOBR be on-duty not driving (ODND) when the vehicle is stationary (not moving and the engine is off) for 5 minutes or more. When the CMV is stationary and the driver is in a duty status other than the ODND default setting, the driver would need to enter the duty status manually on the EOBR. The performance requirements of § 395.16 add a provision for automatically recording the location of the CMV. The Agency believes this requirement strikes an appropriate balance between improving the accuracy and reliability of ODND status information and off-duty information without intruding unnecessarily upon the privacy of the driver. Drivers would still be required to record the location of each change of duty status, as currently required under §§ 395.8 and 395.15. Finally, as stated in the NPRM (72 FR 2352), the Agency recognizes the need for a verifiable EOBR audit trail—a detailed set of records to verify time and physical location data for a particular CMV—must be counterbalanced by privacy considerations. *See also* the discussion on FMCSA's Privacy Impact Assessment under preamble section V. Rulemaking Analyses and Notices.

We disagree with two assertions made by OOIDA based on the premise that "any EOBR data collected by the Federal Government is subject to FOIA and may be available to any entity or the general public." OOIDA's statement is an overly simplistic interpretation of our responsibilities under FOIA and DOT regulations. *See* 49 CFR part 7. The Volpe Center statement relied upon by OOIDA is not the official legal opinion of FMCSA. The Agency rejects OOIDA's interpretation based on the two scenarios raised.

First, FMCSA rejects the OOIDA argument that EOBRs will allow a competitor to obtain access to information that would be deemed proprietary, such as carrier routes. If the information was indeed proprietary, the information would be exempt from FOIA disclosure under 5 U.S.C. 552(b)(4). Given that the Agency is only requiring EOBRs to collect locational data at each change of duty status and at intervals of no greater than 60 minutes while the CMV is in motion, and given that the locational data need only identify the nearest city, town, or village, the information gathered is not likely to be precise enough to allow routes or customers to be determined. It is also likely that competitors could, to some extent, discern motor carriers' routes by other means. No commenter has provided information demonstrating competitive harm—a showing mandated by FOIA—would occur from disclosure of EOBR data as proposed in the NPRM. In the absence of such a showing, the Agency has determined today's final rule, in conjunction with existing legal authorities, properly balances the need to safeguard proprietary information against the need to enforce safety statutes and regulations.

Second, OOIDA alleges that FOIA could be used to obtain personal information, including truck location. As a preliminary matter, the Agency does not agree that the location of a CMV in a public place qualifies as "personal information." Moreover, with respect to genuinely personal identifying information, FOIA's exception for personnel, medical and similar information at 5 U.S.C. 552(b)(6) severely restricts the Agency from disclosing such information. In response to past FOIA requests for driver RODS from a carrier, the Agency has redacted all information that would reveal the identity of an individual driver. The Agency need not, and will not, disclose the name of a driver when the sec. 552(b)(6) exemption allows the Agency to disclose the HOS records in a redacted form. The Agency has also denied FOIA requests seeking individual driving records in the Agency's possession. OOIDA's characterization does not accurately reflect applicable judicial standards for the disclosure or withholding of private personal information.

We also disagree with OOIDA's claim that required use of EOBRs amounts to an illegal search under the Fourth Amendment. It is well-established that the collection and inspection of documents and information pursuant to regulatory guidelines do not violate the Fourth Amendment. The data that compliant EOBRs will gather are comparable in most respects to the data already required on RODS. Further, there is no reasonable expectation of privacy in the location of a CMV, which can be monitored by the naked eye. The installation and use of the EOBR will also be known to the driver, and thus any expectation of privacy that might exist in the location of the CMV is significantly diminished.

6 Performance-Oriented Standards for EOBR Technology

6.1 Use of Detailed Design Specifications

A number of commenters disagreed with FMCSA's approach of using performance oriented standards in the NPRM, and advocated using detailed design specifications instead. Three asked for prescriptive guidance on how EOBRs must record HOS for drivers who work for multiple carriers or who drive multiple CMVs. CMV manufacturer ITEC stressed the need for interoperability between EOBRs and the equipment used by law enforcement officials, including both hardware connections and software compatibility. Siemens criticized the proposed performance-based approach, advocating instead a "single technical solution" to account for HOS for drivers who operate more than one CMV during any given day. Siemens believes, based upon its experience with international requirements for HOS monitoring, that an EOBR system's technical concept should be "tailored for the specific needs and goals of the region in which they are being considered."

Several other commenters, including XATA, SC&RA, and ATA expressed concerns with FMCSA's approach. They seek specific, uniform, and consistent EOBR requirements related to EOBR utility, reliability, tamper-resistance, accuracy, durability, and effectiveness. Because electronic equipment technologies and industry consensus standards and recommended practices evolve over time, they questioned whether FMCSA's regulation would provide sufficiently clear direction to suppliers and users of EOBR systems. ATA asserted motor carriers would not adopt EOBRs until their "compliance" was assured. Until that point, ATA believed motor carriers would not be able to accurately assess potential benefits and costs of EOBRs, and the potential for improving EOBR technology would be constrained. ATA recommended FMCSA publish an SNRPM to revise its proposed performance specifications.

Siemens and PeopleNet expressed concern about a need for design specifications to promote implementation of EOBR data integrity requirements. Siemens focused on EOBR data integrity through operational and legal chains of custody. Although it did not elaborate on its reasoning, Siemens contended neither AOBRDs nor the proposed EOBRs would protect data from falsification and called on FMCSA to standardize file formats, download protocols, and user interfaces. Siemens also recommended FMCSA reference a "defined" [published] security standard such as the *Common Criteria* to define the level of tamper resistance.

Response: As the commenters point out, information technology standards evolve over time; performance standards allow EOBR suppliers to implement

solutions that will improve users' ability to enter, review, and use data efficiently and effectively without constraining innovation or improvements.

Responding to comments concerning prescriptive requirements to ensure data integrity during transfers, Appendix A to part 395 addresses requirements for hardware, software, and communications related to transfer of data from an EOBR to a safety official's portable computer. As will be discussed later in this section, FMCSA has substantially revised these requirements in response to the comments on the NPRM.

Responding to Siemens'comments about the necessity for a "single technical solution" for all EOBR applications, FMCSA disagrees. A full set of design specifications for hardware, software, and communications methods would impose unnecessary restrictions on the design of EOBRs and support systems, limit the ability to adopt emerging technologies, and constrain motor carriers with different operational characteristics from implementing EOBR applications. However, the data element dictionary will serve as a guide to developers of EOBR and support systems to foster the use of compatible data structures for the benefit of both motor carriers and safety oversight agencies.

Responding to comments concerning cross-referencing European Union (EU) standards, FMCSA notes that the EU Council regulation No. 2135/98 requires a "driver card" for recording and transferring HOS data. It does not include provisions for wireless data transfer. In contrast, many North American suppliers of AOBRD systems currently provide wireless data transfer capabilities between a CMV and the motor carrier's information management systems via satellite or cellular transmission. FMCSA does not agree that data transfer methods requiring the use of physically removable media should be mandated, because wireless data transfer (1) provides motor carriers considerably more flexibility to implement HOS and other motor carrier operational oversight systems, and (2) does not have an adverse effect on the quality and integrity of the HOS data.

With respect to data integrity, although FMCSA is not requiring specific information technology structures, the Agency expects motor carriers and their EOBR system providers to use appropriate methods and procedures in the development, testing, and operation of HOS information systems to ensure data and information integrity. However, after reviewing the "Common Criteria" cited by Siemens, "Common Criteria for Information Technology Security Evaluation," the Agency understands that these requirements were developed primarily for use with national security and defense communities and would go far beyond what is necessary for monitoring HOS compliance.

6.2 Information and Display Requirements

6.2.1 Information Content Requirements

Several commenters objected to the proposed requirement for EOBRs to record information currently required by the HOS regulations, including shipping information, motor carrier name and USDOT Number, and a time and location entry at each change of duty status. One supplier contended an EOBR would need a "full keyboard" to enter this information. Seven commenters objected to the proposed requirement to include State line crossing information, questioning its relevance to HOS compliance assurance.

Werner asked for clarification of the "24-hour start time," because it believes the 24-hour period of the underlying HOS regulation is affected by the "split break" and would vary. Although it noted the ATA Technology and Maintenance Council's (TMC) Technical Policy Advisory (TPA) (collectively, TMC TPA) recommended the use of the four codes (*i.e.,* OFF, SB, D, and ON), Werner asked for flexibility to allow use of other duty status codes. Conversely, Siemens held the four codes should be unique to avoid inconsistencies. ITEC asked if there was a potential inconsistency between the diagnostic event codes and the code words in Table 3, EOBR Diagnostic Event Codes.

ITEC and a motor carrier asked for flexibility in coding of latitude and longitude values to allow software users to operate outside of North America. Werner stated its system calculates the name of the nearest city or town from latitude/longitude coordinates.

Response: As noted earlier, this rulemaking updates and revises the requirements for use of technological methods to record HOS. It does not change the underlying HOS regulations. With the exception of the requirement to record CMV location hourly while the CMV is in motion, it does not change the basic requirements for documenting HOS-related information (such as motor carrier identification).

FMCSA disagrees that an EOBR would need a "full"—presumably a full-sized—keyboard. Some of the earliest AOBRDs did not have full keyboards, leading to the requirement in § 395.15(d)(2) for a listing of location codes. Many contemporary devices have full keyboards (although the dimensions are considerably smaller than those used with desktop computers). Others use partial keypads or touch-sensitive screens. Information such as the carrier name, USDOT Number, and shipping document references can also be entered automatically through centralized or administrative applications. These entries continue to be necessary to identify the motor carrier, CMV, and other information related to the transportation. EOBRs must accommodate recordkeeping for drivers who operate multiple CMVs, as AOBRDs are required to do.

FMCSA agrees that display of State line crossing information is not necessary for HOS compliance assurance purposes and has removed the requirement from the rule. Collection of State line crossing information for fuel tax reporting purposes will continue to be optional, as in the current AOBRD rule.

Responding to Werner's question about the start time for a 24-hour period, this regulation has not changed. Both §§ 395.8(d) and 395.15(c)(10) of the current rules allow the motor carrier to select the 24-hour period starting time.

Responding to comments on duty status coding, the identifiers will remain "driving" or "D," "on-duty, not driving" or "ON," "off-duty" or "OFF," and "sleeper berth" or "SB." This maintains consistency with current regulation and for the transition from AOBRDs to EOBRs. Also, a driver could enter explanations concerning duty status activities (such as a period of ON time spent loading a trailer or performing maintenance on a power unit) in the Remarks section.

In response to ITEC's question about event codes, the labels for the event codes are 6 characters, but the codes themselves would be 2 characters (bytes) in length.

In response to the questions about latitude and longitude codes, the proposed rule was written with North American users in mind. FMCSA recognizes some CMVs may travel outside North America, and other nations might want to adapt the FMCSR requirement. In the interests of international harmonization, the final rule makes a nominal revision to the data dictionary to accommodate a field for east/west latitude ("E/W") and north/south longitude ("N/S"). EOBR and system suppliers may set these fields to default to "N" and "E" entries.

As to the use of an algorithm to identify the nearest city, town, or

village, Question 3 of the Regulatory Guidance to § 395.15 allows this. FMCSA intends to allow EOBR systems to use this method as well. The Regulatory Guidance is added as § 395.16 (f)(4). However, the Agency has not accepted and will not accept *only* latitude-longitude codes as location records because they do not provide a safety official with a way to quickly determine a geographic location on a standard map or road atlas. (*See* §§ 395.15(d) and 395.16(f)(2).) Although the provision for location codes in § 395.16(f)(5) is specific to the United States, EOBR and system suppliers may augment their location-tracking capabilities to include locations outside the United States.

6.2.2 Driver Acknowledgement of HOS Limits Alerts § 395.16(o)(4))

Qualcomm and the TMC TPA oppose the proposal to require a driver to acknowledge warnings of HOS limits. The TMC TPA recommends the EOBR include configurable alert capabilities so a driver could receive several alerts before reaching the regulatory limits of HOS. Qualcomm stated it was unclear what would be required if the driver failed to acknowledge warnings. Werner was concerned about a conflict between the reporting time for position histories and the ability to record a 30-minute warning. In contrast, Maryland SHA stated the warning should be recorded in the EOBR and made part of the driver's record.

Response: The proposed "response" provision would have required the driver to interact with the EOBR while the CMV is in motion, and it is not part of the final rule. FMCSA does not believe it is appropriate to require the driver to interact with the EOBR while the vehicle is in motion. However, the requirement for the minimum, 30-minute alert remains in the final rule.

6.3 Duty Status Category When Vehicle Is Not Moving (§ 395.16(d))

6.3.1 EOBR Must Default to On-Duty/Not-Driving When Vehicle Is Stationary for 15 Minutes or More

Werner and the Maryland State Police agreed with the proposed 15-minute default to on-duty/not-driving (ODND). In contrast, Qualcomm and Siemens asserted the 15-minute period was too long and that the determination of driving/non-driving time should be more flexible and should also reflect motor carriers' operational practices in recording driving time. Siemens recommended switching to ODND whenever a CMV stops, contending that the interpretation of stops should be part of the compliance software, rather than the data record.

Commenters suggested two distance thresholds for an EOBR to record a CMV in motion as "D." Werner suggested a 2-mile threshold, while Qualcomm and the TMC TPA recommended a 1-mile threshold. For changing a default status from D to ODND, Werner recommended if a vehicle moves less than 1 mile, a 5-minute stop would reset the movement threshold. The "driving stop" situation should alert the driver of duty status change and allow the driver to override the default. For example, the duty status would remain D if the CMV were stopped in traffic or when the driver operated auxiliary vehicle functions while seated at the driving controls.

Response: FMCSA agrees that a 15-minute period is too long. Section 395.16(d) has been revised to require that an EOBR automatically record driving time, and the EOBR's entry must change to on-duty not driving when the CMV is stationary for 5 minutes or more. The driver must then enter the proper duty status. If the CMV is being used as a personal conveyance, the driver must affirmatively enter an annotation before the CMV begins to move.

FMCSA agrees with the TMC TPA's interpretation concerning the entry of the time of a duty status change: it must be done when the change takes place.

6.3.2 Recording and Confirmation of On-Duty Not Driving and Driving Status

Several commenters, including Werner, Qualcomm, ATA, the MTA, and the authors of the TMC TPA asked FMCSA to clarify how to record duty status information when the CMV is in motion, but the driver is not in a "driving" status. These situations include a maintenance technician repositioning a CMV in a motor carrier's yard and a driver using a CMV as a personal conveyance. Commenters also cited the draft TMC TPA's treatment of situations where a driver fails to log on to the EOBR, prompting the driver and continuing to record driving time if the driver ignores the prompt, and allowing a driver to confirm previous driving time, and generating a system error if a driver ignores prompts.

Response: As is the case with AOBRDs, the driver would need to select and enter the proper duty status and make the appropriate entry in the "Remarks" section of the record. This rule does not change the way FMCSA defines ODND activities. In response to the questions concerning use of a CMV as a personal conveyance, FMCSA has revised §§ 395.16(d)(1) and 395.16(h)(3). If a CMV is being used as a personal conveyance, the driver must affirmatively enter an annotation before the CMV begins to move.

6.3.3 Other Comments on Duty Status Defaults

IBT, OOIDA, TCA and 23 other commenters stated that the need for manual entry of non-driving status creates the same potential for violations of the HOS rules as the present system. For many drivers, ODND time may account for a substantial proportion of their work schedules. Because drivers may receive less pay for hours ODND than for driving time—or no pay at all—they have an economic incentive to under-report the number of those hours. OOIDA contends if drivers were compensated for this time most deficiencies in drivers' recording their ODND time would disappear.

Response: FMCSA is not aware of any devices currently available that would enable automatic recording of all categories of duty status, nor did any commenters suggest that such devices are available. Given concerns about personal privacy in general, we do not believe proposing the use of personal activity monitors for HOS compliance purposes would be appropriate. Despite the need to require the driver to manually enter some kinds of information, FMCSA believes the automatic recording of CMV location information will assist the Agency in investigating potential violations of part 395.

As to drivers' compensation for ODND time, driver compensation is not within FMCSA's jurisdiction.

6.4 Malfunction Alert System

Several commenters opposed the proposed requirement for an EOBR to provide an audible and visual signal when it ceases to function properly (§ 395.16(o)(6)). KonaWare, Qualcomm, TMC, Werner, and FedEx believe the requirement for a failure-alert system would add to the costs of an EOBR. Qualcomm expressed concern that driver alerts for minor interruptions in device operation, such as loss of mobile communications network coverage for very short periods of time should not be required while the CMV is being driven. Instead, Qualcomm believes they should be indicated only when the vehicle is stopped or if they affect required data capture, requiring the driver to enter remarks or amend a record.

The TMC TPA and Qualcomm recommended FMCSA allow the driver to fill in missing data for non-critical sensor failure. The data would be "annotated" as driver-added information, and a record of the sensor

failure would be included in the log data. ATA said more specificity was needed on driver reporting, carrier correction, and sensor failures.

Response: FMCSA continues to believe it is necessary to require the malfunction alert system required for EOBRS in § 395.16 remain essentially the same as that currently required for AOBRDs in § 395.15(i)(4). FMCSA agrees with the commenters that certain types of brief interruptions in operation should not be considered an "EOBR device failure." In particular, the Agency acknowledges location information can be momentarily lost due to signal blockages, such as from bridges or geographic features. The Agency revises § 395.16(o) to clarify subsystem and sensor failure alert.

6.5 Synchronization of EOBR to Vehicle (§ 395.16(e) and (g))

Most commenters strongly disagreed with the proposal to allow EOBRs without integral synchronization with the vehicle. Vendor commenters XATA, Qualcomm, Tripmaster, Siemens, and PeopleNet, motor carriers Boyle Transportation, Fil-Mor Express, and J.B. Hunt, safety advocacy groups IIHS and Advocates, and CVSA and TMC provided extensive comments opposing the Agency's proposal to allow the use of EOBRs that are not synchronized with the CMV. Various commenters addressed both the need for integral synchronization and the inability of GPS technologies to provide driving time and CMV travel-distance information with sufficient accuracy.

XATA commented that a duty status other than D is difficult to automate, so the D status must be as accurate as possible. A connection to the engine makes it possible to automatically enter the vehicle identification, so only the driver's identification must be entered manually. XATA suggested entering both items of identification manually increases opportunities for falsification and difficulty of auditing.

Tripmaster was concerned non-synchronized EOBRs could not be designed to prevent tampering and manipulation. Tripmaster recommended synchronization include obtaining power from the vehicle, obtaining distance from vehicle-based sensors or networks, and ensuring the device could not be deactivated without visible signs of tampering. Tripmaster also believed FMCSA could generate more realistic performance standards for synchronized than for non-synchronized EOBRs. Tripmaster and the TMC TPA noted the inherent inaccuracies of GPS-based distance measurement (citing a University of Oregon study that found GPS-based distance accuracy to range from 75 percent to 94 percent of actual distance traveled). Tripmaster added that non-synchronized devices could provide location data from the driver carrying the device on his/her person, well beyond what is required to verify the accuracy of the RODS and that auditing the electronic RODS records for non-synchronized EOBRs would be problematic, particularly if there would be no supporting documents to verify driving time.

IIHS and Advocates stated FMCSA failed to provide evidence the non-synchronized EOBRs can provide secure and accurate records, be made tamper-resistant, or ensure records will be related to a unique truck, driver, and carrier. Advocates was particularly concerned FMCSA's proposed approach would eliminate the Agency's ability to assess the design and operational integrity of EOBRs.

With respect to use of GPS technologies substituting for integral synchronization, Qualcomm, ITEC, and other commenters cited problems associated with losing the GPS signal. GPS technology suffers from "canyon effect" in urban areas, where tall buildings and tunnels can block the communications pathways to the GPS satellites, and even relying on GPS signals for distance traveled on a minute-by-minute basis may not achieve the accuracy FMCSA desired in the NPRM. Furthermore, the straight line point-to-point distances computed between recording intervals is less than actual travel distances over curved segments of highway. For this reason, Boyle Transportation favored a requirement for EOBRs to have GPS capability *and* to be synchronized to the engine, to improve both tamper-resistance and the ability to calibrate the device.

A number of commenters stated non-synchronized systems would be vulnerable to tampering and manipulation. Tripmaster, J.B. Hunt, and PeopleNet noted non-tethered devices can be turned on and off or removed from the vehicle and left behind, leading to falsification of travel distance and duty status information. J.B. Hunt, Tripmaster, PeopleNet and the TMC TPA noted physically blocking a GPS receiver's antenna (such as by covering it with aluminum foil) was completely effective in blocking the signal, and the signal could be corrupted by a noisy radio frequency (RF) transmitter. Siemens added that unsynchronized EOBRs would be useless for enforcement if used by drivers willing to cheat because their data integrity would be no better than with manual RODS. Additionally, safety officials would not have an enhanced tool to detect falsification; and, if EOBRs were to be mandated only in the context of a remedial action, this flaw would be magnified. Siemens added that there is no way to prevent interruption of signal availability (for example, in tunnels or when the driver turns it off purposefully).

Only a few commenters supported the proposal to allow non-integrally-synchronized EOBRs. Verigo described its PDA-based electronic logbook and questioned the justification for a more complex system. Xora supported non-integrally synchronized EOBRs on the basis of their lower costs and potential wider adoption. ATA stated it would support unsynchronized EOBRs only if: (1) Effective controls could be developed to prevent or minimize system weakness, especially deliberate blockage or loss of data; or (2) sufficiently severe penalties could deter these violations. CVSA believed untethered EOBRs might be possible in the future.

Response: After considering the comments on this issue, FMCSA decided to require EOBRs to be integrally synchronized with the CMV in which it is installed. This parallels the current requirement for AOBRDs in § 395.15. The definition of an "integrally synchronized" device in the final rule is as proposed in the January 2007 NPRM. The current definition of AOBRD in § 395.2 calls for the device to be "integrally synchronized with specific operations of the commercial motor vehicle in which it is installed." It implicitly defines synchronization through a performance-based requirement: "At a minimum, the device must record engine use, road speed, miles driven, the date, and time of day." The final rule is explicit in its definition: an integrally-synchronized AOBRD or EOBR must receive and record the engine use status for the purpose of deriving on-duty driving status from a source or sources internal to the CMV.

The NPRM based the proposed use of non-synchronized devices upon the assumed accuracy of those devices to measure the distance traveled by a CMV. After reviewing the comments that questioned those assumptions, FMCSA decided it would be prudent to conduct a limited field test of several of these devices. The Agency entered into an interagency agreement with the Volpe Center to perform this work. The results of this effort are documented in the report, "Evaluation of the Accuracy and Reliability of GPS-Based Methods for Measuring Vehicle Driving

Distance," which has been placed in the docket for this rulemaking.

The study assessed the performance of commercial off-the-shelf GPS receivers using various types of antennas and antenna mount configurations and waypoint time intervals (that is, time intervals during the trips) of 10, 30, 60, and 120 seconds. The vehicles' odometers were calibrated on a certified course and the GPS-derived measurements were compared to those corrected odometer readings. The accuracy for vehicle driving distance measurements made within this study ranged from 1.9 percent to 10.6 percent less than actual baseline driving distance. In light of this significant level of inaccuracy, FMCSA concluded that the integral synchronization requirement should remain.

6.6 Accuracy and Frequency of Data Recorded by EOBRs

6.6.1 Rounding

ATA and Werner stated the rule should not place a motor carrier that elects to use EOBRs at a disadvantage over those that do not. One specific issue was that of "rounding" information recorded on paper RODS to the nearest 15 minutes. ATA offered an example of a driver beginning to drive at 6:55 a.m. after a 10-hour off-duty period. If the driver used a paper RODS the time would be entered as "7:00 a.m.," and the driver would be in compliance with the HOS regulations. However, if "6:55 a.m." appeared on the RODS the driver would be in violation.

Response: In the situation these commenters describe, there is an inherent advantage for the use of handwritten RODS. The 15-minute grid on the RODS allows for flexibility in estimating start and stop times (*i.e.,* changes in duty status). Question 1 of the Regulatory Guidance for § 395.8 [available through *http://www.fmcsa.dot.gov*] states that short periods of time (less than 15 minutes) are to be noted in the Remarks section of the RODS. By contrast, a driver using an EOBR (or an AOBRD) could be cited for any time period over or under the prescribed requirements. However, FMCSA believes such small differences are not likely under most circumstances to warrant enforcement action, particularly when they are few and isolated.

6.6.2 Location Information, General

Two commenters addressed the precision of location information. KonaWare recommended a location precision only to the level of the nearest city, with latitude-longitude data included in the detailed record to complement it. Qualcomm questioned the meaning of the phrase, "correspond to Census Bureau 2000 Gazetteer County Subdivision data," and whether that referenced source is the most current.

FedEx stated the Census Bureau 2000 Gazetteer "County Subdivision" data did not correspond to actual city names that would make sense to a person viewing the location. FedEx held the requirements in § 395.15(d)(1) give a person enough information to determine the location of status changes (*i.e.,* city, town, or village, with State abbreviation).

Response: FMCSA proposed to include latitude and longitude in the Data Elements Dictionary. The Agency proposed "nearest populated place" per Federal Information Processing Standard Publication 55 (FIPS 55) because "city" has a specific meaning under some States' laws: in some jurisdictions, there are many populated places in FIPS 55 that are not "cities." In response to Qualcomm's question, the County Subdivision information is contained in FIPS 55. The FIPS 55 data set has been integrated into the U.S. Geological Survey's Geographic Names Information System (GNIS), and all references to that source in the final rule will reflect this change.

6.6.3 Frequency of Recording Location Information (§ 395.16(f))

Many commenters believed the proposed 1 minute update interval was excessive and unwarranted. PeopleNet, XATA, Boyle Transportation, FedEx, and several others were concerned the size of the resulting dataset would lead to significantly higher onboard data storage and data transfer costs. Qualcomm, ATA, and others indicated such a frequent recording interval should not be required when the CMV's motion and mileage are determined through a synchronized, tamper-resistant interface with vehicle sensors.

The TMC TPA stated minute-by-minute location history should be required only for purposes of auditing GPS-based mileage accuracy of a non-synchronized EOBR. Also, XATA contended that the requirement for location recording frequency should take into consideration whether or not EOBR synchronization would be required.

ITEC recommended a recording interval of no less than every 5 minutes, citing reduced onboard storage, as well as data transmission and costs, both from CMV office and CMV roadside inspector's computers. PeopleNet suggested a 5- or 15-minute interval might be sufficient so long as accurate mileage information were recorded from the CMV's electronic control module (ECM). FedEx recommended a 75-minute interval for sending data to the host (back office) and a 15-minute location record. CVSA supported the 1-minute interval and plus or minus 1 percent accuracy. DriverTech also supported the 1-minute interval.

Some commenters, including ATA, Tripmaster, and J.B. Hunt, recommended FMCSA retain the current requirement to record the CMV location only at each change of duty status. Werner cited its practice of receiving hourly updates of CMV position.

Response: FMCSA acknowledges the commenters' concerns about the proposed 1-minute recording interval. The final rule requires location and time to be recorded at an interval of no greater than 60 minutes while the vehicle is in motion. The reason for selecting an appropriate location-recording interval is to ensure travel distance and the associated driving time are recorded and reported at a level of accuracy appropriate to ensure HOS compliance. Based on the information provided by commenters and the Agency's decision to continue to require that on-board recorders be integrally synchronized, the Agency believes the new requirement achieves an appropriate balance between accuracy and affordability.

As discussed in the NPRM and in the preamble of this final rule, the Agency expects the addition of the requirement to automatically record location information will significantly improve the accuracy of driving time information.

6.6.4 Clock Drift

Qualcomm recommended several revisions to the proposed requirements, including a requirement for the clock drift tolerance for systems with or without mobile communications to not exceed 3 minutes at any time. These systems should be calibrated at least every 3 months. For systems *without* mobile communications, vehicle system clocks should be calibrated at least 3 times per year against an external trusted source. Motor carriers should maintain records of all clock recalibrations, including the degree of adjustment.

ATA stated the clock accuracy requirement should be realistic and the regulation needs to address how clock accuracy is managed. ATA cited the TMC TPA and its discussion of the Technology and Maintenance Council's Recommended Practice 1219(T) (TMC

RP 1219(T)). TMC RP 1219(T) recommends that clock drift be checked periodically. EOBRs with mobile communications and/or GPS may recalibrate, or use calibrated network or GPS time, on a continuous basis. Clock resets and recalibration adjustments should be made only by a trained technician. Adjustments that exceed the allowable threshold should be entered into the EOBR's maintenance record.

Werner asserted a requirement for clock accuracy would provide no significant benefit to the system. Werner cited questions raised in the TMC TPA, particularly the proposed 2 second per day time drift. Siemens stated the clock requirement is achievable, but will require a periodic synchronization with a trusted time reference. Tripmaster recommended FMCSA consider a requirement for clock time drift of less than 1 minute per month and that it be checked every 3 months.

The TMC TPA also provided specific recommendations for recalibration of EOBR clocks: (1) Clock drift should not exceed 1 minute with calibration required at least every 3 months; (2) clocks determined to drift more than an average of 1 minute per month must be repaired or replaced; (3) EOBRs with mobile communications and/or GPS should recalibrate or use calibrated network or GPS time on a continuous basis; (4) clock resets and recalibration adjustments (exceeding the allowable threshold) should be maintained with carrier records and should be made only by a trained technician.

Response: Section 395.16(e)(2) of the proposed rule addressed date and time information that could not be altered by a motor carrier or a driver. FMCSA is not specifying a maximum daily time drift in the final rule. However, § 395.16(e)(4) provides that the time deviation must not exceed 10 minutes from Coordinated Universal Time (UTC) at any time.

6.6.5 Distance-Traveled Accuracy (§ 395.16(g))

Several commenters expressed concern with the NPRM's proposal for accuracy of CMV distance travel: non-synchronized EOBRs, which obtain distance-traveled information from a source external to the CMV, must be accurate within 1 percent of actual distance traveled over a 24-hour period. Most comments centered on the difference between the proposed requirement in the NPRM for EOBRs and industry consensus standards for odometers. Qualcomm, ITEC, Xora, Tripmaster, and Siemens expressed concern that the NPRM's provisions did not align with the state-of-the-practice. They cited SAE J1226, "Surface Vehicle Recommended Practice: Electronic Speedometer Specification—On Road." Section 5.1 of that document, Overall Design Variation, states the overall odometer accuracy "shall be within minus 4 percent to plus 4 percent for each actual unit of distance of travel over the operating range of the instrument. The design limits should not, however, be construed as absolute under all operating conditions." Thus, according to Qualcomm, the best-case scenario for a non-synchronized EOBR would be a plus or minus 5 percent error in the mileage calculation. In short, for systems capturing mileage from the vehicle ECM odometer, Qualcomm recommended the odometer should be maintained consistent with the vehicle manufacturer's specification for odometer recalibration.

Qualcomm and other commenters recommended FMCSA reference SAE J1708 ("Serial Data Communications Between Microcomputer Systems in Heavy-Duty Vehicle Applications") for communications with the vehicle data bus. Qualcomm also stated the requirements of § 395.16 should address conditions where location history data are incomplete due to limitations in obtaining satellite fixes and should specify when a driver should record HOS information in a paper RODS. ATA and Werner offered similar concerns. ATA stated odometer accuracy is outside the control of the EOBR supplier and excessive calibration requirements would be operationally problematic and costly.

ITEC and several other commenters noted, although recording to within 1 percent of the odometer is reasonable, the overall accuracy for distance data should be 5 percent because an absolute accuracy of plus or minus 1 percent of the actual distance may not always be achievable. A key reason is that the rolling radius of the vehicle's drive axle tires changes with ambient temperature, inflation pressure, load, and tire wear, and these changes can exceed 1 percent. An odometer is calibrated using the tire manufacturer's recommended revolutions per mile, and the vehicle owner must maintain this rolling radius when the vehicle's tires change from replacement, recapping, or regrooving.

Response: In § 395.16(g)(3), the Agency requires the distance-traveled information recorded by the EOBR should not be less accurate than the information obtained from the CMV's odometer.

Because FMCSA will allow only integrally synchronized EOBRs, the proposed rule text concerning distance-traveled information from a source external to the CMV, is not included in the final rule.

Responding to the request to formally reference SAE J1708, we do not believe this is necessary because it is one of several engineering consensus standards that address on-vehicle communications networks that can provide engine use status. The Agency does not wish to preclude the use of other standards, existing or in development.

Concerning commenters' references to SAE J1226, FMCSA notes that this Recommended Practice also refers users to SAE J862, "Factors Affecting Accuracy of Mechanically Driven Automotive Speedometer-Odometers." Among other things, this document describes nine factors that can affect odometer readings, four of which relate to tires.

6.7 Review and Amendment of Records by Drivers (§ 395.16(h))

6.7.1 Driver Amendments of EOBR RODS.

Qualcomm recommended the regulations be more flexible to allow driver annotations of the records, to the same degree it is possible with paper RODS, to include annotating yard moves to reposition CMVs, as well as noting driving time in stop-and-go traffic. Qualcomm also asserted that driving status information automatically generated should not be subject to alteration, but a driver should be able to "claim" driving time if he or she neglected to log-on. Qualcomm recommended drivers should also be allowed to review and accept or reject any administrative amendments, and administrative staff be required to reconcile and assign all driving (vehicle movement) periods with drivers. Both drivers and administrative personnel should be able to annotate and reconcile manual data entries such as tractor and trailer numbers.

Werner sought clarification of the term "annotation," arguing the driver should be able to amend non-driving status periods at any time and should be able to request authorized administrative personnel to amend driving time entries, but disagreed that correction of typographical errors should generate an audit trail. The system should keep a digital record or other evidence showing any amendments made after the driving records were approved by the driver and identifying the amendments by time, date, personnel involved, and the reason for the amendment. Werner objected to limiting the driver to making corrections to the RODS only before the first driving period of the day or following the last

period of the day, because it would place an unnecessary burden on the driver and force a driver who has made an error to drive the rest of the day with incorrect records. According to Werner, driver acceptance of the technology is critical to its use in the industry, and every reasonable effort should be made to keep the systems forgiving and driver friendly. DriverTech stated allowances need to be made for legitimate truck moves.

DriverTech stated there needs to be a reasonableness factor to correct honest mistakes and suggested a limit of one duty status correction per 24 hours. The TMC TPA stated that the data capture and data integrity requirements proposed in the NPRM needed better definition and improved usability. For example, they recommended that for the most common cases, the driver and administrative records amendment process needs to be more thoroughly defined and practical to ensure drivers submit complete and accurate electronic logs. The process of making and reviewing amendments made by administrative personnel needs to address more specific situations. TMC RP 1219(T)), currently under development by the ATA Technology and Maintenance Council S. 12 Onboard Vehicle Electronics Study Group, outlines a recommended process that it believes better ensures data accuracy and accountability. Automated recording of duty status changes and effective recording of overrides need more specificity to address yard moves and stopped-in-traffic scenarios. RP 1219(T) recommended amendments be limited to eight specific items.

Response: In § 395.16(h)(3), FMCSA selected the term "annotate" rather than "amend." Annotating a record implies adding information, generally for the purpose of clarifying it. Amending a record implies changing it. An EOBR must automatically record driving time (§ 395.16(d)(1)) so there should be no need for a driver to request designated administrative personnel to amend a driving record. Section 395.16(h)(3) has been revised to include use of a CMV as a personal conveyance. It requires the driver to annotate the corresponding driving time entry to reflect such use.

As discussed earlier, § 395.16(d)(1) requires the EOBR to automatically record driving time. Altering driving time records is prohibited. However, remarks may be added to annotate the record. Section 395.16(h)(3) has been revised to address this.

6.7.2 Other Comments on Driver Interaction With EOBRs

Several commenters offered recommendations about driver interaction with EOBRs. Several commenters offered recommendations about driver interaction with EOBRs. For example, when team drivers use a CMV equipped with an EOBR, they suggested the non-driving team member be allowed to make entries in the EOBR while the CMV is moving. Others suggested a method for the driver to override pre-programmed duty status change thresholds (such as between driving and on duty). Still others recommended FMCSA consider adding distance and time thresholds for "yard moves" and for "non-allocated driving time."

Werner stated there had been little consideration or analysis of driver acceptance. The ideal system should take into account the need for driver training and the differing levels of technical sophistication.

Response: This rule does not alter the treatment of the duty status of team drivers. The final rule allows annotations of the EOBR's electronic RODS. Whether an annotation is characterized as an "override" or by another term, the annotation must add information to the HOS record—it must not overwrite or delete information. Because of the enormous variations in motor carriers' individual policies and practices, FMCSA does not believe it would be appropriate to establish a single uniform threshold for non-allocated driving time.

Today's rule, like the 1988 AOBRD rule, is performance-based and anticipates developers of EOBRs will work with their motor carrier clients to ensure the devices are appropriately designed and configured. Motor carriers must ensure drivers are trained to use the new EOBRs properly.

6.8 Safety Officials' Access to HOS Information

6.8.1 EOBR Must Be Capable of Producing Duty Status Records for the Current Day and the Previous 7 Days (§ 395.16(k))

Werner asked if an EOBR needed to retain 7 days of RODS in the device itself, or if the information could be stored on a server. Werner also asked for clarification on provisions for safeguarding and retention of transferred data to portable computers used by roadside inspection officials.

Response: RODS data need not be stored on the EOBR. Section 395.16(k)(1) allows use of "information stored in and retrievable from the EOBR or motor carrier support system records." As is the case in the current AOBRD rule, § 395.15(b)(4), HOS data must consist of information "stored in and retrievable from" the device. As for enforcement officials' duties regarding safeguarding and retention of information is concerned, the HOS information they obtain from (or via) EOBRs must be handled and safeguarded in the same way as other records obtained during the conduct of enforcement activities. (*See* preamble section IV. Discussion of Comments to the NPRM; 5. Privacy, Agency response.)

6.8.2 EOBR Must Be Able To Produce, Upon Demand, a Driver's HOS Chart Using a Graph-Grid Format in Either Electronic or Printed Form (§ 395.16(i) and (n))

CVSA supported the use of a graph-grid format. However, numerous commenters, including Qualcomm, Tripmaster, the TMC TPA, Werner, and ATA questioned the need for the EOBR device itself to produce the graph-grid format.

Qualcomm, Tripmaster, and ATA believed the display requirements should be limited to specific information (such as driver information and the sequence of changes of duty status) in the vehicle, and other data should be made available by electronic data transfer or reports from a motor carrier's office system. Werner, XATA, and the TMC TPA suggested, other than placing HOS information in a familiar format, there is no real reason for an EOBR to display data in a graph-grid format they believe computers used by roadside safety personnel should be able to handle this task. The Maryland SHA offered a similar comment. Conversely, ITEC stated it did not believe the data format provided in Appendix A, Table 1, could be used to produce a graph-grid.

Qualcomm and ATA noted many legacy systems and devices could potentially meet proposed EOBR requirements, save two: the proposed display requirements and the viewable-outside-the-cab requirement. The latter is a concern because many new devices are dashboard-mounted. Because the format specification does not address requirements for display size, character resolution, scrolling, and navigation, they question how usable the display would be.

A motor carrier questioned whether EOBRs could produce the required HOS information, and another contended FMCSA did not offer a standardized method for retrieving EOBR recorded data because not all agencies will have

the proper equipment to access a driver's logs.

A few commenters offered alternatives, such as using an integrated printer with the EOBR rather than a mobile display. One asked how an alternative display format would be approved.

The Maryland SHA stated the requirement that the data be displayed in "either electronic or printed form" presents problems. If the EOBR provides the HOS information in electronic format only, the officer will have no substantive evidence or paper copy for court purposes, which will hamper adjudication processes. Maryland SHA urged FMCSA to assess how these changes will impact roadside enforcement activities, as not all enforcement officers have laptop computers from which to receive or review HOS data retrieved from an EOBR.

Response: The provision at § 395.16(i)(2) would allow electronic transmission of an EOBR-generated RODS for display on another device, such as a PDA or portable computer used by a safety official at a roadside inspection. FMCSA amends paragraph (i)(2) and subsection (n) to clarify the requirement for the EOBR to enable RODS data to be transferred to an enforcement official's PDA or portable computer. The Agency also revises the rule text to remove the proposed design requirement to display the graph-grid on the EOBR device.

The Agency also clarifies that data transfer methods discussed in the NPRM and adopted in this final rule are meant to facilitate a one-way transfer of data from the EOBR to the enforcement official's computer and not the reverse. Several commenters appeared to interpret this provision as a requirement for EOBRs to be able to interact with each other, and for any EOBRs to be able to interact with any office support systems. FMCSA leaves the decisions on whether to provide this level of interoperability to EOBR system providers. Rather, the proposed specifications were developed based on the assumption the Agency would provide the software capable of: (1) Initiating the data transfer, (2) transforming the EOBR-generated standard flat file into the desired graphical output on enforcement officials' electronic equipment (*i.e.,* computer, PDA, *etc.*), and (3) determining whether the RODS information was in compliance with 49 CFR part 395.

EOBR system suppliers and motor carriers would not need to determine how to achieve interoperability with enforcement officials' various types of equipment and software. Under the Motor Carrier Safety Assistance Program (MCSAP), enforcement officials operate FMCSA-approved hardware with inspection software compatible with FMCSA systems to conduct roadside inspections. The proposed data format and transmission protocols have been tested to work with enforcement officials' tools. This was the rationale for proposing the EOBR make data available in a flat file format, the simplest of formats (as opposed to requiring a specific hierarchical or relational database form), and for setting forth specific communications protocols.

The same would apply to information generated by the motor carrier's office systems. The safety investigator uses FMCSA-approved equipment and FMCSA-issued software to conduct the compliance review at the motor carrier's place of business. Systems capable of producing the flat file delineated in Appendix A to part 395, Table 2, would be fully compatible with the compliance review software, and they would meet Agency requirements under the new § 395.16(i).

Responding to the SHA, FMCSA will require EOBRs display the driver's duty status sequence, as is currently required for AOBRDs. The Agency will also require drivers' HOS records be made available in digital form to inspection officials.

6.8.3 EOBR Must Be Able To Produce Upon Demand a Digital File of the Driver's HOS (§ 395.16(i)(2))

The TMC TPA stated security of digital EOBR data needs to be considered, citing security threats external to the EOBR in the data transfer process. Xora supported an EOBR that could obtain HOS information from a centralized server, and one that could be physically handed to roadside inspection officials. Werner asked FMCSA to define "immediately" in the context of an inspection. It noted a driver will need the opportunity to verify the recently created logs for accuracy. If the system maintains the log data off the truck for some or all of the period being checked, a reasonable delay may be incurred in sending the data to the truck in some form.

Response: Motor carriers and their EOBR system providers must use appropriate methods and procedures in the development, testing, and operation of HOS information systems to ensure data and information integrity. Rather than specifying testing and assessment procedures, the Agency again focuses on performance requirements for the EOBR user. Under new § 395.16(o)(2), the EOBR and associated support systems must not permit alteration or erasure of the original information collected concerning the driver's hours of service, or alteration of the source data streams used to provide that information, and under § 395.16(p)(1), the motor carrier must not permit or require alteration or erasure of the original information collected concerning the driver's hours of service, the source data streams used to provide that information, or information contained in its EOBR support systems that use the original information and source data streams.

As to defining "immediately," FMCSA requires CMV drivers to maintain their EOBR records current to the last change in duty status and encourages safety officials to exercise reasonable discretion in allowing the drivers sufficient time to access the HOS records from the EOBR, or from the motor carrier's support system.

6.8.4 Information Must Be Accessible to Safety Assurance Officials Without Requiring Them To Enter In or Upon the CMV (§ 395.16(i)(4))

CVSA supported the requirement that information displayed on the EOBR be accessible to safety assurance officials without requiring the officials to enter in or upon the CMV. However, one driver stated moving the EOBR in and out of the truck would lead to electronic problems. He suggested using a cable to connect it to a computer.

Response: FMCSA agrees with CVSA. The final rule will retain the proposed requirement that information displayed on the EOBR be made accessible to safety assurance officials without requiring them to enter in or upon the CMV. It will not be necessary to physically remove an EOBR from its mounting in a CMV cab. The enforcement official will provide a cable to the driver to plug into the EOBR, or request the driver initiate a wireless transfer of the RODS data to the officer's portable computer.

6.8.5 Electronic Records Must Be Transferable to Portable Computers in the Specified Format (§ 395.16(i)(6))

A number of commenters provided comments related to the need for safety officials to obtain digital records from EOBRs to conduct roadside inspections. CVSA held EOBRs should use standardized data formats and have a standardized interface for law enforcement so that training, compliance evaluation, and monitoring are effective and simplified. CVSA stated it would be better to equip

inspectors to print the record, which they will need as evidence.

Regarding security encryption, data security, and how these interact with enforcement roadside computers, the SHA commented that not all MCSAP agencies' safety inspection officials have laptop computers in their patrol vehicles and or wireless platform capabilities from the patrol vehicle.

Ohio PUC stressed the need for technological solutions to improve inspection officials' ability to read and interpret electronic HOS records. The MTA and OOIDA also stressed the need for training these officials in the use of EOBRs and interpretation of HOS data.

CVSA stated electronic records must adhere to common, uniform, and strict standards so inspection officials can read the data on laptops or handheld computers. However, CVSA had concerns with the possibility of these files introducing a virus or otherwise damaging the inspection official's operating system or software.

Qualcomm stated the use of XML or other file formats should be considered for Internet file transfers. It is also recommended the specifications be deferred to an industry standards approach to address any ongoing changes in security, technology, or data requirements, rather than by including them in a regulation. The TMC TPA offered a similar comment related to insulating a regulation from technological change. The document advocated a hardwired connection between the EOBR and the vehicle data bus and a network neutral wireless connection to obtain data via the Internet from a secure server. ITEC stated it assumed that, because it was not discussed, FMCSA did not intend to require that EOBR data be downloaded onto portable media. Werner questioned the cost of being able to download data.

Ohio PUC stated the rule must have verifiable provisions to ensure EOBRs are standardized with a uniform format that all carriers must use to display information. These must be easily read by roadside inspection personnel and designed to include a standard means of allowing enforcement personnel to download information from the devices.

Response: FMCSA agrees with commenters that it will be critical for roadside inspection officials to be prepared to interact with the new EOBRs. The Agency has set the compliance date to provide sufficient time for this transition. As discussed above, the final rule specifies the use of standardized file formats and communications interfaces to support the needs of safety officials operating in the field.

6.8.6 Communications information interchange methods (§ 395.16(i))

Qualcomm, TMC, ITEC, Tripmaster, and ATA opposed the wireless information interchange standards cited in the proposed rule because they would be likely to become outdated. The TMC TPA stated the wireless methods are prone to connection management, interoperability, and security issues, as well as changes in technical standards.

Qualcomm recommended FMCSA use TMC RP 1219(T) for technical requirements. In addition, they recommended citing SAE J1708, "Serial Data Communications Between Microcomputer Systems in Heavy-Duty Vehicle Applications," in reference to wired communications links using the vehicle data bus. They also recommended FMCSA consider referencing SAE J1939, "Recommended Practice for a Serial Control and Communications Vehicle Network." Qualcomm also asked FMCSA to consider submitting a standards request to the Society of Automotive Engineers subcommittees for J1939 and J1708 to address tamper-resistance technical specifications for capturing information from electronic control modules transmitting over the vehicle data bus.

Qualcomm and the TMC TPA recommended two methods for information reporting they believed would be technology neutral for EOBR devices and are expected to have significant longevity in availability. They recommended use of the vehicle data bus for a wired data transfer from the EOBR to a roadside inspection device (because this approach is similar to that used for on-board diagnostic (OBD) emissions inspections); and use of the Internet for wireless data transfers from the EOBR (device and/or support system) with the roadside inspection system (device and/or host support system). Although they noted additional security standards would be required to ensure proper authentication between devices and data transfer security, they recommended these be addressed through industry standards rather than by regulation.

Qualcomm and the TMC TPA both believe use of Universal Serial Bus (USB) or a serial port would not be appropriate for a wired data transfer. They cited problems with pin configurations and software driver requirements, as well as the long-term viability of wired USB, because wireless USB standards are under development. On the other hand, they appear to favor use of the Internet for wireless data transfers from the EOBR (and/or its support system) to the roadside inspection system (device and/or host support system). Many EOBR systems maintain near real-time communications with secure centralized support systems, and they believe virtually all safety officials conducting roadside inspections can use network connectivity to retrieve this information from a support system (or directly) with Internet file transfers. Qualcomm believed the Internet file data transfer approach will be able to accommodate changes in wireless communications standards and has high probability of still working flawlessly over a 10-year or longer time frame.

Qualcomm held use of Wireless Local Area Network (WLAN) and Wireless Personal Area Network (WPAN) technologies for peer-to-peer wireless connections are not appropriate in EOBRs and law enforcement systems because they have significant security vulnerabilities and are prone to connection management issues.

Qualcomm also supported wired transfer via the CMV's data bus. Qualcomm, Tripmaster, and ATA referenced TMC RP 1210(B) (Serial Communications Application Program Interface). For wireless, they referenced RP 1216 (the vehicle-to-office data communications standard). Qualcomm stated the latter standard brings efficiencies to the industry because it puts aside any proprietary communications protocols and allows for wireless communications (via radio frequency, infrared, satellite, cellular, or WLAN) between a trucking company's office and its fleet.

ITEC recommended dropping the Bluetooth wireless standard, which is not interoperable with IEEE 802.11 and RS–232 (which is out-of-date), and adding IEEE 802.11p. ITEC-supported USB 2.0.

CVSA suggested that, while FMCSA may not want to specify the communications technologies because they change so rapidly, the more important aspects related to the data are security, content, and timeliness of the information availability. Werner stated any wireless access should be adequately protected.

KonaWare stated FMCSA should not specify data transfer technology. If data transfer is needed, submission of data to law enforcement within 48 to 72 hours should be acceptable.

Siemens expressed concern about costs for wireless data extraction. Although they noted FMCSA included these costs in its estimate of operating costs as a necessary item for mobile phone solutions and fleet management systems, they were concerned these

costs were not addressed for minimally compliant, tethered EOBR solutions that could use other methods to transfer data for backup purposes. Siemens was concerned owner-operators, small carriers, and carriers operating within limited geographic areas would not benefit from wireless data extraction of HOS data.

PeopleNet stated the records should be available in wireless or wired format, but not both. FedEx stated the protocols and application interfaces needed to perform the data download are not defined. A great deal of definition would be required to successfully implement a roadside exchange as suggested in the NPRM, and changing technology could make several of the suggested physical transport layers obsolete. FedEx suggested wireless as a transport layer (802.11g and Bluetooth), but stated the pairing methodology between EOBR and roadside device must be defined. It also stressed the need for the Agency to define a method for authentication between the EOBR and roadside device, an especially important concern if the Agency contemplated using wireless technology.

Response: The final rule requires the use of wired (direct physical connection) and wireless communications (WiFi and cellular, as described in more detail below) of the electronic RODS data record. For a wired transfer, the roadside enforcement official will provide a cable to the driver to be inserted into the EOBR's USB data port.

FMCSA is revising the requirements for the content of the data file that would be downloaded from an EOBR to an enforcement official's portable computer to remove the name of the driver and co-driver in the records downloaded at roadside. The driver and co-driver will be identified by employee identification number(s) in that downloaded record. Enforcement officials may verify the identity of the driver (and co-driver) from documents such as a driver's license and would enter that information into their portable computers to generate inspection reports and violation documents. This change is being made because the combination of a name and other information in a transmitted record places the record in the category of personally identifiable information (PII). PII must be encrypted, and encryption adds considerably to the complexity of software design, implementation, and maintenance. These factors would increase the costs to EOBR suppliers, motor carriers, and FMCSA. FMCSA stresses this change affects only those records downloaded at roadside. All other records maintained in EOBRs and support systems must include the driver's and co-driver's names. This includes records requested by safety assurance officials at a motor carrier's place of business.

The primary goal of the EOBR device itself is to collect and safeguard data. There are numerous industry consensus standards and recommended practices in this field, and FMCSA believes developers of EOBRs and EOBR support systems are in the best position to select and use those standards and practices to ensure their motor carrier customers are able to maintain the confidentiality, integrity, and availability of HOS data and information.

To ensure a reliable means of data exchange between each EOBR device and a roadside safety official's portable computer, the following hardware interface specifications are required:

1. Each EOBR device must implement a single USB compliant interface featuring a Type-B connector.
2. USB interface must comply with USB V1.1 and V2.0 USB signaling standards.
3. The USB interface must implement the Mass Storage class (08h) for [software] driverless operation.

FMCSA will not allow the use of portable storage devices, *e.g.,* thumb drives, for the transfer of the electronic RODS because they are not capable of meeting the necessary authentication requirements.

6.9 Identification of the Driver (§ 395.16(j))

6.9.1 FMCSA's Approach of Not Specifying Identification Method

CVSA supported the idea of providing flexibility regarding how drivers are identified. However, CVSA said FMCSA should specify a minimum performance requirement including standardized and explicit test procedures and expectations. ITEC approved of the decision to allow motor carriers to choose among competing technologies for driver identification. The company said driver identification technologies would be a key cost factor in the implementation of EOBRs.

Several commenters, including IBT, OOIDA, and AMSA, disagreed with FMCSA's approach, contending the rule should be more specific regarding the identification of drivers. IBT was concerned unscrupulous drivers' use of false identification could undermine efforts to improve HOS compliance. Qualcomm, Siemens, and the TMC TPA said the rule should have security requirements that address detailed policies and procedures for driver identity management. They also requested the requirements cover the use of third parties for EOBR security administration and audit.

One commenter recommended using employee ID numbers to identify drivers, while another proposed using an identification code made up of the driver's license number and the abbreviation of the issuing State.

Response: FMCSA agrees the identification of the driver of a CMV is key to implementation of this rule. However, imposing a set of standards to assign and manage driver and employee identification numbers is unnecessary to effectuate this rulemaking and is more appropriately addressed through motor carriers' internal processes.

This final rule requires the driver's name as part of the EOBR's record maintained by the motor carrier. However, it will not require the driver's name to be part of the information transmitted from the EOBR or a support system during the course of a roadside inspection because the combination of a name and the other information is considered personally identifiable information and is subject to stringent and complex encryption requirements. As discussed earlier, enforcement officials will verify the identity of the driver (and co-driver) from documents such as a driver's license.

FMCSA's interest is that each driver used by a motor carrier is uniquely identified for purposes of recordkeeping and the motor carrier ensures that drivers enter duty status information accurately. How individual drivers are identified—by name, by employee number, or by another code—is left to a motor carrier's discretion. However, we very strongly discourage a motor carrier from using a Social Security number or driver's license number because of the potential for persons to obtain access to information that is not relevant to HOS compliance assurance. It is a motor carrier's responsibility to select and implement information security policies—including issuing and updating identification and information system access codes—appropriate to its own operations.

Responding to Qualcomm's question concerning recording the hours of drivers who use more than one vehicle, an EOBR support system must account for this, as today's AOBRDs are required to do. Although not explicitly required in the regulation, error-checking procedures in the support system also should flag a driver who is shown as operating multiple CMVs on the same day, during the same period of time. AOBRDs have been required to identify

which driver of a team is operating the CMV at any given time—and EOBRs must do the same. Each driver must be assigned a unique identifier.

6.10 Maintenance and Repair (§ 395.16(p))

6.10.1 Motor Carrier Must Ensure EOBRs Are Calibrated, Maintained, and Recalibrated

Werner said the requirement for motor carriers to ensure EOBRs are calibrated, maintained, and recalibrated should not be imposed without serious cost/benefit analysis. The carrier said this requirement could be a substantial burden for many carriers who have trucks that are not home-based at a terminal.

Qualcomm and TMC said the requirements for motor carriers should also address security management and administration of EOBR systems. They also said the rule should provide criteria for when third-party services must be used if carriers do not have appropriate resources for security management.

Maverick Transportation asked FMCSA to clarify how often EOBRs would need to be recalibrated and how long a carrier would need to retain calibration, maintenance, and recalibration records.

Response: Section 395.15(i)(8) the of current regulations requires that AOBRDs be maintained and recalibrated in accordance with the manufacturer's recommendations. Considering the range of approaches (now and in the future), it would not be realistic for FMCSA to specify maintenance intervals for EOBRs. The text of the rule adopted here parallels the proposed regulation but adds a requirement for calibration. This initial calibration would be done at the time of initial installation, if the characteristics of the device require it. Concerning security management and administration, those are information technology matters, and any third-party performing this work for a motor carrier would do so as the carrier's agent and under the carrier's direction. Retention of EOBR maintenance and calibration records is addressed in the general inspection, repair, and maintenance requirements of current § 396.3, because an EOBR, like an AOBRD, is an "additional part or accessory which may affect safety of operations." These records must be maintained for 1 year or 6 months after a CMV leaves the motor carrier's control.

6.11 Testing and Certification Procedures

6.11.1 Manufacturer Self-Certification (§ 395.16(q))

Qualcomm expressed support for the provision allowing EOBR manufacturers to self-certify their products. The company said the self-certification approach is consistent with the requirements in § 395.15 and should be continued. Maverick Transportation agreed with manufacturer self-certification, but asserted EOBR manufacturers should face penalties if their products are later found to be non-compliant.

Conversely, several motor carrier and EOBR manufacturer commenters believed FMCSA's proposed requirement for AOBRD and EOBR manufacturers to self-certify their devices did not provide a sufficient level of assurance to convince carriers to voluntarily use EOBRs. These commenters indicated carriers would be more willing to invest in EOBRs if FMCSA or an independent testing entity evaluated and certified devices as conforming products. J.B. Hunt stated that, because most of today's EOBR manufacturers are small businesses, they probably would not have the financial resources to properly indemnify the carrier if FMCSA were to find the devices noncompliant. Werner made similar comments, noting the contracts offered by EOBR vendors would likely restrict a carrier's right to recover from the vendor if the system were found to be non-compliant.

CVSA recommended FMCSA and the National Highway Traffic Safety Administration create a more rigorous, third-party certification program for EOBRs. It also recommended the establishment of an advisory board to create and maintain a list of approved EOBRs. This advisory board could operate similarly to those groups that are involved with speed-measuring instruments and breath alcohol testing devices.

Qualcomm and ATA offered the alternative of "strong self-certification." An international standard, ISO/IEC 17050, would be used as a basis for requiring manufacturers to document their conformance with a standard. An EOBR manufacturer's declaration of conformity would be subject to standardized documentation requirements and audits. They noted this approach would require a government or industry entity to audit supporting materials for conformity declarations and to maintain a registry of conforming products. ATA stated such an authority does not currently exist. Tempering its support of third-party certification, ATA cautioned that FMCSA should balance the potential benefits of third-party certification against the potential for increased cost of EOBR devices and possible delays in the introduction of new devices and technology due to the need to satisfactorily complete a certification process.

Response: The Agency is aware that a working group of the ATA's Technology and Maintenance Council S. 12 Onboard Vehicle Electronics Study Group is currently preparing a draft recommended engineering practice, TMC RP 1219(T), "Guidelines for Electronic On-Board Recorders." Several commenters included this document as an attachment to their comments. Although the final rule does not establish a formal FMCSA oversight process for EOBR testing and certification, it is possible that more widespread use of EOBRs may bring compliance concerns to light. Therefore, FMCSA will monitor motor carriers' compliance with EOBR and support system requirements as part of its safety oversight programs.

6.11.2 Other Comments on Testing and Certification Procedures

The Ohio PUC asked that the rule provide for periodic certification of the reliability and integrity of EOBRs, with specific penalties for failure to comply; and it maintained widespread violations could occur without such provisions. The MTA suggested the rule require EOBR manufacturers to warranty performance of their products for at least 5 years.

Response: FMCSA takes seriously penalties related to false records but does not believe it would be appropriate to set a prescriptive requirement for "recertifying" EOBRs according to a fixed schedule. The self-certification process will remain part of the FMCSRs. FMCSA does not have the authority to impose a requirement for a warranty period or warranty terms.

6.12 Other Comments on Proposed EOBR Standards

Several commenters believe the NPRM did not adequately address a requirement to make EOBRs "tamper-proof." Siemens said FMCSA should require EOBRs to be tested and certified against a defined security standard by independent laboratories. Advocates criticized FMCSA for proposing no specific controls for ensuring that EOBRs are tamper-proof, contending the Agency "must set minimum requirements for what constitutes tamper-proof or tamper-resistant EOBRs

and their key components." Advocates called upon FMCSA to ensure that EOBRs are both tamper-proof and designed to indicate any attempts at tampering. CVSA suggested FMCSA review the EU Information Technology Security Evaluation process with regard to EOBRs. A team driver who had used an EOBR said her motor carrier had altered the hours recorded by the device, and FMCSA must ensure against improper alteration of data by drivers, carriers, or law enforcement personnel. Two commenters said the burden of making EOBRs tamper-proof should rest on the shoulders of the manufacturers and FMCSA, and that all aspects of tampering should be resolved before installation.

Response: The September 2005 report prepared by the Volpe Center: "Recommendations Regarding the Use of Electronic On-Board Recorders (EOBRs) for Reporting Hours of Service," addresses a range of methods to prevent, to the greatest extent practicable, tampering with the physical EOBR device, as well as the electronic records it holds. The revised text of § 395.16(p)(1) prohibits the motor carrier from permitting or requiring alteration or erasure of original information or the source data streams used to provide it. This covers both physical and electronic alterations and erasures.

FMCSA reviewed the EU type-specification for electronic tachographs early in this rulemaking process. The type-specification is highly design-prescriptive for both the hardware and software elements of the electronic tachograph and support systems. By contrast, FMCSA regulatory policy expresses a strong preference for performance-based regulations. Furthermore, because the EU directive for the electronic tachograph is based upon a compliance-assurance model that is dramatically different from that of FMCSA, FMCSA continues to believe adopting it would be inappropriate. And, as discussed above, the final rule will continue to require manufacturer self-certification of EOBRs and their support systems.

6.12.1 Environmental Specifications

For operating temperature, Qualcomm and ITEC said the typical industry standards for device functionality while installed in commercial vehicles (−40 to 85 °C) exceed the rule's requirements for the temperature range at which EOBRs must be able to operate (−20 to 120 °F (−29 to 49 °C)). Both commenters suggested the rule defer to industry standards for environmental performance, specifically SAE standard J1455, "Recommended Environmental Practices for Electronic Equipment Design in Heavy-Duty Vehicle Applications." TMC offered a similar comment.

NTSB stated the NPRM failed to address damage-resistance and data-survivability, and asked for performance standards for these issues.

Response: FMCSA agrees with Qualcomm, ITEC, and TMC and in the final rule revises the environmental operating ranges (temperature, *etc.*) for EOBRs. In response to NTSB, FMCSA considers it appropriate to require EOBRs to comply with the same generally-accepted industry consensus standards for durability and reliability as other electronic components used in trucks and buses, but not to go beyond these standards in terms of crash- or fire- survivability.

6.12.2 Reconstruction of RODS After EOBR Failure

Werner and the Maryland State Police questioned the requirement that a driver reconstruct RODS for the past 7 days in the event of an EOBR failure. The two commenters doubted that drivers would be able to do this unless the data had been printed out, transmitted to the carrier, or backed up in some other way.

Response: Records must be available for the current day and the past 7 days so safety officials can review them during roadside inspections. This is not a new requirement; it currently applies to both paper RODS and AOBRDs (§§ 395.8(k), 395.15(b)(2)). The 7 days' worth of records can include those records already transmitted to the motor carrier.

6.12.3 Requirement To Carry EOBR Instructions and Blank RODS (§ 395.16(l))

ITEC said the rule should be clarified to allow a motor carrier to maintain the EOBR instruction sheet and blank RODS forms either separately or together. Qualcomm expressed support for the requirement that CMVs carry instructional material. TMC TPA suggested FMCSA be more specific about the content of the instruction sheet to assure greater consistency and usability.

Response: The requirement in the final rule is identical to the current one for AOBRDS (§ 395.15). It does not specify that the instructions and blank RODS forms be bound in a single document, only that the driver have both of them on board the CMV.

7. Incentives To Promote EOBR Use

FMCSA is adopting as proposed two incentives for motor carriers that voluntarily install and use EOBRs compliant with section 395.16. First, after the traditional targeted review of their drivers' HOS compliance, FMCSA will conduct random reviews of such carriers' drivers for purposes of determining these carriers' safety ratings. Second, such carriers will be granted relief from the supporting documents requirements for purposes of recording on-duty driving time. FMCSA requested comment on these two incentives, as well as on possible additional incentives, including granting flexibility in the HOS rules themselves.

7.1 Random Review for Motor Carriers Voluntarily Using EOBRs

Numerous commenters, including Report on Board, Werner, Maverick, SCRA, and IIHS, said random review of a motor carriers HOS compliance, as opposed to a focused review, would not provide enough incentive to make voluntary installation of EOBRs attractive. Both IIHS and Report on Board held only a mandate requiring EOBRs will work. Report on Board commented that carriers believe they are competitively disadvantaged by using EOBRs. Because focused sampling would continue, with violations imposed based on that sampling, it felt that there would be little reason for carriers to voluntarily adopt EOBRs.

SCRA stated there were no statistical data provided on safety enhancement or cost benefits to support this element of the proposed rule, arguing that application of technology should provide tangible cost benefits and easily recognizable advantages for all required to comply.

Several commenters objected to the incentive because they believed it would place some carriers at an unfair disadvantage. OOIDA stated FMCSA is proposing to lessen scrutiny of carriers that adopt EOBRs while increasing scrutiny of other carriers, most of whom will be small. OOIDA also stated the proposal is inconsistent with CSA 2010 since that initiative relies heavily on focused review of problem drivers based on roadside data. "Without any proof that EOBRs improve HOS compliance or the safe operation of commercial motor vehicles, FMCSA cannot justify the creation of such a dichotomous enforcement strategy." One carrier was also concerned the proposal places small carriers at a disadvantage because they cannot afford EOBRs, and they will be given the same scrutiny as those mandated to use EOBRs.

While Maverick supported the random sampling incentive, Advocates stated the implication is that the

outcome of EOBR use is not improved oversight and enforcement of safety management controls. Advocates asserted the proposal would lead to "more extensive HOS violations and lack of enforcement."

Response: One objective of CSA 2010 is to leverage the capabilities of existing technologies to make compliance and enforcement efforts more effective and efficient. FMCSA believes policies that encourage the adoption of EOBRs are consistent with CSA 2010. (*See* the earlier discussion of CSA 2010 and roadside data in preamble section IV. Discussion of Comments to the NPRM; 3.2 *Trigger for remedial directive.* The motor carrier industry previously expressed concern that FMCSA's current HOS sampling techniques during compliance reviews are not random across all areas of a carrier's operation. Rather, the compliance review procedures direct the safety investigators to focus on known problem areas and drivers first. If the number of violations discovered using the existing policy of focused sampling exceeds 10 percent of the records reviewed, a less than satisfactory safety fitness rating is proposed. Thus, industry members argue, a motor carrier's overall safety fitness rating can be adversely affected based only on a focused review of known problem drivers or areas of a motor carrier's operation without consideration of a motor carrier's overall HOS compliance status or violation rate.

FMCSA does not agree that motor carriers under the proposed incentive will be subject to less-thorough reviews. Under the incentive proposed and adopted today, all motor carriers taking advantage of this incentive, and all owner-operators leased to such carriers, will be subject to the same level of initial review as under current procedures, which focus first on drivers involved in crashes and those with known HOS violations. Violations resulting from this initial focused sample will continue to be considered for compliance improvement and enforcement purposes. However, under the incentive, a CR that revealed a proposed 10 percent or higher violation rate based on the *initial* focused sample will be expanded through *random* sampling to look at a broader segment of the motor carrier's overall operation. Only the HOS violations resulting from this expanded review will be used to determine a carrier's safety rating.

This incentive is justified on several grounds. The HOS portion of CRs on motor carriers using EOBRs can be done far more efficiently than traditional reviews of logbooks and supporting documents, thus allowing motor carriers—as well as FMCSA reviewers—to do more thorough and comprehensive checks of HOS records for accuracy and possible falsification. The Agency expects EOBR use to lower voluntary-adopter-carriers' rates of serious HOS violations, which, as noted above, are related to higher than average crash rates. As a result, safety will be promoted. Because civil penalties will still be imposed and SafeStat scores will still be affected if violations are discovered during the targeted review, carriers will continue to be motivated to correct HOS compliance problems. *See* 72 FR 2378–2379. FMCSA emphasizes that the Agency will continue to bring civil penalty enforcement cases against both drivers and carriers for HOS violations discovered during the initial focused HOS review, even though that analysis will not be used for purposes of determining the carrier's safety rating.

7.2 Partial Relief From Supporting Documentation (§ 395.11)

Several commenters, including Maverick, SC&RA, TCA, J.B. Hunt, and AMSA, generally supported the incentive providing relief from the requirement to maintain supporting documents relating to driving time. Commenters, including Maverick and SC&RA, stated EOBRs will capture much of the same information as supporting documents. Continuing to require supporting documents becomes a disincentive for using EOBRs.

AMSA stated retaining and reconciling such corroborating documents is a financial, storage, and organizational burden on carriers, and relief from these burdens might provide the desired incentive for a carrier to consider adopting EOBRs. ATA stated that managing supporting documents takes 258 million hours a year; the potential costs could be billions of dollars. FedEx noted the NPRM claimed the EOBRs would reduce compliance costs and increase productivity, but if the supporting document requirements are not dropped, those claims were overstated or wrong. If regulators require or allow technology to replace paperwork for HOS, FedEx commented the Agency should replace all paperwork for that requirement. Otherwise, it is an indication that either the technology is not ready for implementation or the technical specifications should be revisited.

MTA, Boyle, NPTC, ATA, and FedEx sought elimination of the supporting documents requirement for those with EOBRs. NPTC stated companies that use EOBRs to supervise driver operations and have effective management systems should not be required to undertake the additional administrative task of collecting and maintaining supporting documents to verify the non-driving portion of a driver's hours. If a company is found to be significantly non-compliant in its HOS management, NPTC asserts FMCSA could use its enforcement authority to impose additional and more stringent supporting document requirements on that carrier and its drivers.

In contrast, J.B. Hunt said supporting documents cannot be eliminated, but carriers should not have to retain documents that show only time and location. If the document does not have any objective information that discloses the driver's non-driving activities, it would not be of value in an EOBR world. Additionally J.B. Hunt states that, in most over-the-road operations, driving time is the most important contributor to driver fatigue. For example, loading and unloading times can be significant, but supporting documents are of little value in determining the duration of on-duty activity. Siemens stated law enforcement is unlikely to accept reduced supporting documents over the long term, and inadequate performance standards lead States and law enforcement to ignore EOBRs.

One owner/operator said this proposed relief was an unfair advantage to motor carriers who could afford EOBRs.

Response: FMCSA agrees compliant EOBRs produce regular time and CMV location position histories sufficient to adequately verify a driver's on-duty driving activities. Under this final rule, motor carriers voluntarily maintaining the time and location data produced by EOBRs would need to maintain only those additional supporting documents that are necessary to verify ODND activities and off-duty status.

It is not in the best interest of public safety to provide relief from supporting document requirements necessary to verify ODND status. Providing such relief could make verification and enforcement of ODND activities extremely difficult, if not impossible in some cases. For privacy reasons, the requirements for compliant EOBRs stop short of the electronic, video or other driver monitoring measures that would be necessary to verify individuals' on-duty not driving time and activities through use of automated recorders.

FMCSA disagrees with FedEx that failure to eliminate all supporting document requirements is an indication that EOBR technology is not yet ready for implementation. FMCSA considers the ability to relieve supporting

document requirements related to on-duty and driving time significant in itself. Blanket relief from all supporting document requirements was not proposed in the NPRM and is not included as part of this final rule.

7.2.1 EOBRs and the Supporting Documents Rule

Several commenters raised the relationship of this rule with the supporting documents rule. ATA stated FMCSA should complete the supporting document rule as soon as possible. FedEx said the rule should be coordinated with the EOBR rule, OOIDA and CVSA asserted until the supporting document rule is complete, the public does not have enough information to evaluate the incentives.

FMCSA published the supporting documents Supplemental Notice of Proposed Rulemaking on November 3, 2004 (69 FR 63997), and proposed requirements for the collection and use of documents to verify the accuracy of driver records of duty status. It proposed language to clarify the duties of motor carriers and drivers with respect to supporting documents and requested further comments on the issue. FMCSA withdrew this rulemaking action on October 25, 2007 (72 FR 60614) based on issues with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) analysis supporting this action. After the paperwork analysis that accurately identifies the information collection burden associated with the existing supporting documents requirements is complete, the Agency intends to initiate a new rulemaking action. This will ensure the new rulemaking proposal is based on an accurate and comprehensive understanding of the existing information collection inventory.

FMCSA does not wish to delay the benefits of this rulemaking pending completion of the supporting documents rule. Therefore, this rulemaking provides for relief from the existing supporting document requirements related to on-duty driving activities for motor carriers that voluntarily install EOBRs.

7.3 Suggestions for Other Incentives

MTA recommended any violations occurring when the truck is being used as a personal conveyance should be assigned only to the driver, not the carrier. It suggested carriers should not be subject to violations for speeding based on GPS data, and also that RODS violations should be weighted as other categories are, not at twice the value.

ATA suggested including positive credits or points for carriers in the SafeStat selection criteria as applied to the safety management and Driver SEAs. ATA also suggested FMCSA offer relief from the 2-point assessment in the safety rating methodology for a pattern of HOS violations. It also recommended the use of random sampling in conducting compliance reviews. In the event these incentives cannot be achieved through provisions in regulations, FMCSA should provide motor carriers the ability to test and apply these incentives through pilot programs and an expedited exemption process.

ATA, TCA, J.B. Hunt, Fil-Mor Express, AMSA, and two individuals recommended tax incentives. Two individuals also recommended tax breaks. TCA stated log auditing for EOBR logs should be done only at roadside inspections, not by the carriers. DriverTech stated the fleets and EOBR manufacturers should be exempt from lawsuits on product and usage liability.

CTA recommended FMCSA consider allowing minor variances in driving, on-duty and off-duty time, up to a specified limit. CTA did not see this as an incentive to encourage EOBR use by compliant carriers; rather, it considered it to be a reasonable enforcement approach to avoid unwarranted penalties. Other commenters made similar suggestions.

J.B. Hunt suggested a number of incentives. It recommended providing EOBR carriers with a credit on their Inspection Selection System score to allow their drivers to more frequently bypass inspection stations. J.B. Hunt said this may help gain much needed driver acceptance. Only carriers with a good history of well maintained equipment (Equipment Safety Evaluation Area (SEA) value or Out-of-Service rates less than a certain score) should qualify for this incentive.

J.B. Hunt said the Agency should make a commitment in the final rule to work cooperatively with other agencies and governmental entities in an effort to exempt EOBR units from the Federal Excise Tax (FET) for original equipment manufacturer installations and equipment retrofitting and to provide for an accelerated depreciation or expensing option for tax purposes. It recommended ensuring EOBR carriers are able to gain the benefit of the "Intra-City Multiple Stop" rule by permitting the driver to show very short movements (totaling less than 1 percent of daily miles traveled) combined with other driving in the same city. This should also apply to consolidating ODND time as currently permitted when logging on paper.

AMSA stated, without sufficient incentives, HHG carriers would find it too expensive to install EOBRs and implement the supporting systems.

An individual suggested original equipment manufacturer-installed EOBRs should come with the option to switch providers.

Response: FMCSA believes the majority of other incentive ideas offered, including tax incentives, are outside the scope of this rulemaking. FMCSA does not believe it is in the best interest of public safety to count threshold rates of HOS violations the same as other violations in our safety fitness rating methodology, as suggested by the Minnesota Trucking Association and the ATA. To do so would effectively allow motor carriers to continue in operation with a Satisfactory safety fitness rating and 100 percent HOS noncompliance as long as deficiencies were not documented in other areas of the motor carrier's operation. Also, FMCSA did not propose, and will not require, EOBRs to collect vehicle speed data.

8. Economic Analysis and Other Rulemaking Analyses and Notices

8.1 Economic Costs

8.1.1 Viability of EOBR Market Without a Broad Mandate

Three commenters, Report on Board, Siemens, and CVSA, stated a broader mandate would lead to lower device costs. Report on Board claims it did not see a viable market for its own product without an industry-wide mandate. Siemens reported its device would cost 20 percent more under a long-haul mandate compared to what it would cost under an industry-wide mandate and mentioned that component costs should fall over time. However, IIHS pointed out there is already a market for these devices, and questions of unit-cost and availability are no longer relevant.

Response: FMCSA assumes that the price of EOBRs under an industry-wide mandate should be considered from a long-run equilibrium perspective—*i.e.,* assuming manufacturers have had enough time to enter the industry and expand capacity to meet demand. Under those conditions, prices should be driven to where they allow efficient manufacturers to cover their production costs and provide an adequate profit.

The production of more units may allow manufacturers to take advantage of economies of scale (whereby fixed costs are spread over more units) and produce EOBRs at lower per-unit cost. The degree to which economies of scale would reduce costs is uncertain, however. Current and would-be EOBR manufacturers would, for the most part,

already be able to take advantage of considerable economies of scope [3] because they (1) Currently produce similar products, (2) already possess the necessary technical expertise, organizational infrastructure, distribution networks, and some of the necessary manufacturing equipment, and (3) have access to variable inputs (materials and labor). Independent of the number of EOBRs produced, firms would not necessarily need to make outlays for many of these fixed inputs. Similarly, though manufacturers might be expected to achieve manufacturing cost savings through "learning by doing" (that is, finding more efficient manufacturing methods as cumulative output increases), it is not clear to what extent learning effects have already been exhausted in the course of manufacturing very similar devices. Finally, uncertainty about the number of new manufacturers entering the expanded market makes it impossible to estimate the number of units per manufacturer, which is a key variable in determining both scale and learning effects.

FMCSA agrees that the cost of EOBRs' electronic components—EOBRs generally borrow components from existing technology—should trend down, assuming that plentiful supplies of electronic parts continue. However, and given the circumstances noted above, FMCSA does not have sufficient data at this time that would allow it to estimate the effects of greater production volumes on EOBR costs, and hence on EOBR prices. In the face of substantial uncertainty over the extent of any reduction in EOBR prices as a result of greater sales volumes, FMCSA has assumed that the market price for EOBRs would remain unchanged regardless of the breadth of the mandate, for the purposes of this rule. The data and price projections will be explored further in the follow-on rulemaking, discussed earlier.

The Agency agrees with IIHS that availability should not be a consideration and that EOBR prices are not prohibitive. Report on Board's claim that it did not see a viable market without FMCSA's delivering captive customers is not supported by current market conditions: Not only are numerous manufacturers already engaged in this business, but the market for these devices could extend beyond U.S. borders. In both the NPRM and this final rule, the Agency examined a variety of devices, including the lowest cost device submitted for consideration. The analysis for the final rule is premised on the use of only a low cost device.

8.1.2 Alternative Device Cost Estimates

Report on Board, Siemens, NPGA, and TCA offered estimates of EOBR device costs ranging from $300 to $3,000. Siemens stated the low cost device considered in the NPRM would not be practicable due to its low operational life, and offered a $300 price estimate for its own minimally compliant device, which it claims has a ten-year operational life with periodic maintenance and upgrades; the annualized cost of this device would be $69.

Response: Since the NPRM was published, FMCSA has actively monitored EOBR technology (both devices with and without extra fleet management applications) currently being sold in North America. It conducted its analysis in that NPRM using a range of devices priced from $100 to $2000, a range into which most of the devices subsequently described by commenters fall. The Agency categorically rejects the assertion motor carriers will need to spend $3000 for a device that meets the performance standards of this rule. FMCSA agrees the cost-savings of the low cost device originally considered was severely curtailed by its assumed short operational life. Since publishing the NPRM, the Agency has become aware of other compliant low cost EOBRs, and has focused its analysis on one of them, while carefully considering all of the costs particular to this device.

8.1.3 Comments on Associated Costs

Eight commenters mentioned costs associated with EOBRs in addition to the individual device costs. AMSA, SC&RA, Werner, the Maryland State Police, TCA, and ATA stated driver and other employee training expenses would be significant. Werner, AMSA, the Maryland State Police, and ATA mentioned installation costs. FedEx, SC&RA, ATA, TCA, and NPGA stated the Agency should consider administrative costs for such expenditures as computer software and hardware, data extraction, and administrative staff; NPGA further stated computing equipment to process EOBR data could cost as much as $15,000 per carrier, and such expense would be disproportionately large for its members, who, on average, have 9 or fewer trucks. AMSA, SC&RA, Maryland State Police, and ATA commented inspection, maintenance, and repair costs should be factored in. AMSA, SC&RA, and ATA stated airtime costs for data extraction should be accounted for, while Siemens stated a single annual operating cost figure it has estimated for its low-cost device includes all airtime costs.

Werner and ATA pointed to device calibration as possibly resulting in significant cost. Werner stated calibration requirements may impose significant costs on the carrier if calibration cannot be easily done by existing staff and asked how often calibration will or should be required. This could represent a substantial burden for many carriers that have trucks that are not based at a terminal. ATA also listed driver technical demands, external report generation, and the costs for some fleets of moving from existing systems to new systems as potentially adding costs.

Response: With the exception of calibration costs, which FMCSA does not believe to be significant, the Agency included all of the costs referenced by commenters. In any event, commenters for the most part did not offer any alternative cost figures for the Agency to consider. Regarding repair, maintenance, and upgrade costs, the Agency currently bases its estimates on a device that is leased from its manufacturer and does not have these costs associated with it. Cost and benefit estimates now explicitly account for current use of AOBRDs, devices that would meet the requirements of this rule, and fleet management systems that can be upgraded to EOBR functionality.

The Agency does not believe NPGA's assertion that office computer equipment for processing EOBR data "could be as much as $15,000" is reasonable, particularly for its members, who, on average, have nine or fewer trucks. The Agency has made every attempt not to understate any costs, although all cost estimates are constrained by the criterion that EOBR systems meet the minimum requirements of this rule. In addition, hypothetically large cost figures are not germane, because carriers incur excessive costs at their own choosing, not because the rule requires them to do so. Costs of office equipment have been eliminated in this analysis because the EOBR provider hosts all records on a secure Web site and includes the price of this service in its monthly fee.

Every device is configured differently, and not all devices share the same costs. The complexity and cost of installation, for example, can vary widely by device, and the costs of even similarly configured devices can differ greatly. FMCSA presented the costs particular to

[3] Economies of scope: Per-unit or average total cost of production decreases as a result of increasing the number of different goods produced.

the three devices it considered; it could not present costs as if these had been any other devices. Likewise, the current analysis focuses on the actual costs of implementing the low cost device presented. As in the NPRM, costs particular to that device are explicitly accounted for. The goal of the cost analysis is to demonstrate how the performance standards of this rule may be met with minimal cost, not to estimate the costs of every possible device.

8.1.4 Costs of Training Law Enforcement

The Maryland SHA and ATA stated the cost of training enforcement officers to review electronic logs should be included. The Maryland SHA added State enforcement officials would also be asked to provide "inspection services for verification of electronic-on-board-recorder installation and operation," although enforcement personnel are neither trained electronics installers nor mechanics. The Maryland SHA also stated not all enforcement personnel have laptop computers in their patrol vehicles, and those that do may not have wireless connectivity; it would be impossible to check electronic logs under these circumstances. Additionally enforcement personnel should not be asked to perform this function as staffing reserves are already strained with more important duties—*e.g.,* roadside inspections, homeland security activities, *etc.* Maryland SHA stated FMCSA should fully assess the effects on enforcement. No funding is being provided to enforce the new provisions.

Response: The Agency has carefully considered the costs to State enforcement staff. The Agency has already increased its cost estimates after recognizing that training in reviewing electronic records will always represent an additional cost, and will never simply replace the current training in paper RODS. In response to the Maryland SHA's concerns, the Agency has estimated costs of inspecting EOBR devices, and the costs of equipment purchases and upgrades for accessing and reviewing electronic records.

8.2 Paperwork Savings

Six entities commented on paperwork benefits and driver's time use. PMAA stated the time saved from not filling out logs is not significant. However, the Maryland SHA agrees that EOBRs will save time, and SC&RA stated automation should reduce administrative burden. Report on Board estimated annual per truck paperwork burden costs $2,029. Public Citizen commented electronic records are more easily collected and analyzed, and such information could be used to more accurately track and monetize time wasted at loading docks, which would benefit drivers paid by the mile or trip. Verigo, a manufacturer of manual electronic logs that lack the automatic recording features required of AOBRDs and EOBRs, stated FMCSA is relatively silent on the issue of HOS auditing and management reporting.

Response: Paperwork savings figure prominently into this rule's analysis, and have been carefully considered. The paperwork burden associated with RODS includes the time spent filling them out, reviewing them, and filing them. FMCSA's estimate of the paperwork burden of filling out RODS is 6.5 minutes per day per driver, and 3 minutes per day per driver for review and filing. Trucking companies may not recognize all the benefits of paperwork savings if they pay drivers by the mile or trip and do not compensate drivers for time spent filling out logs. Costs directly borne by drivers are as important as costs borne by motor carriers, and, as other commenters have pointed out and the RIA shows, the time saving to drivers can be significant. The Agency also agrees with Public Citizen that insofar as EOBRs accurately capture total on-duty time, drivers may benefit when wasted time, such as excessive time spent at loading docks, is documented. Nevertheless, this potential benefit is not included in the RIA because the Agency cannot predict if this added recording of on duty time will translate into driver compensation, and if so, whether this would be a transfer from motor carriers or paid for via higher prices charged to shippers.

8.3 Regulatory Flexibility Act Analysis (Small Entities)

Forty commenters, including 15 carriers and 13 drivers, expressed opinions on the impact on small entities. PMAA stated the cost would be a heavy burden for small companies. TCA stated with high fuel costs and expected tighter emission controls increasing the costs of new trucks, the cost of EOBRs is one more burden the majority of these carriers cannot afford. The Maryland State Police said mandating EOBRs could be economically disastrous for some carriers. OOIDA said the burden would be disproportionately borne by small entities, which do not have the purchasing power of larger carriers or the large number of revenue producing drivers across whom to spread EOBR costs; non-safety economic advantages of EOBRs also come at a cost and typically are only useful to those managing large fleets. OOIDA also stated small carriers are more likely to be selected for reviews, although until SafeStat is revised, it is difficult to be certain on that point; larger carriers are more sophisticated about disguising noncompliance.

OOIDA also commented the most burdensome cost to small-business carriers will be the loss of drivers who are unwilling to drive for an EOBR-mandated motor carrier. As posited by OOIDA, for example, the cost of the initial installation of an EOBR into an existing truck has been estimated to be between $1,000 and $3,000. Either the motor carriers will face that cost for each truck, or the owner-operator will bear that cost. That cost may be prohibitive for a small-business, and owner-operators who face such a cost will quickly look for work for another carrier. Under either scenario, a motor carrier facing the mandate will go out of business.

Response: All carriers are harmed, but especially small carriers, by companies that gain a competitive advantage by violating safety regulations. Although the majority of carriers are small businesses, most will not be subject to the remedial directive. Any competitive advantage gained by a small carrier by violating HOS will likely come at the expense of carriers with similar characteristics—size, geography, market share.

Regarding comments concerning costs, costs for the most part are proportional to the number of power units a carrier would need to outfit. Carriers would incur an annual net expense of less than $100 per power unit, less than 0.1 percent of annual revenue per power unit. Furthermore, even these modest costs are avoidable as long as carriers comply with the HOS rules.

8.4 Comments on Driver Health Considerations

Three commenters criticized the Agency for failing to adequately consider driver health impacts in this rule. IBT stated carriers will use EOBRs to pressure drivers to increase productivity, which would increase their stress levels and adversely impact their health, and OOIDA stated the stress of being monitored alone is enough to harm driver health. Advocates, however, stated FMCSA's concern about the stress of using EOBRs distorted the research results of several studies, and the Agency had ignored potential health impacts of using EOBRs and improving compliance. Advocates contended the Agency's regulatory analysis ignored "evidence of adverse

health impacts from the very long working hours associated with HOS violations." Furthermore, by not proposing to mandate EOBR use, Advocates held the Agency was not helping "to ameliorate the adverse health impacts of exceptionally long working and driving hours triggered by the Agency's final rules in 2003 and in 2005."

Response: The Agency has addressed both positive and negative health impacts in Appendix A to the EA for this rule, which has been placed in the docket. The Agency carefully reviewed research on the potentially negative impacts of electronic monitoring and concluded that the use of EOBRs required in today's final rule will not result in negative impacts on driver health for two reasons: First, because monitoring of HOS compliance is an existing, not a new, requirement; and second, because the Agency is requiring EOBRs to monitor safety, not workplace productivity.

The Agency has also not been able to statistically quantify significant health benefits from improved HOS compliance, although at least some benefits are anticipated to result, for at least some drivers. Cost and benefit estimates of the HOS regulations are included in the analysis for that separate rulemaking 72 FR 71247 (Dec. 17, 2007). In addition, the underlying HOS regulations are the subject of a separate rulemaking action 72 FR 71247 (Dec. 17, 2007).

V. Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

Under Executive Order 12866 (58 FR 51735, October 4, 1993) and DOT policies and procedures, FMCSA must determine whether a regulatory action is "significant," and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal government or communities.

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof.

(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.

FMCSA has determined this rule will have an annual effect of $100 million or more, and is, therefore, an economically significant regulatory action within the meaning of the Executive Order and under the regulatory policies and procedures of DOT because of the level of public interest in rulemakings related to hours-of-service (HOS) compliance. The Agency has therefore conducted an RIA of the costs and benefits of this rule. The RIA is summarized below. The full analysis is available in the docket.

After reconsidering the discussion in the NPRM, and based on comments received, FMCSA examined two regulatory options for the final rule—the 2 x 10 remedial directive proposed in the NPRM, and the considerably broader and more stringent 1 x 10 remedial directive. We understand the concerns of ATA and J.B. Hunt, among others, who believe the proposal did not cover enough carriers. While FMCSA acknowledges the safety concerns of those that support an industry-wide EOBR mandate, the Agency cannot extend the EOBR mandate in that manner in this final rule because the scope of the current rulemaking proceeding is limited to a compliance-based regulatory approach, implemented through a remedial directive. However, the number of motor carriers that will be required to install, use and maintain EOBRs is significantly greater under this final rule—using the 1 x 10 trigger—than under the 2 x 10 trigger that was proposed in the NPRM. The RIA examines the costs and benefits of two regulatory options, the 2 x 10 and the 1 x 10 remedial directives.

Cost information was gathered from publicly available marketing materials and contact with EOBR vendors. The RIA focuses on the least expensive device determined to be compliant with the rule.[4] We do not expect all carriers to use this specific device, only that it represents a device at the low end of the cost range of an EOBR that the Agency believes would be compliant with the provisions of the final rule.

For many carriers, this rule would not require new equipment. Some carriers already use AOBRDs, AOBRDs with enhanced functionality, or onboard systems with EOBR functionality, which the rule will allow them to continue using provided certain conditions are met. These carriers are excluded from cost and benefit calculations when appropriate. Other carriers employ Fleet Management Systems (FMS) that are capable of fulfilling this rule's requirements with the activation of available hardware or software functions. Estimates of costs are lower for carriers that already have partial or complete EOBR functionality.

Costs were estimated on an annualized basis over a ten-year horizon. Costs and benefits that accrue throughout the year are presented at their present value at the beginning of the year. Training time costs for drivers, administrative staff, and State enforcement personnel were estimated. The analysis estimates the cost to carriers of coming into compliance with HOS and corresponding safety benefits as induced through EOBR use. Cost savings on paper log purchase, use, and processing are also assessed.

Safety benefits of EOBR use are assessed by estimating reductions in HOS violations and resulting reductions in fatigue-related crashes. Other non-safety health effects (positive and negative) for drivers, as a result of the potential decreased driving time based on increased pressure on drivers to comply with the HOS regulations, are considered but not quantified in this analysis.

The estimates of the total net benefits are presented below: Of the two regulatory options, the 1 x 10 remedial directive yields higher total net benefit.

[4] The least expensive device that satisfies the requirements of the rule was found to be the RouteTracker sold by Turnpike Global. Cost data are based on the use of this device with the Sprint network.

TOTAL ANNUAL NET BENEFITS

[Millions]

	Regulatory option 1: 1 x 10 remedial directive	Regulatory option 2: 2 x 10 remedial directive
Total Costs	($139)	($14)
Total Benefits	182	22
Net Benefits	43	8

Additionally, the overall crash rates of both the 1 x 10 remedial directive motor carriers and the 2 x 10 remedial directive motor carriers are considerably higher than the crash rates of the general motor carrier population. Using data from MCMIS and compliance review databases, crash rates were computed by dividing total crashes by each carrier's number of power units. The Agency compared crash rates between the general motor carrier population and 1 x 10 remedial directive motor carriers as well as between the general motor carrier population and 2 x 10 remedial directive motor carriers. The 1 x 10 remedial directive motor carriers were found to have a 40 percent higher crash rate than that of other carriers that have undergone compliance reviews, and 2 x 10 remedial directive motor carriers had a 90 percent higher crash rate than that of other carriers that have undergone compliance reviews. The final rule's application of a remedial directive to the 1 x 10 remedial directive motor carriers makes the best use of Agency resources and provides considerably higher net benefits to society.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 5 U.S.C. 601 *et seq.*), requires agencies to consider the impact of regulations on small businesses, small non-profit organizations, and small governmental jurisdictions, unless the Agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities (SEISNOSE). The remedial directive aspect of this rule will be applicable to about 2,800 motor carriers in the first year and 5,700 motor carriers each year thereafter. The Agency estimates that the total net cost of this rule will be less than $100 per power unit per year, compared to revenues of over $100,000 per power unit per year. Based on the number of carriers affected and the overall cost impact to these carriers, the Agency does not expect this rule to have a SEISNOSE. The Agency has prepared a small business impact analysis for this rule that discusses its estimates of small business impacts. This analysis has been placed in the docket.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from OMB for each collection of information they conduct, sponsor, or require through regulations. The FMCSA determined that this rule will affect the OMB Control Number 2126–0001, "Hours of Service of Drivers Regulation, Supporting Documents," information collection request (ICR), approved at 184,380,000 burden hours through December 31, 2011. The PRA requires agencies to provide a specific, objectively supported estimate of burden hours that will be imposed by the information collection. *See* 5 CFR 1320.8. The requirement triggering the paperwork burden imposed by FMCSA's records of duty status requirement is set forth at 49 CFR 395.8.

The FMCSA estimated that the remedial provisions of this final rule, requiring the installation, use, and maintenance of EOBRs by motor carriers with a threshold rate of serious HOS violations, would affect approximately 5,700 motor carriers that employ 129,000 drivers annually. The use of EOBRs will reduce the annual burden hours for FMCSA's information collection OMB Control Number 2126–0001 by 3,110,000 hours. The FMCSA's revised estimate of the annual burden of the IC is 181,270,000 hours (184,380,000 − 3,110,000).

A supporting statement reflecting this assessment will be submitted to OMB together with this final rule.

Privacy Impact Assessment

Section 522(a)(5) of the Transportation, Treasury, Independent Agencies, and General Government Appropriations Act, 2005, (Pub. L. 108–447, div. H, 118 Stat. 2809, 3268) requires the Department of Transportation and certain other Federal agencies to conduct a privacy impact assessment (PIA) of each proposed rule that will affect the privacy of individuals. The Agency conducted a PIA for the NPRM, and we have augmented the PIA for this final rule and placed the revised version in the docket. Although the Agency determined that the same personally identifiable information (PII) for CMV drivers currently collected as part of the RODS and supporting documents requirements would continue to be collected under this rulemaking, it recognized the significance of the decision to require, even in limited circumstances, that PII previously kept in paper copy now be kept electronically. Privacy was a significant consideration in FMCSA's development of this proposal. As stated earlier, we recognize that the need for a verifiable EOBR audit trail—a detailed set of records to verify time and physical location data for a particular CMV—must be counterbalanced by privacy considerations. The Agency considered, but rejected, certain alternative technologies to monitor drivers' HOS (including in-cab video cameras and bio-monitors) as too invasive of personal privacy. All CMV drivers subject to 49 CFR part 395 must have their HOS accounted for to ensure they have adequate opportunities for rest. This final rule would not change the Agency's policies, practices, or regulations regarding its own collection and storage of HOS records of individual drivers whose RODS are reviewed. The expanded review procedures under the random review incentive, however, would enlarge the population of drivers whose RODS are reviewed for those carriers. It would also change the technology by which compliance is to be documented, in a way that facilitates both the sharing of information and its capacity to be data processed.

As before, the HOS information recorded on EOBRs would be accessible to Federal and State enforcement personnel only when compliance assurance activities are conducted at the facilities of motor carriers subject to the RODS requirement or when the CMVs of those carriers are inspected at roadside. Motor carriers would not be required to upload this information into Federal or

State information systems accessible to the public. This would aid data security and ensure that general EOBR data collection does not result in a new or revised Privacy Act System of Records for FMCSA. (Evidence of violation of any FMCSA requirements uncovered during either of these activities is transferred to a DOT/FMCSA Privacy Act record system.) Data accuracy concerning drivers' RODS should improve as a result of the new performance standards for EOBRs, allowing drivers to make EOBR entries to identify any errors or inconsistencies in the data, and mandating EOBR use by motor carriers with a history of serious HOS noncompliance.

What would change, and change significantly, is the capacity of this data to be processed and converted to more usable information for the purpose of determining drivers' and motor carriers' compliance with the HOS regulations. Although no CMV operator would be required to upload this data to a Federal or State database accessible to the public, the electronic formulation of the data would make it easier for a CMV operator to keep track of the activities of its drivers. Similarly, Federal and State law enforcement and safety authorities, including FMCSA, would be better able to do the same. As shown in other contexts, the increased accessibility, accuracy, and reliability of geospatial location information has made electronically generated and preserved data attractive to a variety of audiences. On balance, we must compel use of these devices in those situations described in this rule. The entire privacy impact assessment is available in the docket for this rule.

Unfunded Mandates Reform Act

This rule would not result in the net expenditure by State, local and Tribal governments, in the aggregate, or by the private sector, of $141,300,000 or more in any one year, nor would it affect small governments. Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Executive Order 13132 (Federalism)

This rulemaking would not preempt or modify any provision of State law, impose substantial direct unreimbursed compliance costs on any State, or diminish the power of any State to enforce its own laws. Accordingly, this rulemaking does not have Federalism implications warranting the application of Executive Order 13132.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this rule.

National Environmental Policy Act

The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*, as amended) requires Federal agencies to consider the consequences of, and prepare a detailed statement on, all major Federal actions significantly affecting the quality of the human environment. In accordance with its procedures for implementing NEPA (FMCSA Order 5610.1, Chapter 2.D.4(c) and Appendix 3), FMCSA prepared an EA to review the potential impacts of this rulemaking. The EA findings are summarized below. The full EA is in the docket.

Implementation of this action would alter to some extent the operation of CMVs. However, the rule will not require any new construction or change significantly the number of CMVs in operation. FMCSA found, therefore, that noise, hazardous materials, endangered species, cultural resources protected under the National Historic Preservation Act, wetlands, and resources protected under Section 4(f) of the Department of Transportation Act would not be impacted by the rule.

The EA also examined impacts on air quality and public safety. We anticipate that drivers of CMVs operated by carriers that have been issued an EOBR remedial directive will now take the full off-duty periods required by the HOS rules. During off-duty periods, drivers frequently leave the CMV parked in "idle," which increases engine emissions on a per-mile basis. Hence, drivers for remediated carriers will cause a modest overall increase in engine emissions by virtue of additional drivers coming into compliance with the HOS regulations. Because the number of trucks likely to be required to install EOBRs is relatively small (139,000 out of 4.2 million total CMVs), FMCSA determined that the increase in air toxics would be negligible. Moreover, because drivers for carriers brought into HOS compliance will experience less fatigue and be less likely to have fatigue-related crashes, there will be a counterbalancing increase in public safety.

FMCSA concludes that the rule changes will have a negligible impact on the environment. The provisions under the action do not, individually or collectively, pose any significant environmental impact. Therefore, this rule change will not require an environmental impact statement. Consequently, FMCSA issues a Finding of No Significant Impact (FONSI) in the EA for this final rule.

Executive Order 13211 (Energy Supply, Distribution or Use)

FMCSA determined that the rule will not significantly affect energy supply, distribution, or use. No Statement of Energy Effects is therefore required.

Executive Order 12898 (Environmental Justice)

FMCSA considered the effects of this final rule in accordance with Executive Order 12898 and DOT Order 5610.2 on addressing Environmental Justice for Minority Populations and Low-Income Populations, published April 15, 1997 (62 FR 18377) and determined that there are no environmental justice issues associated with this rule or any collective environmental impact resulting from its promulgation. Environmental justice issues would be raised if there were "disproportionate" and "high and adverse impact" on minority or low-income populations. None of the regulatory options considered in this rulemaking will result in high and adverse environmental impacts.

Executive Order 13045 (Protection of Children)

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, Apr. 23, 1997), requires agencies issuing "economically significant" rules, if the regulation also concerns an environmental health or safety risk that an agency has reason to believe may disproportionately affect children, to include an evaluation of the regulation's environmental health and safety effects on children. Although the rule is economically significant, it will improve safety; the rule also would not have a disproportionate affect on children. Therefore, FMCSA has determined that an analysis of the impacts on children is not required.

Executive Order 12988 (Civil Justice Reform)

This action 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.

Executive Order 12630 (Taking of Private Property)

This rule will not effect a taking of private property or otherwise have

taking implications under E. O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act (15 U.S.C. 272 note) requires Federal agencies proposing to adopt Government technical standards to consider whether voluntary consensus standards are available. If the Agency chooses to adopt its own standards in place of existing voluntary consensus standards, it must explain its decision in a separate statement to OMB.

FMCSA determined there are no voluntary national consensus standards for the design of EOBRs as complete units. However, there are many voluntary consensus standards concerning communications and information interchange methods that could be referenced as part of comprehensive performance-based requirements for EOBRs to ensure their reliable and consistent utilization by motor carriers and motor carrier safety compliance assurance officials. For example, the digital character set would reference the ASCII (American Standard Code for Information Interchange) character set specifications, the most widely used form of which is ANSI X3.4–1986. This is described in the "American National Standard for Information Systems—Coded Character Sets—7–Bit American National Standard Code for Information Interchange (7–Bit ASCII) (ANSI document # ANSI INCITS 4–1986 (R2007)) published by the American National Standards Institute (ANSI). The standard is available by contacting the American National Standards Institute, 11 West 42nd Street, New York, New York 10036, or by visiting the ANSI Web site at *http://webstore.ansi.org.* In another example, the Agency would reference the 802.11g–2003 standard as defined in the 802.11–2007 base standard for wireless communication published by IEEE (Institute of Electrical and Electronics Engineers).

We did review and evaluate the European Commission Council Regulations 3821/85 (analog tachograph) and 2135/98 (digital tachograph). These are not voluntary standards, but rather are design-specific type-certification programs. We concluded these standards lack several features and functions (such as CMV location tracking and the ability for the driver to enter remarks) that FMCSA has included in its performance-based final rule, and require other features (such as an integrated license document on the driver's data card) that are not appropriate for U.S. operational practices.

List of Subjects

49 CFR Part 350

Grant programs—transportation, Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 385

Administrative practice and procedure, Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping.

49 CFR Part 395

Highway safety, Incorporation by reference, Motor carriers, Reporting and recordkeeping.

49 CFR Part 396

Highways and roads, Motor carriers, Motor vehicle equipment, Motor vehicle safety.

■ For the reasons stated in the preamble, FMCSA amends 49 CFR chapter III as set forth below:

PART 350—COMMERCIAL MOTOR CARRIER SAFETY ASSISTANCE PROGRAM

■ 1. The authority citation for part 350 is revised to read as follows:

Authority: 49 U.S.C. 13902, 31101–31104, 31108, 31136, 31140–31141, 31161, 31310–31311, 31502; and 49 CFR 1.73.

■ 2. Amend § 350.201 by revising the introductory text and adding a new paragraph (z) to read as follows:

§ 350.201 What conditions must a State meet to qualify for Basic Program Funds?

Each State must meet the following 26 conditions:

* * * * *

(z) Enforce requirements relating to FMCSA remedial directives issued in accordance with 49 CFR part 385, subpart J, including providing inspection services for verification of electronic on-board recorder installation and operation as provided in § 385.811(b).

PART 385—SAFETY FITNESS PROCEDURES

■ 3. Revise the authority citation for part 385 to read as follows:

Authority: 49 U.S.C. 113, 504, 521(b), 5105(e), 5109, 13901–13905, 31133, 31135, 31136, 31137(a), 31144, 31148, and 31502; Sec. 113(a), Pub. L. 103–311; Sec. 408, Pub. L. 104–88; Sec. 350, Pub. L. 107–87; and 49 CFR 1.73.

■ 4. Amend § 385.1 by revising paragraph (a) to read as follows:

§ 385.1 Purpose and scope.

(a) This part establishes FMCSA's procedures to determine the safety fitness of motor carriers, to assign safety ratings, to direct motor carriers to take remedial action when required, and to prohibit motor carriers determined to be unfit from operating a CMV.

* * * * *

■ 5. Amend § 385.3 by adding a definition for the term "safety fitness determination" in alphabetical order, by removing the existing definition for the term "safety ratings," and by adding a new definition for the term "safety rating or rating" to read as follows:

§ 385.3 Definitions and acronyms.

* * * * *

Safety fitness determination means the final determination by FMCSA that a motor carrier meets the safety fitness standard under § 385.5.

Safety rating or *rating* means a rating of "Satisfactory," "Conditional" or "Unsatisfactory," which the FMCSA assigns to a motor carrier using the factors prescribed in § 385.7, as computed under the Safety Fitness Rating Methodology (SFRM) set forth in Appendix B to this part and based on the carrier's demonstration of adequate safety management controls under § 385.5(a). A safety rating of "Satisfactory" or "Conditional" is necessary, but not sufficient, to meet the overall safety fitness standard under § 385.5.

(1) *Satisfactory safety rating* means that a motor carrier has in place and functioning safety management controls adequate to meet that portion of the safety fitness standard prescribed in § 385.5(a). Safety management controls are adequate for this purpose if they are appropriate for the size and type of operation of the particular motor carrier.

(2) *Conditional safety rating* means a motor carrier does not have adequate safety management controls in place to ensure compliance with that portion of the safety fitness standard prescribed in § 385.5(a), which could result in occurrences listed in § 385.5(a)(1) through (a)(11).

(3) *Unsatisfactory safety rating* means a motor carrier does not have adequate safety management controls in place to ensure compliance with that portion of the safety fitness standard prescribed in § 385.5(a), and this has resulted in occurrences listed in § 385.5(a)(1) through (a)(11).

(4) *Unrated carrier* means that the FMCSA has not assigned a safety rating to the motor carrier.

■ 6. Revise § 385.5 to read as follows:

§ 385.5 Safety fitness standard.

A motor carrier must meet the safety fitness standard set forth in this section. Intrastate motor carriers subject to the hazardous materials safety permit requirements of subpart E of this part must meet the equivalent State requirements. To meet the safety fitness standard, the motor carrier must demonstrate the following:

(a) It has adequate safety management controls in place, which function effectively to ensure acceptable compliance with applicable safety requirements to reduce the risk associated with:

(1) Commercial driver's license standard violations (part 383 of this chapter),

(2) Inadequate levels of financial responsibility (part 387 of this chapter),

(3) The use of unqualified drivers (part 391 of this chapter),

(4) Improper use and driving of motor vehicles (part 392 of this chapter),

(5) Unsafe vehicles operating on the highways (part 393 of this chapter),

(6) Failure to maintain accident registers and copies of accident reports (part 390 of this chapter),

(7) The use of fatigued drivers (part 395 of this chapter),

(8) Inadequate inspection, repair, and maintenance of vehicles (part 396 of this chapter),

(9) Transportation of hazardous materials, driving and parking rule violations (part 397 of this chapter),

(10) Violation of hazardous materials regulations (parts 170 through 177 of this title), and

(11) Motor vehicle accidents, as defined in § 390.5 of this chapter, and hazardous materials incidents.

(b) The motor carrier has complied with all requirements contained in any remedial directive issued under subpart J of this part.

■ 7. Amend § 385.9 by revising paragraph (a) to read as follows:

§ 385.9 Determination of a safety rating.

(a) Following a compliance review of a motor carrier operation, FMCSA, using the factors prescribed in § 385.7 as computed under the Safety Fitness Rating Methodology set forth in Appendix B to this part, shall determine whether the present operations of the motor carrier are consistent with that portion of the safety fitness standard set forth in § 385.5(a), and assign a safety rating accordingly.

* * * * *

■ 8. Amend § 385.11 by revising the section heading and adding paragraph (g) to read as follows:

§ 385.11 Notification of safety rating and safety fitness determination.

* * * * *

(g) If a motor carrier is subject to a remedial directive and proposed determination of unfitness under subpart J of this part, the notice of remedial directive will constitute the notice of safety fitness determination. If FMCSA has not issued a notice of remedial directive and proposed determination of unfitness under subpart J of this part, a notice of a proposed or final safety rating will constitute the notice of safety fitness determination.

■ 9. Amend § 385.13 by adding paragraph (e) as follows:

§ 385.13 Unsatisfactory rated motor carriers; prohibition on transportation; ineligibility for Federal contracts.

* * * * *

(e) *Revocation of operating authority.* If a proposed "unsatisfactory" safety rating or a proposed determination of unfitness becomes final, the FMCSA will, following notice, issue an order revoking the operating authority of the owner or operator. For purposes of this section, the term "operating authority" means the registration required under 49 U.S.C. 13902 and § 392.9a of this subchapter. Any motor carrier that operates CMVs after revocation of its operating authority will be subject to the penalty provisions listed in 49 U.S.C. 14901.

■ 10. Amend § 385.15 by revising paragraph (a) to read as follows:

§ 385.15 Administrative review.

(a) A motor carrier may request the FMCSA to conduct an administrative review if it believes FMCSA has committed an error in assigning its proposed safety rating in accordance with § 385.11(c) or its final safety rating in accordance with § 385.11(b).

* * * * *

■ 11. Amend § 385.17 by adding paragraphs (k) and (l) to read as follows:

§ 385.17 Change to safety rating based upon corrective actions.

* * * * *

(k) An upgraded safety rating based upon corrective action under this section will have no effect on an otherwise applicable notice of remedial directive, or proposed determination of unfitness issued in accordance with subpart J of this part.

(l) A motor carrier may not request a rescission of a determination of unfitness issued under subpart J of this part based on corrective action.

■ 12. Amend § 385.19 by revising paragraphs (a) and (b) to read as follows:

§ 385.19 Safety fitness information.

(a) Final safety ratings, remedial directives, and safety fitness determinations will be made available to other Federal and State agencies in writing, telephonically, or by remote computer access.

(b) The final safety rating, any applicable remedial directive(s), and the safety fitness determination pertaining to a motor carrier will be made available to the public upon request. Any person requesting information under this paragraph must provide FMCSA with the motor carrier's name, principal office address, and, if known, the USDOT Number or the Interstate Commerce Commission MC (ICCMC) docket number if any.

* * * * *

■ 13. Amend § 385.407 by revising paragraph (a) to read as follows:

§ 385.407 What conditions must a motor carrier satisfy for FMCSA to issue a safety permit?

(a) *Motor carrier safety performance.* (1) The motor carrier:

(i) Must be in compliance with any remedial directive issued under subpart J of this part, and

(ii) Must have a "Satisfactory" safety rating assigned by either FMCSA, under the Safety Fitness Procedures of this part, or the State in which the motor carrier has its principal place of business, if the State has adopted and implemented safety fitness procedures that are equivalent to the procedures in subpart A of this part.

(2) FMCSA will not issue a safety permit to a motor carrier that:

(i) Does not certify that it has a satisfactory security program as required in § 385.407(b);

(ii) Has a crash rate in the top 30 percent of the national average as indicated in FMCSA Motor Carrier Management Information System (MCMIS); or

(iii) Has a driver, vehicle, hazardous materials, or total out-of-service rate in the top 30 percent of the national average as indicated in the MCMIS.

* * * * *

■ 14. Amend part 385 by adding a new subpart J consisting of new §§ 385.801 through 385.819 to read as follows:

Subpart J—Remedial Directives

Sec.

385.801 Purpose and scope.
385.803 Definitions and acronyms.
385.805 Events triggering issuance of remedial directive and proposed determination of unfitness.
385.807 Notice and issuance of remedial directive.
385.809 [Reserved]

385.811 Proof of compliance with remedial directive.
385.813 Issuance and conditional rescission of proposed unfitness determination.
385.815 Exemption for AOBRD users.
385.817 Administrative review.
385.819 Effective of failure to comply with remedial directive.

Subpart J—Remedial Directives

§ 385.801 Purpose and scope.

(a) This subpart establishes procedures for FMCSA's issuance of notices of remedial directives and proposed determinations of unfitness.

(b) This subpart establishes the circumstances under which FMCSA will direct motor carriers (including owner-operators leased to motor carriers, regardless of whether the owner-operator has separate operating authority under part 365), in accordance with § 385.1(a), to install electronic on-board recorders (EOBRs) in their commercial motor vehicles as a remedy for threshold rate violations, as defined by § 385.803, of the part 395 hours-of-service regulations listed in Appendix C to this part.

(c) This subpart establishes the procedures by which motor carriers may challenge FMCSA's issuance of proposed determinations of unfitness and remedial directives.

(d) The provisions of this subpart apply to all motor carriers subject to the requirements of part 395 of this chapter.

§ 385.803 Definitions and acronyms.

(a) The definitions in subpart A of this part and part 390 of this chapter apply to this subpart, except where otherwise specifically noted.

(b) As used in this subpart, the following terms have the meaning specified:

Appendix C regulation means any of the regulations listed in Appendix C to Part 385 of this chapter.

Appendix C violation means a violation of any of the regulations listed in Appendix C to part 385 of this chapter.

Electronic on-board recording device (EOBR) means an electronic device that is capable of recording a driver's duty hours of service and duty status accurately and automatically and that meets the requirements of § 395.16 of this chapter.

Final determination for purposes of part 385, subpart J means:

(1) An adjudication under this subpart upholding a notice of remedial directive and proposed unfitness determination;

(2) The expiration of the period for filing a request for administrative review of remedial directive and proposed unfitness determination under this subpart; or

(3) The entry of a settlement agreement stipulating that the carrier is subject to mandatory EOBR installation, use, and maintenance requirements.

Motor carrier includes owner-operators leased to carriers subject to a remedial directive, regardless of whether the owner-operator has separate operating authority under part 365 of this chapter.

Proposed determination of unfitness or *proposed unfitness determination* means a determination by FMCSA that a motor carrier will not meet the safety fitness standard under § 385.5 on a specified future date unless the carrier takes the actions necessary to comply with the terms of a remedial directive issued under this subpart.

Remedial directive means a mandatory instruction from FMCSA to take one or more specified action(s) as a condition of demonstrating safety fitness under 49 U.S.C. 31144(b).

Threshold rate violation for the purposes of this subpart means a violation rate for any Appendix C regulation equal to or greater than 10 percent of the number of records reviewed.

§ 385.805 Events triggering issuance of remedial directive and proposed determination of unfitness.

A motor carrier subject to 49 CFR part 395 will be subject to a remedial directive and proposed unfitness determination in accordance with this subpart for threshold rate violations of any Appendix C regulation or regulations that have been documented during a compliance review. A remedial directive and proposed unfitness determination will be issued if a compliance review conducted on the motor carrier resulted in a final determination of one or more threshold rate violations of any Appendix C regulation are discovered.

§ 385.807 Notice and issuance of remedial directive.

(a) Following the close of the compliance review described in § 385.805(a), FMCSA will issue the motor carrier a written notice of remedial directive and proposed determination of unfitness. FMCSA will issue the notice and proposed determination as soon as practicable, but not later than 30 days after the close of the review.

(b) The remedial directive will state that the motor carrier is required to install and maintain EOBRs compliant with § 395.16 of this chapter in all of the motor carrier's CMVs and to use the EOBRS to record its drivers' hours of service pursuant to § 395.16. The motor carrier shall provide proof of the installation to FMCSA in accordance with § 385.811 within the following time periods:

(1) Motor carriers transporting hazardous materials in quantities requiring placarding, and motor carriers transporting passengers in a CMV, must install EOBRs and provide proof of the installation by the 45th day after the date of the notice of remedial directive.

(2) All other motor carriers must install EOBRs and provide proof of installation by the 60th day after the date of FMCSA's notice of remedial directive. If FMCSA determines the motor carrier is making a good-faith effort to comply with the terms of the remedial directive, FMCSA may allow the motor carrier to operate for up to 60 additional days.

(3) A motor carrier may challenge the notice of remedial directive and proposed determination of unfitness in accordance with § 385.817.

§ 385.809 [Reserved]

§ 385.811 Proof of compliance with remedial directive.

(a) Motor carriers subject to a remedial directive to install EOBRs under this section must provide proof of EOBR installation by one of the following:

(1) Submitting all of the carrier's CMVs for visual and functional inspection by FMCSA or qualified State enforcement personnel.

(2) Transmitting to the FMCSA service center for the geographic area where the carrier maintains its principal place of business all of the following documentation:

(i) Receipts for all necessary EOBR purchases.

(ii) Receipts for the installation work.

(iii) Digital or other photographic evidence depicting the installed devices in the carrier's CMVs.

(iv) Documentation of the EOBR serial number for the specific device corresponding to each CMV in which the device has been installed.

(3) If no receipt is submitted for an installed device or the installation work in accordance with paragraph (a)(2) of this section, the carrier must submit a written statement explaining who installed the devices, how many devices were installed, the manufacturer and model numbers of the devices installed, and the vehicle identification numbers of the CMVs in which the devices were installed.

(b) Visual and functional EOBR inspections may be performed at any

FMCSA roadside inspection station or at the roadside inspection or weigh station facility of any State that receives Motor Carrier Safety Assistance Program funds under 49 U.S.C. 31102 and that provides such inspection services. The carrier may also request such inspections be performed at its principal place of business.

(c) Motor carriers issued remedial directives pursuant to this section must install in all of their CMVs EOBRs meeting the standards set forth in 49 CFR 395.16. Such motor carriers must maintain and use the EOBRs to verify compliance with part 395 for a period of 2 years following the issuance of the remedial directive. In addition to any other requirements imposed by the FMCSRs, during the period of time the carrier is subject to a remedial directive the carrier must maintain all records and reports generated by the EOBRs and, upon demand, produce those records to FMCSA personnel.

(d) *Malfunctioning devices.* Motor carriers subject to remedial directives shall maintain EOBRs installed in their CMVs in good working order. Such carriers must cause any malfunctioning EOBR to be repaired or replaced within 14 days from the date the carrier becomes aware of the malfunction. During this repair or replacement period, carriers subject to a remedial directive under this part must prepare a paper record of duty status pursuant to § 395.8 of this chapter as a temporary replacement for the non-functioning EOBR unit. All other provisions of the remedial directive will continue to apply during the repair and replacement period. Failure to comply with the terms of this paragraph may subject the affected CMV and/or driver to an out-of-service order pursuant to § 396.9(c) and § 395.13 of this chapter, respectively. Repeated violations of this paragraph may subject the motor carrier to the provisions of § 385.819.

§ 385.813 Issuance and conditional rescission of proposed unfitness determination.

(a) Simultaneously with the notice of remedial directive, FMCSA will issue a proposed unfitness determination. The proposed unfitness determination will explain that, if the motor carrier fails to comply with the terms of the remedial directive, the carrier will be unfit under the fitness standard in § 385.5, prohibited from engaging in interstate operations and intrastate operations affecting interstate commerce, and, in the case of a carrier registered under 49 U.S.C. 13902, have its registration revoked.

(b) FMCSA will conditionally rescind the proposed determination of unfitness upon the motor carrier's submission of sufficient proof of EOBR installation in accordance with § 385.811.

(c) During the period the remedial directive is in effect, FMCSA may reinstate the proposed unfitness determination and immediately prohibit the motor carrier from operating in interstate commerce and intrastate operations affecting interstate commerce if the motor carrier violates the provisions of the remedial directive.

§ 385.815 Exemption for AOBRD users.

(a) Upon written request by the motor carrier, FMCSA will grant an exception from the requirements of remedial directives under this section to motor carriers that already had installed in all commercial motor vehicles, at the time of the compliance review immediately preceding the issuance of the notice of remedial directive, AOBRDs compliant with 49 CFR 395.15 of this chapter.

(b) The carrier will be permitted to continue using the previously installed devices if the carrier can satisfactorily demonstrate to FMCSA that the carrier and its employees understand how to use the AOBRDs and the information derived from them.

(c) The carrier must either use and maintain the AOBRDs currently in its CMVs or install new devices compliance with § 395.16 of this chapter.

(d) Although FMCSA may suspend enforcement for noncompliance with the remedial directive, the directive will remain in effect; and the hours-of-service compliance of any motor carrier so exempted, will be subject to ongoing FMCSA oversight.

(e) The exemption granted under this section shall not apply to CMVs manufactured on or after the date 2 years from the effective date of this rule.

§ 385.817 Administrative review.

(a) A motor carrier may request FMCSA to conduct an administrative review if the carrier believes FMCSA has committed an error in issuing a notice of remedial directive under § 385.807 and proposed unfitness determination under § 385.813. Administrative reviews of notices of remedial directive and proposed unfitness determinations are limited to findings in the compliance review immediately preceding the notice.

(b) The motor carrier's request must explain the error it believes FMCSA committed in issuing the notice of remedial directive and proposed unfitness determination. The motor carrier must include a list of all factual and procedural issues in dispute and any information or documents that support its argument.

(c) The motor carrier must submit its request in writing to the Assistant Administrator, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. The motor carrier must submit on the same day a copy of the request to FMCSA counsel in the FMCSA service center for the geographic area where the carrier maintains its principal place of business.

(1) If a motor carrier has received a notice of remedial directive and proposed unfitness determination, the carrier should submit its request in writing within 15 days from the date of the notice. This timeframe will allow FMCSA to issue a written decision before the prohibitions outlined in § 385.819(a) take effect. If the carrier submits its request for administrative review within 15 days of the issuance of the notice of remedial directive and proposed unfitness determination, FMCSA will stay the finality of the proposed unfitness determination until the Agency has ruled on the carrier's request. Failure to submit the request within this 15-day period may prevent FMCSA from ruling on the request before the prohibitions take effect.

(2) A motor carrier must make a request for an administrative review within 90 days after the date of the notice of remedial directive and proposed determination of unfitness under § 385.807.

(d) FMCSA may request the motor carrier to submit additional data or attend a conference to discuss the request for review. If the motor carrier does not provide the information requested, or does not attend the conference, FMCSA may dismiss its request for review.

(e) FMCSA will notify the motor carrier in writing of its decision following the administrative review. FMCSA will complete its review:

(1) Within 30 days after receiving a request from a hazardous materials or passenger motor carrier that has received a proposed unfitness determination;

(2) Within 45 days after receiving a request from any other motor carrier that has received a proposed unfitness determination;

(3) With respect to requests for administrative review of notices of remedial directive, as soon as practicable but not later than 60 days after receiving the request.

(f) The decision regarding a proposed unfitness determination constitutes final Agency action.

(g) The provisions of this section will not affect procedures for administrative review of proposed or final safety ratings in accordance with § 385.15 or for requests for changes to safety ratings based upon corrective action in accordance with § 385.17.

§ 385.819 Effect of failure to comply with remedial directive.

(a) A motor carrier that fails or refuses to comply with the terms of a remedial directive issued under this subpart, including a failure or refusal to provide proof of EOBR installation in accordance with § 385.811, does not meet the safety fitness standard set forth in § 385.5(b). With respect to such carriers, the proposed determination of unfitness issued in accordance with § 385.813 becomes final, and the motor carrier is prohibited from operating, as follows:

(1) Motor carriers transporting hazardous materials in quantities requiring placarding and motor carriers transporting passengers in a CMV are prohibited from operating CMVs in interstate commerce and in operations that affect interstate commerce beginning on the 46th day after the date of FMCSA's notice of remedial directive and proposed unfitness determination. A motor carrier subject to the registration requirements of 49 U.S.C. 13901 will have its registration revoked on the 46th day after the date of FMCSA's notice of remedial directive and proposed unfitness determination.

(2) All other motor carriers are prohibited from operating a CMV in interstate commerce and in operations that affect interstate commerce beginning on the 61st day after the date of FMCSA's notice of remedial directive and proposed unfitness determination. A motor carrier subject to the registration requirements of 49 U.S.C. 13901 will have its registration revoked on the 61st day after the date of FMCSA's notice of remedial directive and proposed unfitness determination. If FMCSA determines the motor carrier is making a good-faith effort to satisfy the terms of the remedial directive, FMCSA may allow the motor carrier to operate for up to 60 additional days.

(b) If a proposed unfitness determination becomes a final determination, FMCSA will issue an order prohibiting the motor carrier from operating in interstate commerce. If the motor carrier is required to register under 49 U.S.C. 13901, FMCSA will revoke the motor carrier's registration on the dates specified in § 385.819(a)(1) and (a)(2).

(c) If FMCSA has prohibited a motor carrier from operating in interstate commerce under paragraph (a) of this section and, if applicable, revoked the carrier's registration, and the motor carrier subsequently complies with the terms and conditions of the remedial directive and provides proof of EOBR installation under § 385.811, the carrier may request FMCSA to lift the prohibition on operations at any time after the prohibition becomes effective. The request should be submitted in writing in accordance with § 385.817(c).

(d) A Federal Agency must not use for CMV transportation a motor carrier that FMCSA has determined is unfit.

(e) *Penalties.* If a proposed unfitness determination becomes a final determination, FMCSA will issue an order prohibiting the motor carrier from operating in interstate commerce and any intrastate operations that affect interstate commerce and, if applicable, revoking its registration. Any motor carrier that operates a CMV in violation of this section will be subject to the penalty provisions listed in 49 U.S.C. 521(b).

■ 15. Amend Appendix B to part 385 by revising paragraphs (b), (c), and (d) and section VI, paragraph (a), to read as follows:

Appendix B to Part 385—Explanation of Safety Rating Process

* * * * *

(b) As directed, FMCSA promulgated a safety fitness regulation, entitled "Safety Fitness Procedures," which established a procedure to determine the safety fitness of motor carriers through the assignment of safety ratings and established a "safety fitness standard" that a motor carrier must meet to obtain a "Satisfactory" safety rating. FMCSA later amended the safety fitness standard to add a distinct requirement that motor carriers also be in compliance with applicable remedial directives.

(c) To meet the safety fitness standard, a motor carrier must meet two requirements. First, the carrier must demonstrate to FMCSA it has adequate safety management controls in place that function effectively to ensure acceptable compliance with the applicable safety requirements. (*See* § 385.5(a)). A "safety fitness rating methodology" (SFRM) developed by FMCSA uses data from compliance reviews (CRs) and roadside inspections to rate motor carriers. Second, a motor carrier must also be in compliance with any applicable remedial directives issued in accordance with subpart J. This second requirement is set forth in § 385.5(b).

(d) The safety rating process developed by FMCSA is used to:

1. Evaluate the first component of the safety fitness standard, under § 385.5(a), and assign one of three safety ratings (Satisfactory, Conditional, or Unsatisfactory) to motor carriers operating in interstate commerce. This process conforms to § 385.5(a), Safety fitness standard, and § 385.7, Factors to be considered in determining a safety rating.

2. Identify motor carriers needing improvement in their compliance with the Federal Motor Carrier Safety Regulations (FMCSRs) and applicable Hazardous Materials Regulations (HMRs). These are carriers rated Unsatisfactory or Conditional.

* * * * *

VI. Conclusion

(a) FMCSA believes this "safety fitness rating methodology" is a reasonable approach to assignment of a safety rating, as required by the safety fitness regulations (§ 385.9), that most closely reflects the motor carrier's current level of compliance with the safety fitness standard in § 385.5(a). This methodology has the capability to incorporate regulatory changes as they occur.

* * * * *

■ 16. Add Appendix C to part 385 to read as follows:

Appendix C to Part 385—Regulations Pertaining to Remedial Directives in Part 385, Subpart J

§ 395.1(h)(1)(i) Requiring or permitting a property-carrying commercial motor vehicle driver to drive more than 15 hours (Driving in Alaska).

§ 395.1(h)(1)(ii) Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on duty 20 hours (Driving in Alaska).

§ 395.1(h)(1)(iii) Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on duty more than 70 hours in 7 consecutive days (Driving in Alaska).

§ 395.1(h)(1)(iv) Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on duty more than 80 hours in 8 consecutive days (Driving in Alaska).

§ 395.1(h)(2)(i) Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive more than 15 hours (Driving in Alaska).

§ 395.1(h)(2)(ii) Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty 20 hours (Driving in Alaska).

§ 395.1(h)(2)(iii) Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty more than 70 hours in 7 consecutive days (Driving in Alaska).

§ 395.1(h)(2)(iv) Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty more than 80 hours in 8 consecutive days (Driving in Alaska).

§ 395.1(o) Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on duty 16 consecutive hours.

§ 395.3(a)(1) Requiring or permitting a property-carrying commercial motor vehicle driver to drive more than 11 hours.

§ 395.3(a)(2) Requiring or permitting a property-carrying commercial motor vehicle driver to drive after the end of the 14th hour after coming on duty.

§ 395.3(b)(1) Requiring or permitting a property-carrying commercial motor vehicle

driver to drive after having been on duty more than 60 hours in 7 consecutive days.

§ 395.3(b)(2) Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on duty more than 70 hours in 8 consecutive days.

§ 395.3(c)(1) Requiring or permitting a property-carrying commercial motor vehicle driver to restart a period of 7 consecutive days without taking an off-duty period of 34 or more consecutive hours.

§ 395.3(c)(2) Requiring or permitting a property-carrying commercial motor vehicle driver to restart a period of 8 consecutive days without taking an off-duty period of 34 or more consecutive hours.

§ 395.5(a)(1) Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive more than 10 hours.

§ 395.5(a)(2) Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty 15 hours.

§ 395.5(b)(1) Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty more than 60 hours in 7 consecutive days.

§ 395.5(b)(2) Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty more than 70 hours in 8 consecutive days.

§ 395.8(a) Failing to require driver to make a record of duty status.

§ 395.8(e) False reports of records of duty status.

§ 395.8(i) Failing to require driver to forward within 13 days of completion, the original of the record of duty status.

§ 395.8(k)(1) Failing to preserve driver's record of duty status for 6 months.

§ 395.8(k)(1) Failing to preserve driver's records of duty status supporting documents for 6 months.

PART 395—HOURS OF SERVICE OF DRIVERS

■ 17. The authority citation for part 395 is revised to read as follows:

Authority: 49 U.S.C. 508, 13301, 13902, 31133, 31136, 31502, 31504, and § 204, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); Sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677; Sec. 217, Pub. L. 106–159, 113 Stat. 1748, 1767; and 49 CFR 1.73.

■ 18. Amend § 395.2 by adding the following definitions in alphabetical order:

§ 395.2 Definitions.

* * * * *

CD–RW (Compact Disc—Re-Writeable) means an optical disc digital storage format that allows digital data to be erased and rewritten many times. The technical and physical specifications for CD–RW are described in the document Orange Book Part III: CD–RW, published by Royal Philips Electronics.

CMRS (Commercial Mobile Radio Services) An FCC designation for any carrier or licensee whose wireless network is connected to the public switched telephone network and/or is operated for profit. Another common term for these entities is cellular telephony providers.

* * * * *

802.11 is a set of communications and product compatibility standards for wireless local area networks (WLAN). The 802.11 standards are also known as WiFi by marketing convention.

Electronic on-board recording device (EOBR) means an electronic device that is capable of recording a driver's hours of service and duty status accurately and automatically and that meets the requirements of § 395.16. The device must be integrally synchronized with specific operations of the commercial motor vehicle in which it is installed. The EOBR must record, at minimum, the information listed in § 395.16(b).

* * * * *

Integrally synchronized refers to an AOBRD or EOBR that receives and records the engine use status and distance traveled for the purpose of deriving on-duty driving status from a source or sources internal to the CMV.

* * * * *

USB (Universal Serial Bus) is a serial bus interface standard for connecting electronic devices.

UTC (Coordinated Universal Time) is the international civil time standard, determined by using highly precise atomic clocks. It is the basis for civil standard time in the United States and its territories. UTC time refers to time kept on the Greenwich meridian (longitude zero), which is 5 hours ahead of Eastern Standard Time. UTC times are expressed in terms of a 24-hour clock. Standard time within any U.S. time zone is offset from UTC by a given number of hours determined by the time zone's distance from the Greenwich meridian.

* * * * *

■ 19. Amend § 395.8 by revising paragraphs (a)(2) and (e) to read as follows:

§ 395.8 Driver's record of duty status.

(a) * * *

(2) Every driver operating a commercial motor vehicle equipped with either an automatic on-board recording device meeting the requirements of § 395.15 or an electronic on-board recorder meeting the requirements of § 395.16 must record his or her duty status using the device installed in the vehicle. The requirements of this section shall not apply, except for paragraphs (e) and (k)(1) and (2) of this section.

* * * * *

(e) Failure to complete the record of duty activities of either this section, § 395.15 or § 395.16, failure to preserve a record of such duty activities, or making false reports in connection with such duty activities shall make the driver and/or the carrier liable to prosecution.

* * * * *

■ 20. Add § 395.11 to read as follows:

§ 395.11 Supporting documents for drivers using EOBRs.

(a) Motor carriers maintaining date, time and location data produced by a § 395.16-compliant EOBR need only maintain additional supporting documents (*e.g.,* driver payroll records, fuel receipts) that provide the ability to verify on-duty not driving activities and off-duty status according to the requirements of § 395.8(k).

(b) This section does not apply to motor carriers and owner-operators that have been issued a remedial directive to install, use, and maintain EOBRs.

■ 21. Amend § 395.13 by revising paragraph (b)(2) and by adding paragraph (b)(4) to read as follows:

§ 395.13 Drivers declared out of service.

* * * * *

(b) * * *

(2) Every driver required to maintain a record of duty status under § 395.8 must have a record of duty status current on the day of examination and for the prior 7 consecutive days.

* * * * *

(4) No driver shall drive a CMV in violation of § 385.811(d) of this chapter.

* * * * *

■ 22. Amend § 395.15 by adding introductory text to paragraph (a), and revising paragraph (a)(1) to read as follows:

§ 395.15 Automatic on-board recording devices.

(a) *Applicability and authority to use.* This section applies to automatic on-board recording devices (AOBRDs) used to record drivers' hours of service as specified by part 395.

(1) A motor carrier may require a driver to use an AOBRD to record the driver's hours of service in lieu of complying with the requirements of § 395.8 of this part. For commercial motor vehicles manufactured prior to June 4, 2012, manufacturers or motor carriers may install an electronic device to record hours of service if the device meets the requirements of either this section or § 395.16.

* * * * *

■ 23. Add § 395.16 to read as follows:

§ 395.16 Electronic on-board recording devices.

(a) *Applicability and authority to use.* This section applies to electronic on-board recording devices (EOBRs) used to record the driver's hours of service as specified by part 395. Motor carriers subject to a remedial directive to install, use and maintain EOBRs, issued in accordance with 49 CFR part 385, subpart J, must comply with this section.

(1) A motor carrier may require a driver to use an EOBR to record the driver's hours of service in lieu of complying with the requirements of § 395.8 of this part. For commercial motor vehicles manufactured after June 4, 2012, any electronic device installed in a CMV by a manufacturer or motor carrier to record hours of service must meet the requirements of this section.

(2) Every driver required by a motor carrier to use an EOBR shall use such device to record the driver's hours of service.

(b) *Information to be recorded.* An EOBR must record the following information:

(1) Name of driver and any co-driver(s), and corresponding driver identification information (such as a user ID and password). However, the name of the driver and any co-driver is not required to be transmitted as part of the downloaded file during a roadside inspection.

(2) Duty status.

(3) Date and time.

(4) Location of CMV.

(5) Distance traveled.

(6) Name and USDOT Number of motor carrier.

(7) 24-hour period starting time (*e.g.,* midnight, 9 a.m., noon, 3 p.m.).

(8) The multiday basis (7 or 8 days) used by the motor carrier to compute cumulative duty hours and driving time.

(9) Hours in each duty status for the 24-hour period, and total hours.

(10) Truck or tractor and trailer number.

(11) Shipping document number(s), or name of shipper and commodity.

(c) *Duty status categories.* An EOBR must use the following duty statuses:

(1) "Off duty" or "OFF".

(2) "Sleeper berth" or "SB", to be used only if sleeper berth is used.

(3) "Driving" or "D".

(4) "On-duty not driving" or "ON".

(d) *Duty status defaults.*

(1) An EOBR must automatically record driving time. If the CMV is being used as a personal conveyance, the driver must affirmatively enter an annotation before the CMV begins to move.

(2) When the CMV is stationary for 5 minutes or more, the EOBR must default to on-duty not driving, and the driver must enter the proper duty status.

(3) An EOBR must record the results of power-on self-tests and diagnostic error codes.

(e) *Date and time.*

(1) The date and time must be recorded on the EOBR output record as specified under paragraph (i) of this section at each change of duty status, and at intervals of no greater than 60 minutes when the CMV is in motion. The date and time must be displayed on the EOBR's visual output device.

(2) The date and time must be obtained, transmitted, and recorded in such a way that it cannot be altered by a motor carrier, driver, or third party.

(3) The driver's duty status record must be prepared, maintained, and submitted using the time standard in effect at the driver's home terminal, for a 24-hour period beginning with the time specified by the motor carrier for that driver's home terminal.

(4) The time must be coordinated to UTC and the absolute deviation shall not exceed 10 minutes at any time.

(f) *Location.*

(1) Information used to determine the location of the CMV must be derived from a source not subject to alteration by the motor carrier or driver.

(2) The location description for the duty status change, and for intervening intervals while the CMV is in motion, must be sufficiently precise to enable Federal, State, and local enforcement personnel to quickly determine the vehicle's geographic location on a standard map or road atlas. The term "sufficiently precise," for purposes of this paragraph means the nearest city, town or village.

(3) When the CMV is in motion, location and time must be recorded at intervals no greater than 60 minutes. This recorded information must be capable of being made available in an output file format as specified in Appendix A to this part, but does not need to be displayed on the EOBR's visual output device.

(4) For each change of duty status (*e.g.,* the place and time of reporting for work, starting to drive, on-duty not driving, and where released from work), the name of the nearest city, town, or village, with State abbreviation, must be recorded.

(5) The EOBR must record location names using codes derived from satellite or terrestrial sources, or a combination of these. The location codes must correspond, at a minimum, to ANSI INCITS 446–2008, "American National Standard for Information Technology—Identifying Attributes for Named Physical and Cultural Geographic Features (Except Roads and Highways) of the United States, Its Territories, Outlying Areas, and Freely Associated Areas and the Waters of the Same to the Limit of the Twelve-Mile Statutory Zone (10/28/2008)," where "GNIS Feature Class" = "Populated Place" (incorporated by reference, *see* § 395.18). (For further information, *see also* the Geographic Names Information System (GNIS) at *http://geonames.usgs.gov/domestic/index.html*).

(g) Distance traveled.

(1) Distance traveled must use units of miles or kilometers driving during each on-duty driving period and total for each 24-hour period for each driver operating the CMV.

(2) If the EOBR records units of distance in kilometers, it must provide a means to display the equivalent distance in miles.

(3) Distance traveled information obtained from a source internal to the CMV must be accurate to the distance traveled as measured by the CMV's odometer.

(h) *Review of information by driver.*

(1) The EOBR must allow for the driver's review of each day's record before the driver submits the record to the motor carrier.

(2) The driver must review the information contained in the EOBR record and affirmatively note the review before submitting the record to the motor carrier.

(3) The driver may annotate only non-driving-status periods and the use of a CMV as a personal conveyance as described in paragraph (d)(1) of this section. The driver must electronically confirm his or her intention to make any annotations. The annotation must not overwrite the original record.

(4) If the driver makes a written entry on a hardcopy output of an EOBR relating to his or her duty status, the entries must be legible and in the driver's own handwriting.

(i) *Information reporting requirements.*

(1) An EOBR must make it possible for authorized Federal, State, or local officials to immediately check the status of a driver's hours of service.

(2) An EOBR must produce, upon demand, a driver's hours-of-service record in either electronic or printed form. It must also produce a digital file in the format described in Appendix A to this part. The record must show the time and sequence of duty status changes including the driver's starting time at the beginning of each day. As an alternative, the EOBR must be able to provide a driver's hours-of-service

record as described in paragraph (i)(6) of this section.

(3) This information may be used in conjunction with handwritten or printed records of duty status for the previous 7 days.

(4) Hours-of-service information must be made accessible to authorized Federal, State, or local safety assurance officials for their review without requiring the official to enter in or upon the CMV. The output record must conform to the file format specified in Appendix A to this part.

(5) The driver must have in his or her possession records of duty status for the previous 7 consecutive days available for inspection while on duty. These records must consist of information stored in and retrievable from the EOBR, handwritten records, records available from motor carriers' support systems, other printed records, or any combination of these. Electronic records must be capable of one-way transfer through wired and wireless methods to portable computers used by roadside safety assurance officials and must provide files in the format specified in Appendix A to this part. Wired communication information interchange methods must comply with the "Universal Serial Bus Specification (Revision 2.0) incorporated by reference, *see* § 395.18) and additional specifications in Appendix A, paragraph 2.2 to this part. Wireless communication information interchange methods must comply with the requirements of the 802.11g–2003 standard as defined in the 802.11–2007 base standard "IEEE Standard for Information Technology—Telecommunications and information exchange between systems—Local and metropolitan area networks—Specific requirements: Part 11: Wireless LAN Medium Access Control (MAC) and Physical Layer (PHY) Specifications" (IEEE Std. 802.11–2007) (incorporated by reference, *see* § 395.18), or CMRS.

(6) Support systems used in conjunction with EOBRs at a driver's home terminal or the motor carrier's principal place of business must be capable of providing authorized Federal, State, or local officials with summaries of an individual driver's hours of service records, including the information specified in § 395.8(d). The support systems must also provide information concerning on-board system sensor failures and identification of amended and edited data. Support systems must provide a file in the format specified in Appendix A to this part. The system must also be able to produce a copy of files on portable storage media (CD–RW, USB 2.0 drive) upon request of authorized safety assurance officials. The support system may be maintained by a third-party service provider on behalf of the motor carrier.

(j) *Driver identification.* For the driver to log into the EOBR, the EOBR must require the driver to enter information (such as a user ID and password) that identifies the driver or to provide other information (such as smart cards, biometrics) that identifies the driver.

(k) *Availability of records of duty status.*

(1) An EOBR must be capable of producing duty status records for the current day and the previous 7 days from either the information stored in and retrievable from the EOBR or motor carrier support system records, or any combination of these.

(2) If an EOBR fails, the driver must do the following:

(i) Note the failure of the EOBR and inform the motor carrier within 2 days.

(ii) Reconstruct the record of duty status for the current day and the previous 7 days, less any days for which the driver has records.

(iii) Continue to prepare a handwritten record of all subsequent duty status until the device is again operational.

(iv) A brief (less than 5 minute) loss of connectivity between the EOBR and a location-tracking system or the motor carriers' support system is not considered an EOBR failure for the purpose of this section.

(l) *On-board information.* Each commercial motor vehicle must have onboard the commercial motor vehicle an information packet containing the following items:

(1) An instruction sheet describing how data may be stored and retrieved from the EOBR.

(2) A supply of blank driver's records of duty status graph-grids sufficient to record the driver's duty status and other related information for the duration of the current trip.

(m) *Submission of driver's record of duty status.*

(1) The driver must submit electronically, to the employing motor carrier, each record of the driver's duty status.

(2) For motor carriers not subject to the remedies provisions of part 385 subpart J of this chapter, each record must be submitted within 13 days of its completion.

(3) For motor carriers subject to the remedies provisions of part 385 subpart J of this chapter, each record must be submitted within 3 days of its completion.

(4) The driver must review and verify that all entries are accurate prior to submission to the employing motor carrier.

(5) The submission of the record of duty status certifies that all entries made by the driver are true and correct.

(n) *EOBR display requirements.* An EOBR must have the capability of displaying all of the following information:

(1) The driver's name and EOBR login ID number on all EOBR records associated with that driver, including records in which the driver serves as a co-driver.

(2) The driver's total hours of driving during each driving period and the current duty day.

(3) The total hours on duty for the current duty day.

(4) Total miles or kilometers of driving during each driving period and the current duty day.

(5) Total hours on duty and driving time for the prior 7-consecutive-day period, including the current duty day.

(6) Total hours on duty and driving time for the prior 8-consecutive-day period, including the current duty day.

(7) The sequence of duty status for each day, and the time of day and location for each change of duty status, for each driver using the device.

(8) EOBR serial number or other identification, and identification number(s) of vehicle(s) operated that day.

(9) Remarks, including fueling, waypoints, loading and unloading times, unusual situations, or violations.

(10) Driver's override of an automated duty status change to driving if using the vehicle for personal conveyance or for yard movement.

(11) The EOBR may record other data as the motor carrier deems appropriate, including the date and time of crossing a State line for purposes of fuel-tax reporting.

(o) *Performance of recorders.* A motor carrier that uses an EOBR for recording a driver's records of duty status instead of the handwritten record must ensure the EOBR meets the following requirements:

(1) The EOBR must permit the driver to enter information into the EOBR only when the commercial motor vehicle is at rest.

(2) The EOBR and associated support systems must not permit alteration or erasure of the original information collected concerning the driver's hours of service, or alteration of the source data streams used to provide that information.

(3) The EOBR must be able to perform a power-on self-test, as well as a self-test at any point upon request of an authorized safety assurance official. The

EOBR must provide an audible and visible signal as to its functional status. It must record the outcome of the self-test and its functional status as a diagnostic event record in conformance with Appendix A to this part.

(4) The EOBR must provide an audible and visible signal to the driver at least 30 minutes in advance of reaching the driving time limit and the on-duty limit for the 24-hour period.

(5) The EOBR must be able to track total weekly on-duty and driving hours over a 7- or 8-day consecutive period. The EOBR must be able to warn a driver at least 30 minutes in advance of reaching the weekly duty-/driving-hour limitation.

(6) The EOBR must warn the driver via an audible and visible signal that the device has ceased to function. "Ceasing to function" for the purpose of this paragraph does not include brief losses of communications signals during such time as, but not limited to, when the vehicle is traveling through a tunnel.

(7) The EOBR must record a code corresponding to the reason it has ceased to function and the date and time of that event.

(8) The audible signal must be capable of being heard and discerned by the driver when seated in the normal driving position, whether the CMV is in motion or parked with the engine operating. The visual signal must be visible to the driver when the driver is seated in the normal driving position.

(9) The EOBR must be capable of recording separately each driver's duty status when there is a multiple-driver operation.

(10) The EOBR device/system must identify sensor failures and edited and annotated data when downloaded or reproduced in printed form.

(11) The EOBR device/system must identify annotations made to all records, the date and time the annotations were made, and the identity of the person making them.

(12) If a driver or any other person annotates a record in an EOBR or an EOBR support system, the annotation must not overwrite the original contents of the record.

(p) *Motor Carrier Requirements.*

(1) The motor carrier must not alter or erase, or permit or require alteration or erasure of, the original information collected concerning the driver's hours of service, the source data streams used to provide that information, or information contained in its EOBR support systems that use the original information and source data streams.

(2) The motor carrier must ensure the EOBR is calibrated, maintained, and recalibrated in accordance with the manufacturer's specifications; the motor carrier must retain records of these activities.

(3) The motor carrier's drivers and other personnel reviewing and using EOBRs and the information derived from them must be adequately trained regarding the proper operation of the device.

(4) The motor carrier must maintain a second copy (back-up copy) of the electronic hours-of-service files, by month, on a physical device different from that on which the original data are stored.

(5) The motor carrier must review the EOBR records of its drivers for compliance with part 395.

(6) If the motor carrier receives or discovers information concerning the failure of an EOBR, the carrier must document the failure in the hours-of-service record for that driver.

(q) *Manufacturer's self-certification.*

(1) The EOBR and EOBR support systems must be certified by the manufacturer as evidence that they have been sufficiently tested to meet the requirements of § 395.16 and Appendix A to this part under the conditions in which they would be used.

(2) The exterior faceplate of the EOBR must be marked by the manufacturer with the text "USDOT–EOBR" as evidence that the device has been tested and certified as meeting the performance requirements of § 395.16 and Appendix A to this part.

■ 24. Add § 395.18 to read as follows:

§ 395.18 Matter incorporated by reference.

(a) *Incorporation by reference.* Certain materials are incorporated by reference in part 395, with the approval of the Director of the Federal Register under 5 U.S.C. 552(a), and 1 CFR part 51. For materials subject to change, only the specific version approved by the Director of the Office of the Federal Register and specified in the regulation is incorporated. To enforce any edition other than that specified in this section, the Federal Motor Carrier Safety Administration must publish notice of change in the **Federal Register** and the material must be available to the public. All of the approved material is available for inspection 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.* Also, it is available for inspection at the Federal Motor Carrier Safety Administration, Office of Bus and Truck Standards and Operations (MC–PS), 1200 New Jersey Ave., SE., Washington, DC 20590–00001, (202) 366–4325, and is available from the sources listed in paragraphs (b) and (c) of this section.

(b) *Institute of Electrical and Electronic Engineers (IEEE).* 3 Park Avenue, New York, New York 10016–5997. Web page is *http://www.ieee.org/web/publications/home;* telephone is (800) 678–4333.

(1) "IEEE Standard for Information Technology—Telecommunications and information exchange between systems—Local and metropolitan area networks—Specific requirements: Part 11: Wireless LAN Medium Access Control (MAC) and Physical Layer (PHY) Specifications," IEEE Computer Society, Sponsored by the LAN/MAN Standards Committee: June 12, 2007 (IEEE Std. 802.11–2007). Incorporation by reference approved for § 395.16(i); and Appendix A to part 395, paragraph 2.3.

(2) [Reserved]

(c) *Universal Serial Bus Implementers Forum (USBIF).* 3855 SW. 153rd Drive, Beaverton, Oregon 97006. Web page is *http://www.usb.org;* telephone is (503) 619–0426.

(1) "Universal Serial Bus Specification," Compaq, Hewlett-Packard, Intel, Lucent, Microsoft, NEC, Philips; April 27, 2000 (Revision 2.0). Incorporation by reference approved for § 395.16(i) and Appendix A to part 395, paragraph 2.2.

(2) [Reserved]

(d) *American National Standards Institute (ANSI).* 11 West 42nd Street, New York, New York 10036. Web page is *http://webstore.ansi.org;* telephone is (212) 642–4900.

(1) "ANSI INCITS 446–2008, American National Standard for Information Technology—Identifying Attributes for Named Physical and Cultural Geographic Features (Except Roads and Highways) of the United States, Its Territories, Outlying Areas, and Freely Associated Areas and the Waters of the Same to the Limit of the Twelve-Mile Statutory Zone (10/28/2008)," (ANSI INCITS 446–2008). Incorporation by reference approved for § 395.16(f); Appendix A to part 395, paragraph 1.3, Table 2; and Appendix A to part 395, paragraph 3.1.1.3. (For further information, *see also* the Geographic Names Information System (GNIS) at *http://geonames.usgs.gov/domestic/index.html.*

(2) [Reserved]

■ 25. Add Appendix A to 49 CFR part 395 to read as follows:

Appendix A to Part 395—Electronic On-Board Recorder Performance Specifications

1. Data Elements Dictionary for Electronic On-Board Recorders (EOBRs)

1.1 To facilitate the electronic transfer of records to roadside inspection personnel and compliance review personnel, and provide the ability of various third-party and proprietary EOBR devices to be interoperable, a consistent electronic file format and record layout for the electronic RODS data to be recorded are necessary. This EOBR data elements dictionary provides a standardized and consistent format for EOBR output data.

EOBR Data File Format

1.2 Regardless of the particular electronic file type (such as ASCII or XML) ultimately used for recording the electronic RODS produced by an EOBR, RODS data must be recorded according to a "flat file" database model format. A flat file is a simple database in which all information is stored in a plain text format with one database "record" per line. Each of these data records is divided into "fields" using delimiters (as in a comma-separate-values data file) or based on fixed column positions. Table 1 below presents the general concept of a flat data file consisting of data "fields" (columns) and data "records" (rows).

Table 1: Flat Data File Database Model

FIELDS →

RECORDS ↓

Person First Name	Person Last Name	Driver PIN	Event Date	Event Time	Status Code
William	Smith	978354	20050718	12:11	D
William	Smith	978354	20050718	15:17	SB
William	Smith	978354	20050718	18:53	D
William	Smith	978354	20050718	21:43	ON
William	Smith	978354	20050718	22:14	OFF
William	Smith	978354	20050719	06:25	ON
William	Smith	978354	20050719	06:47	D
William	Smith	978354	20050719	13:32	SB
William	Smith	978354	20050719	15:27	D
William	Smith	978354	20050719	20:04	SB

1.3 The data elements dictionary describes the data fields component of the above framework. Individual data records must be generated and recorded whenever there is a change in driver duty status, an EOBR diagnostic event (such as power-on/off, self test, *etc.*), or when one or more data fields of an existing data record are later amended. In the last case, the corrected record must be recorded and noted as "current" in the "Event Status Code" data field, with the original record maintained in its unedited form and noted as "historical" in the "Event Status Code" data field. The EOBR Data Elements Dictionary is described in Table 2. The event codes are listed in Table 3.

TABLE 2—EOBR DATA ELEMENTS DICTIONARY

Data element	Data element definition	Type	Length	Valid values and notes
Driver Identification Data				
Driver First Name	First name of the driver	A	35	*See* Note 1.
Driver Last Name	Last name, family name, or surname of the driver	A	35	*See* Note 1.
Driver PIN/ID	Numeric identification number assigned to a driver by the motor carrier.	A	40	
Vehicle Identification Data				
Tractor Number	Motor carrier assigned identification number for tractor unit.	A	10	
Trailer Number	Motor carrier assigned identification number for trailer	A	10	
Tractor VIN Number	Unique vehicle ID number assigned by manufacturer according to US DOT regulations.	A	17	
Co-Driver Data				
Co-Driver First Name	First name of the co-driver	A	35	*See* Note 1.
Co-Driver Last Name	Last name, family name or surname of the co-driver	A	35	*See* Note 1.
Co-Driver ID	Numeric identification number assigned to a driver by the motor carrier.	A	40	
Company Identification Data				
Carrier USDOT Number.	USDOT Number of the motor carrier assigned by FMCSA.	N	8	

TABLE 2—EOBR DATA ELEMENTS DICTIONARY—Continued

Data element	Data element definition	Type	Length	Valid values and notes
Carrier Name	Name or trade name of the motor carrier company appearing on the Form MCS–150.	A	120	
Shipment Data				
Shipping Document Number.	Shipping document number	A	40	
Event Data				
Event Sequence ID	A serial identifier for an event that is unique to a particular vehicle and a particular day.	N	4	0001 through 9999.
Event Status Code	Character codes for the four driver duty status change events, State border crossing event, and diagnostic events.	A	3	OFF = Off Duty SB = Sleeper Berth D = On Duty Driving ON = On Duty Not Driving DG = Diagnostic.
Event Date	The date when an event occurred	N (Date)	8	UTC (universal time) recommended. Format: YYYYMMDD.
Event Time	The time when an event occurred	N (Time)	6	UTC (universal time) recommended. Format: HHMMSS (hours, minutes, seconds).
Event Latitude	Latitude of a location where an event occurred	N	2,6	Decimal format: XX.XXXXXX.
Event Longitude	Longitude of a location where an event occurred	N	3,6	Decimal format: XXX.XXXXXX.
Place Name	The location codes must correspond, at a minimum, to ANSI INCITS 446–2008, "American National Standard for Information Technology—Identifying Attributes for Named Physical and Cultural Geographic Features (Except Roads and Highways) of the United States, Its Territories, Outlying Areas, and Freely Associated Areas and the Waters of the Same to the Limit of the Twelve-Mile Statutory Zone (10/28/2008)," where "GNIS Feature Class" = "Populated Place" (incorporated by reference, *see* § 395.18). (For further information, see also the Geographic Names Information System (GNIS) at *http://geonames.usgs.gov/domestic/index.html*.	N	5	Unique within a FIPS state code. Lookup list derived from GNIS.
Place Distance Miles	Distance in miles to nearest populated place from the location where an event occurred.	N	4	
Total Vehicle Miles	Total vehicle miles (as noted on vehicle odometer or as measured by any other compliant means such as vehicle location system, *etc.*).	N	7	With total vehicle mileage recorded at the time of each event, vehicle miles traveled while driving, *etc.,* can be computed.
Event Update Status Code.	A status of an event, either Current (the most up-to-date update or edit) or Historical (the original record if the record has subsequently been updated or edited).	A	1	C = Current, H = Historical.
Diagnostic Event Code.	For diagnostic events (events where the "Event Status Code" is noted as "DG"), records the type of diagnostic performed (*e.g.,* power-on, self test, power-off, etc.).	A	2	(*See* Table 3).
Event Error Code	Error code associated with an event	A	2	(*See* Table 3).
Event Update Date	The date when an event record was last updated or edited.	N (Date)	8	UTC (universal time) recommended. Format: YYYYMMDD.
Event Update Time	Then time when an event record was last updated or edited.	N (Time)	6	UTC (universal time) recommended. Format: HHMMSS (hours, minutes, seconds).
Event Update Person ID.	An identifier of the person who last updated or edited a record.	A	40	
Event Update Text	A textual note related to the most recent record update or edit.	A	60	Brief narrative regarding reason for record update or edit.

Note 1: This element must not be included in the records downloaded from an EOBR or support system at roadside.

TABLE 3—EOBR DIAGNOSTIC EVENT CODES

Code class	Code	Brief description	Full description
General System Diagnostic	PWR_ON	Power on	EOBR initial power-on.
General System Diagnostic	PWROFF	Power off	EOBR power-off.
General System Diagnostic	TESTOK	test okay	EOBR self test successful.
General System Diagnostic	SERVIC	Service	EOBR Malfunction (return unit to factory for servicing).
General System Diagnostic	MEMERR	memory error	System memory error.
General System Diagnostic	LOWVLT	Low voltage	Low system supply voltage.
General System Diagnostic	BATLOW	battery low	Internal system battery backup low.
General System Diagnostic	CLKERR	clock error	EOBR system clock error (clock not set or defective).
General System Diagnostic	BYPASS	Bypass	EOBR system bypassed (RODS data not collected).
Data Storage Diagnostic	INTFUL	internal memory full	Internal storage memory full (requires download or transfer to external storage).
Data Storage Diagnostic	DATACC	Data accepted	System accepted driver data entry.
Data Storage Diagnostic	EXTFUL	external memory full	External memory full (smartcard or other external data storage device full).
Data Storage Diagnostic	EXTERR	external data access error.	Access external storage device failed.
Data Storage Diagnostic	DLOADY	download yes	EOBR data download successful.
Data Storage Diagnostic	DLOADN	download no	Data download rejected (unauthorized request/wrong Password).
Driver Identification Issue	NODRID	no driver ID	No driver information in system and vehicle is in motion.
Driver Identification Issue	PINERR	PIN error	Driver PIN/identification number invalid.
Driver Identification Issue	DRIDRD	Driver ID read	Driver information successfully read from external storage device (transferred to EOBR).
Peripheral Device Issue	DPYERR	display error	EOBR display malfunction.
Peripheral Device Issue	KEYERR	keyboard error	EOBR keyboard/input device malfunction.
External Sensor Issue	NOLTLN	no latitude longitude	No latitude and longitude from positioning sensor.
External Sensor Issue	NOTSYC	no time synchronization	Unable to synchronize with external time reference input.
External Sensor Issue	COMERR	communications error	Unable to communicate with external data link (to home office or wireless service provider).
External Sensor Issue	NO_ECM	no ECM data	No sensory information received from vehicle's Engine Control Module (ECM).
External Sensor Issue	ECM_ID	ECM ID number mismatch.	ECM identification/serial number mismatch (with preprogrammed information).

2. Communications Standards for the Transmittal of Data Files From Electronic On-Board Recorders (EOBRs)

2.1 EOBRs must produce and store RODS in accordance with the file format specified in this Appendix and must be capable of a one-way transfer of these records through wired and wireless methods to authorized safety officials upon request.

2.2 *Wired.* EOBRs must be capable of transferring RODS using the "Universal Serial Bus Specification (Revision 2.0) (incorporated by reference, *see* § 395.18). Each EOBR device must implement a single USB compliant interface featuring a Type B connector. The USB interface must implement the Mass Storage class (08h) for driverless operation.

2.3 *Wireless.* EOBRs must be capable of transferring RODS using one of the following wireless standards:

2.3.1 802.11g–2003 standard as defined in the 802.11–2007 base standard for wireless communication "IEEE Standard for Information Technology—Telecommunications and information exchange between systems—Local and metropolitan area networks—Specific requirements: Part 11: Wireless LAN Medium Access Control (MAC) and Physical Layer (PHY) Specifications" (IEEE Std. 802.11–2007) (incorporated by reference, *see* § 395.18).

2.3.2 Commercial Mobile Radio Services (*e.g.,* cellular).

3. Certification of EOBRs To Assess Conformity With FMCSA Standards

3.1 The following outcome-based performance requirements must be included in the self-certification testing conducted by EOBR manufacturers:

3.1.1 Location

3.1.1.1 The location description for the duty status change must be sufficiently precise to enable enforcement personnel to quickly determine the vehicle's geographic location at each change of duty status on a standard map or road atlas.

3.1.1.2 When the CMV is in motion, location and time must be recorded at intervals of no greater than 60 minutes. This recorded information must be available for an audit of EOBR data, but is not required to be displayed on the EOBR's visual output device.

3.1.1.3 Location codes derived from satellite or terrestrial sources, or a combination thereof must be used. The location codes must correspond, at minimum, to the GNIS maintained by the United States Geological Survey.

3.1.2 Distance traveled

3.1.2.1 Distance traveled may use units of miles or kilometers driving during each on-duty driving period and total for each 24-hour period for each driver operating the CMV.

3.1.2.2 If the EOBR records units of distance in kilometers, it must provide a means to display the equivalent distance in English units.

3.1.2.3 If the EOBR obtains distance-traveled information from a source internal to the CMV, the information must be accurate to the CMV's odometer.

3.1.3 Date and time

3.1.3.1 The date and time must be reported on the EOBR output record and display for each change of duty status and at such additional entries as specified under "Location."

3.1.3.2 The date and time must be obtained, transmitted, and recorded in such a way that it cannot be altered by a motor carrier or driver.

3.1.3.3 The time must be coordinated to the Universal Time Clock (UTC) and must not drift more than 60 seconds per month.

3.1.4 File format and communication protocols: The EOBR must produce and transfer a RODS file in the format and communication methods specified in sections 1.0 and 2.0 of this Appendix.

3.1.5 Environment

3.1.5.1 Temperature—The EOBR must be able to operate in temperatures ranging from −40 degrees C to 85 degrees C.

3.1.5.2 Vibration and shock—The EOBR must meet industry standards for vibration stability and for preventing electrical shocks to device operators.

3.2 The EOBR and EOBR support systems must be certified by the manufacturer as evidence that their design has been sufficiently tested to meet the requirements of § 395.16 under the conditions in which they would be used.

3.3 The exterior faceplate of EOBRs must be marked by the manufacturer with the text 'USDOT–EOBR' as evidence that the device has been tested and certified as meeting the performance requirements of § 395.16.

PART 396—INSPECTION, REPAIR AND MAINTENANCE

■ 26. The authority citation for part 396 continues to read as follows:

Authority: 49 U.S.C. 31133, 31136, and 31502; and 49 CFR 1.73.

■ 27. Amend § 396.9 by revising the section heading, the heading of paragraph (c), and paragraph (c)(1) to read as follows:

§ 396.9 Inspection of motor vehicles in operation.

* * * * *

(c) *Motor vehicles declared "out of service.*" (1) Authorized personnel shall declare and mark "out of service" any motor vehicle which by reason of its mechanical condition or loading would likely cause an accident or a breakdown. Authorized personnel may declare and mark "out of service" any motor vehicle not in compliance with § 385.811(d). An "Out of Service Vehicle" sticker shall be used to mark vehicles "out of service."

* * * * *

Issued on: March 19, 2010.

Anne S. Ferro,

Administrator.

[FR Doc. 2010–6747 Filed 4–2–10; 8:45 am]

BILLING CODE 4910–EX–P

Federal Register

Monday,
April 5, 2010

Part III

Environmental Protection Agency

40 CFR Parts 51 and 93

Revisions to the General Conformity Regulations; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 93

[EPA–HQ–OAR–2006–0669; FRL–9131–7]

RIN 2060–AH93

Revisions to the General Conformity Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is revising its regulations relating to the Clean Air Act (CAA) requirement that Federal actions conform to the appropriate State, tribal or Federal implementation plan (SIP, TIP, or FIP) for attaining clean air ("General Conformity"). EPA and other Federal agencies have gained experience with the implementation of the existing regulations, which were promulgated in 1993 (and underwent minor revisions in 2006), and have identified several issues with their implementation. In addition, in 2004, EPA issued regulations to implement the revised ozone national ambient air quality standards (NAAQS) and in 2007 issued regulations to implement the new fine particulate matter standard. State and other air quality agencies are in the process of developing revised plans to attain the new standards and the revisions to the General Conformity Regulations will be helpful to the State, Tribe, and local agencies in developing, and Federal agencies in commenting, on the proposed SIPs revisions. This rule revision will also facilitate Federal agency compliance with conforming its activities to the SIPs thereby preventing violations of the NAAQS. This rule revision provides for a timely and effective process for Federal agencies and States and Tribes to ensure Federal activities are incorporated in these SIPs. Where that is not possible, it provides an efficient and effective process for Federal agencies to ensure their actions do not cause or contribute to a violation of the NAAQS or interfere with the purpose of a SIP, TIP or FIP to attain or maintain the NAAQS.

DATES: This action is effective on July 6, 2010.

ADDRESSES: EPA has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2006–0669. 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., Confidential Business Information (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. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the EPA Docket Center EPA/DC, EPA West, Room 3334, 1301 Constitution Avenue, Northwest, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Coda, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539–02, Research Triangle Park, NC 27711, phone number (919) 541–3037 or by e-mail at *coda.tom@epa.gov* or Mr. H. Lynn Dail, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539–02, Research Triangle Park, NC 27711, phone number (919) 541–2363 or by e-mail at *dail.lynn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

Entities affected by this rule include Federal agencies and public and private entities that receive approvals or funding from Federal agencies such as airports and seaports.

B. How is this preamble organized?

The information presented in this preamble is organized as follows:

Outline

I. General Information
A. Does this action apply to me?
B. How is this preamble organized?
C. When did EPA propose these revisions to the General Conformity Regulations?
D. Where can I obtain additional information?
II. Background
A. What is General Conformity and how does it affect air quality?
B. Why is EPA revising these regulations at this time?
III. How are the existing regulations implemented?
A. Applicability Analysis
B. Conformity Determination
C. Review Process
IV. Comments Submitted on the Proposed Rule
V. Summary of the Final Revisions and Clarifications of the General Conformity Regulations
A. Overview of Revisions to the General Conformity Regulations
B. What Innovative and Flexible Approaches Are Being Finalized?
C. What Burden Reduction Measures Are Being Finalized?
D. What Revisions Provide Tools and Guidance for Transitioning to New or Revised NAAQS?
E. What Revisions Are Being Finalized at the Request of Other Agencies?
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VI. Detailed Discussion of the Final Revisions to and Clarifications of the General Conformity Regulations
A. 40 CFR Part 51, Subpart W—Determining Conformity of General Federal Actions to State or Federal Implementation Plans
B. 40 CFR 93.150—Prohibition
C. 40 CFR 93.151—SIP Revision
D. 40 CFR 93.152—Definitions
E. 40 CFR 93.153—Applicability Analysis
F. 40 CFR 93.154—Federal Agencies Responsibility for a Conformity Determination
G. 40 CFR 93.155—Reporting Requirements
H. 40 CFR 93.156—Public Participation
I. 40 CFR 93.157—Re-Evaluation of Conformity
J. 40 CFR 93.158—Criteria for Determining Conformity for General Federal Actions
K. 40 CFR 93.159—Procedures for Conformity Determinations for General Federal Actions
L. 40 CFR 93.160—Mitigation of Air Quality Impacts
M. 40 CFR 93.161—Conformity Evaluations for Installations With Facility-Wide Emission Budget
N. 40 CFR 93.162—Emissions Beyond the Time Period Covered by the Applicable SIP or Tribal Implementation Plan (TIP)
O. 40 CFR 93.163—Timing of Offsets and Mitigation Measures
P. 40 CFR 93.164—Inter-Precursor Offsets and Mitigation Measures
Q. 40 CFR 93.165—Early Emission Reduction Credit Program
VII. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act
L. Judicial Review
VIII. Statutory Authority

C. When did EPA propose these revisions to the General Conformity Regulations?

The EPA proposed the revised General Conformity Regulations in the **Federal Register** on January 8, 2008 at 73 FR 1402.

D. Where can I obtain additional information?

In addition to being available in the docket, an electronic copy of this final rule is also available on the worldwide web. Following signature by the EPA Administrator, a copy of this notice will be posted at *http://www.epa.gov/oar/genconform/regs.htm.*

II. Background

A. What is General Conformity and how does it affect air quality?

The intent of the General Conformity requirement is to prevent the air quality impacts of Federal actions from causing or contributing to a violation of the NAAQS or interfering with the purpose of a SIP, TIP, or FIP.

In the CAA, Congress recognized that actions taken by Federal agencies could affect State, Tribal, and local agencies' ability to attain and maintain the NAAQS. In section 176(c) (42 U.S.C. 7506) of the CAA, Congress established requirements to ensure Federal agencies proposed actions conform to the applicable SIP, TIP or FIP for attaining and maintaining the NAAQS. That section requires Federal entities to find that the emissions from the Federal action will conform to the purposes of the SIP, TIP or FIP or not otherwise interfere with the State's or Tribe's ability to attain and maintain the NAAQS.

The CAA Amendments of 1990 clarified and strengthened the provisions in section 176(c). Because certain provisions of section 176(c) apply only to highway and mass transit funding and approval actions, EPA published two sets of regulations to implement section 176(c). The Transportation Conformity Regulations, first published on November 24, 1993 (58 FR 62188) and revised on July 1, 2004 at 69 FR 40004, May 6, 2005 at 70 FR 24280 and March 10, 2006 at 71 FR 12468, and January 24, 2008 at 73 FR 4420, address Federal actions related to highway and mass transit funding and approval actions. The General Conformity Regulations, published on November 30, 1993 (58 FR 63214), cover all other Federal actions.

B. Why is EPA revising these regulations at this time?

On July 17, 2006 at 71 FR 40420, EPA revised the General Conformity Regulations to include *de minimis* emission levels for particulate matter with an aerodynamic diameter equal to or less than 2.5 microns ($PM_{2.5}$) and its precursors. Otherwise, EPA has not revised the General Conformity Regulations since they were promulgated in 1993. Since that time, EPA and other Federal agencies have gained experience with the implementation of the existing regulations and have identified several issues with their implementation. To address these issues, EPA initiated a process to review, revise and streamline the regulations. In addition, EPA is in the process of developing regulations to implement the revised ozone standard and regulations to implement the new particulate matter standard. In the near future, State and local air quality agencies will be required to develop revised SIPs to attain these new standards. Knowledge of the revised General Conformity Regulations will be helpful to the State, Tribal, and local agencies in the SIP development process as well as the Federal agencies in commenting on the proposed SIP revisions. This rule revision will also facilitate Federal agency compliance with conforming its activities to the SIPs and thereby preventing violations of the NAAQS.

III. How are the existing regulations implemented?

Federal agencies and other parties involved in the conformity process have found that in implementing the existing General Conformity Regulations their process falls into three phases: (A) Applicability analysis, (B) Conformity determination, and (C) Review process. Besides ensuring that the Federal actions are in conformance with the SIP, the regulations encourage consultation between the Federal agency and the State or local air pollution control agencies before and during the environmental review process.

The existing regulations do not specifically identify the roles of Indian Tribes in the General Conformity process or the connection between the regulations and TIPs. In the revised regulations, EPA has specifically identified tribal agencies as stakeholders in the conformity process such as requiring specific notification for any federally recognized Tribes in the nonattainment or maintenance area where the action is occurring. In addition, the revised regulations also clarify that Federal actions must conform to any applicable TIP.

A. Applicability Analysis

The National Highway System Designation Act of 1995 (Pub. L. 104–59) added section 176(c)(5) to the CAA to limit applicability of the conformity programs only to areas designated as nonattainment under section 107 of the CAA and maintenance areas established under section 175A of the CAA. Therefore, only actions which cause emissions in designated nonattainment and maintenance areas are subject to the regulations. In addition, the regulations recognize that the vast majority of Federal actions do not result in a significant increase in emissions and, therefore, include a number of exemptions such as *de minimis* emission levels based on the type and severity of the nonattainment problem.

In the applicability analysis phase, the Federal agency determines:

1. Whether the action will occur in a nonattainment or maintenance area;
2. Whether one or more of the specific exemptions apply to the action;
3. Whether the Federal agency has included the action on its list of "presumed to conform" actions;
4. Whether the total direct and indirect emissions are below or above the *de minimis* levels; and/or
5. Where the facility has an emission budget approved by the State or Tribe as part of the SIP or TIP, the Federal agency determines if the emissions from the proposed action are within the budget.

If the action will cause emissions above the *de miminis* in any nonattainment or maintenance area and the action is not otherwise exempt, "presumed to conform," or included in the existing emissions budget of the SIP or TIP, the agency must conduct a conformity determination before it takes the action.

B. Conformity Determination

When the applicability analysis shows that the action must undergo a conformity determination, Federal agencies must first show that the action will meet all SIP control requirements such as reasonably available control measures, and the emissions from the action will not cause a new violation of the standard, or interfere with the timely attainment of the standard, the maintenance of the standard, or the area's ability to achieve an interim emission reduction milestone. Federal agencies then must demonstrate conformity by meeting one or more of the methods specified in the regulation for determining conformity:

1. Demonstrating that the total direct and indirect emissions are specifically identified and accounted for in the applicable SIP,

2. Obtaining a written statement from the State, Tribe or local agency responsible for the SIP or TIP documenting that the total direct and indirect emissions from the action along with all other emissions in the area will not exceed the SIP emission budget,

3. Obtaining a written commitment from the State or Tribe to revise the SIP or TIP to include the emissions from the action,

4. Obtaining a statement from the metropolitan planning organization (MPO) for the area documenting that any on-road motor vehicle emissions are included in the current regional emission analysis for the area's transportation plan or transportation improvement program,

5. Fully offsetting the total direct and indirect emissions by reducing emissions of the same pollutant or precursor in the same nonattainment or maintenance area, or

6. Conducting air quality modeling that demonstrates that the emissions will not cause or contribute to new violations of the standards, or increase the frequency or severity of any existing violations of the standards. Air quality modeling cannot be used to demonstrate conformity for emissions of ozone precursors or nitrogen dioxide (NO_2). As stated in EPA's proposal of the 1993 regulations (58 FR 13845), due to the complex interaction of the ozone precursors, the regional nature of the ozone and NO_2 problems, and limitations of current air quality models, it is not generally appropriate to use an air quality model to determine the impact on ozone or NO_2 concentrations from a single emission source or a single Federal action.

C. Review Process

As public bodies, Federal agencies must make their conformity determinations through a public process. The General Conformity Regulations require Federal agencies to provide notice of the draft determination to the applicable EPA Regional Office, the State and local air quality agencies, the local MPO and, where applicable, the Federal Land Manager(s)(FLM). In addition, the regulations require Federal agencies to provide at least a 30-day comment period on the draft determination and make the final determination public. State agencies and the public can appeal the final determination in the U.S. Courts system. Failure by a Federal agency to follow the substantive and procedural General Conformity requirements can result in an adverse court decision if challenged.

IV. Comments Submitted on the Proposed Rule

The proposed rule on the "Revisions to the General Conformity Regulations" was issued on January 8, 2008 (73 FR 1402). The EPA received 65 letters from State and local governments, Federal agencies, environmental groups, and private citizens commenting on the proposed regulations. Some of the comments are discussed in section VI of this notice as they were relevant to the detailed discussion of revisions. The EPA has included a response to comments document which addresses all of the timely comments received on the proposed rule in the docket of this rulemaking action (*See* Docket No. EPA–HQ–OAR–2006–0669).

V. Summary of the Final Revisions and Clarifications of the General Conformity Regulations

A. Overview of Revisions to the General Conformity Regulations

In accordance with the requirements of section 176(c)(4)(C) of the CAA, when EPA promulgated General Conformity Regulations in 1993 in 40 CFR 93 subpart B (sections 150 to 160), it also promulgated regulations at 40 CFR part 51, subpart W (sections 850–860) which required States to adopt and submit SIPs for General Conformity. In August 2005, Congress passed the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) which eliminated the requirement for States to adopt and submit General Conformity SIPs. Therefore, EPA is revising its regulations to make the adoption and submittal of the General Conformity SIP or TIP optional for the State or Tribe.

Because 40 CFR part 51, subpart W (§§ 51.850–51.860) essentially duplicates the regulations promulgated at 40 CFR part 93, subpart B (§§ 93.150–93.160), EPA is deleting all of subpart W except for § 51.851. In the revision to § 51.851, EPA is requiring that if a State or Tribe submits a General Conformity SIP or TIP that it be consistent with the requirements of 40 CFR part 93, subpart B. The EPA added paragraph (f) to 40 CFR 51.851 to allow the States and Tribes to develop their own "presumed to conform" list for actions covered by their conformity SIPs or TIPs.

In 40 CFR part 93, subpart B, EPA is making specific revisions to the regulations which (1) Clarify the process, (2) delete outdated or unnecessary requirements, (3) authorize innovative and flexible approaches, (4) reduce the paperwork burden, (5) provide transition tools for implementing new standards, (6) address issues identified by implementing agencies, and (7) provide a better explanation of regulations and policies.

Several of the revisions encourage both the Federal agencies and the States or Tribes to take actions in advance of the project environmental review. Such advance action should speed the review process for the individual projects and reduce the delays for the project without impairing the environmental review. This is discussed in more detail in section VI below.

B. What Innovative and Flexible Approaches Are Being Finalized?

1. The EPA is adding a new section (40 CFR 93.161) to allow for a facility-wide emission budget approach. Under this voluntary arrangement, Federal agencies, in anticipation of future major actions, may negotiate a facility-wide emission budget with the appropriate State, tribal, or local air quality agency responsible for the SIP or TIP. The State, tribal, or local agency could incorporate the facility-wide emission budget into the applicable SIP or TIP and submit it to EPA for approval. After EPA approves the SIP or TIP, any action at the facility can be "presumed to conform" provided that the emissions from the proposed action along with all other emissions at the facility are within the EPA approved facility-wide emission budget and a conformity determination would not be necessary. Alternatively, a facility with an approved facility-wide emission budget could demonstrate conformity by the conventional methods afforded in the General Conformity Regulations. For example, once approved, minor actions under the control of the facility where an applicability analysis results in a determination that the emissions are below a *de minimis* threshold could proceed with no conformity determination.

2. The EPA is adding a new section (40 CFR 93.165) to explicitly incorporate the use of early emission reduction credits into the regulations. The proposal reflects the provisions established by Congress in Federal Aviation Administration (FAA) Reauthorization Act of 2003 for the Airport Early Emission Reduction Credit (AERC) program and the guidance to implement that program. The revised regulations provide a similar framework for other Federal agencies.

3. The EPA is adding a new section (40 CFR 93.164) to allow, with certain limitations, the emission of one

precursor of a criteria pollutant to be mitigated or offset by the reduction in the emissions of another precursor of that pollutant.

4. The EPA is adding a new section (40 CFR 93.163) to allow alternate schedules for mitigating emissions increases. The mitigation timing approach allows some flexibility for Federal agencies and States or Tribes to negotiate a program for some emissions mitigation to occur in future years. States or Tribes can allow this approach to accommodate short-term increases in emissions if they believe a substantial long-term reduction in emissions will result from a Federal action.

C. What Burden Reduction Measures Are Being Finalized?

1. The EPA is deleting the provision in the existing regulation (40 CFR 93.153) that requires Federal agencies to conduct a conformity determination for regionally significant actions where the direct and indirect emissions of any pollutant represent 10 percent or more of a nonattainment or maintenance area's emissions inventory for that pollutant, even though the total direct and indirect emissions from the actions are below the *de minimis* emission levels or the actions are otherwise "presumed to conform".

2. The EPA is adding in 40 CFR 93.153 new types of actions that Federal agencies can include in their "presumed to conform" lists and EPA is also permitting States or Tribes to establish in their General Conformity SIPs or TIPs "presumed to conform" lists for actions within their State or tribal area.

3. The EPA is finalizing an exemption in 40 CFR 93.153 for the emissions from stationary sources permitted under the minor source New Source Review (NSR) programs similar to the EPA's existing General Conformity regulation which already provides for exemptions for emissions from major NSR sources.

D. What Revisions Provide Tools and Guidance for Transitioning to New or Revised NAAQS?

1. The EPA is adding a definition in the regulation (40 CFR 93.152) for "Take or start the Federal action" to help Federal agencies determine what, if any, conformity requirements apply when an area is designated or re-designated as nonattainment.

2. The EPA is adding requirements (40 CFR 93.153(k)) for the implementation of the statutory grace period for newly designated nonattainment areas.

3. The EPA is adding alternate methods (40 CFR 93.162) to demonstrate conformity for time periods beyond those covered by the SIP or TIP. The EPA is also allowing States or Tribes to include an enforceable commitment in the SIP or TIP to address future emissions from a Federal action.

E. What Revisions Are Being Finalized at the Request of Other Agencies?

1. As part of EPA's efforts to finalize an Air Quality Policy on Wildland and Prescribed Fires, which was undertaken in consultation with FLMs, EPA took comment on two possible approaches: To include a presumption of conformity for (1) prescribed fires conducted in accordance with a State certified smoke management programs (SMPs) which meets the requirements of EPA's Interim Air Quality Policy on Wildland and Prescribed Fires or an equivalent replacement EPA policy, or (2) prescribed fires conducted in accordance with a State certified SMPs which meets the requirements of EPA's Interim Air Quality Policy on Wildland and Prescribed Fires or an equivalent replacement EPA policy or, in the absence of a State certified SMP, where the Federal agency has obtained written assurance from the State prior to the burn that the planned burn employs State approved basic smoke management practices (BSMP). EPA is finalizing option 1 to include a presumption of conformity for prescribed fires that are conducted in compliance with SMPs (40 CFR 93.153(i)(2)), with recognition that prescribed fires employing BSMPs may be able to meet a presumption of conformity if such a presumption is established by an agency following the requirements of 93.153(g) or by a State following the requirements of 51.851(f). In the absence of such SMPs, we encourage States and Federal agencies to work together to develop and finalize SMPs or to include prescribed fires conducted in accordance with BSMPs as presumed to conform actions in the applicable SIP. In addition, Federal agencies could undertake actions in accordance with 40 CFR 93.153(f) and (g) to include prescribed fires conducted in accordance with specific BSMPs as actions that are presumed to conform.

2. The EPA is finalizing the proposal (40 CFR 93.158) to allow Federal agencies to obtain emission offsets for general conformity purposes from another nearby nonattainment or maintenance area of equal or higher nonattainment classification provided the emissions from that area contribute to violation of the NAAQS in the area where the Federal action is located or, in the case of maintenance areas, the emissions from the nearby area contributed in the past to the violations in the area where the Federal action is occurring.

3. At the request of several Federal agencies, EPA is clarifying the language in the regulation that states that nothing in these regulations (40 CFR 93.155 and 40 CFR 93.156) requires the release of materials and other information where disclosure is restricted by law. Also, EPA is including a similar clarification for CBI.

4. Several Federal agencies and others involved in the General Conformity process suggested that EPA should consider exempting construction activity emissions from the conformity regulations requirements (40 CFR 93.153). Although the existing General Conformity Regulations do not specifically mention construction emissions, they implicitly require Federal agencies to include emissions from construction activities in the conformity evaluation.

The EPA understands these concerns and, in the discussion about the revision to the definition of "caused by," has identified a number of ways that Federal agencies can work with the State, Tribe, and local agencies to address construction emissions in the General Conformity assessment. However, EPA is not finalizing an exemption for construction emissions in the revisions and is instead affirming that emissions from construction activities must be considered in a conformity evaluation.

5. At the request of the FAA, EPA is codifying one of the examples contained in the preamble to the existing General Conformity Regulations (58 FR 63229) that stated, "the EPA believes that the following actions are illustrative of *de minimis* actions: * * * Air traffic control activities and adopting approach, departure and enroute procedures for air operations." The FAA conducted a study of ground level concentrations caused by elevated aircraft emissions released above ground level (AGL) using EPA-approved models and conservative assumptions.[1] The study concluded that aircraft operations at or above the average mixing height of 3,000 feet AGL have a very small effect on ground level concentrations and could not directly result in a violation of the NAAQS in a local area. Consequently, this study supports the example provided in EPA's initial preamble language for air traffic control activities and adopting approach,

[1] Wayson, Roger, and Fleming, Gregg, "Consideration of Air Quality Impacts by Airplane Operations at or Above 3000 feet AGL," Volpe National Transportation Systems Center and FAA Office of Environment & Energy, FAA–AEE–00–01–DTS–34, September 2000. *http://www.faa.gov/regulations_policies/policy_guidance/envir_policy/.*

departure and enroute procedures for aircraft operations above the mixing height. As some of the commenters noted, the mixing height for some areas can vary and some SIPs and TIPs identify a specific mixing height to be used. Therefore, EPA's final rule (40 CFR 93.153) exempts as *de minimis* aircraft emissions above the specific mixing height identified in the SIP or TIP. If no mixing height is identified in the SIP or TIP, the Federal agency can use 3,000 feet AGL as a default mixing height. The list of exemptions under 40 CFR 93.153(c)(2)(xxii) has been updated in this final rule to reflect this policy.

F. What are some of the clarifications to the existing regulations that are being finalized?

1. The EPA is clarifying in 40 CFR 93.150 the General Conformity evaluation for treatment of emissions from actions with emissions originating in more than one nonattainment or maintenance area. The emissions in each area would be treated as if they result from a separate action.

2. The EPA is establishing procedures in 40 CFR 93.153 to follow in extending the 6-month conformity exemption for actions taken in response to an emergency.

3. The EPA is revising (40 CFR 93.158) the procedures that can be used to demonstrate conformity with the applicable SIP when the SIP does not contain an attainment demonstration or when the emissions from the Federal action are projected beyond the period of the SIP. In addition, EPA is adding a new section (40 CFR 93.162) to establish procedures for demonstrating conformity beyond the time period covered by the SIP or TIP.

4. The EPA is revising the review process (40 CFR 93.155) to require Federal agencies to notify tribal governments in the nonattainment or maintenance area of General Conformity evaluations.

5. The EPA is clarifying the definition (40 CFR 93.152) of several terms used in the regulations.

6. The EPA is including specific language throughout the regulations to identify the role of Indian Tribes and TIPs in the General Conformity evaluation.

VI. Detailed Discussion of the Final Revisions to and Clarifications of the General Conformity Regulations

A. 40 CFR Part 51, Subpart W—Determining Conformity of General Federal Actions to State or Federal Implementation Plans

In 1990, the CAA was amended to include a provision in section 176(c)(4) that required States to adopt and submit to EPA for approval a SIP to implement the provisions of section 176(c). Section 6011 of SAFETEA–LU revised the conformity requirements in section 176(c) of the CAA. Although most of the revisions affected the Transportation Conformity requirements, section 6011(f) also revised the General Conformity requirements. Specifically, section 6011(f) revised section 176(c)(4)(A) of the CAA by including a requirement that the regulations must be periodically updated and by deleting the requirement for the States to adopt and submit a General Conformity SIP. The EPA does not interpret this provision as prohibiting States or Tribes from voluntarily adopting and submitting General Conformity implementation plans consistent with EPA regulations. Therefore, EPA is revising 40 CFR 51.851 to make the adoption and submittal of the General Conformity SIP optional for the State and eligible federally-recognized tribal governments.

In promulgating the General Conformity Regulations in 1993, EPA published two sets of regulations: 40 CFR Part 51, subpart W (§§ 51.850 through 51.860) directed States to adopt and submit General Conformity SIPs to EPA for approval and 40 CFR Part 93 subpart B (§§ 93.150 through 93.160) provided the requirements for Federal agencies to follow in conducting their conformity evaluations before EPA approved the General Conformity SIP for the area. Section 40 CFR 51.851 directed States to adopt SIPs meeting the requirements of 40 CFR part 51, subpart W. The other sections in subpart W repeated the requirements found in 40 CFR part 93, subpart B. The EPA is deleting 40 CFR 51.850, and §§ 51.852 through 51.860 since those sections merely repeated the language in 40 CFR 93.150 and §§ 93.152 through 93.160 and is including a requirement in 40 CFR 51.851(a) that the General Conformity SIP or TIP, if adopted, must meet the requirements in 40 CFR part 93, subpart B.

In addition, EPA is restructuring § 51.851.

1. The EPA is dividing paragraph (b) of 40 CFR 51.851 into four paragraphs—(b), (c), (d), and (e):

a. Paragraph (b) now states that until EPA approves the General Conformity SIP, Federal agencies must meet the requirements of 40 CFR part 93, subpart B.

b. Paragraph (c) states that after EPA approves a SIP or TIP meeting the requirement of 40 CFR part 93, subpart B, or portion thereof, the Federal agencies must meet the requirements of the SIP or TIP and any other portions of 40 CFR part 93, subpart B if not contained in the approved SIP or TIP. In addition, paragraph (g) states that any conformity requirements in an existing implementation plan remain enforceable until the State submits and EPA approves a revision to the applicable State implementation plan to specifically remove the conformity requirements. Since there is no longer a requirement for SIPs to include conformity requirements and the applicable statutes do not grant EPA additional authorities to condition approval of a State's request to remove the General Conformity requirements from an implementation plan, it is EPA's intent, once requested by a State, to expeditiously review and approve implementation plan revisions that seek to remove General Conformity requirements.

c. Paragraph (d) contains the requirement that the SIP or TIP can be no less stringent than 40 CFR part 93, subpart B.

d. Paragraph (e) contains the requirement that the SIP or TIP can be no more stringent that the requirement in 40 CFR part 93, subpart B unless the provisions apply equally to non-Federal as well as Federal entities.

2. The EPA is adding a new provision in § 51.851(f), which allows States or Tribes to include in their SIP or TIP a list of actions that are "presumed to conform." For example, the State may identify the emissions from a certain type and size of construction activities that it presumes will conform.

Comment: Several commenters supported EPA's proposal to make the adoption and submittal of the General Conformity SIP optional. One commenter believed that the elimination of the conformity SIP requirement in § 93.151 leaves a gap regarding the enforcement of mitigation measures.

The commenter noted that under the language in the new provision, there is no State or Federal enforceability if the State withdraws its conformity SIP or otherwise fails to retain a requirement that written commitments to undertake and implement mitigation measures are obligations of the SIP. Another commenter supported the requirements for States to develop conformity SIPs.

Response: The EPA is revising its regulations to be consistent with the revised requirements of the CAA. In 2005, the CAA was revised to eliminate the requirement that a State must adopt a conformity SIP. If a State does not have a conformity SIP, then Federal agencies must conduct their evaluation under the requirements of 40 CFR

93.150–93.165. These requirements are essentially the same as the requirements contained in the conformity SIPs. Therefore, there would be little difference in the enforceability of the regulations. Mitigation measures are included in the SIP or TIP. A conformity SIP is not needed to include the mitigation measures in the SIP or TIP. They are included in the SIP to attain or maintain the ambient air quality standards. Section 93.160 has been changed by deleting the term "General Conformity Regulations" to ensure this fact is clear.

B. 40 CFR 93.150—Prohibition

Section 93.150 establishes the general prohibition against Federal agencies taking actions that do not conform with the SIP and requirements for the Federal agencies to make the conformity determinations following the procedures of subpart B of part 93. The EPA is making two revisions to § 93.150. First, EPA is deleting the language in paragraph (c) of that section and reserving that paragraph. Second, EPA is adding a new paragraph (e) to the section to State that if an action occurs in more than one nonattainment area, that each area must be evaluated separately.

In paragraph (c) of the 1993 regulations, EPA identified categories of actions that were not subject to the regulations based on environmental review for the action that was either completed or under way at the time the regulations were promulgated. The paragraph was based on the environmental reviews (either the conformity determination or the National Environmental Policy Act (NEPA) analysis) being completed in early 1994. Therefore, paragraph (c) was outdated and not necessary at this time.

In the new paragraph (e) in § 93.150, EPA is clarifying the regulations to State specifically that conformity determinations must be made for each nonattainment or maintenance area in which emissions from the Federal action occur. The emissions from most Federal actions or projects occur within one nonattainment or maintenance area; however, some actions or projects could extend across area boundaries, causing emissions in more than one area. A facility (for example, a national park, military installation or an airport) could be located in multiple counties or in multiple States. Emissions from an action at such facilities could extend across the nonattainment or maintenance area boundaries. Some Federal actions could result in direct or indirect emissions in non-contiguous areas, or even nationwide, that are above the *de minimis* thresholds and affect multiple nonattainment or maintenance areas. The 1993 regulations did not specify how actions or projects affecting multiple areas should be addressed. Therefore, EPA added paragraph (e) to state that an action's emissions in each area would be treated as if they result from separate actions.

The EPA clarified that emissions from actions be treated separately for each nonattainment and maintenance area for the following reasons:

1. Federal agencies demonstrate conformity to a SIP, TIP or FIP that are developed on an area-specific basis and SIP requirements may vary from one area to another.

2. The General Conformity Regulations exemptions are also area-specific. For example, the *de minimis* levels are based upon the type and classification of the nonattainment or maintenance area.

3. Section 176(c)(5) of the CAA limits the applicability of the conformity regulations to actions in nonattainment and maintenance areas. Therefore, actions, which affect broad regions encompassing several nonattainment, maintenance or attainment areas, must be evaluated based only on the portions of the emissions in the nonattainment and maintenance areas.

C. 40 CFR 93.151—SIP Revision

The main purpose of § 93.151 is to specify that the regulations in part 93 subpart B apply to Federal actions unless the State or Tribe adopts and EPA approves a General Conformity SIP or TIP for the area. The EPA did not change the purpose of the section, but is revising the section to clarify its wording. The 1993 regulations included statements about the stringency of the SIP compared to the requirements in subpart B of part 93. The EPA is deleting those statements because they duplicate statements in 40 CFR 51.851 which specifies the requirements for the SIP and TIP.

D. 40 CFR 93.152—Definitions

Section 93.152 provides the definition of terms used in the regulations. The EPA is revising 12 of the definitions, adding 11 new terms, and deleting one term, and clarifying the scope of an existing definition as follows:

Applicability analysis. The EPA is adding this new term to describe the process of determining if the Federal agency must conduct a conformity determination for its action.

Applicable implementation plan or applicable SIP. The EPA is making two minor revisions to the definition. First, EPA is correcting the citation for the SIP approval and second, EPA is clarifying the definition by adding a parenthetical phrase to clarify that the term includes an approved TIP. The requirements for eligible Tribes are found in 40 CFR 49.6.

Area-wide air quality modeling analysis. The EPA is clarifying this definition by making a minor wording change and by including photochemical grid model in the definition. Also, EPA is adding an example of the type of models that could be used for the area-wide air quality modeling analysis.

Caused by. The basic test established by the 1993 regulations' definition of "caused by" is that the emissions would not have occurred in the absence of the Federal action. Since the General Conformity Regulations were promulgated in 1993, EPA has interpreted the regulations to require a Federal agency to include construction emissions in its conformity analysis. The EPA believes that emissions from construction activities initiated, approved, or funded by a Federal agency meets this test and should be included in the conformity evaluation. Therefore, EPA is clarifying that construction emissions are part of the total direct and indirect emissions from an action.

Comment: In the January 8, 2008, proposal, EPA solicited comment on whether construction emissions in general or short-term construction emissions should be exempt from the regulations. In addition, EPA solicited comment on what should be considered short-term construction emissions (1 to 5 years). The majority of commenters on this issue objected to exempting construction emissions. They noted that construction emissions can contribute significantly to particulate matter (PM) exceedances, especially off-road vehicle emissions. Some believed that ignoring these emissions might drop a project below the *de minimis* threshold and result in unmitigated emissions and the exposure of local residents to significant levels of pollutants such as diesel exhaust. However, some commenters thought that construction emissions should be exempted. They noted that construction emissions only peak for a short time and that a disproportionate amount of time in the conformity process is spent on addressing very short-term construction-related emissions. They also pointed out that construction emissions are generally not included in NSR or Transportation Conformity evaluations. Of the commenters that thought construction emissions should be exempt, some thought they should be exempt for 5

years while others thought they should be exempt for only 2 years.

Response: The EPA agrees with the majority of commenters on this issue that construction emissions can contribute significantly to exceedances of the NAAQS, particularly exceedances of the PM standards. Unlike the construction activities associated with Transportation Conformity and NSR projects, construction activities associated with General Conformity actions vary widely in type. For example, General Conformity is concerned about localized impacts of the direct and indirect impacts of particular action or projects, as reflected in case-by-case analysis of emissions from specific actions, while Transportation Conformity is primarily concerned with the regional impacts of long-term use of the roads, as reflected in analysis of regional transportation processes, and secondarily concerned with short-term and localized impacts. Also, NSR specifically does not apply to emissions from mobile sources, which includes most construction equipment—no such restriction is found in General Conformity. Moreover, as explained above, EPA believes that emissions from construction activities initiated, approved, or funded by a Federal agency would not have occurred in the absence of the Federal action and thus meet the "caused by" definition included in the general conformity regulations. For these reasons, EPA believes that it is important that construction emissions should be considered as part of the General Conformity process. EPA also believes that other flexibilities in the revised rule will help with planning for, and addressing, construction emissions in the General Conformity process. These flexibilities include allowing alternative mitigation schedules and including construction emissions in a facility emission budget.

Also, EPA is clarifying that conformity is based on annual emissions. Therefore, Federal agencies should estimate construction emissions on an annual basis and would only have to demonstrate conformity of construction emissions during the years when the emissions occurred.

Confidential business information (CBI). In §§ 93.155 and 93.156, EPA is clarifying how CBI used in the conformity determination is to be handled. To support those provisions, EPA is adding a definition of CBI. The definition is based upon that used to define CBI under the Freedom of Information Act.

Conformity determination. The EPA is adding a new term to describe the decision that a Federal agency official makes in determining that the action will conform with the SIP, TIP or FIP.

Conformity evaluation. The EPA is adding a new definition to describe the entire conformity analysis process from the applicability analysis through the conformity determination, if necessary.

Continuing program responsibility. In the 1993 regulations, EPA used the term "emissions that a Federal agency has a continuing program responsibility for." That term was awkward and confusing. The EPA is shortening the term to the "continuing program responsibility" and reformatting the definition to make it clearer.

Continuous program to implement. This term was used in the 1993 regulations but was not defined. Therefore, EPA is adding a definition for this term. The definition would require the Federal agency to have a program to implement the action. That program can include a number of steps such as preparation of final design plans and can also allow for seasonal shutdowns. The definition includes a requirement that the action does not stop for more than 18 months unless such a delay is included in the original plans for the action.

Direct emissions. The EPA is revising the definition of direct emissions to include a requirement that the emissions must be reasonably foreseeable. This revision reflects EPA's policy as set forth in the July 1994 implementation guidance that direct emissions must be reasonably foreseeable. (General Conformity Guidance: Questions and Answers, USEPA, OAQPS, Page 6, Question 2, July 13, 1994).

Emission Inventory. This term is used but not defined in the 1993 regulations. Therefore, EPA is adding a definition of this term.

EPA. Since some States have Environmental Protection Agencies, EPA is adding "U.S." in the definition to clarify that the regulations refer to the U.S. Environmental Protection Agency.

Indirect emissions. EPA is revising the definition for indirect emissions to clarify that only indirect emissions originating in a nonattainment or maintenance area need to be analyzed for conformity with the applicable SIP. In addition, EPA is revising the definition of "indirect emissions" to clarify what is meant by "the agency can practically control" and "for which the agency has continuing program responsibility." This clarification represents EPA's long standing position that Congress did not intend for conformity to apply to "cases where, although licensing or approving action is a required initial step for a subsequent activity that causes emissions, the agency has no control over that subsequent activity, either because there is no continuing program responsibility or ability to practically control." (58 FR 63.214, 63.221, November 30, 1993). (General Conformity Guidance: Questions and Answers, USEPA, OAQPS, Page 6, Question 2, July 13, 1994).

Comment: One commenter believes that excluding emissions over which the Federal agency does not have continuing program responsibility is unlawful. The commenter believes that the original definition of "caused by" is practical because the conformity determination will be made in the context of an Environmental Impact Statement (EIS) for such major Federal projects and NEPA requires an assessment of the expected development and reasonably foreseeable impacts associated with such development. The commenter noted that if the agency with authority to approve these expansions lacks the continuing programmatic responsibility to control the use of facilities approved by the agency, then the proposed activity should not be approved.

The commenter believes that the proposed rule definition has the potential for allowing massive increases in emissions that is anticipated as a result of port expansions in some of the nation's most polluted metropolitan areas. The commenter also noted that the NEPA may also create authority to adopt environmental mitigation plans as part of an agency's programmatic responsibility.

Response: The exclusion of emissions over which the Federal agency does not have a continuing program responsibility is related to indirect emissions for the General Conformity analysis and does not affect the analysis required for NEPA review. EPA is not changing the requirements of that provision; EPA is only clarifying the language contained in it. Since 1993, the "indirect emissions" definition has been limited to those emissions for which "the Federal agency * * * will maintain control over due to continuing programmatic responsibility." Accordingly, EPA's reformatting of the language in this revision does not change the practical impact of this definition, and the commenter's suggestion that the definition should include emissions over which the Federal agency does not have control would greatly expand the program beyond what EPA believes that the law intended. In any event, since EPA did not propose to expand the program to

include emissions over which a Federal agency does not have control, it cannot go final with such an expansion in this rule.

Local air quality modeling analysis. The EPA is revising the definition to include an example of the type of models that are used in the local air quality modeling analysis.

Maintenance area. The EPA is making a minor wording change to clarify the definition by citing the regulations and the section of the CAA used to identify maintenance areas.

Metropolitan Planning Organization. The EPA is revising its regulatory definition to make it more consistent with the statutory definition in SAFETEA–LU, which was signed into law on August 10, 2005.

Mitigation measure. The 1993 regulations used the term "mitigation measure" and had a section specifying the requirements for a mitigation measure; however the regulations did not define the term. The EPA is defining a mitigation measure as a method of reducing emissions of the pollutant at the location of the action. This definition would distinguish a mitigation measure from an offset.

National ambient air quality standards. In 1997, EPA promulgated new NAAQS for both ozone and for fine particles. The definition in the 1993 regulations is broad enough to cover the new ozone standard, but the definition did not cover the fine particle standard known as $PM_{2.5}$. Therefore, EPA is revising the definition of NAAQS to include $PM_{2.5}$.

Precursors of criteria pollutants. The 1993 regulations define precursors for both ozone and PM–10. Since the $PM_{2.5}$ standard was promulgated after the General Conformity Regulations, the original regulations did not include the precursors for $PM_{2.5}$. EPA recently amended the regulations (July 17, 2006 at 71 FR 40420) to add $PM_{2.5}$ precursors, consistent with the proposed implementation program for the $PM_{2.5}$ standard (70 FR 65984). The EPA defined the precursors of $PM_{2.5}$ as follows:

1. Sulfur dioxide (SO_2) is a regulated pollutant in all $PM_{2.5}$ nonattainment and maintenance areas.[2]

2. Nitrogen oxides (NO_X) are regulated pollutants in all $PM_{2.5}$ nonattainment and maintenance areas unless both the State/Tribe and EPA determine that they are not.

3. Volatile organic compounds (VOC) and ammonia (NH_3) are not regulated pollutants in any $PM_{2.5}$ nonattainment or maintenance area unless either the State/Tribe or EPA determines that they are.

Reasonably foreseeable emissions. As discussed above, under "direct emissions," EPA is revising the term "direct emissions" to limit the emissions to those which can be reasonably foreseeable. Therefore, EPA is revising the term "reasonably foreseeable" to include "direct emissions."

Regionally significant action. As discussed in the revisions to 93.153(i) below, EPA is deleting the requirement that conformity determinations are required for actions that would normally be exempt if those actions are considered regionally significant. Therefore, EPA is deleting the definition of the term.

Restricted information. As discussed in §§ 93.155 and 156 on reporting and public participation, EPA is specifying how restricted information used in the conformity determination is to be handled. To support those revisions, EPA is adding a definition of restricted information. The definition is based upon applicable Executive Orders, regulations and statutes pertaining to materials and other information where disclosure is restricted by law.

Comment: One commenter requested that EPA state that emission data be specifically excluded for the definition of "restricted information."

Response: The EPA agrees that emission data generally can not be considered "restricted information." Under EPA policy emission data cannot be considered as "confidential business information." Only in rare circumstances where data are contained in documents classified as sensitive information to which access is restricted by law or regulation to particular classes of persons and a formal security clearance is required to handle or access the classified data would emission data from a government facility be "restricted information." In the situations where restricted information is used as part of the conformity evaluation, EPA will work with the appropriate Federal, State and tribal agencies to ensure an adequate review of the conformity evaluation.

Take or start the Federal action. The EPA is adding a new term to define the date when an action occurs or starts. This date is important in determining what, if any, conformity requirements apply when an area is designated or re-designated as nonattainment. The EPA is defining this term as the date the decision-maker signs a document such as a grant, permit, license or approval. Otherwise, EPA is defining the term as the date the Federal agency physically starts the action that requires the conformity evaluation.

Tribal implementation plan (TIP). The EPA is adding a definition for TIP to mean plans adopted and submitted by federally recognized Indian Tribes.

E. 40 CFR 93.153—Applicability Analysis

The EPA is clarifying the process of determining if the General Conformity requirements are applicable to a Federal action. Although EPA is providing clarification on actions that are exempt or "presumed to conform" in this regulation, nothing in this regulation is intended to interfere with any exemptions previously established by law.

1. The EPA is revising the title of the section to include the word "analysis." The EPA believes that adding the word would make the title more descriptive of the section's content.

2. The EPA is making technical changes to paragraph (a) of § 93.153. The technical correction in section 93.153(a) is to update the reference to the transportation conformity regulations. Section 93.153(a) currently states that the transportation conformity regulations are codified at 40 CFR part 51 subpart T, but EPA deleted transportation conformity criteria and procedures from 40 CFR part 51 subpart T a number of years ago. (62 FR 43779) Accordingly, section 93.153(a) has been revised to refer to the transportation conformity criteria and procedures now codified at 40 CFR part 93 subpart A.[3]

EPA is not finalizing the proposed changes to paragraph (b). Following proposal of changes to this paragraph EPA realized that the minor wording changes we had proposed (adding the word "criteria" before the word "pollutant" and "or precursor" after the

[2] While sulfur dioxide must be addressed in general conformity determinations for $PM_{2.5}$, sulfur dioxide is not required to be addressed in transportation conformity determinations before a SIP is submitted, unless either the State air agency or EPA regional office makes a finding that on-road emissions of sulfur dioxide are significant contributors to the area's $PM_{2.5}$ problem. Sulfur dioxide would be addressed in transportation conformity after a $PM_{2.5}$ SIP is submitted if the area's SIP contains an adequate or approved sulfur dioxide motor vehicle emissions budget. EPA based its decision regarding treatment of sulfur dioxide in transportation conformity on the *de minimis* amount of on-road emissions of sulfur dioxide now and in the future, and on the implementation of low sulfur gasoline beginning in 2004 and low sulfur diesel fuel beginning in 2006. (70 FR 24283).

[3] While we did not issue a proposal or provide an opportunity for public comment for this minor correction to the rule, we believe such actions are unnecessary because this minor revision in no way changes substantive conformity procedures described in the general conformity rule but merely updates the reference to the proper location of the transportation conformity regulations in the CFR.

word to clarify the paragraph) had been accomplished by changes made to this section in a July 17, 2006 regulatory action (71 FR 40426). Therefore, EPA is making no changes to this paragraph from the current regulatory language.

3. The EPA is revising the table in sub-paragraph (b)(1) to include all nonattainment areas in the Ozone Transport Region. In 1993, when the General Conformity Regulations were promulgated, all nonattainment areas in the Ozone Transport Region were classified pursuant to Table 1 in CAA section 181(a)(1) as marginal or above for the 1-hour ozone NAAQS. When EPA later designated areas for the 8-hour ozone NAAQS, some nonattainment areas were identified as needing to meet only the requirements in subpart 1 of Part D of Title I of the CAA and were not classified pursuant to Table 1. However, the decision to place certain areas only under subpart 1 was vacated by the decision in *South Coast Air Quality Management District* v. *EPA,* 472 F.3d 882 (DC Cir. 2006). Although there are currently no areas classified under subpart 1, the Court left open the door that EPA may be able to justify such action in the future. Accordingly, EPA is revising the table in § 93.153(c)(1) to ensure that the General Conformity requirements would apply to any area placed in the subpart 1 in the future by changing the classification from "Marginal and moderate non-attainment areas inside an ozone transport region" to "other non-attainment areas inside an ozone transport region."

4. The EPA is adding a new sub-paragraph (xxii) to § 93.153(c)(2) to clarify the exemptions for aircraft emissions above the mixing height for the area. Specifically, EPA is exempting aircraft emissions above the mixing height identified in the applicable SIP, TIP or FIP. Where the SIP does not contain a specific mixing height, EPA is establishing a default mixing height of 3000 feet AGL. In the January 2008 proposal, EPA had proposed to exempt all aircraft emissions above 3000 feet AGL.

Comment: Several commenters representing State and local air quality agencies objected to excluding the emissions from aircraft above 3000 feet above ground level. They noted that the mixing height varies and can be as high as 4,500 feet AGL during the ozone season and that pollutants emitted at middle and high altitudes can travel long distances. They also noted that pollution levels were below predicted levels following September 12, 2001 when aircraft were grounded.

Other commenters representing the airports and the airline industry supported the exemption emission from aircraft above 3000 feet AGL. They noted that the FAA study supports the conclusion that aircraft operations at or above 3,000 feet AGL have a minimal effect on ground level pollutant concentrations. The commenters also noted that flights over almost all major U.S. airports must be at least 7000 feet AGL; therefore, any commercial aircraft operating at 3000 feet would most likely either be landing or taking off. The commenters also noted that the FAA study concluded that any increase in ground level concentrations of CO and hydrocarbon (HC) due to mixing was negligible.

A Federal agency commenter believes that the exemption for air traffic control activities should not be restricted by altitude. The commenter noted that the proposal for exempting aircraft operations above 3,000 feet AGL is much narrower than what was presented in the preamble to the 1993 General Conformity rule as an example of an action that is exempt from the General Conformity requirements—"air traffic control activities and adopting approach, departure and enroute procedures for air operations."

Response: EPA agrees that the aircraft emissions above the mixing height do not significantly affect ground level concentrations and acknowledges that the mixing height can vary from one area to another. Accordingly, in those areas where the applicable SIP or TIP specifies a mixing height, EPA is requiring the specified mixing height to be used. However, in those areas where the SIP or TIP does not specify a mixing height, EPA is allowing the Federal agencies to use 3,000 feet AGL as a default mixing height. This conclusion is supported by the FAA study. In addition, 3,000 feet AGL is commonly used as an estimate of the average maximum afternoon mixing height across the country and most air quality models use 3,000 feet AGL as the default mixing height. However, we also note that the FAA study showed that some areas have mixing heights lower than 3,000 feet AGL, so we have added regulatory language to sub-paragraph (xxii) to allow Federal agencies to use a different mixing height if they can demonstrate that emissions at and above that height are *de minimis.* As a general matter, it is in the reasoned discretion of the Federal agency to decide which methods and analysis it will use when determining whether this exemption or any other provision applies to the emissions from its activity, including making an applicability determination under section 93.153(b), finding emissions result in no increase under section 93.153(c)(2), or concluding emissions are presumed to conform under section 93.153(f).

5. The EPA is revising paragraph (d)(1) of § 93.153 to exempt emissions covered by a NSR permit for minor sources. The 1993 regulations exempt emissions covered by a NSR permit for major sources but not for minor sources. EPA concluded at that time that the purposes of the General Conformity review would be adequately met by the major source NSR review, and that additional review would not be necessary. The EPA now believes that minor source NSR provides similar review, and that this approach will reduce the duplicate review of emissions under both minor source NSR and conformity programs and treat all NSR permitted emissions the same way. Accordingly, we are revising § 93.153(d)(1) to also exempt emissions covered by minor source NSR permits issued pursuant to the general permitting authority provided by section 110(a)(2)(c) of the CAA.

Comment: The majority of commenters agreed with the proposal to exempt stationary sources permitted under the NSR program. They believed the review to be redundant and unnecessary.

Some commenters disagreed with exempting minor sources. One commenter thought that EPA should not exempt activities with emissions less than the major source threshold from conformity review unless some basis can be established that the cumulative emissions from such sources are truly *de minimis* with respect to the statutory conformity tests. The commenter suggests that EPA substitute a SIP-based program for establishing a budget for minor sources in place of the regionally significant threshold. Several commenters suggested that only NSR permits which require offsets or are offset on a programmatic basis should be exempt from conformity. A few commenters thought that, if EPA exempts minor sources for the conformity evaluation, it must first clearly demonstrate that such exemptions will not impede States' ability to attain any standard.

Response: The EPA agrees that requiring a conformity analysis for emission covered by a minor source NSR permit would be redundant and provide little environmental benefit. EPA believes that the permitting authority has the responsibility to ensure that the source will not interfere with the SIP or otherwise interfere with the State's ability to attain the

standards. Minor source NSR permits are issued under a SIP-approved program, so there has already been a determination that the permitting program will not contribute to a violation of the NAAQS or delay the attainment or maintenance of the standards. Thus, by issuing a specific permit under that program, the authority is stating that the emissions are accounted for in the SIP, effectively providing the same assurances as a conformity determination since Federal agencies can demonstrate conformity for an action by showing that the actions will not cause a violation or interfere with the SIP.

6. The EPA is deleting "or natural disasters such as hurricanes, earthquakes, etc.," and "or disaster" from paragraph (d)(2) of § 93.153 because they are unnecessary words. In § 93.152 EPA defines an emergency; therefore the words in § 93.153 describing an "emergency" are not necessary and may be confusing since they do not include all types of emergencies.

7. The EPA is amending paragraph (e)(2) of § 93.153 to provide procedures for reviewing an extension of the exemption from making a conformity determination for actions related to responding to an emergency. A Federal agency, in responding to an emergency event such as a natural disaster, terrorist attack, military mobilization, or other situations (such as wildfire responses) that an agency determines fit within the definition of emergency found in § 93.152, may find it impractical to conduct a conformity evaluation on the action before it must take the action. To address this situation, 40 CFR 93.153(d)(2) of the 1993 regulations provides Federal agencies with a 6-month exemption from the requirement to undertake a conformity analysis for actions taken in response to an emergency. The EPA recognizes that in rare situations it may be impractical, even after 6 months, to conduct a conformity evaluation and is amending § 93.153(e) to allow the agencies to extend the exemption for another 6 months. This section requires Federal agencies to make a written determination that it is impractical to conduct an evaluation for the action. The 1993 regulations were not clear about the number of additional extensions permitted under § 93.153(e) nor do those regulations provide any procedures for agencies to follow in deciding on the extension.

The EPA is not revising requirements for the initial exemption for actions in response to emergencies. The initial governmental actions that are typically commenced within hours or days in response to emergencies or disasters would still be exempt from the General Conformity requirements for 6 months after the commencement of the response to the emergency or disaster. However, EPA is adding requirements for Federal agencies that want to extend the exemption beyond the initial 6-month period. First, EPA is requiring the Federal agencies to allow EPA and the State 15 days to review and provide comments on the draft written determination to extend the exemption at the beginning of the extension period. Next, EPA is requiring Federal agencies to publish a notice within 30 days of making the extension decision. The notice must be published in a daily general circulation newspaper for the affected area. Finally, EPA is limiting the maximum number of 6-month extensions an agency may declare without additional documentation on their own to three. Thereafter, the revisions require that the agency must provide additional information concerning the emergency conditions to EPA and the State or Tribe.

8. The EPA is revising paragraphs (f), (g), and (h) of § 93.153 to provide Federal agencies clear guidance in developing their list of actions that are "presumed to conform" and provide requirements for the materials that must be included in the documentation and draft list. Specifically, EPA is adding wording to paragraph (f) to specify when and how more than one "presumed to conform" exception may be taken for a Federal action; adding a new paragraph (g)(3) to specify that Federal agencies can list actions that are for individual areas or SIPs or TIPs; adding a sentence to paragraph (h)(1) to specify the information that must be included in the documentation; and adding a sentence to paragraph (h)(2) to allow the Federal agencies to notify EPA headquarters when the "presumed to conform" actions would have multi-regional or national impacts. In addition, EPA is revising paragraphs (f) and (h) to include a reference to the new paragraph (g)(3).

In promulgating the existing regulations, EPA allowed a number of actions that were "presumed to conform." The regulations also allow Federal agencies to establish their own lists of actions that are "presumed to conform" with applicable SIPs and TIPs. Under the 1993 regulations, Federal agencies must justify the inclusion of the actions on their "presumed to conform" list by either demonstrating: (1) That the actions will not cause or contribute to an air quality problem or otherwise interfere with the SIP, TIP, or FIP, or (2) that the actions will have emissions below the *de minimis* levels. The Federal agencies must provide copies of the proposed list to EPA, affected State and local air quality agencies and MPOs. In addition, the agencies must provide at least a 30-day public comment period and document its response to all comments. The notice of the proposed and final list must be published in the **Federal Register.**

The EPA is adding sub-paragraph (g)(3) to clarify that a presumption could apply to one facility or for facilities in a specified area and does not have to be nationally applicable. For example, if the nonattainment area's SIP includes a sector emission budget for construction activities, a facility in that area may be able to demonstrate that construction activities of a certain size or type fits within the SIP's emission budget. With the concurrence of the State or Tribe, the Federal agencies could publish a "presumed to conform" list that includes the construction activity emissions that are specific to a facility.

9. The EPA is deleting the regionally significant test included in paragraph (i) of § 93.153. The existing regulations in § 93.152 define "regionally significant" as "a federal action for which the direct and indirect emissions of any pollutant represent 10 percent or more of a nonattainment or maintenance area's emissions inventory." 40 CFR 93.153(i) and (j) require conformity determinations for all regionally significant actions, regardless of any exemptions or presumptions of conformity based on other provisions in the regulations.

Comment: Some commenters supported deletion of the regionally significant provision noting that it is unnecessary, not helpful in determining whether a Federal action will conform to the SIP, and is an administrative burden. Other commenters believed that the provision should be retained or strengthened or a more appropriate percentage of the area's inventory be used for the test. Some commenters also pointed out that in light of the new $PM_{2.5}$ and 8-hour ozone standards, certain Federal projects might become "regionally significant" in the near future.

Response: EPA agrees that the determination of whether actions with emissions below the *de minimis* emission levels are regionally significant has been a burden to some Federal agencies with little or no environmental benefit. Analysis discussed in the proposal showed that the emission inventory for most nonattainment and maintenance areas well exceeded the ten times the *de*

minimis emission levels for the area, such that no emissions could actually be regionally significant. Although several commenters question whether the regionally significant test might be important for the new $PM_{2.5}$ and 8-hour ozone standards, they presented no information to show that the *de minimis* emission levels would exceed 10 percent of the inventory for potential nonattainment areas for those standards.

10. In a revised paragraph (i) of § 93.153, EPA allows installations with a facility-wide emission budget to presume that an action at the installation will conform provided that the emissions from that action along with all other emissions from the facility will not exceed the budget. A more detailed discussion of the facility-wide emission budget concept is found in § 93.161.

11. Also in § 93.153(i), EPA identified emissions from a prescribed fire conducted under an approved smoke management program as "presumed to conform." In the January 2008 proposal, EPA asked for comments on two options for allowing a presumption of conformity for prescription fires. Option 1 would have allowed Federal agencies to presume that the emissions from prescribed burns will conform provided the burning is conducted under a State certified approved SMP or an equivalent replacement EPA policy. Option 2 would have also allowed Federal agencies, in the absence of a certified SMP, to presume that emissions from prescribed burns will conform provided they obtain written permission from the State and use BSMP.

Comment: The EPA received many comments in support of the second option, which allows Federal agencies to determine, in absence of a certified SMP, that prescription fires conducted using BSMP are considered "presumed to conform" to the SIP. Some commenters noted that to be consistent with the "Treatment of Data Influenced by Exceptional Events" rule (72 FR 13559, March 22, 2007), if the State does not certify a SMP, the exemption should be for burns using State approved BSMP. Many commenters also supported the first option, noting that it was reasonable to assume that any action conducted in compliance with the certified SMP would be in compliance with the SIP. One commenter thought that the presumption of conformity for burns conducted under BSMP is not acceptable because BSMP are in no way connected to air quality and will not ensure that resulting emissions from a prescribed burn would conform to the SIP. This commenter also noted that the use of SMP may be acceptable, but EPA has not yet issued its final wildland fire policy. Another commenter suggested that if prescribed burns under certified SMP or a BSMP are "presumed to conform," there needs to be a simple way to flag the data from affected monitors. Numerous commenters recommended that the definition of emergency include wildfires.

Response: After considering the various practices and the comments received, the EPA believes option 1 presented in the proposed rule is more protective of the air quality than option 2. However, we also recognize that prescribed fires employing BSMPs may be able to meet a presumption of conformity if such a presumption is established by an agency following the requirements of 93.153(g) or by a State following the requirements of 51.851(f). Under option 1, prescribed fires conducted in compliance with a SMP are "presumed to conform." The purpose of an SMP is to mitigate nuisance smoke and public safety hazards, prevent NAAQS violations, protect public health, and address visibility impacts in Class I areas. EPA also notes that SMPs establish procedures and requirements for minimizing emissions. EPA recognizes that prescribed burns employing BSMPs may be as protective of air quality in areas where no SMP exists. BSMPs can be connected to air quality and may protect air quality as outlined in the "Treatment of Data Influenced by Exceptional Events" rule. In order to assure the adequacy of the BSMPs to meet the legal requirements of the General Conformity program as outlined in section 176, Federal agency developed BSMPs must be publicly and State reviewed as part of a presumed to conform action under section 93.153(g) or 51.851(f) of these regulations to establish such a presumption. Because the EPA chose not to require the certification of the SMP under the final "Treatment of Data Influenced by Exceptional Events" rule, EPA is also removing the term "certified" from this final General Conformity Rule. Finally, EPA has identified wildfire response as an example of an emergency event that may be exempt from General Conformity requirements under 93.153 (d)(2) and (e) if that agency determines it fits within the definition of emergency found in § 93.152.

12. As discussed above, EPA also added a provision in § 93.153(i) to allow a State or Tribe to adopt in their SIP or TIP a list of actions it "presumes to conform."

13. The EPA is revising paragraph (j) of § 93.153 by deleting the reference to regionally significant emissions, by adding a reference to paragraph (i) and by describing the criteria for requiring a conformity determination for an action that otherwise would be "presumed to conform." The 1993 regulations state that an action cannot be "presumed to conform" if it was regionally significant or did not in fact meet the requirements of sub-paragraph (g)(1). As discussed above, EPA has deleted the regionally significant test, therefore reference to it is has been deleted from this paragraph. For clarity, instead of referring to sub-paragraph (g)(1), EPA is repeating the requirements in this paragraph.

14. The EPA is revising paragraph (k) of § 93.153 to incorporate the provisions of section 176(c)(6) of the CAA. (42 U.S.C. 7506(c)(6)). In November 2000, Congress added section 176(c)(6) to the CAA to allow for a conformity grace period for newly designated nonattainment areas (Pub. L. 106–377). That section establishes a 1-year grace period following the effective date of the final nonattainment designation for each new or revised NAAQS before the conformity requirements must be met in the area. If an agency takes or starts the Federal action before the end of the grace period, it must comply with the applicable pre-designation conformity requirements. If an agency takes or starts the Federal action after the end of the grace period, it must comply with the post-designation conformity requirements. As discussed above in describing the new term "take or start the federal action," EPA is defining the term to mean that a Federal agency takes an action when it signs a permit, license, grant or contract or otherwise physically starts the Federal action. From the time that an area is designated as nonattainment, agencies will have a year to take or start the Federal action. If the agency fails to take or start the Federal action during the grace period, then it must re-evaluate conformity for the project based on the requirements for the new designation and classification.

F. 40 CFR 93.154—Federal Agencies Responsibility for a Conformity Determination

1. The EPA is revising the title of this section to clarify the purpose of the section. In the 1993 regulations this section is entitled broadly "Conformity Analysis." Since the short section only discusses the requirement for each Federal agency to make its own determination, EPA is revising the title of the section to more closely describe the section's content.

2. The EPA is adding language to this section to specifically state that the

conformity determination must meet the requirements of this subpart.

G. 40 CFR 93.155—Reporting Requirements

1. Since EPA is adding additional sections to subpart B, it is revising the references to those sections in § 93.155.

2. Consistent with EPA's Tribal Authority Rule (63 FR 7253), EPA is providing federally-recognized Indian tribal governments the same opportunity to comment on draft conformity determinations as given to States. Therefore, EPA is requiring the Federal agencies to notify all the federally-recognized Indian tribal governments in the nonattainment or maintenance area.

3. The EPA is adding an alternative procedure for notifying EPA when the action would result in emissions originating in nonattainment or maintenance areas in three or more EPA regions. Specifically, EPA is allowing agencies to notify the EPA Office of Air Quality Planning and Standards rather than each individual regional office. A single contact point for EPA should be more efficient for the other Federal agencies than notifying up to 10 regional Offices. This final notification provision also corrects an inconsistency between the proposed rule preamble and the proposed regulation, which stated that the EPA Office of Air Quality Planning and Standards could be contacted when the action would result in emissions originating in nonattainment or maintenance areas in two or more EPA regions.

4. The EPA is adding a new paragraph to § 93.155 to describe how restricted information used to support conformity determinations should be handled when provided to EPA, States and Tribal governments. The 1993 General Conformity Regulations do not contain an explicit statement about protecting restricted information from public release. The interagency review and public participation provisions in the 1993 regulations require Federal agencies to make available for review the draft conformity determination with supporting materials that describe the analytical methods and conclusions relied upon in making the determination. Disclosure of classified information by a Federal employee is a criminal offense (18 U.S.C. 1905). In addition, certain unclassified information is privileged or otherwise protected from disclosure. Therefore, several Federal agencies wanted to ensure that the General Conformity Regulations clearly state that no agency or individual was required to release restricted information including, but not limited to, classified materials. Therefore, EPA is revising the regulation to add explicit language concerning the protection of restricted information. In addition, conformity determinations could, in part, be based upon restricted information. The EPA is adding specific language to the regulation to protect restricted information in accordance with each Federal agency's policy and regulations for the handling of restricted information. The regulations would allow State or EPA personnel with the appropriate clearances to be able to view the restricted information.

H. 40 CFR 93.156—Public Participation

1. The EPA is correcting the section referenced in § 93.156. The 1993 regulations refer to § 93.158. The correct reference should be § 93.154. Section 93.158 prescribes the criteria for conducting a conformity analysis, while § 93.154 requires Federal agencies to make the determination and references the requirements in the other sections of subpart B.

2. The EPA is providing an alternative public notification procedure for actions that cause emissions above the *de minimis* levels in three or more EPA regions. This corrects a mistake made in the proposed rule preamble that stated, "EPA is proposing to provide an alternative public notification procedure for actions that cause emissions above the *de minimis* levels in more than three nonattainment or maintenance areas." In addition, this corrects an inconsistency with the proposed regulation, which stated that the alternative public notification procedure is for actions that have multi-regional or national impacts in two or more regions. The 1993 regulations require that the Federal agency publish a notice in a daily newspaper of general circulation in the nonattainment or maintenance area. Some Federal actions affect a large number of nonattainment and maintenance areas. The notification procedure for such an action could be burdensome and inefficient. Therefore, EPA is amending the rules to allow the Federal agencies to publish a notice in the **Federal Register** if the action would cause emissions above the *de minimis* levels in three or more nonattainment or maintenance areas.

3. The EPA is adding a new paragraph to § 93.156 to describe how restricted information and CBI used to support conformity determinations should be handled in providing the information to the public.

I. 40 CFR 93.157—Re-Evaluation of Conformity

1. The EPA is revising the title of this section to more appropriately describe the section's content. The 1993 regulations section is entitled, "Frequency of Conformity Determinations." That title implies that the General Conformity requirements for Federal actions must be reevaluated on a regular basis. However, the section states that conformity must be reevaluated only if the determination lapses or the action is modified, resulting in an increase in emissions.

2. If an action's emissions are below the *de minimis* levels or the action is not located in a nonattainment or maintenance area, a conformity determination is not required. Therefore, the Federal agency would not have a date for the conformity determination to use in determining if reevaluation is required. The EPA is making minor wording changes in paragraphs (a) and (b) to clarify that the date of a completed NEPA analysis, as evidenced by a signed finding of no significant impact (FONSI) for an environmental assessment, a record of decision (ROD) for an environmental impact statement, or a record of a categorical exclusion, can be used when a conformity determination is not required.

3. The EPA is adding a new paragraph (d) to § 93.157 to clarify the requirements for needing to conduct a conformity determination when the action is modified. Paragraph (d) deals with modifying an action for which the Federal agency made a conformity determination. In order to make the original determination, the Federal agency had to demonstrate that all the emissions caused by the initial action conformed to the SIP. Since conformity determinations are only needed for emissions that exceed the *de minimis* levels, EPA has clarified in the rule that the Federal agency does not have to revise its conformity determination unless the modification would result in an increase that equals or exceeded the *de minimis* emission levels for the area. Paragraph (d) also deals with modifying an action that the Federal agency determined had emissions below the *de minimis* level. Since the emissions from the unmodified action were determined to be *de minimis* and not fully evaluated to determine conformity, EPA is requiring Federal agencies to conduct a conformity determination for the modified action if the total emissions (the emissions from the unmodified action plus the increased emissions resulting from the modification) equal

or exceed the *de minimis* levels for the area. Thus, in both situations, all emissions that exceed *de minimis* levels are evaluated for conformity impacts, either initially or after modification.

J. 40 CFR 93.158—Criteria for Determining Conformity for General Federal Actions

1. In § 93.158(a)(1), EPA is adding "or precursor" after "any criteria pollutant" to clarify that Federal agencies must demonstrate conformity for the precursors of the criteria pollutants if the precursor emissions are specifically identified and accounted for in the applicable SIP, TIP or FIP.

2. In § 93.158(a)(2) and (a)(5)(iii), EPA is allowing Federal agencies to obtain emission offsets for the General Conformity requirements from a nearby nonattainment or maintenance area of equal or higher classification, provided that the emissions from the nearby area contribute to the violations of the NAAQS in the area where the Federal action is located or, in the case of a maintenance area, the emissions from the nearby area have contributed in the past to the violations in the area where the Federal action is located. The regulation requires such emissions offsets to be obtained through either an approved SIP revision or an equally enforceable commitment.

Comment: Commenters representing Federal agencies, industry groups and some State air quality agencies supported the provision to allow offsets from nearby nonattainment or maintenance areas. Some of these commenters suggested that additional limits could be imposed on the use of the out-of-area offsets. Several commenters representing State air quality agencies opposed the allowing of offsets from other areas. The commenters noted that EPA regulations and Federal court rulings limit the area from which emissions reductions can be creditable for attainment demonstrations. They also opposed allowing offsets because conformity generally applies to mobile source emissions that are different from stationary source emissions covered by NSR.

Response: The EPA agrees that offsets should be allowed in nearby nonattainment areas in the same manner as they are allowed under the NSR program. We agree with the commenter that EPA regulations and judicial rulings place limits on the area from which emissions reductions can be creditable for attainment demonstrations. The intent of those limits is to ensure that the emissions from the nearby nonattainment area contribute to the violations, or have contributed to violations in the past, in the area in which the Federal action takes place. This is consistent with the overall revisions to this regulation. Therefore, we are also recommending that Federal agencies show that they have met the requirements of § 93.158(a)(2)—that the emission offsets originate from an area that contributes to the violations, or have contributed to violations in the past, in the areas with the Federal action—by using the same techniques EPA has approved by rule or guidance for demonstrating contributing emissions in other SIP-related determinations, such as Reasonable Further Progress, Rate of Progress, or Attainment Demonstrations for a particular pollutant or pollutant precursor. By limiting the offsets to areas that contribute or have contributed to the nonattainment, EPA is narrowing the potential offsets to areas that will result in a benefit to the nonattainment or maintenance area in which the Federal action will take place.

3. In § 93.158(a)(2), (a)(3) and (a)(4), EPA is revising the regulations to address the precursors of $PM_{2.5}$. The EPA does not believe that the current models are adequate to reasonably predict the project level impact of individual precursor sources of ozone or $PM_{2.5}$. Therefore, EPA is allowing Federal agencies to use modeling to demonstrate conformity only for directly emitted pollutants. Precursors of $PM_{2.5}$ will be treated the same as precursors of ozone and direct emissions of $PM_{2.5}$ will be treated the same as CO and PM–10 for purposes of identifying available tests to demonstrate conformity.

4. In § 93.158(a)(3) and (5), EPA is correcting two typographical errors. In sub-paragraph (3), EPA is correcting "meet" to "meets" and in sub-paragraph (5), EPA is changing "paragraph (a)(30)(11)" to "paragraph (a)(3)(ii)."

5. In § 93.158(a)(5)(iv)(A)(1), EPA is deleting the reference to the year 1990 and replacing it with a generic reference to the most current calendar year with a complete emission inventory available before an area is designated unless EPA sets another year. In addition to requiring the conformity regulations, the CAA Amendments of 1990 required the designation of areas as nonattainment based on the existing air quality data. Therefore, when EPA promulgated the 1993 regulations, all the designations were based on a 1990 date. Since EPA promulgated the conformity regulations, it has promulgated new 8-hour ozone and $PM_{2.5}$ standards and designated a number of areas as nonattainment. By changing the regulations to reference the date when the area was designated as nonattainment, EPA is allowing for the General Conformity regulations to address these new designations and any future designations through identification of appropriate inventory levels. In addition, including the option to allow EPA to set another year for the baseline allows EPA and other Federal agencies to work together to determine if another baseline may be appropriate for determining conformity of a particular action, such as determining that an agency can rely on one specific baseline year for an action subject to both the general and transportation conformity regulations when those regulations otherwise indicate application of two different baseline years.

6. Also in § 93.158(a)(5)(i), EPA is revising the paragraph to allow Federal agencies to make conformity determinations based upon a State's or Tribe's determination that the emissions from the action along with all other emissions in the area would not exceed the emission budget in the applicable SIP or TIP. Under the 1993 regulations, States could only make such a determination if they had an approved attainment demonstration or maintenance SIP. This revision would allow the State or Tribe to make its determination based upon a post-designation applicable SIP or TIP even though the plan does not include an attainment demonstration. For example, the State or Tribe could base their determination on an emission budget in an EPA-approved "Reasonable Further Progress" plan. By adopting the budget and submitting it as part of the SIP or TIP, the State or Tribe is treating the Federal action like any other source in the area. When the State or tribal agency adopts the attainment or maintenance SIP or TIP, it will have to consider the emissions from the Federal action, and if necessary require additional controls on the sources as necessary to meet air quality needs.

7. The EPA is revising § 93.158(a)(5)(i)(C) to allow the State or Tribe to commit to including the emissions from the Federal action in future SIPs. Under the 1993 regulations, Federal agencies can demonstrate conformity by having the State commit to revising the applicable SIP to include the emissions. If a State or Tribe agrees to such a commitment, the State or Tribe must submit a SIP revision within 18 months to include the emissions from the action and to make other necessary adjustments in the SIP to accommodate those emissions. However, the existing SIP or TIP (or a SIP or TIP required to be submitted in

18 months) may not cover the same timeframe covered by the conformity determination. For example, a SIP for a nonattainment area that demonstrates attainment may only cover the period until the attainment date while the conformity determination may cover emissions for many years beyond that date. The State or Tribe may be submitting future SIPs or TIPs to address either maintenance of the standard or to address a continuing nonattainment problem that would cover the time period of the emissions. The revision to § 93.158(a)(5)(i)(C) would continue to require States to revise the SIP within 18 months of the conformity determination based upon a State's or Tribe's commitment. However, if the existing SIP or TIP (or a SIP or TIP due within 18 months) does not cover the time period of the emissions, then the State or Tribe will submit a SIP revision that includes an enforceable commitment to account for the emissions in future SIP revisions. This approach will allow States and Tribes flexibility in committing to include the emissions from the Federal action in the SIP covering the relevant time period.

8. The EPA is revising § 93.158(a)(5)(iv) to delete the use of 1990 as the baseline year. As discussed above, when EPA promulgated the existing General Conformity Regulations in 1993, the designations and classifications were based upon the 1990 air quality and emissions. Since 1993, EPA has promulgated new standards and designated additional areas as nonattainment. Therefore, in many cases the 1990 date for the baseline emission inventory is inappropriate. The EPA is setting the baseline year as the most current calendar year with a complete emission inventory available before an area is designated unless EPA sets another year. As noted above, including the option to allow EPA to set another year for the baseline allows EPA and other Federal agencies to work together to determine if another baseline may be appropriate for determining conformity of a particular action.

Finally, EPA is deleting another alternate baseline year that no longer is applicable in PM–10 areas. Specifically, EPA is deleting in § 93.158(a)(5)(iv)(A)(3) the use of the "year of the baseline inventory in the PM–10 applicable SIP." EPA believes that the deletion of this outdated baseline year should not affect current General Conformity determinations in PM–10 nonattainment and maintenance areas.

K. 40 CFR 93.159—Procedures for Conformity Determinations for General Federal Actions

1. EPA is changing § 93.159(b)(1)(ii) to address when new motor vehicle emissions factors models are used in General Conformity determinations. EPA is clarifying that the grace period before such new models are used will be 3 months from EPA's model release, unless a longer grace period is announced in the **Federal Register.** This is more consistent with 40 CFR 93.111 of the transportation conformity rule that allows grace periods for new motor vehicle emissions factor models to be between 3–24 months.

2. The EPA is revising § 93.159(b)(2) and (c) to update the reference to the Compilation of Air Pollutant Emission Factors and the Guideline on Air Quality Modeling. EPA has released updated versions of these documents since it promulgated the existing regulations in 1993.

3. The EPA is revising paragraph (d)(1) to clarify that analysis is first required for the attainment year specified in the SIP. In some cases, such as SIPs for marginal ozone areas, an attainment demonstration date was not required in the SIP. Therefore, EPA is requiring that if the SIP or TIP does not specify an attainment demonstration year then the analysis is conducted for the latest attainment year possible under the CAA. Since the CAA requires the SIP demonstrate attainment as expeditiously as possible but no later than the CAA mandated attainment date, it is possible that a SIP or TIP could have an earlier attainment date. That earlier date if specified in the SIP would be the appropriate year for the conformity analysis.

4. The EPA is making a minor wording revision to paragraph (d)(2) to clarify the paragraph. The EPA is replacing the word "farthest" with "last." The maintenance plans are developed for a 10-year period and revised as necessary for the next 10-year period. The purpose is for conformity to be evaluated for the last year of the maintenance plan. The word "last" conveys that meaning.

L. 40 CFR 93.160—Mitigation of Air Quality Impacts

The EPA is revising paragraph § 93.160(f) to clarify its meaning. The regulations were meant to require that the mitigation measures include a written commitment from the person or organization reducing the emissions and that those commitments must be fulfilled. EPA is adding text to state that those commitments must be fulfilled to clearly provide for enforcement of those commitments under the Federal regulations.

M. 40 CFR 93.161—Conformity Evaluations for Installations With Facility-Wide Emission Budget

The EPA is adding a new section to the regulations to facilitate the use of a facility-wide emission budget in evaluating conformity. Although the existing regulations do not preclude States and Federal agencies from using this approach, the regulations do not specifically authorize its use. This section for developing such a budget would be in conjunction with a new § 93.153(i)(1), which provides a mechanism for demonstrating that the emissions are in conformance with the SIP or TIP. This approach allows States or Tribes and Federal agencies to identify acceptable levels of emissions from the facility for inclusion in the SIP before starting the environmental review for the actions and thereby expedite the review of the Federal actions at the facilities that do not exceed the emission levels.

The EPA believes that this provision would encourage the State, Tribe or local air quality agency and the Federal facilities to develop an upfront emission budget for the facility, and the action or project environmental review would be streamlined as long as the facility remains within an established budget.

The development and use of a facility-wide emission budget would be voluntary on the part of the Federal agency, State, Tribe and local air quality agency. No party would be required to participate. If the parties agreed to participate, an emission budget would be established based upon specific guidance and documented growth projections for the facility, and adoption of that budget into a SIP or TIP would demonstrate that the area could meet its air quality obligations with the identified emission budget.

Comment: The majority of commenters supported the concept of the facility-wide emission budget approach with the appropriate consultation and input from the States. Many noted that it will not interfere with attainment of the NAAQS. However, some commenters disapproved of the budget approach and expressed concern about a Federal agency/airport being allowed to establish their own budget without having to do additional analysis.

While generally agreeing with the approach, many commenters asked EPA for clarifications. Several commenters asked for clarification in the final rule that this is voluntary for both the

Federal agency and the States and the States can opt to use the existing General Conformity approach. In addition, some commenters asked EPA to include provisions requiring such measures as periodic reporting of emissions, anti-backsliding, and a requirement to obtain offsets if the budget is exceeded. Another commenter requested that on-site pollution prevention projects be required to occur contemporaneously with any proposed emission changes at the facility. Many commenters requested that EPA clarify the applicability of this provision to non-Federal facilities (*e.g.,* airports).

Response: The EPA agrees with most of the commenters that the facility-wide emissions budget approach will not interfere with attainment of the NAAQS and will provide flexibility to the facilities in meeting the General Conformity requirements. EPA believes that this approach benefits both the air regulatory agencies and the regulated facilities. State air quality agencies would benefit by having better emission estimates, including growth estimates from the installation and Federal agencies would benefit by having the General Conformity process streamlined, reducing the amount of time it takes to demonstrate conformity. EPA is clarifying in the final rule that this approach is completely voluntary by both the State and the Federal agency. If the State or Tribe agrees to allow the facility to use the emission budget approach, it must ensure that the budget that it approves meets all applicable air quality requirements such as attainment deadlines and reasonable further progress milestones. Thus, in developing and approving such budgets, we encourage the facilities and the State or Tribe to consult with other agencies or authorities as may be appropriate. For example, we encourage consultation with the local MPO if a facility-wide emissions budget includes on-road mobile emissions that might also be included in an MPO's regional emissions analysis.

While the State or Tribe must approve a facility-wide budget into the SIP or TIP, once they have done so they cannot compel an agency to demonstrate conformity with another approach if the Federal agency chooses to show conformity with the approved facility-wide emission budget. Federal agencies may use any approach to demonstrate conformity provided for in the rule. Facilities that are not federally controlled or operated, but are subject to Federal approvals, permits or funding (such as airports and seaports) may work with the State to establish facility-wide emissions budget that can be used by a Federal agency to satisfy its General Conformity responsibilities. The approval by the State of a facility-wide emissions budget into the SIP does not relieve the State of any obligation to meet any SIP or CAA requirements, milestones or deadlines.

N. 40 CFR 93.162—Emissions Beyond the Time Period Covered by the Applicable SIP or TIP

The EPA is adding a new section to address how Federal agencies can demonstrate conformity for an action that causes emissions beyond the time period covered by the SIP or TIP. First, EPA is allowing Federal agencies to demonstrate conformity using the last emission budget in the SIP or TIP. If it is not practicable to demonstrate conformity using that technique, then the Federal agency can request the State or Tribe to provide an enforceable commitment to include the emissions from the Federal action in a current or future SIP or TIP emissions budget. In such a case, the State or Tribe would be required to submit a SIP revision within 18 months to either include the emissions in the current SIP or TIP or a commitment to account for the emissions in future SIPs or TIPs. The emissions included in the future SIP should be based on the latest planning assumptions at the time of the SIP revision. Although a State is committing to include the emissions in the emissions budget for the SIP revisions, this commitment does not prevent the State from requiring the use for the affected sources of reasonably available control technology (RACT), reasonably available control measures (RACM) or any other control measures within the State's authority to ensure timely attainment of the NAAQS.

O. 40 CFR 93.163—Timing of Offsets and Mitigation Measures

Mitigation measures and offsets are used to reduce the impact of emission increases from a project or action. To alleviate the impact of the project's emissions, the emissions reductions from offsets or mitigation measures should occur at the same time as the emission increases from the project. In general, EPA has interpreted the existing regulations to mean that the reductions must occur in the same calendar year as the emission increases caused by the action because the total direct and indirect emissions from an action are collated on an annual basis. Therefore, EPA has decided to include this interpretation in the regulations.

The EPA is adding a new section to address the timing of offset and mitigation measures. First, the section generally requires that the emission reductions for the offset and mitigation measures must occur in the same calendar year as the emission increases caused by the Federal action and that the reductions are equal to the emissions increases. As an alternative, the new section would allow, under special conditions and consistent with CAA requirements, the State or Tribe to approve other schedules for offsets or mitigation measures. EPA is requiring that emissions reductions used over an alternate schedule must be consistent with statutory requirements that new violations are not created, the frequency or severity of existing violations are not increased, and timely attainment or interim milestones are not delayed. Therefore, when a State or Tribe approves an alternative schedule for emissions reductions, it is assuring that the increased emissions that occur during the period of the Federal action do not violate any of the three Clean Air Act requirements described above.

To ensure that these non-contemporaneous emission reductions provide greater environmental benefits in the long term, EPA is requiring that the offset or mitigation ratios for alternative schedules be greater than one-for-one. Therefore, EPA is requiring a ratio that is no less than the applicable NSR offset ratios for the area. These ratios are readily available and already understood to be based on the severity of the nonattainment problem for the area.

Also, EPA believes that the mitigation or offset compensation period should not last indefinitely and is requiring that the period should not exceed two times the period of the under-mitigated emissions. For example, a Federal agency may be supporting a construction project lasting 3 years in a serious nonattainment area and that project will cause 150 tons per year of increased emissions; the State or Tribe can approve mitigation measures or offsets which reduce emissions by less than 150 tons per year provided the total reduction over a 6-year period is equal to or more than 540 tons (150 tons per year times 3 years equals 450 tons times the offset/mitigation ratio of 1.2 to 1 for serious nonattainment areas equals 540 tons).

Agreeing to allow the use of offsets or mitigation measures in later years does not exempt the State or Tribe from timely meeting any of its SIP or TIP obligations, such as reasonable further progress milestones or attainment deadlines. Emissions reductions which accrue beyond the compensation period should be properly reflected in the SIP or TIP, *e.g.,* through a SIP revision.

Comment: Several commenters representing Federal agencies, industry and airports supported the flexibility in the timing of offsets and mitigation measures. The commenters believe that EPA needs to clarify what entity would determine whether the alternative time period for mitigation would trigger the three statutory factors for conformity and how such entity would do so. One commenter recommended that the State or tribal agency responsible for the SIP be the appropriate entity. Another commenter requested that EPA clarify the use of emission reduction credits in such cases. In addition, a commenter urges EPA to reduce the offset ratios to no more than 1.2:1 in extreme nonattainment areas and to provide a fixed period of time for completing the emissions reductions recommending a 5-year compensation period to be included in the rule.

Some commenters representing State and local air quality agencies objected to the alternate schedule provision for offsets. The commenters believe that mitigation measures and offsets must be contemporaneous and occur in the same calendar year as the emission increases. If EPA adopts the provision, the commenters suggested additional limitation on the use of the alternative schedule, such as a 3-year maximum time limit for the schedule and requiring more than a one-for-one offset.

Response: The EPA believes the rule should be finalized as proposed. This will allow Federal agencies to work with States or Tribes to develop an alternative schedule for the emission reductions in cases where a greater environmental benefit can be obtained. The requirement for the additional reductions to meet the ratios in the regulations ensures that the area is receiving at least a minimum environmental benefit consistent with other CAA programs. Since State or tribal approval is required for the alternative schedule, those agencies have the ability to ensure that the alternative schedule not cause or contribute to a violation of the SIP or TIP. In addition, EPA has added additional wording to clarify that the State or Tribe is not compelled to approve a proposed alternate schedule for mitigation measures.

P. 40 CFR 93.164—Inter-Precursor Offsets and Mitigation Measures

The EPA is adding a new section to the regulations to allow the use of inter-precursor offset and mitigation measures where they are allowed by the SIP. For example, some States and local air districts have SIP-approved NSR regulations that allow new or modified stationary sources to offset the increase in emissions of one criteria pollutant precursor by reducing the emissions of another precursor of the same criteria pollutant, provided there is an environmental benefit to such an exchange and an appropriate ratio of precursor reductions has been established. The 1993 General Conformity regulations do not specifically allow or prohibit inter-precursor offsets and mitigation measures. Therefore, EPA is revising the regulations to allow such offsets or mitigation measures if they are allowed by a State or tribal NSR or trading program approved in the SIP, provided they:

1. Are technically justified; and
2. Have a demonstrated environmental benefit.

The ratio for the offsets must be consistent with SIP or TIP requirements and EPA guidance.

Comments: Commenters from a wide range of affiliations supported the provision for inter-precursor offsets with some conditions. The commenters suggested that offsets should be allowed only with adequate technical support and appropriate ratios for inter-pollutant mitigation. Others thought EPA should provide a guidance document on what States may consider as reasonable tradeoffs and procedures for evaluating such tradeoffs at the same time as the final rule publication. Many believed the provisions should only be implemented with the full involvement and approval of the State, local or tribal air quality agency. Some commenters representing State air quality agencies objected to the provision for inter-precursor offsets but gave no reason for the objection.

Response: The EPA believes that allowing inter-precursor offsets will allow facilities flexibility in meeting the General Conformity requirements and agrees to change the regulations to allow for the trading of inter-precursor emissions only if two conditions are met. First, such trades must be allowed by the State or Tribe in a SIP or TIP. The State must already allow for inter-precursor offsets or trading through a SIP-approved NSR program, transportation conformity program, or in the attainment or reasonable further progress (RFP) demonstration to ensure conformance with a SIP or a TIP. Second, the trade must be technically justified and have demonstrated environmental benefits. This technical justification and demonstration should be accomplished by showing that the precursors are area specific and appropriate ratios are identified in the SIP. As needed, EPA will provide guidance on tradeoffs and procedures for evaluating such tradeoffs.

Q. 40 CFR 93.165—Early Emission Reduction Credit Program

The EPA is adding a new section to the regulations to establish an early emission reduction credit program for facilities subject to the General Conformity Regulations. The existing regulations require that the offsets and mitigation measures be in place before the emissions increases caused by the Federal action occur. However, emission reduction programs undertaken before the conformity determination is made could be considered as part of the baseline emissions and not available as offsets or mitigation measures for future actions subject to the General Conformity requirements. To expedite the project level conformity process, EPA believes Federal agencies and project sponsors could benefit from the ability to reduce emissions in advance of the time that the reductions are needed for a conformity evaluation, while at the same time meeting the goals of the SIP and TIP.

The EPA is adding a new section, § 93.165, to the General Conformity Regulations to define the requirements of this program. Under the program, Federal agencies or project proponents (such as airport authorities) could identify emission control measures and present the proposed reduction to the State, Tribe or local air quality agency. If the measure met the criteria for an offset (quantifiable; consistent with the applicable SIP attainment and RFP demonstrations; surplus to the reductions required by and credited to other applicable SIP provisions; enforceable at both the State and Federal levels; and permanent within the timeframe specified by the program) as well as all State, Tribe or local requirements, the State, Tribe or local agency can approve the measure as eligible to produce emission reduction credits. If credits are issued, then a Federal agency will be allowed to use the credits to reduce the total of direct and indirect emissions from a future proposed action. At the time the credits are used, the State, Tribe or local agency must certify that the reductions still meet the criteria listed above. The credits must be used in the same calendar year in which they are generated under this program.

In paragraph (a), EPA establishes the ability for the State or Tribe and Federal agency to create and use the emission reduction credits.

In paragraph (b), EPA identifies the criteria for creating the credits. The

criteria are similar to the requirements that apply to any offset or mitigation measure used to compensate for the increased emissions caused by the action. First, the Federal agency must be able to quantify the reductions using reliable techniques. In some cases, however, it may not be possible to precisely quantify the reductions until after the measure has been implemented. For example, a facility may adopt a strategy calling for the purchase and use of alternate-fueled vehicles. Although the agency could calculate the difference in the emissions between the alternate-fueled vehicle and the standard vehicle, it may not know the amount the vehicles will be used. In this case, the State or Tribe and Federal agency could agree on an emission factor and determine the use at a later time. However, the reductions must be quantified before the credit is used to support a conformity determination.

In paragraph (c), EPA establishes the requirements for the use of the credits. If the emission reduction credits are created at the same facility and in the same nonattainment or maintenance area as the Federal action, the credits can be used to reduce the total emissions from the action. This may allow the Federal agency to determine the action conforms because the total emissions are below the *de minimis* levels for the area. If the strategy is not implemented at the same facility but is in the same nonattainment or maintenance areas as the action, then the credits can be used as offsets or mitigation measures for the emissions caused by the action, but not to determine if the action emissions fall below *de minimis* thresholds. In this context, "same facility" means a contiguous area that a Federal agency manages or exercises control over. Generally, all actions and operations within a fence line of a facility such as an airport would be considered to be at the "same facility." However, military operations at a civilian airport would not be considered to be at the "same facility." Therefore, an airport could install equipment to supply power and conditioned air to airplanes parked at a gate to reduce the use of diesel generators and auxiliary power units at an airport terminal. Those reductions could be considered to be implemented as part of an airport expansion project to improve the terminal and thus would be at the "same facility."

Since the General Conformity program is based on annual emissions, EPA is requiring that the credits be used in the same year as they are generated under the program. Such a restriction would ensure consistency with the other parts of the General Conformity program. This does not mean that an emission reduction strategy cannot produce an annual stream of credits, but does mean that the reduction credits cannot be carried over to another year. Although the emission reduction credits must meet the criteria for use of offsets or other mitigation measures, EPA is not allowing the credits to be combined with other program areas such as the alternate schedules for mitigation measures under § 93.163 or the inter-precursor mitigation offset program under § 93.164. At this time, EPA believes that, because of the newness of the emission reduction credit program and the lack of available implementation data, it is better to take a conservative approach on implementing the program to ensure that it can be effectively implemented and evaluated.

Comment: Most commenters supported EPA's proposal to allow the use of emission reduction credits (ERCs). One commenter thought that EPA should clarify when the ERCs can be used. Several commenters disagreed with the proposal, citing concerns such as violations of conformity, while another was concerned about the additional resources required to certify the ERC and track them over time, and avoidance of formal conformity determinations. Still another commenter thought that under § 93.165(b)(4) there is no ability for States and the public to enforce the measures relied upon to generate emission reduction credits.

Response: The EPA believes that by allowing early ERCs, Federal agencies will be encouraged to develop emission reduction programs before they are needed as offsets for conformity determinations. Since the emissions are accounted for on an annual basis, the unused credits would benefit the environment. The emission reduction programs could be implemented in conjunction with the action requiring the conformity determination. Therefore, the use of ERC would not encourage an agency to violate conformity. In any event, under this provision all Federal actions would need applicable offsetting reductions by the time the conformity determination was made. EPA does not believe States will be required to use more resources since States and Tribes are only required to verify the credits when they are used in a conformity evaluation, while the agency relying upon the credits is required to document that usage.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a "significant regulatory action" because it may interfere with actions taken or planned by other Federal agencies. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

This action does not directly impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* on non-Federal entities. The General Conformity Regulations require Federal agencies to determine that their actions conform to the SIPs or TIPs. However, depending upon how Federal agencies implement the regulations, non-Federal entities seeking funding or approval from those Federal agencies may be required to submit information to that agency.

Although the present revisions to the regulations do not establish any specific new information collection burden, it would establish alternative voluntary approaches that may result in a different burden. For example, the proposed facility-wide emission budget would allow Federal agencies or operators of facilities subject to the General Conformity requirements such as commercial service airports to work with the State, Tribe or local air quality agency to develop an emission budget for the facility. The State, Tribe or local agencies and Federal agencies or third party facility operators would incur the burden of developing the budget. However, those entities are not required to implement such a program and would be relieved of the burden of conducting and reviewing some, if not all, of the General Conformity determinations for the facility if they do so. States are not required to implement a program that would increase their burden, and we assume they would not choose to do so.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an Agency to prepare a regulatory flexibility analysis of any regulation subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the

Agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts this final rule on small entities, small entity is defined as: (1) A small business that is a small industrial entity as defined in the U.S. Small Business Administration (SBA) size standards. (*See* 13 CFR 121.); (2) A governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) A small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impact of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any significant requirements on small entities, because the General Conformity Regulations set requirements on Federal agencies to show that their actions conform to the appropriate State, tribal or Federal implementation plan for attaining clean air.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. The action imposes no enforceable duty on any State, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of section 202 and 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. The General Conformity Regulations set requirements on Federal agencies to show that their actions conform to the appropriate State, tribal or Federal implementation plan for attaining clean air.

E. Executive Order 13132—Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The General Conformity Regulations set requirements on Federal agencies to show that their actions conform to the appropriate State, tribal or Federal implementation plan for attaining clean air. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). They do not have a substantial direct effect on one or more Indian Tribes, since no Tribe has to demonstrate conformity for their actions. Furthermore, except for allowing the Tribes to comment on draft conformity determinations, these regulation revisions do not affect the relationship or distribution of power and responsibilities between the Federal government and Indian Tribes. The CAA and the Tribal Air Rule establish the relationship of the Federal government and Tribes in developing plans to attain the NAAQS, and these revisions to the regulations do nothing to modify that relationship. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not a "significant energy action" as defined in Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The General Conformity Regulations set requirements on Federal agencies to show that their actions conform to the appropriate State, tribal or Federal implementation plan for attaining clean air. Further, we have concluded that this rule is not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

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) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The VCS are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

This action does not involve technical standards. Therefore, EPA did not consider the use of any VCS.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629, (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

The EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The revisions to the regulations would revise procedures for other Federal agencies to follow and does not relax the progress toward attainment and maintenance for the NAAQS as required by individual SIPs and TIPs As such, they do not affect the health or safety of minority or low income populations. The EPA encourages other agencies to carefully consider and address environmental justice in their implementation of their evaluations and conformity determinations.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement

Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this 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.** A major rule cannot take effect until 60 days after it is published in the **Federal Register.** This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective July 6, 2010.

VII. Statutory Authority

The statutory authority for this action is provided by section 176(c) of the CAA as amended (42 U.S.C. 7506).

List of Subjects

40 CFR Part 51

Environmental protection, Administrative practice and procedures, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

40 CFR Part 93

Environmental protection, Administrative practice and procedures, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Dated: March 24, 2010.

Lisa P. Jackson,

Administrator.

■ For the reasons stated in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

Subpart W—[Amended]

§ 51.850 [Removed and Reserved]

■ 2. Remove and reserve § 51.850.

■ 3. Section 51.851 is revised to read as follows:

§ 51.851 State implementation plan (SIP) or Tribal implementation plan (TIP) revision.

(a) A State or eligible Tribe (a federally recognized tribal government determined to be eligible to submit a TIP under 40 CFR 49.6) may submit to the Environmental Protection Agency (EPA) a revision to its applicable implementation plan which contains criteria and procedures for assessing the conformity of Federal actions to the applicable implementation plan, consistent with this section and 40 CFR part 93, subpart B.

(b) Until EPA approves the conformity implementation plan revision permitted by this section, Federal agencies shall use the provisions of 40 CFR part 93, subpart B in addition to any existing applicable State or tribal requirements, to demonstrate conformity with the applicable SIP or TIP as required by section 176(c) of the CAA (42 U.S.C. 7506).

(c) Following EPA approval of the State or tribal conformity provisions (or a portion thereof) in a revision to the applicable SIP or TIP, conformity determinations shall be governed by the approved (or approved portion of) State or tribal criteria and procedures. The Federal conformity regulations contained in 40 CFR part 93, subpart B would apply only for the portion, if any, of the part 93 requirements not contained in the State or Tribe conformity provisions approved by EPA.

(d) The State or tribal conformity implementation plan criteria and procedures cannot be any less stringent than the requirements in 40 CFR part 93, subpart B.

(e) A State's or Tribe's conformity provisions may contain criteria and procedures more stringent than the requirements described in this subpart and part 93, subpart B, only if the State's or Tribe's conformity provisions apply equally to non-Federal as well as Federal entities.

(f) In its SIP or TIP, the State or Tribe may identify a list of Federal actions or type of emissions that it presumes will conform. The State or Tribe may place whatever limitations on that list that it deems necessary. The State or Tribe must demonstrate that the action will not interfere with timely attainment or maintenance of the standard, meeting the reasonable further progress milestones or other requirements of the Clean Air Act. Federal agencies can rely on the list to determine that their emissions conform with the applicable SIP or TIP.

(g) Any previously applicable SIP or TIP requirements relating to conformity remain enforceable until EPA approves the revision to the SIP or TIP to specifically remove them.

§§ 51.852 through 51.860 [Removed and Reserved]

■ 4. Remove and reserve §§ 51.852 through 51.860.

PART 93—DETERMINING CONFORMITY OF FEDERAL ACTIONS TO STATE TRIBAL OR FEDERAL IMPLEMENTATION PLANS

■ 5. The authority citation for part 93 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart B—[Amended]

■ 6. Section 93.150 is amended by removing and reserving paragraph (c) and by adding paragraph (e) to read as follows:

§ 93.150 Prohibition.

* * * * *

(e) If an action would result in emissions originating in more than one nonattainment or maintenance area, the conformity must be evaluated for each area separately.

■ 7. Section 93.151 is revised to read as follows:

§ 93.151 State implementation plan (SIP) revision.

The provisions and requirements of this subpart to demonstrate conformity required under section 176(c) of the Clean Air Act (CAA) apply to all Federal actions in designated nonattainment and maintenance areas where EPA has not approved the General Conformity SIP revision allowed under 40 CFR 51.851. When EPA approves a State's or Tribe's conformity provisions (or a portion thereof) in a revision to an applicable implementation plan, a conformity evaluation is governed by the approved (or approved portion of the) State or Tribe's criteria and procedures. The Federal conformity regulations contained in this subpart apply only for the portions, if any, of the part 93 requirements not contained in the State or Tribe conformity provisions approved by EPA. In addition, any previously applicable implementation plan conformity requirements remain enforceable until the EPA approves the revision to the applicable SIP to specifically include the revised requirements or remove requirements.

■ 8. Section 93.152 is amended as follows:

■ a. Adding in alphabetical order a definition for "Applicability analysis."

■ b. Revising the definition of "Applicable implementation plan or applicable SIP."

■ c. Revising the definition for "Areawide air quality modeling analysis."
■ d. Adding the following definitions in alphabetical order: "Confidential business information (CBI)," "Conformity determination," "Conformity evaluation," "Continuing program responsibility," and "Continuous program to implement."
■ e. Revising the definition of "Direct emissions."
■ f. Adding in alphabetical order a definition for "Emission inventory."
■ g. Removing the definition for "Emissions that a Federal agency has a continuing program responsibility for."
■ h. Revising the definition of "EPA."
■ i. Revising the definition of "Indirect Emissions."
■ j. Revising the definition of "Local air quality modeling analysis."
■ k. Revising the definitions for "Maintenance area" and "Metropolitan Planning Organization (MPO)."
■ l. Adding in alphabetical order a definition for "Mitigation measure."
■ m. Revising the definition for "National ambient air quality standards (NAAQS)."
■ n. In the definitions for "Precursors of a criteria pollutant," revising paragraphs (3)(i), (3)(ii) and (3)(iii).
■ o. Revising the definition for "Reasonably foreseeable emissions."
■ p. Removing the definition for "Regionally significant action."
■ q. Adding the following definitions: "Restricted information."
■ r. Adding in alphabetical order the definitions for "Take or start the Federal action" and "Tribal implementation plan (TIP)."

The additions and revisions read as follows:

§ 93.152 Definitions.

* * * * *

Applicability analysis is the process of determining if your Federal action must be supported by a conformity determination.

Applicable implementation plan or applicable SIP means the portion (or portions) of the SIP or most recent revision thereof, which has been approved under section 110(k) of the Act, a Federal implementation plan promulgated under section 110(c) of the Act, or a plan promulgated or approved pursuant to section 301 (d) of the Act (Tribal implementation plan or TIP) and which implements the relevant requirements of the Act.

Areawide air quality modeling analysis means an assessment on a scale that includes the entire nonattainment or maintenance area using an air quality dispersion model or photochemical grid model to determine the effects of emissions on air quality, for example, an assessment using EPA's community multi-scale air quality (CMAQ) modeling system.

* * * * *

Confidential business information (CBI) means information that has been determined by a Federal agency, in accordance with its applicable regulations, to be a trade secret, or commercial or financial information obtained from a person and privileged or confidential and is exempt from required disclosure under the Freedom of Information Act (5 U.S.C. 552(b)(4)).

Conformity determination is the evaluation (made after an applicability analysis is completed) that a Federal action conforms to the applicable implementation plan and meets the requirements of this subpart.

Conformity evaluation is the entire process from the applicability analysis through the conformity determination that is used to demonstrate that the Federal action conforms to the requirements of this subpart.

Continuing program responsibility means a Federal agency has responsibility for emissions caused by:

(1) Actions it takes itself; or

(2) Actions of non-Federal entities that the Federal agency, in exercising its normal programs and authorities, approves, funds, licenses or permits, provided the agency can impose conditions on any portion of the action that could affect the emissions.

Continuous program to implement means that the Federal agency has started the action identified in the plan and does not stop the actions for more than an 18-month period, unless it can demonstrate that such a stoppage was included in the original plan.

* * * * *

Direct emissions means those emissions of a criteria pollutant or its precursors that are caused or initiated by the Federal action and originate in a nonattainment or maintenance area and occur at the same time and place as the action and are reasonably foreseeable.

* * * * *

Emission Inventory means a listing of information on the location, type of source, type and quantity of pollutant emitted as well as other parameters of the emissions.

* * * * *

EPA means the U.S. Environmental Protection Agency.

* * * * *

Indirect emissions means those emissions of a criteria pollutant or its precursors:

(1) That are caused or initiated by the Federal action and originate in the same nonattainment or maintenance area but occur at a different time or place as the action;

(2) That are reasonably foreseeable;

(3) That the agency can practically control; and

(4) For which the agency has continuing program responsibility.

For the purposes of this definition, even if a Federal licensing, rulemaking or other approving action is a required initial step for a subsequent activity that causes emissions, such initial steps do not mean that a Federal agency can practically control any resulting emissions.

* * * * *

Local air quality modeling analysis means an assessment of localized impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested roadways on a Federal facility, which uses an air quality dispersion model (*e.g.,* Industrial Source Complex Model or Emission and Dispersion Model System) to determine the effects of emissions on air quality.

Maintenance area means an area that was designated as nonattainment and has been re-designated in 40 CFR part 81 to attainment, meeting the provisions of section 107(d)(3)(E) of the Act and has a maintenance plan approved under section 175A of the Act.

* * * * *

Metropolitan Planning Organization (MPO) means the policy board of an organization created as a result of the designation process in 23 U.S.C. 134(d).

* * * * *

Mitigation measure means any method of reducing emissions of the pollutant or its precursor taken at the location of the Federal action and used to reduce the impact of the emissions of that pollutant caused by the action.

National ambient air quality standards (NAAQS) are those standards established pursuant to section 109 of the Act and include standards for carbon monoxide (CO_2), lead (Pb), nitrogen dioxide (NO_2), ozone, particulate matter (PM–10 and PM2.5), and sulfur dioxide (SO_2).

* * * * *

Precursors of a criteria pollutant are:

* * * * *

(3) * * *

(i) Sulfur dioxide (SO_2) in all PM2.5 nonattainment and maintenance areas,

(ii) Nitrogen oxides in all PM2.5 nonattainment and maintenance areas unless both the State and EPA determine that it is not a significant precursor, and

(iii) Volatile organic compounds (VOC) and ammonia (NH3) only in PM2.5 nonattainment or maintenance areas where either the State or EPA determines that they are significant precursors.

Reasonably foreseeable emissions are projected future direct and indirect emissions that are identified at the time the conformity determination is made; the location of such emissions is known and the emissions are quantifiable as described and documented by the Federal agency based on its own information and after reviewing any information presented to the Federal agency.

* * * * *

Restricted Information is information that is privileged or that is otherwise protected from disclosure pursuant to applicable statutes, Executive Orders, or regulations. Such information includes, but is not limited to: Classified national security information, protected critical infrastructure information, sensitive security information, and proprietary business information.

Take or start the Federal action means the date that the Federal agency signs or approves the permit, license, grant or contract or otherwise physically begins the Federal action that requires a conformity evaluation under this subpart.

* * * * *

Tribal implementation plan (TIP) means a plan to implement the national ambient air quality standards adopted and submitted by a federally recognized Indian tribal government determined to be eligible under 40 CFR 49.9 and the plan has been approved by EPA.

■ 9. Section 93.153 is amended as follows:

■ a. By revising the table in paragraph (b)(1).

■ b. By adding paragraph (c)(2)(xxii).

■ c. By revising paragraphs (d)(1) and (d)(2).

■ d. By revising paragraph (e)(2).

■ e. By adding paragraph (e)(3).

■ f. By revising paragraph (f).

■ g. By revising paragraph (g) introductory text.

■ h. By adding paragraph (g)(3).

■ i. By revising paragraphs (h) introductory text, (h)(1), (h)(2), and (h)(4).

■ j. By revising paragraphs (i), (j), and (k).

§ 93.153 Applicability analysis.

* * * * *

(1) * * *

	Tons/year
Ozone (VOC's or NO_X):	
Serious NAA's	50
Severe NAA's	25
Extreme NAA's	10
Other ozone NAA's outside an ozone transport region	100
Other ozone NAA's inside an ozone transport region:	
VOC	50
NO_X	100
Carbon monoxide: All NAA's	100
SO_2 or NO_2: All NAA's	100
PM–10:	
Moderate NAA's	100
Serious NAA's	70
$PM_{2.5}$:	
Direct emissions	100
SO_2	100
NO_X (unless determined not to be significant precursors)	100
VOC or ammonia (if determined to be significant precursors)	100
Pb: All NAA's	25

* * * * *

(c) * * *

(2) * * *

(xxii) Air traffic control activities and adopting approach, departure, and enroute procedures for aircraft operations above the mixing height specified in the applicable SIP or TIP. Where the applicable SIP or TIP does not specify a mixing height, the Federal agency can use the 3,000 feet above ground level as a default mixing height, unless the agency demonstrates that use of a different mixing height is appropriate because the change in emissions at and above that height caused by the Federal action is *de minimis.*

* * * * *

(d) * * *

(1) The portion of an action that includes major or minor new or modified stationary sources that require a permit under the new source review (NSR) program (Section 110(a)(2)(c) and Section 173 of the Act) or the prevention of significant deterioration program (title I, part C of the Act).

(2) Actions in response to emergencies which are typically commenced on the order of hours or days after the emergency and, if applicable, which meet the requirements of paragraph (e) of this section.

* * * * *

(e) * * *

(2) For actions which are to be taken after those actions covered by paragraph (e)(1) of this section, the Federal agency makes a new determination as provided in paragraph (e)(1) of this section and:

(i) Provides a draft copy of the written determinations required to affected EPA Regional office(s), the affected State(s) and/or air pollution control agencies, and any Federal recognized Indian tribal government in the nonattainment or maintenance area. Those organizations must be allowed 15 days from the beginning of the extension period to comment on the draft determination; and

(ii) Within 30 days after making the determination, publish a notice of the determination by placing a prominent advertisement in a daily newspaper of general circulation in the area affected by the action.

(3) If additional actions are necessary in response to an emergency or disaster under paragraph (d)(2) of this section beyond the specified time period in paragraph (e)(2) of this section, a Federal agency can make a new written determination as described in (e)(2) of this section for as many 6-month periods as needed, but in no case shall this exemption extend beyond three 6-month periods except where an agency:

(i) Provides information to EPA and the State or Tribe stating that the conditions that gave rise to the emergency exemption continue to exist and how such conditions effectively prevent the agency from conducting a conformity evaluation.

(ii) [Reserved]

(f) Notwithstanding other requirements of this subpart, actions specified by individual Federal agencies that have met the criteria set forth in either paragraphs (g)(1), (g)(2), or (g)(3) of this section and the procedures set forth in paragraph (h) of this section are "presumed to conform," except as provided in paragraph (j) of this section. Actions specified by individual Federal agencies as "presumed to conform" may not be used in combination with one another when the total direct and indirect emissions from the combination of actions would equal or exceed any of the rates specified in paragraphs (b)(1) or (2) of this section.

(g) The Federal agency must meet the criteria for establishing activities that are "presumed to conform" by fulfilling the requirements set forth in either paragraphs (g)(1), (g)(2), or (g)(3) of this section:

* * * * *

(3) The Federal agency must clearly demonstrate that the emissions from the type or category of actions and the amount of emissions from the action are included in the applicable SIP and the State, local, or tribal air quality agencies responsible for the SIP(s) or TIP(s) provide written concurrence that the emissions from the actions along with all other expected emissions in the area will not exceed the emission budget in the SIP.

(h) In addition to meeting the criteria for establishing exemptions set forth in paragraphs (g)(1), (g)(2), or (g)(3) of this section, the following procedures must also be complied with to presume that activities will conform:

(1) The Federal agency must identify through publication in the **Federal Register** its list of proposed activities that are "presumed to conform" and the basis for the presumptions. The notice must clearly identify the type and size of the action that would be "presumed to conform" and provide criteria for determining if the type and size of action qualifies it for the presumption;

(2) The Federal agency must notify the appropriate EPA Regional Office(s), State, local, and tribal air quality agencies and, where applicable, the agency designated under section 174 of the Act and the MPO and provide at least 30 days for the public to comment on the list of proposed activities "presumed to conform." If the "presumed to conform" action has regional or national application (*e.g.,* the action will cause emission increases in excess of the *de minimis* levels identified in paragraph (b) of this section in more than one of EPA's Regions), the Federal agency, as an alternative to sending it to EPA Regional Offices, can send the draft conformity determination to U.S. EPA, Office of Air Quality Planning and Standards;

* * * * *

(4) The Federal agency must publish the final list of such activities in the **Federal Register.**

(i) Emissions from the following actions are "presumed to conform":

(1) Actions at installations with facility-wide emission budgets meeting the requirements in § 93.161 provided that the State or Tribe has included the emission budget in the EPA-approved SIP and the emissions from the action along with all other emissions from the installation will not exceed the facility-wide emission budget.

(2) Prescribed fires conducted in accordance with a smoke management program (SMP) which meets the requirements of EPA's Interim Air Quality Policy on Wildland and Prescribed Fires or an equivalent replacement EPA policy.

(3) Emissions for actions that the State or Tribe identifies in the EPA-approved SIP or TIP as "presumed to conform."

(j) Even though an action would otherwise be "presumed to conform" under paragraph (f) or (i) of this section, an action shall not be "presumed to conform" and the requirements of § 93.150, § 93.151, §§ 93.154 through 93.160 and §§ 93.162 through 93.164 shall apply to the action if EPA or a third party shows that the action would:

(1) Cause or contribute to any new violation of any standard in any area;

(2) Interfere with provisions in the applicable SIP or TIP for maintenance of any standard;

(3) Increase the frequency or severity of any existing violation of any standard in any area; or

(4) Delay timely attainment of any standard or any required interim emissions reductions or other milestones in any area including, where applicable, emission levels specified in the applicable SIP or TIP for purposes of:

(i) A demonstration of reasonable further progress;

(ii) A demonstration of attainment; or

(iii) A maintenance plan.

(k) The provisions of this subpart shall apply in all nonattainment and maintenance areas except conformity requirements for newly designated nonattainment areas are not applicable until 1 year after the effective date of the final nonattainment designation for each NAAQS and pollutant in accordance with section 176(c)(6) of the Act.

■ 10. Section 93.154 is revised to read as follows:

§ 93.154 Federal agency conformity responsibility.

Any department, agency, or instrumentality of the Federal government taking an action subject to this subpart must make its own conformity determination consistent with the requirements of this subpart. In making its conformity determination, a Federal agency must follow the requirements in §§ 93.155 through 93.160 and §§ 93.162 through 93.165 and must consider comments from any interested parties. Where multiple Federal agencies have jurisdiction for various aspects of a project, a Federal agency may choose to adopt the analysis of another Federal agency or develop its own analysis in order to make its conformity determination.

■ 11. Section 93.155 is revised to read as follows:

§ 93.155 Reporting requirements.

(a) A Federal agency making a conformity determination under §§ 93.154 through 93.160 and §§ 93.162 through 93.164 must provide to the appropriate EPA Regional Office(s), State and local air quality agencies, any federally-recognized Indian tribal government in the nonattainment or maintenance area, and, where applicable, affected Federal land managers, the agency designated under section 174 of the Act and the MPO, a 30-day notice which describes the proposed action and the Federal agency's draft conformity determination on the action. If the action has multi-regional or national impacts (*e.g.,* the action will cause emission increases in excess of the *de minimis* levels identified in § 93.153(b) in three or more of EPA's Regions), the Federal agency, as an alternative to sending it to EPA Regional Offices, can provide the notice to EPA's Office of Air Quality Planning and Standards.

(b) A Federal agency must notify the appropriate EPA Regional Office(s), State and local air quality agencies, any federally-recognized Indian tribal government in the nonattainment or maintenance area, and, where applicable, affected Federal land managers, the agency designated under section 174 of the Clean Air Act and the MPO, within 30 days after making a final conformity determination under this subpart.

(c) The draft and final conformity determination shall exclude any restricted information or confidential business information. The disclosure of restricted information and confidential business information shall be controlled by the applicable laws, regulations, security manuals, or executive orders concerning the use, access, and release of such materials. Subject to applicable procedures to protect restricted information from public disclosure, any information or materials excluded from the draft or final conformity determination or supporting materials may be made available in a restricted information annex to the determination for review by Federal and State representatives who have received appropriate clearances to review the information.

■ 12. Section 93.156 is revised to read as follows:

§ 93.156 Public participation.

(a) Upon request by any person regarding a specific Federal action, a Federal agency must make available, subject to the limitation in paragraph (e) of this section, for review its draft conformity determination under § 93.154 with supporting materials which describe the analytical methods and conclusions relied upon in making the applicability analysis and draft conformity determination.

(b) A Federal agency must make public its draft conformity determination under § 93.154 by placing a notice by prominent advertisement in a daily newspaper of general circulation in the area affected by the action and by providing 30 days for written public comment prior to taking any formal

action on the draft determination. This comment period may be concurrent with any other public involvement, such as occurs in the National Environmental Policy Act (NEPA) process. If the action has multi-regional or national impacts (*e.g.,* the action will cause emission increases in excess of the *de minimis* levels identified in § 93.153(b) in three or more of EPA's Regions), the Federal agency, as an alternative to publishing separate notices, can publish a notice in the **Federal Register.**

(c) A Federal agency must document its response to all the comments received on its draft conformity determination under § 93.154 and make the comments and responses available, subject to the limitation in paragraph (e) of this section, upon request by any person regarding a specific Federal action, within 30 days of the final conformity determination.

(d) A Federal agency must make public its final conformity determination under § 93.154 for a Federal action by placing a notice by prominent advertisement in a daily newspaper of general circulation in the area affected by the action within 30 days of the final conformity determination. If the action would have multi-regional or national impacts, the Federal agency, as an alternative, can publish the notice in the **Federal Register.**

(e) The draft and final conformity determination shall exclude any restricted information or confidential business information. The disclosure of restricted information and confidential business information shall be controlled by the applicable laws, regulations or executive orders concerning the release of such materials.

■ 13. Section 93.157 is revised to read as follows:

§ 93.157 Reevaluation of conformity.

(a) Once a conformity determination is completed by a Federal agency, that determination is not required to be re-evaluated if the agency has maintained a continuous program to implement the action; the determination has not lapsed as specified in paragraph (b) of this section; or any modification to the action does not result in an increase in emissions above the levels specified in § 93.153(b). If a conformity determination is not required for the action at the time NEPA analysis is completed, the date of the finding of no significant impact (FONSI) for an Environmental Assessment, a record of decision (ROD) for an Environmental Impact Statement, or a categorical exclusion determination can be used as a substitute date for the conformity determination date.

(b) The conformity status of a Federal action automatically lapses 5 years from the date a final conformity determination is reported under § 93.155, unless the Federal action has been completed or a continuous program to implement the Federal action has commenced.

(c) Ongoing Federal activities at a given site showing continuous progress are not new actions and do not require periodic re-determinations so long as such activities are within the scope of the final conformity determination reported under § 93.155.

(d) If the Federal agency originally determined through the applicability analysis that a conformity determination was not necessary because the emissions for the action were below the limits in § 93.153(b) and changes to the action would result in the total emissions from the action being above the limits in § 93.153(b), then the Federal agency must make a conformity determination.

■ 14. Section 93.158 is amended as follows:

■ a. Revising paragraphs (a)(1), (a)(2), (a)(3) introductory text and (a)(4) introductory text;

■ b. Revising paragraph (a)(5) introductory text;

■ c. Revising paragraphs (a)(5)(i) introductory text, and (a)(5)(i)(C);

■ d. Adding paragraph (a)(5)(i)(D).

■ e. Revising paragraphs (a)(5)(iii), (a)(5)(iv) introductory text; (a)(5)(iv)(A)(*1*), (a)(5)(iv)(A)(*2*) and paragraph (a)(5)(iv)(B).

§ 93.158 Criteria for determining conformity of general Federal actions.

(a) * * *

(1) For any criteria pollutant or precursor, the total of direct and indirect emissions from the action are specifically identified and accounted for in the applicable SIP's attainment or maintenance demonstration or reasonable further progress milestone or in a facility-wide emission budget included in a SIP in accordance with § 93.161;

(2) For precursors of ozone, nitrogen dioxide, or PM, the total of direct and indirect emissions from the action are fully offset within the same nonattainment or maintenance area (or nearby area of equal or higher classification provided the emissions from that area contribute to the violations, or have contributed to violations in the past, in the area with the Federal action) through a revision to the applicable SIP or a similarly enforceable measure that effects emissions reductions so that there is no net increase in emissions of that pollutant;

(3) For any directly-emitted criteria pollutant, the total of direct and indirect emissions from the action meets the requirements:

* * * * *

(4) For CO or directly emitted PM—

* * * * *

(5) For ozone or nitrogen dioxide, and for purposes of paragraphs (a)(3)(ii) and (a)(4)(ii) of this section, each portion of the action or the action as a whole meets any of the following requirements:

(i) Where EPA has approved a revision to the applicable implementation plan after the area was designated as nonattainment and the State or Tribe makes a determination as provided in paragraph (a)(5)(i)(A) of this section or where the State or Tribe makes a commitment as provided in paragraph (a)(5)(i)(B) of this section:

* * * * *

(C) Where a Federal agency made a conformity determination based on a State's or Tribe's commitment under paragraph (a)(5)(i)(B) of this section and the State has submitted a SIP or TIP to EPA covering the time period during which the emissions will occur or is scheduled to submit such a SIP or TIP within 18 months of the conformity determination, the State commitment is automatically deemed a call for a SIP or TIP revision by EPA under section 110(k)(5) of the Act, effective on the date of the Federal conformity determination and requiring response within 18 months or any shorter time within which the State or Tribe commits to revise the applicable SIP;

(D) Where a Federal agency made a conformity determination based on a State or tribal commitment under paragraph (a)(5)(i)(B) of this section and the State or Tribe has not submitted a SIP covering the time period when the emissions will occur or is not scheduled to submit such a SIP within 18 months of the conformity determination, the State or Tribe must, within 18 months, submit to EPA a revision to the existing SIP committing to include the emissions in the future SIP revision.

* * * * *

(iii) The action (or portion thereof) fully offsets its emissions within the same nonattainment or maintenance area (or nearby area of equal or higher classification provided the emissions from that area contribute to the violations, or have contributed to violation in the past, in the area with the Federal action) through a revision to the applicable SIP or an equally enforceable measure that effects

emissions reductions equal to or greater than the total of direct and indirect emissions from the action so that there is no net increase in emissions of that pollutant;

(iv) Where EPA has not approved a revision to the relevant SIP since the area was designated or reclassified, the total of direct and indirect emissions from the action for the future years (described in § 93.159(d)) do not increase emissions with respect to the baseline emissions:

(A) * * *

(*1*) The most current calendar year with a complete emission inventory available before an area is designated unless EPA sets another year; or

(*2*) The emission budget in the applicable SIP;

* * * * *

(B) The baseline emissions are the total of direct and indirect emissions calculated for the future years (described in § 93.159(d)) using the historic activity levels (described in paragraph (a)(5)(iv)(A) of this section) and appropriate emission factors for the future years; or

* * * * *

■ 15. Section 93.159 is amended as follows:

■ a. Revising paragraphs (b) introductory text and (b)(1)(ii);

■ b. Revising paragraphs (b)(2) and (c) introductory text; and

■ c. Revising paragraph (d).

The revisions and additions read as follows:

§ 93.159 Procedures for conformity determinations of general Federal actions.

* * * * *

(b) The analyses required under this subpart must be based on the latest and most accurate emission estimation techniques available as described below, unless such techniques are inappropriate. If such techniques are inappropriate, the Federal agency may obtain written approval from the appropriate EPA Regional Administrator for a modification or substitution, of another technique on a case-by-case basis or, where appropriate, on a generic basis for a specific Federal agency program.

(1) * * *

(ii) A grace period of 3 months shall apply during which the motor vehicle emissions model previously specified by EPA as the most current version may be used unless EPA announces a longer grace period in the **Federal Register.** Conformity analyses for which the analysis was begun during the grace period or no more than 3 months before the **Federal Register** notice of availability of the latest emission model may continue to use the previous version of the model specified by EPA.

(2) For non-motor vehicle sources, including stationary and area source emissions, the latest emission factors specified by EPA in the "Compilation of Air Pollutant Emission Factors" (AP–42, *http://www.epa.gov/ttn/chiefs/efpac*) must be used for the conformity analysis unless more accurate emission data are available, such as actual stack test data from the stationary sources which are part of the conformity analysis.

(c) The air quality modeling analyses required under this subpart must be based on the applicable air quality models, data bases, and other requirements specified in the most recent version of the "Guideline on Air Quality Models." (Appendix W to 40 CFR part 51).

* * * * *

(d) The analyses required under this subpart must be based on the total of direct and indirect emissions from the action and must reflect emission scenarios that are expected to occur under each of the following cases:

(1) The attainment year specified in the SIP, or if the SIP does not specify an attainment year, the latest attainment year possible under the Act; or

(2) The last year for which emissions are projected in the maintenance plan;

(3) The year during which the total of direct and indirect emissions from the action is expected to be the greatest on an annual basis; and

(4) Any year for which the applicable SIP specifies an emissions budget.

■ 16. Section 93.160 is amended as follows:

■ a. Revising paragraph (e);

■ b. Revising paragraph (f); and

■ c. Revising paragraph (g).

§ 93.160 Mitigation of air quality impacts.

* * * * *

(e) When necessary because of changed circumstances, mitigation measures may be modified so long as the new mitigation measures continue to support the conformity determination. Any proposed change in the mitigation measures is subject to the reporting requirements of § 93.156 and the public participation requirements of § 93.157.

(f) Written commitments to mitigation measures must be obtained prior to a positive conformity determination and such commitments must be fulfilled.

(g) After a State or Tribe revises its SIP or TIP and EPA approves that SIP revision, any agreements, including mitigation measures, necessary for a conformity determination will be both State or tribal and federally enforceable. Enforceability through the applicable SIP or TIP will apply to all persons who agree to mitigate direct and indirect emissions associated with a Federal action for a conformity determination.

■ 17. Subpart B is amended by adding § 93.161 to read as follows:

§ 93.161 Conformity evaluation for Federal installations with facility-wide emission budgets.

(a) The State, local or tribal agency responsible for implementing and enforcing the SIP or TIP can in cooperation with Federal agencies or third parties authorized by the agency that operate installations subject to Federal oversight develop and adopt a facility-wide emission budget to be used for demonstrating conformity under § 93.158(a)(1). The facility-wide budget must meet the following criteria:

(1) Be for a set time period;

(2) Cover the pollutants or precursors of the pollutants for which the area is designated nonattainment or maintenance;

(3) Include specific quantities allowed to be emitted on an annual or seasonal basis;

(4) The emissions from the facility along with all other emissions in the area will not exceed the emission budget for the area;

(5) Include specific measures to ensure compliance with the budget, such as periodic reporting requirements or compliance demonstration, when the Federal agency is taking an action that would otherwise require a conformity determination;

(6) Be submitted to EPA as a SIP revision;

(7) The SIP revision must be approved by EPA.

(b) The facility-wide budget developed and adopted in accordance with paragraph (a) of this section can be revised by following the requirements in paragraph (a) of this section.

(c) Total direct and indirect emissions from Federal actions in conjunction with all other emissions subject to General Conformity from the facility that do not exceed the facility budget adopted pursuant to paragraph (a) of this section are "presumed to conform" to the SIP and do not require a conformity analysis.

(d) If the total direct and indirect emissions from the Federal actions in conjunction with the other emissions subject to General Conformity from the facility exceed the budget adopted pursuant to paragraph (a) of this section, the action must be evaluated for conformity. A Federal agency can use the compliance with the facility-wide

emissions budget as part of the demonstration of conformity, *i.e.,* the agency would have to mitigate or offset the emissions that exceed the emission budget.

(e) If the SIP for the area includes a category for construction emissions, the negotiated budget can exempt construction emissions from further conformity analysis.

■ 18. Subpart B is amended by adding § 93.162 to read as follows:

§ 93.162 Emissions beyond the time period covered by the SIP.

If a Federal action would result in total direct and indirect emissions above the applicable thresholds which would be emitted beyond the time period covered by the SIP, the Federal agency can:

(a) Demonstrate conformity with the last emission budget in the SIP; or

(b) Request the State or Tribe to adopt an emissions budget for the action for inclusion in the SIP. The State or Tribe must submit a SIP or TIP revision to EPA within 18 months either including the emissions in the existing SIP or establishing an enforceable commitment to include the emissions in future SIP revisions based on the latest planning assumptions at the time of the SIP revision. No such commitment by a State or Tribe shall restrict a State's or Tribe's ability to require RACT, RACM or any other control measures within the State's or Tribe's authority to ensure timely attainment of the NAAQS.

■ 19. Subpart B is amended by adding § 193.163 to read as follows:

§ 93.163 Timing of offsets and mitigation measures.

(a) The emissions reductions from an offset or mitigation measure used to demonstrate conformity must occur during the same calendar year as the emission increases from the action except, as provided in paragraph (b) of this section.

(b) The State or Tribe may approve emissions reductions in other years provided:

(1) The reductions are greater than the emission increases by the following ratios:

(i) Extreme nonattainment areas	1.5:1
(ii) Severe nonattainment areas	1.3:1
(iii) Serious nonattainment areas	1.2:1
(iv) Moderate nonattainment areas	1.15:1
(v) All other areas	1.1:1

(2) The time period for completing the emissions reductions must not exceed twice the period of the emissions.

(3) The offset or mitigation measure with emissions reductions in another year will not:

(i) Cause or contribute to a new violation of any air quality standard,

(ii) Increase the frequency or severity of any existing violation of any air quality standard; or

(iii) Delay the timely attainment of any standard or any interim emissions reductions or other milestones in any area.

(c) The approval by the State or Tribe of an offset or mitigation measure with emissions reductions in another year does not relieve the State or Tribe of any obligation to meet any SIP or Clean Air Act milestone or deadline. The approval of an alternate schedule for mitigation measures is at the discretion of the State or Tribe, and they are not required to approve an alternate schedule.

■ 20. Subpart B is amended by adding § 93.164 to read as follows:

§ 93.164 Inter-precursor mitigation measures and offsets.

Federal agencies must reduce the same type of pollutant as being increased by the Federal action except the State or Tribe may approve offsets or mitigation measures of different precursors of the same criteria pollutant, if such trades are allowed by a State or Tribe in a SIP or TIP approved NSR regulation, is technically justified, and has a demonstrated environmental benefit.

■ 21. Subpart B is amended by adding § 93.165 to read as follows:

§ 93.165 Early emission reduction credit programs at Federal facilities and installation subject to Federal oversight.

(a) Federal facilities and installations subject to Federal oversight can, with the approval of the State or tribal agency responsible for the SIP or TIP in that area, create an early emissions reductions credit program. The Federal agency can create the emission reduction credits in accordance with the requirements in paragraph (b) of this section and can use them in accordance with paragraph (c) of this section.

(b) Creation of emission reduction credits.

(1) Emissions reductions must be quantifiable through the use of standard emission factors or measurement techniques. If non-standard factors or techniques to quantify the emissions reductions are used, the Federal agency must receive approval from the State or tribal agency responsible for the implementation of the SIP or TIP and from EPA's Regional Office. The emission reduction credits do not have to be quantified before the reduction strategy is implemented, but must be quantified before the credits are used in the General Conformity evaluation.

(2) The emission reduction methods must be consistent with the applicable SIP or TIP attainment and reasonable further progress demonstrations.

(3) The emissions reductions cannot be required by or credited to other applicable SIP or TIP provisions.

(4) Both the State or Tribe and Federal air quality agencies must be able to take legal action to ensure continued implementation of the emission reduction strategy. In addition, private citizens must also be able to initiate action to ensure compliance with the control requirement.

(5) The emissions reductions must be permanent or the timeframe for the reductions must be specified.

(6) The Federal agency must document the emissions reductions and provide a copy of the document to the State or tribal air quality agency and the EPA regional office for review. The documentation must include a detailed description of the emission reduction strategy and a discussion of how it meets the requirements of paragraphs (b)(1) through (5) of this section.

(c) Use of emission reduction credits. The emission reduction credits created in accordance with paragraph (b) of this section can be used, subject to the following limitations, to reduce the emissions increase from a Federal action at the facility for the conformity evaluation.

(1) If the technique used to create the emission reduction is implemented at the same facility as the Federal action and could have occurred in conjunction with the Federal action, then the credits can be used to reduce the total direct and indirect emissions used to determine the applicability of the regulation as required in § 93.153 and as offsets or mitigation measures required by § 93.158.

(2) If the technique used to create the emission reduction is not implemented at the same facility as the Federal action or could not have occurred in conjunction with the Federal action, then the credits cannot be used to reduce the total direct and indirect emissions used to determine the applicability of the regulation as required in § 93.153, but can be used to offset or mitigate the emissions as required by § 93.158.

(3) Emissions reductions credits must be used in the same year in which they are generated.

(4) Once the emission reduction credits are used, they cannot be used as credits for another conformity evaluation. However, unused credits

from a strategy used for one conformity evaluation can be used for another conformity evaluation as long as the reduction credits are not double counted.

(5) Federal agencies must notify the State or tribal air quality agency responsible for the implementation of the SIP or TIP and EPA Regional Office when the emission reduction credits are being used.

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