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FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1600

Employee Contribution Elections and Contribution Allocations

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Final rule.

SUMMARY: The Federal Retirement Thrift Investment Board (Agency) is amending its regulations at 5 CFR part 1600. These changes implement the Agency's automatic enrollment program as authorized by the Thrift Savings Plan Enhancement Act of 2009.

DATES: This rule is effective August 1, 2010.

FOR FURTHER INFORMATION CONTACT: Megan G. Grumbine at 202–942–1644 or Laurissa Stokes at 202–942–1645.

SUPPLEMENTARY INFORMATION: The Agency administers the Thrift Savings Plan (TSP), which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99–335, 100 Stat. 514. The TSP provisions of FERSA are codified, as amended, largely at 5 U.S.C. 8351 and 8401–79. The TSP is a tax-deferred retirement savings plan for Federal civilian employees and members of the uniformed services. The TSP is similar to cash or deferred arrangements established for private-sector employees under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)).

On June 17, 2010, the Agency published a proposed rule with request for comments in the **Federal Register** (75 FR 34388, June 17, 2010). The Agency received comments from one Federal employees' union, three participants, and one other party.

The Federal employees' union endorsed the proposed changes. The union, however, expressed concern that employing agencies may fail to provide clear and timely notice to newly hired or rehired employees regarding their rights and obligations under the Agency's automatic enrollment program. In response to this comment, the Agency has provided employing agencies with a sample notice to send to newly hired or rehired employees who are automatically enrolled. The Agency promulgated separate guidance that directs employing agencies to provide this notice so that employees can take action within the first automatic enrollment pay period.

In addition, the Agency will directly notify new enrollees of their right to opt out of the automatic enrollment program and to request a refund of default employee contributions. This information will be provided in the TSP Welcome Letter sent to all employees upon receipt of their first contribution.

One participant objected to the forfeiture of agency matching contributions attributable to refunded default employee contributions. The Internal Revenue Service (IRS) mandates forfeiture of matching contributions attributable to refunded default employee contributions. *See* "Automatic Contribution Arrangements" 74 FR 8200, 8206 (February 24, 2009). The TSP must follow applicable IRS guidance such as this to the extent that it is consistent with FERSA. *See* 5 U.S.C. § 8440; 26 U.S.C. 7701(j).

Another participant suggested that the Agency should not require a participant's notarized signature in order to request a refund of default employee contributions. The proposed rule does not require a notarized signature in order to request a refund of default employee contributions. In practice, however, the Agency will soon require a notarized signature for all withdrawal requests, including a request for a refund of default employee contributions, as a measure to protect participants' TSP accounts from fraudulent withdrawals.

One commenter requested affirmation that contribution elections and contribution allocations differ with respect to their effect on a participant's continued coverage under the automatic enrollment program. A participant who makes only a contribution allocation will continue to receive default employee contributions until he or she files a contribution election or elects not to have any default employee contributions made on his or her behalf. In contrast, section 1600.34(b) of the proposed rule provides that a participant will no longer be considered to be covered by the automatic enrollment program if the participant makes a contribution election, i.e., elects to have contributions made in a different amount or percentage of basic pay. Section 1600.34(b) of the proposed rule reflects section 1.414(w)–1(e)(2)(ii) of the Internal Revenue Service's regulation governing refunds from automatic contribution arrangements. 26 CFR § 1.414(w)–1(e)(2)(ii).

A participant who is no longer automatically enrolled by reason of having made a contribution election will retain the right to request a refund within 90 days following the date of the first default employee contribution made to his or her account. However, the amount of the refund will be limited to the amount of the default employee contributions (adjusted for allocable gains and losses) made during the period in which the participant was considered automatically enrolled.

One participant recommended that the TSP provide participants with options to self direct investment of their retirement funds. This comment is outside the scope of the proposed rule.

The Agency appreciates the opportunity to review and respond to comments from participants who take an active interest in the TSP and offer suggestions. The comment process allowed the Agency to address any misunderstandings about the proposed change, to learn if there are unanticipated legal or policy impediments to the proposed change, and to hear suggestions about how better to implement the proposed change. Although the comments received did not cause the Executive Director to make any changes to the text of the proposed rule, he did carefully consider all comments received and addressed some of the concerns through other Agency guidance. Therefore, the Agency is publishing the proposed rule as final without change.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation will affect Federal employees who participate in the Thrift Savings Plan, which is a Federal defined contribution retirement savings plan

created under the Federal Employees' Retirement System Act of 1986, Pub. L. No. 99–335, 100 Stat. 514, and administered by the Agency.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 602, 632, 653, 1501–1571, the effects of this regulation on state, local, and tribal governments and the private sector have been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by state, local, and tribal governments, in the aggregate, or by the private sector. Therefore, a statement under § 1532 is not required.

Submission to Congress and the General Accounting Office

Pursuant to 5 U.S.C. 810(a)(1)(A), the Agency submitted 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 before publication of this rule in the **Federal Register**. This rule is not a major rule as defined at 5 U.S.C. 814(2).

List of Subjects in 5 CFR Part 1600

Government employees, Pensions, Retirement.

Gregory T. Long,

Executive Director, Federal Retirement Thrift Investment Board.

■ For the reasons stated in the preamble, the Agency amends 5 CFR part 1600 as follows:

PART 1600—EMPLOYEE CONTRIBUTION ELECTIONS AND CONTRIBUTION ALLOCATIONS

■ 1. The authority citation for part 1600 continues to read as follows:

Authority: 5 U.S.C. 8351, 8432(a), 8432(b), 8432(c), 8432(j), 8474(b)(5) and (c)(1), Thrift Savings Plan Enhancement Act of 2009, section 102.

■ 2. Revise the heading to part 1600 to read as follows:

PART 1600—EMPLOYEE CONTRIBUTION ELECTIONS, CONTRIBUTION ALLOCATIONS, AND AUTOMATIC ENROLLMENT PROGRAM

■ 3. Add subpart E to read as follows:

Subpart E—Automatic Enrollment Program

1600.34 Automatic Enrollment Program
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1600.36 Matching Contributions
1600.37 Employing Agency Notice

Authority: Sec. 102, Pub. L. 111–31, div. B. tit. I, 123 Stat. 1776, 1853 (5 U.S.C. 8432(b)(2)(A)).

§ 1600.34 Automatic Enrollment Program.

(a) All newly hired Federal employees who are eligible to participate in the Thrift Savings Plan and those Federal employees who are rehired after a separation in service of 31 or more calendar days and who are eligible to participate in the TSP will automatically have 3 percent of their basic pay contributed to the TSP (default employee contribution) unless they elect to not contribute or elect to contribute at some other level by the end of the employee's first pay period (subject to the agency's processing timeframes).

(b) After being automatically enrolled, a participant may elect to terminate default employee contributions or change his or her contribution percentage or amount at any time.

§ 1600.35 Refunds of default employee contributions.

(a) A participant may request a refund of any default employee contributions made on his or her behalf (*i.e.,* the contributions made while under the automatic enrollment program) provided the request is received within 90 days after the date that the first default employee contribution was processed. The election must be made on the TSP's refund request form and must be received by the TSP's record keeper prior to the expiration of the 90-day period.

(1) The distribution of a refund will be reported as income to the participant on IRS Form 1099–R, but it will not be subject to the additional tax under 26 U.S.C. 72(t) (the early withdrawal penalty tax).

(2) A participant who requests a refund will receive the amount of any default employee contributions (adjusted for allocable gains and losses).

(3) Processing of refunds will be subject to the rules set out at 5 CFR part 1650.

(b) A participant will no longer be considered to be covered by the automatic enrollment program if the participant files a contribution election. Consequently, if a participant makes a contribution election during the 90-day period, the participant will only be eligible to receive as a refund an amount equal to his or her default employee contributions (adjusted for allocable gains and losses).

(c) After the expiration of the period allowed for the refund, any withdrawal must be made pursuant to 5 U.S.C. 8433 and 5 CFR part 1650.

(d) A married participant may request a refund of default employee contributions without obtaining the consent of his or her spouse or having the TSP notify the spouse of the request.

(e) The rules applicable to frozen accounts (5 CFR 1650.3) and applicable to deceased participants (5 CFR 1650.6) also apply to refunds of the default employee contributions.

§ 1600.36 Matching Contributions.

(a) A participant is not entitled to keep the matching contributions and their associated earnings that are attributable to refunded default employee contributions.

(b) The matching contributions and associated earnings attributable to refunded default employee contributions shall be forfeited to the TSP and used to offset administrative expenses.

§ 1600.37 Employing Agency Notice.

Employing agencies shall furnish all new employees and all rehired employees covered by the automatic enrollment program a notice that accurately describes:

(a) That default employee contributions equal to 3 percent of the employee's basic pay will be deducted from his or her pay and contributed to the TSP on the employee's behalf if the employee does not make an affirmative election;

(b) The employee's right to elect to not have default employee contributions made to the TSP on his or her behalf or to elect to have a different percentage or amount of basic pay contributed to the TSP;

(c) That the default employee contributions will be invested in the G Fund unless the employee makes a contribution allocation and/or an interfund transfer; and

(d) The employee's ability to request a refund of any default employee contributions (adjusted for allocable gains and losses) and the procedures to request such a refund.

[FR Doc. 2010–18346 Filed 7–26–10; 8:45 am]

BILLING CODE 6760–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0721; Directorate Identifier 2009–SW–56–AD; Amendment 39–16370; AD 2010–15–04]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France (ECF) Model EC225LP Helicopters

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

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for the specified ECF Model EC225LP helicopters. This AD results from a mandatory continuing airworthiness information (MCAI) AD issued by the aviation authority of the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community. The MCAI AD states there have been a "few" reports of cracks and failure of the main rotor hub (MRH) cone restrainer support lugs at their attachment points on the reinforcement ring where the dome fairing is secured. Also, cracks on the dome fairing support have been reported. Failure of the cone restrainer support or the dome fairing support attachment lugs may lead to loss of the dome fairing, damage to the rotor blades, and subsequent loss of control of the helicopter.

DATES: This AD becomes effective on August 11, 2010.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 11, 2010.

We must receive comments on this AD by September 27, 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 your comments electronically.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may get the service information identified in this AD from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, TX 75053–4005, telephone (800) 232–0323, fax (972) 641–3710, or at *http://www.eurocopter.com.*

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

FOR FURTHER INFORMATION CONTACT: DOT/FAA Southwest Region, Gary Roach, ASW–111, Aviation Safety Engineer, Rotorcraft Directorate, Regulations and Guidance Group, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5130, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Discussion

EASA, which is the Technical Agent for the Member States of the European Community, has issued EASA AD 2009–0024, dated February 20, 2009, to correct an unsafe condition for the Eurocopter Model EC225LP helicopters.

The MCAI AD states there have been a "few" reports of cracks and failure of the MRH cone restrainer support lugs in the area of their attachment points on the reinforcement ring where the dome fairing is secured. Also, cracks on the dome fairing support have been reported. Failure of the cone restrainer support or the dome fairing support attachment lugs may lead to loss of the dome fairing, damage to the rotor blades, and subsequent loss of control of the helicopter or injury to persons on the ground.

You may obtain further information by examining the MCAI AD and any related service information in the AD docket.

Related Service Information

Eurocopter has issued one Emergency Alert Service Bulletin (EASB) No. 05A003, Revision 2, dated February 3, 2009 (EASB No. 05A003) for two different helicopters: the Model EC225LP and the military Model EC725AP, a non-FAA type certificated helicopter. Eurocopter has also issued EASB No. 62–007, dated July 10, 2009 (SB 62–007), which corresponds to MOD 0743718. EASB 05A003 specifies checking the MRH in the area of the cone restrainer support attachment lugs and the dome fairing support attachment lugs for a crack. If a crack is found in one of the five lugs of the cone restrainer support or the dome fairing support, the EASB specifies complying with SB 62–007 before further flight. SB 62–007 specifies modifying the MRH by replacing the cone restrainer support and the dome fairing support, reidentifying those parts and balancing the main rotor blades if they were removed. The actions described in the MCAI AD are intended to correct the unsafe condition identified in the service information.

FAA's Evaluation and Unsafe Condition Determination

This helicopter has been approved by the aviation authority of France and is approved for operation in the United States. Pursuant to our bilateral agreement with France, EASA, their Technical Agent, has notified us of the unsafe condition described in the MCAI AD. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other helicopters of this same type design.

Differences Between This AD and the MCAI AD

We do not specify dates because the dates have already passed nor do we specify the compliance time in days but rather only in hours time-in-service (TIS). We also use a different compliance time. Also, we use inspect rather than check when referring to an action required by a mechanic as opposed to a pilot.

Costs of Compliance

We estimate that this AD will affect about 4 helicopters of U.S. registry. We also estimate that it will take about 30 work-hours per helicopter to inspect and modify the MRH. The average labor rate is $85 per work-hour. Required parts will cost about $18,981 per helicopter. Based on these figures, we estimate the cost of this AD on U.S. operators will be $86,124, assuming a crack is found in each MRH cone restrainer support or dome fairing support attachment lugs.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this

AD. We find that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because of the short compliance time of 15 hours TIS to conduct the inspection for a crack in the attachment lugs. Failure of these lugs could result in loss of control of the helicopter. Therefore, we have determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. However, we invite you to send us any written data, views, or arguments concerning this AD. Send your comments to an address listed under the **ADDRESSES** section of this AD. Include "Docket No. FAA–2010–0721; Directorate Identifier 2009–SW–56–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

Therefore, I certify this AD:

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–15–04 EUROCOPTER FRANCE: Amendment 39–16370. Docket No. FAA–2010–0721; Directorate Identifier 2009–SW–57–AD.

Effective Date

(a) This AD becomes effective on August 11, 2010.

Other Affected ADs

(b) None.

Applicability

(c) This AD applies to Model EC225LP helicopters, except those that have been modified with MOD 0743718, certificated in any category.

Reason

(d) The mandatory continuing airworthiness information (MCAI) AD states there have been a "few" reports of cracks and failure of the main rotor hub (MRH) cone restrainer support lugs at their attachment points on the reinforcement ring where the dome fairing is secured. Also, cracks on the dome fairing support have been reported. Failure of the cone restrainer support or the dome fairing support attachment lugs may lead to loss of the dome fairing, damage to the rotor blades, and subsequent loss of control of the helicopter.

Actions and Compliance

(e) Required as indicated:

(1) Within 15 hours time-in-service (TIS), unless already done, and thereafter at intervals not to exceed 15 hours TIS, visually inspect for a crack in the area of the attachment points on the MRH reinforcement ring of the lugs securing the cone restrainer support and also of the lugs securing the dome fairing support as depicted in Figures 1 and 2 of Eurocopter Emergency Alert Service Bulletin No. 05A003, Revision 2, dated February 3, 2009 (EASB No. 05A003) and by following the Accomplishment Instructions, paragraph 2.B.1, of EASB No. 05A003.

Note: The one EASB No. 05A003 applies to two different model helicopters: Eurocopter Model EC225LP helicopters that are type-certificated in the United States and Eurocopter Model EC725AP military helicopters that are not type-certificated in the United States.

(2) If a crack is found in the area of any of the lugs of the cone restrainer support or the dome fairing support, as depicted in Figures 1 and 2 of EASB No. 05A003, before further flight, modify the MRH by replacing both the cone restrainer support and the dome fairing support assembly by following the Accomplishment Instructions, paragraphs 2.B.1. and 2.B.2., reidentify the cone restrainer support and dome fairing assembly by following paragraph 2.D., and if removed, track and balance the main rotor blades by following paragraph 3.B.3. of Eurocopter Service Bulletin No. 62–007, Revision 1, dated July 10, 2009.

(f) Replacing and reidentifying both the cone restrainer support and the dome fairing support assembly in accordance with paragraph (e)(2) of this AD constitutes terminating action for the requirements of this AD.

Differences Between this AD and the MCAI AD

(g) We do not specify dates because the dates are already passed nor do we specify the time in days but rather only in hours TIS. We also use a different initial compliance time. Also, we use inspect rather than check when referring to an action required by a mechanic as opposed to a pilot.

Other Information

(h) Alternative Methods of Compliance (AMOCs): The Manager, Safety Management Group, ATTN: DOT/FAA Southwest Region, Gary Roach, ASW–111, Aviation Safety Engineer, Rotorcraft Directorate, Regulations and Guidance Group, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5130, fax (817) 222–5961, has the authority to approve AMOCs for this AD, if requested, using the procedures found in 14 CFR 39.19.

(i) A special flight permit may be issued to ferry the helicopter to a location where the modification can be done, provided the dome fairing and its attachment screws are removed. When allowing flight with the dome fairing removed, the special flight permit must contain information that alerts the flight crew that when flying without the dome fairing, the lateral vibrations of the helicopter significantly increase at speeds of 70 to 120 knots. These lateral vibrations do not affect flight safety.

Related Information

(j) European Aviation Safety Agency (EASA) Airworthiness Directive No. 2009–0024, dated February 20, 2009, contains related information.

Joint Aircraft System/Component (JASC) Code

(k) The JASC Code is 6220: Main Rotor Head.

Material Incorporated by Reference

(l) You must use the specified portions of Eurocopter Emergency Alert Service Bulletin No. 05A003, Revision 2, dated February 3, 2009, and Eurocopter Service Bulletin No. 62–007, Revision 1, dated July 10, 2009, to do the actions required.

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

(2) For service information identified in this AD, contact American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, TX 75053–4005, telephone (800) 232–0323, fax (972) 641–3710, or at *http://www.eurocopter.com.*

(3) You may review copies at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Fort Worth, Texas, 76137; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Fort Worth, Texas, on July 13, 2010.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2010–17757 Filed 7–26–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0173; Directorate Identifier 2009–NM–076–AD; Amendment 39–16374; AD 2010–15–08]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to all Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. That AD currently requires repetitive inspections to find cracks, fractures, or corrosion of each carriage spindle of the left and right outboard mid-flaps, and corrective action if necessary. That AD also currently requires repetitive gap checks of the inboard and outboard carriage of the outboard mid-flaps to detect fractured carriage spindles, and corrective actions if necessary. This new AD requires any new or serviceable carriage spindle installed per the requirements of the existing AD to meet minimum allowable diameter measurements taken at three locations. This AD also requires new repetitive inspections, measurements, and overhaul of the carriage spindles, and applicable corrective actions. In addition, this AD requires replacing any carriage spindle when it has reached its maximum life limit. This AD results from reports of fractures that resulted from stress corrosion and pitting along the length of the spindle and spindle diameter, and additional reports of corrosion on the outboard flap carriage spindles. We are issuing this AD to detect and correct cracked, corroded, or fractured carriage spindles, and to prevent severe flap asymmetry, which could result in reduced control or loss of controllability of the airplane.

DATES: This AD becomes effective August 31, 2010.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of August 31, 2010.

On December 4, 2003 (68 FR 67027, December 1, 2003), the Director of the Federal Register approved the incorporation by reference of a certain other publication listed in the AD.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com*; Internet *https://www.myboeingfleet.com.*

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6440; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 2003–24–08, Amendment 39–13377 (68 FR 67027, December 1, 2003). The existing AD applies to all Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. That NPRM was published in the **Federal Register** on March 1, 2010 (75 FR 9137). That NPRM proposed to continue to require repetitive gap checks of the inboard and outboard carriage of the outboard mid-flaps to detect fractured carriage spindles, and corrective actions if necessary, and continue to require repetitive inspections to find cracks, factures, or corrosion of each carriage spindle of the left and right outboard mid-flaps. That NPRM also proposed to require any new or serviceable carriage spindle installed per the requirements of the existing AD to meet minimum allowable diameter measurements taken at three locations. That NPRM proposed to require new repetitive inspections, measurements, and overhaul of the carriage spindles, and applicable corrective actions. In addition, that NPRM also proposed to require replacing any carriage spindle

when it has reached its maximum life limit.

Actions Since Original NPRM Was Issued

Since we issued the original NPRM, there has been an in-service event of a dual fracture of the outboard flap carriages. This event is currently under investigation. As a result, we consider this AD to be interim action. If final action is later identified, we might consider further rulemaking then.

Explanation of Changes to AD

We have added paragraph (t)(4) to this final rule to provide credit for actions done in accordance with previously issued AMOCs for individual repairs. In paragraph (m) of this AD, we have also referenced the most current issue of the Boeing (737) Standard Overhaul Practices Manual for actions done as of the effective date of this AD.

Comments

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

Support for the NPRM

Boeing supports the intent of the NPRM.

Request for Stricter Inspection and Overhaul Limits in Lieu of Life Limits

Safair states that it has experienced only one flap carriage spindle failure before AD 2003–24–08 was issued. Safair states that its main concern is scrapping serviceable carriages in order to enforce the life limits on the flap carriages. Safair states that stricter inspections and overhaul requirements would ensure that stress and pitting corrosion are detected and corrected, which would avoid failures and would extend the life of the flap carriages.

We do not agree that substituting stricter inspection and overhaul limits for life limits would address the unsafe condition. Since AD 2003–24–08 was issued, we have received many additional reports of carriage spindle fractures, including fractures caused by fatigue. Because of the difficulty in detecting small cracks and the rapid crack growth in these parts, in combination with the concerns with reduced fatigue life of reworked and overhauled parts, the most effective way to maintain the continued operational safety of the fleet is to mandate life limits. We have not changed the AD in regard to this issue.

Request for Clarification of Requirements to Remove Flap Carriage

KLM requests clarification concerning the requirements to remove the carriage spindle in order to perform a detailed inspection for corrosion, pitting, cracking, and measurement of some minimal allowable spindle diameters. KLM points out that the times specified for this action are the same as for the initial gap check and the nondestructive test for new carriage spindles. KLM asks whether the removal of the carriage spindle is required at 12,000 flight cycles, if the initial or repetitive gap check and the non-destructive test (NDT) at the same time are still useful. KLM further states that carriage spindles that receive a thorough detailed inspection and have been found to be serviceable do not require a gap check or an NDT inspection at the times specified in the 12,000- to 20,000-flight-cycle range as specified in Table 1 and Table 2 of Boeing Alert Service Bulletin 737–57A1277, Revision 1, dated November 25, 2003. KLM states that the gap checks and NDTs are still required, although at a different time interval after completing the requirements of paragraph (o) of the NPRM.

We agree that clarification might be necessary. Paragraph (o) of this final rule requires the overhaul to be performed on the new carriage spindle before the accumulation of 12,000 flight cycles. Therefore, the new carriage spindle should not accumulate more than 11,999 flight cycles before being overhauled in order to comply with this requirement. Paragraph (g) of this AD refers to Boeing Alert Service Bulletin 737–57A1277, Revision 1, dated November 25, 2003, for the compliance times for the gap checks and NDT inspections. Boeing Alert Service Bulletin 737–57A1277, Revision 1, dated November 25, 2003, states that the gap check and NDT inspections are not required for a new flap carriage spindle that has accumulated fewer than 12,000 flight cycles without being overhauled.

Boeing Alert Service Bulletin 737–57A1277, Revision 1, dated November 25, 2003, requires relatively stringent gap checks and NDT inspections for flap carriage spindles that have accumulated 12,000 or more flight cycles on them since being overhauled. This requirement should become obsolete as this AD requires that all spindles be overhauled before accumulating 12,000 flight cycles since new or overhauled.

We have not changed the AD in regard to this issue.

Conclusion

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

Costs of Compliance

There are about 2,852 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspections (required by AD 2003–24–08).	12	$85	None	$1,020 per inspection cycle.	652	$665,040 per inspection cycle.
Inspections and measurements (new actions).	2	85	None	$170 per inspection and measurement cycle.	652	$110,840 per inspection and measurement cycle.
Overhauls (new actions)	16	85	[1] 28,000	$29,360 per overhaul cycle.	652	$19,142,720 per overhaul cycle.
Replacements (new actions)	16	85	[2] 60,000	$61,360 per replacement cycle.	652	$40,006,720 per replacement cycle.

[1] $7,000 per spindle; 4 spindles per airplane.
[2] $15,000 per spindle; 4 spindles per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the actions required by this AD, and that no operator would accomplish those actions in the future if this AD were not adopted. However, we have been advised that the carriage spindles are already being overhauled and replaced on some affected airplanes. In addition, the replacement cycle is approximately every 20 years. Therefore, the future economic cost impact of this rule on U.S. operators is expected to be less than the cost impact figures indicated above.

Authority for this Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. *See* the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing Amendment 39–13377 (68 FR 67027, December 1, 2003) and by adding the following new airworthiness directive (AD):

2010–15–08 The Boeing Company: Amendment 39–16374. Docket No. FAA–2010–0173; Directorate Identifier 2010–NM–076–AD.

Effective Date

(a) This AD becomes effective August 31, 2010.

Affected ADs

(b) This AD supersedes AD 2003–24–08, Amendment 39–13377.

Applicability

(c) This AD applies to all The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 57: Wings.

Unsafe Condition

(e) This AD results from a report indicating that the inboard and outboard carriage spindles were fractured on the right outboard flap during approach to landing. We are issuing this AD to detect and correct cracked, corroded, or fractured carriage spindles and to prevent severe flap asymmetry, which could result in reduced control or loss of controllability of the airplane.

Compliance

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

RESTATEMENT OF CERTAIN REQUIREMENTS OF AD 2003–24–08, WITH UPDATED SERVICE INFORMATION

Compliance Times

(g) The tables in paragraph 1.E., "Compliance" of Boeing Alert Service Bulletin 737–57A1277, Revision 1, dated November 25, 2003, specify the compliance times for paragraphs (g) through (k) of this AD. For carriage spindles that have accumulated the number of flight cycles or years in service specified in the "Threshold" column of the tables, accomplish the gap check and nondestructive test (NDT) and general visual inspections specified in paragraphs (h) and (j) of this AD within the corresponding interval after December 4, 2003 (the effective date AD 2003–24–08), as specified in the "Interval" column. Repeat the gap check and NDT and general visual inspections at the same intervals, except:

(1) The gap check does not have to be done at the same time as an NDT inspection; after doing an NDT inspection, the interval for doing the next gap check can be measured from the NDT inspection; and

(2) As carriage spindles gain flight cycles or years in service and move from one category in the "Threshold" column to another, they are subject to the repetitive inspection intervals corresponding to the new threshold category.

Work Package 2: Gap Check

(h) Perform a gap check of the inboard and outboard carriage of the left and right outboard mid-flaps to determine if there is a positive indication of a severed carriage spindle, in accordance with Work Package 2 of paragraph 3.B., "Work Instructions" of Boeing Alert Service Bulletin 737–57A1277, Revision 1, dated November 25, 2003.

Work Package 2: Corrective Actions

(i) If there is a positive indication of a severed carriage spindle during the gap check required by paragraph (h) of this AD, before further flight, remove the carriage spindle and install a new or serviceable carriage spindle in accordance with the "Work Instructions" of Boeing Alert Service Bulletin 737–57A1277, Revision 1, dated November 25, 2003; or Boeing Alert Service Bulletin 737–57A1218, Revision 5, dated February 9, 2009. If, as a result of the detailed inspection described in paragraph 4.b. of Work Package 2 of Boeing Alert Service Bulletin 737–57A1277, Revision 1, dated November 25, 2003, a carriage spindle is found not to be severed and no corrosion and no cracking is present, it can be reinstalled on the mid-flap in accordance with Boeing Alert Service Bulletin 737–57A1277, Revision 1, dated November 25, 2003; or Boeing Alert Service Bulletin 737–57A1218, Revision 5, dated February 9, 2009. After the effective date of this AD, use only Boeing Alert Service Bulletin 737–57A1218, Revision 5, dated February 9, 2009.

Work Package 1: Inspections

(j) Perform a NDT inspection and general visual inspection for each carriage spindle of the left and right outboard mid-flaps to detect cracks, corrosion, or severed carriage spindles, in accordance with the "Work Instructions" of Boeing Alert Service Bulletin 737–57A1277, Revision 1, dated November 25, 2003.

Work Package 1: Corrective Actions

(k) If any corroded, cracked, or severed carriage spindle is found during any inspection required by paragraph (j) of this AD, before further flight, remove the carriage

spindle and install a new or serviceable carriage spindle in accordance with the "Work Instructions" of Boeing Alert Service Bulletin 737–57A1277, Revision 1, dated November 25, 2003; or Boeing Alert Service Bulletin 737–57A1218, Revision 5, dated February 9, 2009. After the effective date of this AD, use only Boeing Alert Service Bulletin 737–57A1218, Revision 5, dated February 9, 2009.

Parts Installation

(l) Except as provided in paragraph (i) of this AD: As of December 4, 2003, no person may install on any airplane a carriage spindle that has been removed as required by paragraph (i) or (k) of this AD, unless it has been overhauled in accordance with the "Work Instructions" of Boeing Alert Service Bulletin 737–57A1277, Revision 1, dated November 25, 2003; or Boeing Alert Service Bulletin 737–57A1218, Revision 5, dated February 9, 2009. After the effective date of this AD, use only Boeing Alert Service Bulletin 737–57A1218, Revision 5, dated February 9, 2009. To be eligible for installation under this paragraph, the carriage spindle must have been overhauled in accordance with the requirements of paragraph (m) of this AD.

(m) During accomplishment of any overhaul specified in paragraph (l) of this AD, use the procedures specified in paragraphs (m)(1) and (m)(2) of this AD during application of the nickel plating to the carriage spindle in addition to those specified in Chapter 20–42–09, Electrodeposited Nickel Plating, of the Boeing (737) Standard Overhaul Practices Manual. As of the effective date of this AD, use only Chapter 20–42–09, Electrodeposited Nickel Plating, of the Boeing (737) Standard Overhaul Practices Manual, Revision 25, dated July 1, 2009.

(1) The maximum deposition rate of the nickel plating in any one plating/baking cycle must not exceed 0.002-inches-per-hour.

(2) Begin the hydrogen embrittlement relief bake within 10 hours after application of the plating, or less than 24 hours after the current was first applied to the part, whichever is first.

Exception to Reporting Recommendations in Certain Service Bulletins

(n) Although Boeing Alert Service Bulletin 737–57A1277, Revision 1, dated November 25, 2003, recommends that operators report inspection findings to the manufacturer, this AD does not contain such a reporting requirement.

NEW ACTIONS REQUIRED BY THIS AD

Inspections, Measurements, and Overhauls of the Carriage Spindle

(o) At the applicable times specified in paragraph (o)(1) or (o)(2) of this AD: Do the detailed inspection for corrosion, pitting, and cracking of the carriage spindle, the magnetic particle inspection for cracking of the carriage spindle, measurements of the spindle to determine if it meets the allowable minimum diameter, and overhauls, and applicable corrective actions by accomplishing all the applicable actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 737–57A1218, Revision 5, dated February 9, 2009. The applicable corrective actions must be done before further flight. Repeat these actions thereafter at intervals not to exceed 12,000 flight cycles on the carriage spindle or 8 years, whichever comes first.

(1) For Model 737–100, –200, –200C series airplanes, at the later of the times specified in paragraph (o)(1)(i) or (o)(1)(ii) of this AD:

(i) Before the accumulation of 12,000 total flight cycles on the carriage spindle since new or overhauled, or within 8 years after the installation of the new or overhauled part, whichever comes first.

(ii) Within 1 year after the effective date of this AD.

(2) For Model –300, –400, and –500 series airplanes, at the later of the times specified in paragraph (o)(2)(i) or (o)(2)(ii) of this AD:

(i) Before the accumulation of 12,000 total flight cycles on the carriage spindle since new or overhauled, or within 8 years after the installation of the new or overhauled part, whichever comes first.

(ii) Within 2 years after the effective date of this AD.

Replacement of the Carriage Spindle

(p) For Model 737–100, –200, –200C series airplanes: Replace the carriage spindle with a new or documented (for which the service life, in total flight cycles, is known) carriage spindle, in accordance with Boeing Alert Service Bulletin 737–57A1218, Revision 5, dated February 9, 2009, at the later of the times specified in paragraphs (p)(1) and (p)(2) of this AD, except as required by paragraph (r) of this AD. Overhauling the carriage spindles does not zero-out the flight cycles. Total flight cycles accumulate since new.

(1) Before the accumulation of 48,000 total flight cycles on the new or overhauled carriage.

(2) Within three years or 7,500 flight cycles after the effective date of this AD, whichever occurs first.

(q) For Model 737–300, –400, and –500 series airplanes: Replace the carriage spindle with a new or documented (for which the service life, in flight cycles, is known) carriage spindle, in accordance with Boeing Alert Service Bulletin 737–57A1218, Revision 5, dated February 9, 2009, at the later of the times specified in paragraphs (q)(1) and (q)(2) of this AD, except as required by paragraph (r) of this AD. Overhauling the carriage spindles does not zero-out the flight cycles. Total flight cycles accumulate since new.

(1) Before the accumulation of 48,000 total flight cycles on the new or overhauled carriage.

(2) Within six years or 15,000 flight cycles after the effective date of this AD, whichever occurs first.

(r) For airplanes with an undocumented carriage: Do the applicable actions specified in paragraph (p) or (q) of this AD at the applicable time specified in paragraph (r)(1) or (r)(2) of this AD.

(1) For Model 737–100, –200, –200C series airplanes: Do the actions specified in paragraph (p) of this AD at the time specified in paragraph (p)(2) of this AD.

(2) For Model –300, –400, and –500 series airplanes: Do the actions specified in paragraph (q) of this AD at the time specified in paragraph (q)(2) of this AD.

Repetitive Replacements of Carriage Spindle

(s) For all airplanes: Repeat the replacement of the carriage spindle specified by paragraph (p) or (q) of this AD, as applicable, thereafter at intervals not to exceed 48,000 total flight cycles on the new or overhauled carriage spindle.

Alternative Methods of Compliance (AMOCs)

(t)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6440; fax (425) 917–6590. Or, e-mail information to *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

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

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

(4) AMOCs previously approved in accordance with AD 2003–24–08, Amendment 39–13377, for individual repairs are acceptable for compliance with the corresponding provisions of this AD. All other existing AMOCs are not acceptable.

Material Incorporated by Reference

(u) You must use Boeing Alert Service Bulletin 737–57A1218, Revision 5, dated February 9, 2009; Boeing Alert Service Bulletin 737–57A1277, Revision 1, dated November 25, 2003; and Chapter 20–42–09, Electrodeposited Nickel Plating, of the Boeing (737) Standard Overhaul Practices Manual, Revision 25, dated July 1, 2009, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of Boeing Alert Service Bulletin 737–57A1218, Revision 5, dated February 9, 2009; and Chapter 20–42–09, Electrodeposited Nickel Plating, of the Boeing (737) Standard Overhaul Practices Manual, Revision 25, dated July 1, 2009; under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The Director of the Federal Register previously approved the incorporation by

reference of Boeing Alert Service Bulletin 737–57A1277, Revision 1, dated November 25, 2003, on December 4, 2003 (68 FR 67027, December 1, 2003).

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.*

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

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

Issued in Renton, Washington, on July 14, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–18009 Filed 7–26–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0729; Directorate Identifier 2010–CE–032–AD; Amendment 39–16373; AD 2010–15–07]

RIN 2120–AA64

Airworthiness Directives; Zaklad Szybowcowy "Jeżów" Henryk Mynarski Model PW–6U Sailplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

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

Cracks on the lug of the rear attachment fitting of the horizontal stabilizer have been detected during the inspection of two PW–6U gliders operated by the same user.

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

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

DATES: This AD becomes effective August 16, 2010.

On August 16, 2010, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

We must receive comments on this AD by September 10, 2010.

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

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued AD No. 2010–0108–E, dated June 8, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

Cracks on the lug of the rear attachment fitting of the horizontal stabilizer have been detected during the inspection of two PW–6U gliders operated by the same user.

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

For the reasons described above, this AD requires immediate and periodic inspections of the horizontal stabilizer rear attachment fitting and the accomplishment of the relevant corrective actions as necessary.

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

Relevant Service Information

Zakład Szybowcowy "Jeżów" Henryk Mynarski has issued Mandatory Bulletin BO–78–10–10, dated June 7, 2010. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all information provided by the State of Design Authority and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

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

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

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because cracks on the lug of the rear attachment fitting of the horizontal stabilizer have been found. This condition, if not detected and corrected,

could cause the horizontal stabilizer to fail, which could result in loss of control. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0729; Directorate Identifier 2010–CE–032–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–15–07 Zakład Szybowcowy "Jeżów" Henryk Mynarski: Amendment 39–16373; Docket No. FAA–2010–0729; Directorate Identifier 2010–CE–032–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective August 16, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the following Zakład Szybowcowy "Jeżów" Henryk Mynarski Model PW–6U sailplanes, certificated in any category:

(i) Serial numbers (S/Ns) 78.00.00 through 78.03.07 equipped with an automatic elevator control connection installed in accordance with Zakład Szybowcowy "Jeżów" Henryk Mynarski Bulletin BS–78–02–04;

(ii) S/Ns 78.03.08 through 78.03.10; and

(iii) S/Ns 78.04.01 and subsequent S/Ns.

Subject

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

Reason

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

Cracks on the lug of the rear attachment fitting of the horizontal stabilizer have been detected during the inspection of two PW–6U gliders operated by the same user.

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

For the reasons described above, this AD requires immediate and periodic inspections of the horizontal stabilizer rear attachment fitting and the accomplishment of the relevant corrective actions as necessary.

Actions and Compliance

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

(1) Before further flight after the effective date of this AD, repetitively thereafter at intervals not to exceed 50 hours time-in-service, and, in addition, before further flight anytime the sailplane experiences a "hard landing," visually inspect the rear attachment fitting of the horizontal stabilizer for cracks and damage. Do the inspections following Zakład Szybowcowy "Jeżów" Henryk Mynarski Mandatory Bulletin BO–78–10–10, dated June 7, 2010, except use a 10X magnifier.

(2) If any crack or damage is found during any inspection required in paragraph (f)(1) of this AD, before further flight after the inspection in which a crack or damage is found, contact Zakład Szybowcowy "Jeżów" Henryk Mynarski, ul. Długa 93, 58–521 Jeżów Sudecki, Poland, telephone/fax: +48 75 713 21 59 or +48 33 829 33 72; e-mail: *szdjezow.com.pl,* to obtain an FAA-approved repair scheme and incorporate the repair scheme.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows. The service information requires a visual inspection with a 5X magnifier. For the inspection, we are requiring a 10X magnifier to detect cracks and damage that may go undetected using only a 5X magnifier.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; fax: (816) 329–4090. Before using any approved AMOC on any sailplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI EASA AD No. 2010–0108–E, dated June 8, 2010, and Zakład Szybowcowy "Jeżów" Henryk Mynarski Mandatory Bulletin BO–78–10–10, dated June 7, 2010, for related information.

Material Incorporated by Reference

(i) You must use Zakład Szybowcowy "Jeżów" Henryk Mynarski Mandatory Bulletin BO–78–10–10, dated June 7, 2010, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Zakład Szybowcowy "Jeżów" Henryk Mynarski, ul. Długa 93, 58–521 Jeżów Sudecki, Poland, telephone/fax: +48 75 713 21 59 or +48 33 829 33 72; e-mail: *szdjezow.com.pl;* Internet: *http://www.szdjezow.com.pl/.*

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

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

Issued in Kansas City, Missouri on July 15, 2010.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–17924 Filed 7–26–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1015; Directorate Identifier 2009–CE–039–AD; Amendment 39–16376; AD 2010–15–10]

RIN 2120–AA64

Airworthiness Directives; Piper Aircraft, Inc. PA–28, PA–32, PA–34, and PA–44 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Piper Aircraft, Inc. (Piper) PA–28, PA–32, PA–34, and PA–44 series airplanes. This AD requires you to inspect the control wheel shaft on both the pilot and copilot sides and, if necessary, replace the control wheel shaft. This AD results from two field reports of incorrectly assembled control wheel shafts. We are issuing this AD to detect and correct any incorrectly assembled control wheel shafts. This condition, if left uncorrected, could lead to separation of the control wheel shaft, resulting in loss of pitch and roll control.

DATES: This AD becomes effective on August 31, 2010.

On August 31, 2010, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

ADDRESSES: To get the service information identified in this AD, contact Piper Aircraft, Inc., 2926 Piper Drive, Vero Beach, Florida 32960; telephone: (772) 567–4361; fax: (772) 978–6573; Internet: *http://www.newpiper.com/company/publications.asp.*

To view the AD docket, go to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or on the Internet at *http://www.regulations.gov.* The docket number is FAA–2009–1015; Directorate Identifier 2009–CE–039–AD.

FOR FURTHER INFORMATION CONTACT: Hector Hernandez, Aerospace Engineer, Atlanta Aircraft Certification Office, 1701 Columbia Avenue, College Park, GA 30337; telephone: (404) 474–5587; fax: (404) 474–5606.

SUPPLEMENTARY INFORMATION:

Discussion

On October 23, 2009, we issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Piper Aircraft, Inc. (Piper) PA–28, PA–32, PA–34, and PA–44 series airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on October 30, 2009 (74 FR 56138). The NPRM proposed to detect and correct any incorrectly assembled control wheel shafts.

Comments

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

Comment Issue No. 1: Difficulty in Disassembling Components

Fifteen commenters, including the Aircraft Owners and Pilots Association (AOPA), Barry Rogers, Bruce Chien, and Harry Cook commented that some Piper airplanes do not have inspection holes and may require disassembly of the control wheel shaft. Disassembly can take several hours due to the difficulty in removing (or separating) the parts, which could be very costly and possibly damage a perfectly good component.

We infer from these comments that the commenters want us to rescind the NPRM due to difficulty in disassembling the parts and cost of labor for disassembly.

The FAA partially agrees with the above comment. We disagree that we should rescind the NPRM due to difficulty in disassembling the parts. According to Piper, the universal joint has rotating parts that wear, and replacement of those parts, which requires disassembly, is a routine procedure done with little difficulty. Piper sales history records show, that on average, they sell over 400 of these as service spare replacements each year, and the Piper technical support department is not aware of anyone reporting difficulty in replacing them. Piper has revised their service bulletin, to provide more information about the different control wheel shaft configurations. We agree that disassembly of the control shaft wheel may take more time than an inspection with witness holes. However, the FAA has determined that there is an unsafe condition and has identified actions to correct that unsafe condition. It is every owner's and operator's responsibility to maintain the airplane to the type design and address any airworthiness concerns. This includes all maintenance requirements and ADs that correct an unsafe condition.

We will change the final rule AD action to include Piper Aircraft, Inc. Mandatory Service Bulletin No. 1197B, dated May 3, 2010, to use for the procedures to comply with the actions required by this AD. We will allow "unless already done" credit to anyone who already accomplished the actions following the previous service bulletin included as part of the NPRM.

Comment Issue No. 2: Cost Absorbed by Piper

John Witosky, Thomas McIntosh, Claude Dalrymple, Jr., M. Hefter, and George Haffey commented that the cost

for maintenance and replacement parts should be absorbed by Piper. Several aircraft owners disagreed with covering the cost for a Piper mistake. Several aircraft owners/operators felt that Piper failed to manufacture the aircraft to design specification and their quality system did not detect a bad assembly.

The FAA has determined that there is an unsafe condition and has identified actions to correct that unsafe condition. One of the FAA's responsibilities is to identify the direct costs involved (labor and parts) with the corrective actions. It is every owner's and operator's responsibility to maintain the airplane to the type design and address any airworthiness concerns. This includes all maintenance requirements and ADs that correct an unsafe condition.

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

Comment Issue No. 3: Date Range of Manufacturing Error

M. Hefter, Barry Rogers, Matt Gunsch, Thomas McIntosh, and four other commenters stated that the FAA needs to determine a date range when the control wheel assemblies' manufacturing errors were most likely to have occurred. This would narrow the number of aircraft required to be inspected. This AD would require the inspection of the control wheel assemblies on approximately 41,928 airplanes. There are reports from Piper owners that the inspection is not simple and can take several hours due to difficulty in removing (or separating) the parts.

The FAA agrees that it would be helpful to know an exact time period when the manufacturing errors occurred. Piper is unable to determine a time period when the assembly error occurred. Therefore, we are unable to comply with owner's/operator's requests to narrow the number of aircraft based on date of manufacture.

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

Comment Issue No. 4: Various Configurations and Cost of Compliance

The AOPA, Bruce Chien, M. Hefter, and Barry Rogers commented that the cost of compliance should be revised based on field experience and difficulty in removing these parts for inspection, along with replacing these assemblies and different configurations used in the control wheel shaft assemblies. Piper owners claim there are different configurations used in the control wheel shaft assemblies as follows:

- Taper pin on aircraft with witness holes;
- Taper pin on aircraft without witness holes;
- Bolt with witness hole;
- Bolt with no witness hole; and
- The older Piper aircraft do not use fastener (taper pin or bolt) or have witness holes.

The FAA agrees with this comment. Piper has revised the service information to provide more information about the different control wheel shaft configurations. We are including this revised service bulletin in the final rule AD action, and including the estimated cost of each configuration in the Costs of Compliance section of this AD. We will allow "unless already done" credit to anyone who already accomplished the actions following the previous service bulletin included as part of the NPRM.

Comment Issue No. 5: Inadequate Service Information

The AOPA and Harry Cook commented that there should be a revision to the service bulletin to address the different control wheel shaft assemblies. Piper owners are requesting more instructions in the service bulletin to address the older Piper aircraft that do not use taper pins or have witness holes.

The FAA agrees with this comment. Piper has revised the service bulletin to provide more information about the different control wheel shaft configurations. We will change the final rule AD action to include Piper Aircraft, Inc. Mandatory Service Bulletin No. 1197B, dated May 3, 2010, to use for the procedures to comply with the actions required by this AD. We will allow "unless already done" credit to anyone who already accomplished the actions following the previous service bulletin included as part of the NPRM.

Comment Issue No. 6: Alternative Methods of Inspecting

Neal Bachman, M. Hefter, and several other commenters had several suggestions for control wheel shafts lacking a witness hole. One commenter suggested that information should be provided in the service bulletin on drilling a witness hole based on Piper design specifications. Another commenter suggested revising the service bulletin to include an alternative method to determine the location of the drilled taper pin hole, which requires a measurement from the sprocket end of the shaft instead of measuring from the universal joint end of the shaft (which requires the removal of the tapered pin). The commenters feel this will greatly reduce the burden to remove the universal joint/taper pin on airplanes lacking a witness hole.

The FAA disagrees with this comment. Based on input from Piper, we determined these were not viable options due to the many different control wheel shaft configurations within each airplane model. However, anyone may submit substantiating data to show compliance with the actions of this AD. The FAA will review and consider all alternative method of compliance (AMOC) requests we receive provided they follow the procedures in 14 CFR 39.19

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

Comment Issue No. 7: Compliance Times

The AOPA and M. Hefter commented that the compliance time should be changed to be at the next scheduled annual or 100-hour inspection, whichever occurs first. The low fleet incidences do not justify a more restrictive timetable.

The FAA agrees and based on comments received from owners/operators we will change the compliance time to be within the next 100 hours time-in-service or within the next 12 months, whichever occurs first.

Comment Issue No. 8: Unnecessary AD Action

The AOPA, James M. Stockdale, Steven Barnes, and others commented that the proposed AD is a result of two reports of control wheel shafts incorrectly drilled at Piper. The AD would require the inspection of the control wheel assemblies on approximately 41,928 airplanes. Several aircraft owners/operators feel that a control wheel shaft problem would have shown a much greater incidence level than two field reports.

The FAA does not agree that the scope needs to be changed or that this NPRM is not necessary. A loss of the control wheel due to misdrilling of the attachment hole may lead to separation of the control wheel shaft, resulting in loss of pitch and roll control. The FAA has determined that there is an unsafe condition as described and justified in the NPRM. It is every owner's responsibility to maintain their airplane to type design and address any airworthiness concern.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for the changes previously discussed and minor editorial corrections. We have

determined that these minor corrections:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Costs of Compliance

We estimate that this AD would affect 41,928 airplanes in the U.S. registry.

We estimate the following costs to do the inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
From .5 work-hour to 3 work-hours × $85 per hour = $42.50 to $255.	Not applicable ...	From $42.50 to $255	From $1,781,940 to $10,691,640.

We estimate the following costs to do any necessary replacements that would be required based on the results of the inspection. We have no way of determining the number of airplanes that may need this repair/replacement:

Labor cost	Parts cost	Total cost per airplane
Taper Pin with and without witness hole: 16 work-hours × $85 per hour = $1,360.	$75 per side × maximum of 2 per airplane = $150	$1,510
Bolt with and without witness hole: 15 work-hours × $85 per hour = $1,275.	$75 per side × maximum of 2 per airplane = $150	$1,425

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 AD.

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include "Docket No. FAA–2009–1015; Directorate Identifier 2009–CE–039–AD" in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by adding a new AD to read as follows:

2010–15–10 Piper Aircraft, Inc.: Amendment 39–16376; Docket No. FAA–2009–1015; Directorate Identifier 2009–CE–039–AD.

Effective Date

(a) This AD becomes effective on August 31, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the following airplane models and serial numbers that are certificated in any category:

Models	Serial Nos.
PA–28–140	28–20001 through 28–26946 and 28–7125001 through 28–7725290.
PA–28–150	28–03; 28–1 through 28–4377; and 28–1760A.
PA–28–160	28–03; 28–1 through 28–4377; and 28–1760A.
PA–28–180	28–03; 28–671 through 28–5859; and 28–7105001 through 28–7205318.
PA–28S–160	28–1 through 28–1760 and 28–1760A.
PA–28S–180	28–671 through 28–5859 and 28–7105001 through 28–7105234.
PA–28–235	28–10001 through 28–11378; 28–7110001 through 28–7210023; 28E–11 and 28–7310001 through 28–7710089.

Models	Serial Nos.
PA–28–236	28–7911001 through 28–8611008 and 2811001 through 2811050.
PA–28–151	28–7415001 through 28–7715314.
PA–28–161	2841001 through 2841365; 28–7716001 through 28–8216300; 28–8316001 through 28–8616057; 2816001 through 2816109; 2816110 through 2816119; and 2842001 through 2842305.
PA–28–180	28–E13 and 28–7305001 through 28–7505260.
PA–28–181	28–7690001 through 28–8690056; 28–8690061; 28–8690062; 2890001 through 2890205; 2890206 through 2890231; and 2843001 through 2843672.
PA–28–201T	28–7921001 through 28–7921095.
PA–28R–180	28R–30002 through 28R–31270 and 28R–7130001 through 28R–7130013.
PA–28R–200	28R–35001 through 28R–35820; 28R–7135001 through 28R–7135229; and 28R–7235001 through 28R–7635545.
PA–28R–201	28R–7737002 through 28R–7837317; 2837001 through 2837061; and 2844001 through 2844138.
PA–28R–201T	28R–7703001 through 28R–7803374 and 2803001 through 2803012.
PA–28RT–201	28R–7918001 through 28R–7918267 and 28R–8018001 through 28R–8218026.
PA–28RT–201T	28R–7931001 through 28R–8631005 and 2831001 through 2831038.
PA–32–260	32–03; 32–04; 32–1 through 32–1297; and 32–7100001 through 32–7800008.
PA–32–300	32–15; 32–21; 32–40000 through 32–40974; and 32–7140001 through 32–7940290.
PA–32S–300	32S–15; 32S–40000 through 32S–40974; and 32S–7140001 through 32S–7240137.
PA–32R–300	32R–7680001 through 32R–7880068.
PA–32RT–300	32R–7885002 through 32R–7985106.
PA–32RT–300T	32R–7787001 and 32R–7887002 through 32R–7987126.
PA–32R–301 (SP)	32R–8013001 through 32R–8613006; 3213001 through 3213028; and 3213030 through 3213041.
PA–32R–301 (HP)	3213029; 3213042 through 3213103; 3246001 through 3246217; 3246219; 3246223; 3246218; 3246220 through 3246222; and 3246224 through 3246244.
PA–32R–301T	32R–8029001 through 32R–8629008 and 3229001 through 3229003.
PA–32–301	32–8006002 through 32–8606023; 3206001 through 3206019; 3206042 through 3206044; 3206047; 3206050 through 3206055; and 3206060.
PA–32–301T	32–8024001 through 32–8424002.
PA–32R–301T	3257001 through 3257483.
PA–32–301FT	3232001 through 3232074.
PA–32–301XTC	3255001 through 3255014; 3255026, 3255015 through 3255025; 3255027; and 3255051.
PA–34–200	34–E4 and 34–7250001 through 34–7450220.
PA–34–200T	34–7570001 through 34–8170092.
PA–34–220T	34–8133001 through 34–8633031; 3433001 through 3433172; 3448001 through 3448037; 3448038 through 3448079; 3447001 through 3447029; and 3449001 through 3449377.
PA–44–180	44–7995001 through 44–8195026; 4495001 through 4495013; and 4496001 through 4496251.
PA–44–180T	44–8107001 through 44–8207020.

Unsafe Condition

(d) This AD results from two field reports of incorrectly assembled control wheel shafts. We are issuing this AD to detect and correct any incorrectly assembled control wheel shafts. This condition, if left uncorrected, could lead to separation of the control wheel shaft, resulting in loss of pitch and roll control.

Compliance

(e) To address this problem, you must do the following, unless already done:

Actions	Compliance	Procedures
(1) Inspect the pilot and copilot control wheel columns for correct control wheel shaft installation.	Within 100 hours time-in-service after August 31, 2010 (the effective date of this AD), or within the next 12 months after August 31, 2010 (the effective date of this AD), whichever occurs first.	Follow Piper Aircraft, Inc. Mandatory Service Bulletin No. 1197A, dated September 1, 2009; or Piper Aircraft, Inc. Mandatory Service Bulletin No. 1197B, dated May 3, 2010.
(2) If during the inspection required in paragraph (e)(1) of this AD an incorrectly installed control wheel shaft is found, replace the appropriate shaft with a new shaft.	Before further flight after the inspection where incorrect installation of the control wheel shaft is found.	Follow Piper Aircraft, Inc. Mandatory Service Bulletin No. 1197A, dated September 1, 2009; or Piper Aircraft, Inc. Mandatory Service Bulletin No. 1197B, dated May 3, 2010.

Actions	Compliance	Procedures
(3) Inspect the universal joint and all other control wheel parts when doing the action required in (e)(2) of this AD and, if any deterioration, excessive wear, or damage is found, replace the universal joint and/or other control wheel parts with a new universal joint and/or other applicable new control wheel parts as necessary.	Before further flight after the inspection where incorrect installation of the control wheel shaft is found.	Follow Piper Aircraft, Inc. Mandatory Service Bulletin No. 1197A, dated September 1, 2009; or Piper Aircraft, Inc. Mandatory Service Bulletin No. 1197B, dated May 3, 2010.

Alternative Methods of Compliance (AMOCs)

(f) The Manager, Atlanta Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Hector Hernandez, Aerospace Engineer, Atlanta Aircraft Certification Office (ACO), 1701 Columbia Avenue, College Park, GA 30337; telephone: (404) 474–5587; fax: (404) 474–5606. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Related Information

(g) To get copies of the service information referenced in this AD, contact Piper Aircraft, Inc., 2926 Piper Drive, Vero Beach, Florida 32960; telephone: (772) 567–4361; fax: (772) 978–6573; Internet: *http://www.newpiper.com/company/publications.asp.* To view the AD docket, go to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or on the Internet at *http://www.regulations.gov.*

Material Incorporated by Reference

(h) You must use Piper Aircraft, Inc. Mandatory Service Bulletin No. 1197A, dated September 1, 2009, or Piper Aircraft, Inc. Mandatory Service Bulletin No. 1197B, dated May 3, 2010, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Piper Aircraft, Inc., 2926 Piper Drive, Vero Beach, Florida 32960; telephone: (772) 567–4361; fax: (772) 978–6573; Internet: *http://www.newpiper.com/company/publications.asp.*

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

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

Issued in Kansas City, Missouri, on July 16, 2010.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–18012 Filed 7–26–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0241; Airspace Docket No. 10–AGL–4]

RIN 2120–AA66

Modification of VOR Federal Airways V–82, V–175, V–191, and V–430 in the Vicinity of Bemidji, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the legal description of VHF omnidirectional range (VOR) Federal Airways V–82, V–175, V–191, and V–430 in the vicinity of Bemidji, MN. The Bemidji (BJI) VOR, that forms a segment of these airways, has been out of service for over two years due to terrain and new construction signal interference problems and is planned for decommissioning. An airway intersection reporting point is being established in the same location as the BJI VOR to restore a navigable route structure to the area similar to what existed prior to the loss of service from the navigation aid.

DATES: Effective date 0901 UTC, September 23, 2010. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

History

On Wednesday, May 5, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to modify V–82, V–175, V–191, and V–430 in the vicinity of Bemidji, MN (75 FR 24504). Interested parties were invited to participate in this rulemaking effort by submitting written comments on this proposal to the FAA. One comment was received in response to the proposal.

The commenter requested the FAA provide at least a fix to replace the Bemidji VOR. The FAA addressed this comment in the proposal section of the NPRM. Specifically, the FAA stated, "To restore the navigable airway structure in the vicinity of Bemidji, MN, the FAA is proposing to establish the BLUOX fix in the same location currently depicting the BJI VOR navigation aid." The BLUOX fix, as proposed, is defined by intersecting airway radials.

Subsequent to publication, the FAA took action to change the Decatur (DEC) VHF omni-directional range/tactical air navigation (VORTAC) name and identifier to the Adders VORTAC (AXC). The DEC VORTAC name change will only affect V–191 in this rulemaking action.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying V–82, V–175, V–191, and V–430 in the vicinity of Bemidji, MN. The BJI VOR navigation aid was removed from service in April 2007, and is being decommissioned. To restore the navigable airway structure in the vicinity of Bemidji, MN, the FAA is establishing the BLUOX fix in the same location currently depicting the BJI VOR. Also, V–430 is rerouted between the BLUOX fix and Grand Forks VOR (GFK), ND, over the Thief River Falls VOR (TVF), MN. Except for V–191, which is being modified to terminate at the Grand Rapids VOR (GPZ), MN, the FAA is modifying the V–82, V–175, and

V–430 legal descriptions to replace the BJI VOR with an airways intersection point defining the BLUOX fix.

Additionally, V–191 is being amended to reflect the Decatur VORTAC name change to Adders VORTAC. The Decatur VORTAC and Decatur Airport share the same name and facility identifier (DEC), but are not co-located and are greater than 5 nautical miles apart. To eliminate the possibility of confusion, and a potential flight safety issue, the Decatur VORTAC is being renamed the Adders VORTAC and assigned a new facility identifier (AXC). Accordingly, the V–191 legal description will be amended to reflect the Adders, IL, [VORTAC] name change.

VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9T signed August 27, 2009 and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The VOR Federal Airways listed in this document will be published subsequently in the Order.

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

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies VOR Federal airways in the vicinity of Bemidji, MN.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, Environmental Impacts: Polices and Procedures, paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the FAA Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways

* * * * *

V–82 [Modified]

From Baudette, MN; INT Baudette 194° and Brainerd, MN, 331° radials; Brainerd; Gopher, MN; Farmington, MN; Rochester, MN; Nodine, MN; to Dells, WI.

* * * * *

V–175 [Modified]

From Malden, MO; Vichy, MO; Hallsville, MO; Macon, MO; Kirksville, MO; Des Moines, IA; Sioux City, IA; Worthington, MN; Redwood Falls, MN; Alexandria, MN; Park Rapids, MN; INT Park Rapids 003° and Roseau, MN, 160° radials; Roseau; to Winnipeg, MB, Canada. The airspace within Canada is excluded.

* * * * *

V–191 [Modified]

From Troy, IL; Adders, IL; Roberts, IL; INT Roberts 008° and Joliet, IL, 067° radials; Northbrook, IL; Badger, WI; Oshkosh, WI; Rhinelander, WI; Ironwood, MI; Duluth, MN; Hibbing, MN; to Grand Rapids, MN.

* * * * *

V–430 [Modified]

From Cut Bank, MT, 10 miles, 74 miles 55 MSL; Harve, MT, 14 miles, 100 miles 50 MSL; Glasgow, MT; INT Glasgow 100° and Williston, ND, 263° radials, 22 miles, 33 miles 55 MSL, Williston; Minot, ND; Devils Lake, ND; Grand Forks, ND; Thief River Falls, MN; INT Thief River Falls 122° and Grand Rapids, MN, 292° radials; Grand Rapids; Duluth, MN; Ironwood, MI; Iron Mountain, MN; to Escanaba, MI.

Issued in Washington, DC, on July 16, 2010.

Edith V. Parish,

Manager, Airspace and Rules Group.

[FR Doc. 2010–17953 Filed 7–26–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0095; Airspace Docket No. 10–ASO–18]

Amendment of Class D Airspace; Goldsboro, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class D Airspace at Seymour Johnson AFB, Goldsboro, NC, to reflect the part-time operating status of the control tower.

DATES: Effective 0901 UTC, September 23, 2010. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

History

On April 8, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class D airspace for Seymour Johnson AFB, Goldsboro, NC (75 FR 17891) Docket No. FAA–2010–0095. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class D airspace designations are published in paragraph 5000 of FAA Order 7400.9T signed August 27, 2009, and effective September 15, 2009, which is

incorporated by reference in 14 CFR Part 71.1. The Class D airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends the Class D surface airspace to reflect the part-time operations of the airport control tower, establishing in advance the dates and times by a Notice to Airmen. This action is necessary for the safety and management of IFR operations at the airport.

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

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Seymour Johnson AFB, Goldsboro, NC.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, effective September 15, 2009, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASO NC D Goldsboro, NC [Amended]

Seymour Johnson AFB, NC
(Lat. 35°20′22″ N., long. 77°57′38″ W.)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 5.7-mile radius of Seymour Johnson AFB. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

Issued in College Park, Georgia, on July 13, 2010.

Mark D. Ward,

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

[FR Doc. 2010–18264 Filed 7–26–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0052; Airspace Docket No. 10–ASO–13]

Amendment of Class E Airspace; Clemson, SC and Establishment of Class E Airspace: Pickens, SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E Airspace at Clemson, SC, to correct the airspace description and establish Class E airspace at Pickens, SC, to achieve an additional 1000′ of airspace to support a new LPV Approach (Localizer Performance with Vertical Guidance) that has been developed for Pickens County Airport.

DATES: Effective 0901 UTC, September 23, 2010. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

History

On March 23, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace at Clemson, SC and establish Class E airspace at Pickens, SC (75 FR 13697) Docket No. FAA–2010–0052. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9T signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends the Class E airspace extending upward from 700 feet above the surface at Clemson, SC to remove Pickens County Airport from the airspace description and establish Class E airspace at Pickens, SC, to support a new LPV Approach developed for Pickens County Airport. This action is necessary for the safety and management of IFR operations at the airports.

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

certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, effective September 15, 2009, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASO SC E5 Clemson, SC [AMENDED]

Clemson-Oconee County Airport, SC
(Lat. 34°40′19″ N., long. 82°53′12″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Clemson-Oconee County Airport.

* * * * *

ASO SC E5 Pickens, SC [NEW]

Pickens County Airport, SC
(Lat. 34°48′36″ N., long. 82°42′10″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Pickens County Airport and within 3.6 miles each side of the 044° bearing from the airport, extending from the 6.5-mile radius to 11 miles northeast of the airport.

Issued in College Park, Georgia, on July 13, 2010.

Mark D. Ward,

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

[FR Doc. 2010–18263 Filed 7–26–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0070; Airspace Docket No. 10–ASO–14]

Amendment of Class E Airspace; Mount Airy, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E Airspace at Mount Airy, NC, to accommodate the additional airspace needed for the Standard Instrument Approach Procedures (SIAPs) developed for Mount Airy-Surry County Airport.

DATES: Effective 0901 UTC, September 23, 2010. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

History

On March 25, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace at Mount Airy, NC (75 FR 14381) Docket No. FAA–2010–0070. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9T signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends the Class E airspace extending upward from 700 feet above the surface at Mount Airy, NC to provide the controlled airspace required to support the SIAPs for Mount Airy-Surry County Airport. This action is necessary for the safety and management of IFR operations at the airport.

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

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Mount Airy, NC.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, effective September 15, 2009, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASO NC E5 Mount Airy, NC [AMENDED]

Mount Airy-Surry County Airport, NC
(Lat. 36°27′35″ N., long. 80°33′11″ W.)

That airspace extending upward from 700 feet above the surface within a 9-mile radius of the Mount Airy-Surry County Airport and within 3.9 miles each side of the 353° bearing from the airport extending from the 9-mile radius to 15.3 miles north of the Mount Airy-Surry County Airport.

Issued in College Park, Georgia, on July 13, 2010.

Mark D. Ward,

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

[FR Doc. 2010–17948 Filed 7–26–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0285; Airspace Docket No. 10–ASO–23]

Amendment of Class E Airspace; Smithfield, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E Airspace at Smithfield, NC, to accommodate the additional airspace need for the Standard Instrument Approach Procedures (SIAPs) developed for Johnston County Airport.

DATES: Effective 0901 UTC, September 23, 2010. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

History

On April 19, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for Johnston County Airport, Smithfield, NC (75 FR 20320) Docket No. FAA–2010–0285. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9T signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends the Class E5 airspace extending upward from 700 feet above the surface to accommodate SIAPs at Johnston County Airport, Smithfield, NC. This action is necessary for the safety and management of IFR operations at the airport.

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

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Johnston County Airport, Smithfield, NC.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, effective September 15, 2009, is amended as follows:

Paragraph 6005 Class E Airspace Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASO NC E5 Smithfield, NC [Amended]

Johnston County Airport, NC
(Lat. 35°32′27″ N., long. 78°23′25″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Johnston County Airport and within 2 miles each side of the 023° bearing from the airport extending from the 6.5-mile radius to 10.2 miles northeast of the Johnston County Airport.

Issued in College Park, Georgia, on July 13, 2010.

Mark D. Ward,

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

[FR Doc. 2010–17950 Filed 7–26–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0689; Airspace Docket No. 09–AGL–29]

RIN: 2120–AA66

Amendment of VOR Federal Airways V–50, V–251, and V–313 in the Vicinity of Decatur, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the legal description of the VHF omnidirectional range (VOR) Federal Airways V–50, V–251, and V–313 in the vicinity of Decatur, IL. The FAA is taking this action because the Decatur VHF omni-directional range/tactical air navigation (VORTAC), included as part of the V–50, V–251, and V–313 route structure, is being renamed the Adders VORTAC.

DATES: Effective date 0901 UTC, September 23, 2010. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending the legal description of VOR Federal Airways V–50, V–251, and V–313, in the vicinity of Decatur, IL. Currently, V–50, V–251, and V–313 have Decatur, IL, [VORTAC] included as part of their route structure. The Decatur VORTAC and the Decatur Airport share the same name and facility identifier (DEC), but are not co-located and are greater than 5 nautical miles apart. To eliminate the possibility of confusion, and a potential flight safety issue, the Decatur VORTAC will be renamed the Adders VORTAC and assigned a new facility identifier (AXC). All VOR Federal Airways with Decatur, IL, [VORTAC] included in their legal description will be amended to reflect the Adders, IL, [VORTAC] name change. The name change of the VORTAC will coincide with the effective date of this rulemaking action.

Since this action merely involves editorial changes in the legal descriptions of VOR Federal Airways, and does not involve a change in the dimensions or operating requirements of that airspace, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

Domestic VOR Federal Airways are published in paragraph 6010(a) of FAA Order 7400.9T, signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The domestic VOR Federal Airways listed in this document will be published subsequently in the Order.

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

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it revises the legal description of three VOR Federal Airways in the vicinity of Decatur, IL.

Environmental Review

There are no changes to the lateral limits. Therefore, the FAA has determined that this action is not subject to environmental assessments and procedures in accordance with FAA Order 1050.1E, Policies and Procedures for Considering Environmental Impacts, and the National Environmental Policy Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–50 [Amended]

From Hastings, NE; Pawnee City, NE; St. Joseph, MO; Kirksville, MO; Quincy, IL; Spinner, IL; Adders, IL; Terre Haute, IN; Brickyard, IN; to Dayton, OH.

* * * * *

V–251 [Amended]

From Adders, IL; Champaign, IL; Danville, IL; to Boiler, IN.

* * * * *

V–313 [Amended]

From Malden, MO; Cape Girardeau, MO; Centralia, IL; Adders, IL; to Pontiac, IL.

Issued in Washington, DC, on July 13, 2010.

Edith V. Parish,

Manager, Airspace and Rules Group.

[FR Doc. 2010–17947 Filed 7–26–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0001; Airspace Docket No. 10–ASO–10]

Revocation of Class D and E Airspace; Panama City, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action removes the Class D and E Airspace at Panama City-Bay County Airport, Panama City, FL, as the airport has closed and the associated Standard Instrument Approach Procedures (SIAPs) removed, eliminating the need for controlled airspace.

DATES: Effective 0901 UTC, September 23, 2010. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

History

Northwest Florida-Panama City International Airport, a new airport for Panama City, FL, opened on May 23, 2010. Therefore, the Panama City-Bay County Airport was closed effective at 10 p.m. on May 22, 2010. The associated SIAPs and controlled airspace must be removed in conjunction with the airport closure. As a result, this action will remove the Class D, E4, and E5 airspace for the Panama City-Bay County Airport, Panama City, FL. This rule will become effective on the date specified in the **DATES** section. Since this action eliminates the impact of controlled airspace on users of the National Airspace System in the vicinity of the Panama City-Bay County Airport, Panama City, FL, notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Class D and Class E airspace designations are published in paragraphs 5000, 6004 and 6005 respectively of FAA Order 7400.9T, dated August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 removes the Class D, E4 and E5 airspace at Panama City-Bay County Airport, Panama City, FL. Controlled airspace is no longer needed as the airport has closed.

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

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it removes controlled airspace at Panama City-Bay County Airport, Panama City, FL.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, effective September 15, 2009, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASO FL D Panama City, FL [Removed]

Panama City-Bay County Airport, FL
(Lat. 30°12′44″ N., long. 85°40′58″ W.)

* * * * *

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D Surface Area.

* * * * *

ASO FL E4 Panama City, FL [Removed]

Panama City-Bay County Airport, FL
(Lat. 30°12′44″ N., long. 85°40′58″ W.)
Panama City VORTAC
(Lat. 30°12′59″ N., long. 85°40′52″ W.)

* * * * *

Paragraph 6005 Class E Airspace Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASO FL E5 Panama City, FL [Removed]

Panama City-Bay County Airport, FL
(Lat. 30°12′44″ N., long. 85°40′58″ W.)
Tyndall AFB
(Lat. 30°04′12″ N., long. 85°34′34″ W.)

Issued in College Park, Georgia, on July 13, 2010.

Mark D. Ward,

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

[FR Doc. 2010–18262 Filed 7–26–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 740 and 742

[Docket No. 100309131–0283–03]

RIN 0694–AE89

Clarification of Grace Period for Encryption Registration Requirement

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule; correcting amendments.

SUMMARY: This rule clarifies the intent of the encryption registration requirement that appeared in a rule published on June 25, 2010. In addition, this rule corrects the e-mail address for the public contact referenced in the June 25, 2010 rule.

DATES: This rule is effective July 27, 2010.

FOR FURTHER INFORMATION CONTACT: Sharron Cook, Regulatory Policy Division, e-mail *scook@bis.doc.gov,* telephone (202) 482–2440.

SUPPLEMENTARY INFORMATION:

Background

On June 25, 2010, the Bureau of Industry and Security (BIS) published a final rule (75 FR 36482) that, *inter alia,* established an encryption registration requirement for authorization under provisions of License Exception ENC, as codified in § 740.17(b)(1), (b)(2) and (b)(3) of the EAR, and for transactions in connection with mass market encryption transaction, as codified in §§ 742.15(b)(1) and (b)(3) of the EAR. In § 740.17(d)(1)(i)(A) and (d)(1)(i)(B), the rule specified that an encryption registration was required to be filed the first time that a party submits an encryption classification request under § 740.17(b)(2) and (b)(3) or performs an encryption self-classification under § 740.17(b)(1) on or after August 24, 2010. The rule also stated that an encryption registration was required to be submitted in support of an encryption classification or in circumstances where a party is making a mass market encryption item eligible for export and reexport (including the definition at § 734.2(b)(9) for encryption software) under § 742.15(b)(1) for the first time on or after August 24, 2010. Although the rule was issued in final form on June 25, the rule intended to establish a grace period permitting parties to wait until August 24 to submit their registration requirements.

The intent of this grace period was to allow industry time to gather information necessary to accurately submit the information required in the encryption registration (Supplement No. 5 to part 742), to change internal procedures, and to train personnel before submitting the encryption registration. However, the rule inadvertently omitted language that clarifies that parties may self-classify or seek classifications between June 25, 2010 and August 24, 2010 without first submitting a registration. It also inadvertently omitted language that clarifies the post-classification registration requirement for parties that self-classified or sought classifications between June 25, 2010 and August 24, 2010, but did not self-classify or seek a classification again on or after August 24, 2010. This rule corrects the regulations to include language that clarifies the intent of the grace period.

Therefore, this rule adds a sentence to the introductory text of paragraph (b) of § 740.17 that reads, "For items self-classified under paragraph (b)(1) of this section from June 25, 2010 through August 24, 2010, and for requests for classification under paragraphs (b)(2) and (b)(3) of this section submitted from June 25, 2010 through August 24, 2010, exporters have until August 24, 2010 to submit their encryption registrations." This rule also adds a sentence to the introductory text of paragraph (b) of § 742.15 that reads "For items self-classified under paragraph (b)(1) of this section from June 25, 2010 through August 24, 2010, and for requests for classification under paragraph (b)(3) of this section submitted from June 25, 2010 through August 24, 2010, exporters have until August 24, 2010 to submit their encryption registrations."

Since this rule is a clarification of contradicting provisions of the regulations, BIS has determined that this rule has no retroactive effect. The registration requirement remains prospective (i.e. by August 24, 2010), and BIS is not actually triggering any requirements with which the affected entities would not otherwise have to comply. The encryption clarification rule simply clarifies that those who proceed with export between June 25, 2010 and August 24, 2010 must file with BIS by August 24, 2010. The public is not adversely affected by this clarification since it provides exporters with a clear guidance for exporting between June 25, 2010 and August 24, 2010.

In addition, the June 25, 2010 rule listed a non-existent e-mail address (*encryption@bis.doc.gov*) as the e-mail address for technical questions in the **FOR FURTHER INFORMATION CONTACT** section of the preamble of the rule. The correct address for technical questions is *cpratt@bis.doc.gov.* The e-mail address for non-technical questions continues to be *scook@bis.doc.gov.*

Rulemaking Requirements

1. This rule is not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid Office of Management and Budget Control Number. This rule involves a collection of information that has been approved by the OMB under control number 0694–0088, 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 this rule will make no change to the number of submissions or to the burden imposed by this collection.

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

4. BIS finds that there is good cause under 5 U.S.C. 553(b)(B) to waive the provisions of the Administrative Procedure Act requiring prior notice and the opportunity for public comment because it is unnecessary. These revisions merely clarify the intent of the encryption registration requirement, therefore allowing prior notice and comment on these rules is unnecessary. In addition, BIS finds good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness because this rule merely makes technical changes to the regulations to clarify the intent of the encryption registration requirement. No other law requires that notice of proposed rulemaking and an opportunity for public comment be given for this rule; therefore, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

List of Subjects

15 CFR Part 740

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

15 CFR Part 742

Exports, Terrorism.

■ Accordingly, the Bureau of Industry and Security amends its Export Administration Regulations (15 CFR parts 730–774) as follows:

PART 740 [AMENDED]

■ 1. The authority citations for part 740 continue 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 740.17 is amended by adding a sentence after the first sentence in paragraph (b) introductory text to read as follows:

§ 740.17 Encryption commodities, software and technology (ENC).

* * * * *

(b) * * * For items self-classified under paragraph (b)(1) of this section from June 25, 2010 through August 24, 2010, and for requests for classification under paragraphs (b)(2) and (b)(3) of this section submitted from June 25, 2010 through August 24, 2010, exporters have until August 24, 2010 to submit their encryption registrations. * * *

PART 742 [AMENDED]

■ 3. The authority citations for part 742 continue to read as follows:

Authority: 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; 22 U.S.C. 3201 et seq.; 42 U.S.C. 2139a; 22 U.S.C. 7201 et seq.; 22 U.S.C. 7210; Sec 1503, Pub. L. 108 11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003 23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009); Notice of November 6, 2009, 74 FR 58187 (November 10, 2009).

■ 4. Section 742.15 is amended by adding a sentence after the fourth sentence in paragraph (b) to read as follows:

§ 742.15 Encryption items.

* * * * *

(b) * * * For items self-classified under paragraph (b)(1) of this section from June 25, 2010 through August 24, 2010, and for requests for classification under paragraph (b)(3) of this section submitted from June 25, 2010 through August 24, 2010, exporters have until August 24, 2010 to submit their encryption registrations. * * *

Dated: July 21, 2010.

Bernard Kritzer,

Director, Office of Exporter Services.

[FR Doc. 2010–18360 Filed 7–26–10; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0063]

Safety Zones; Annual Firework Displays Within the Captain of the Port, Puget Sound Area of Responsibility

AGENCY: Coast Guard, DHS.

ACTION: Correction of Notice of Enforcement of Regulation.

SUMMARY: On July 1, 2010, the Coast Guard published a document in the **Federal Register**, providing notice of enforcement of a 300-yard safety zone in Dyes Inlet for the Whaling Days event on July 24, 2010. This correction changes the date for the zone to July 23, 2010. During the enforcement periods, entry into, transit through, mooring, or anchoring within these zones is prohibited unless authorized by the Captain of the Port, Puget Sound or Designated Representative.

DATES: This safety zone will be enforced from 5 p.m. on July 23, 2010, to 1 a.m. on July 24, 2010.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or e-mail LTJG Ashley M. Wanzer, Sector Seattle Waterways Management, Coast Guard; telephone 206–217–6175, *SectorSeattleWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone listed in 33 CFR 165.1332, Safety Zones; annual firework displays within the Captain of the Port, Puget Sound Area of Responsibility. A previous notice of enforcement, published on July 1, 2010 (75 FR 38021), incorrectly stated that the zone would be enforced on July 24, 2010. This notice provides corrected information.

The following safety zone will be enforced from 5 p.m. on July 23, 2010 through 1 a.m. on July 24, 2010:

Event Name	Location	Latitude	Longitude	Radius
Whaling Days	Dyes Inlet	47° 38.65′ N	122° 41.35′ W	300

Dated: *July 12, 2010.*

S.W. Bornemann,

Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 2010–18267 Filed 7–23–10; 11:15 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0622]

Safety Zone; DEEPWATER HORIZON Response Staging Area in the Vicinity of Shell Beach, Hopedale, LA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The New Orleans Captain of the Port (COTP), under the authority of the Ports and Waterways Safety Act, has established a safety zone requiring no wake on the Mississippi River Gulf Outlet (MRGO) at Mile 42 extending the entire width of the MRGO 500 yards above and 500 yards below the response staging area. This safety zone is necessary to protect personnel and vessels at the response staging area at Shell Beach in Hopedale, LA in response to the DEEPWATER HORIZON oil spill. Vessels must travel at a safe speed and distance to maintain a no wake zone in this area.

DATES: This rule is effective in the CFR from July 27, 2010 until 11:59 p.m. on September 24, 2010. This rule is effective with actual notice for purposes of enforcement beginning June 24, 2010 upon signature. This rule will remain in effect until 11:59 p.m. on September 24, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0622 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0622 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Lieutenant Commander (LCDR) Marty Daniels, Sector New Orleans, Coast Guard; telephone 504–565–5044, e-mail *William.M.Daniels@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a

notice of proposed rulemaking (NPRM) with respect to this rule. It would be impracticable to issue an NPRM for this rule, because a safety zone is needed immediately to protect personnel and vessels associate with response operations at the staging area at Shell Beach.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Potential safety hazards associated with response activities at this location prohibits regularly issued safety zones.

Basis and Purpose

This response staging area is in support of the DEEPWATER HORIZON oil spill clean-up effort. This safety zone requires that vessels maintain the slowest safe speed to maintain steerage. This rule is needed to protect members of the response effort by creating a no wake zone in the vicinity of the staging area. In addition, the rule is needed to protect mariners transiting in or through the area from the dangers associated with navigating around equipment deployed in support of the clean-up efforts.

Discussion of Rule

The Coast Guard is establishing a safety zone encompassing the coastal areas affected by the DEEPWATER HORIZON oil spill on the Mississippi River Gulf Outlet (MRGO) at Mile 42 at Shell Beach. The safety zone will encompass the entire width of the MRGO, 500 yards above and 500 yards below the response staging area. In accordance with the general regulation in § 165.23 of this part, vessels must transit at the slowest safe speed to allow for steerage to comply with the no wake zone located in (a)(1). Vessels must exercise caution when transiting this area to observe the no wake zone. The Coast Guard will enforce this safety zone from June 24 through September 24, 2010.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is an emergency regulatory action under section 6(a)(3)(D) of Executive Order 12866, Regulatory Planning and Review, and requires compliance with the ordinary review procedure to the extent practicable. The Office of Management and Budget has not reviewed it under that Order.

This rule has been deemed an emergency regulatory action after consultation with the Eighth Coast Guard District Legal Office, CG–0941 and CG–0943. Although this regulation will restrict access to the area, the effect of the rule will not be significant because the safety zone will only be in place for a limited specified time period and is for a limited size and notice will be provided to the maritime community through Safety Broadcast Notice to Mariners and Marine Safety Information Bulletins. Additionally, persons or vessels requiring deviations from this rule may request permission from the Captain of the Port New Orleans.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels, intending to transit the MRGO at Mile 42 in the vicinity of the DEEPWATER HORIZON oil spill response staging area at Shell Beach and where oil spill response activities are taking place. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: the safety zone will only be in place for a limited specified time period and is for a limited size; notice will be provided to the maritime community through Safety Broadcast Notice to Mariners and Marine Safety Information Bulletins; and persons or vessels requiring deviations from this rule may request permission from the Captain of the Port New Orleans. Finally, we note that vessels can transit the area, but merely must do so at reduced speeds.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

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

Under figure 2–1, paragraph (34)(g), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are required for this rule because it concerns a situation of more than 1 week in duration. An environmental analysis checklist and a categorical exclusion determination will be made available in the docket upon publication in the **Federal Register.**

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and record-keeping requirements, Security Measures, Waterways.

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.06–1, 6.05–6 and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T08–0622 to read as follows:

§ 165.T08–0622 Safety Zone, DEEPWATER HORIZON Response Staging Area in the vicinity of Shell Beach, Hopedale, LA.

(a) *Location:* On the Mississippi River Gulf Outlet (MRGO) at Mile 42 in the vicinity of Shell Beach to extend the entire width of the MRGO 500 yards above and 500 yards below the response staging area.

(b) *Enforcement Period:* This rule will be enforced from June 24, 2010, until 11:59 p.m. on September 24, 2010.

(c) *Regulations:*

(1) In accordance with the general regulation in § 165.23 of this part, vessels must transit at the slowest safe speed to allow for steerage to comply with no wake zone located in (a).

(2) Persons or vessels requiring deviations from this rule must request permission from the Captain of the Port New Orleans. The COTP may be contacted at telephone (504) 846–5923.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port New Orleans and designated personnel. Designated personnel include commissioned, warrant and petty officers of the U.S. Coast Guard.

Dated: June 24, 2010.

E. M. Stanton,

Captain, U.S. Coast Guard, Commander, Sector New Orleans.

[FR Doc. 2010–18306 Filed 7–26–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0458]

RIN 1625–AA00

Safety Zone; He'eia Kea Small Boat Harbor, Kaneohe Bay, Oahu, HI

AGENCY: Coast Guard, DHS.

ACTION: Temporary Final Rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in He'eia Kea Small Boat Harbor located in Kaneohe Bay, Oahu, Hawaii. The safety zone is necessary to protect watercraft and the general public from hazards associated with five vessels moored for approximately 3-weeks off the boat harbor's main pier. Vessels desiring to transit through the zone can request permission by contacting the Captain of the Port Honolulu.

DATES: This rule is effective in the CFR on July 27, 2010 through 7:00 p.m. on August 13, 2010. This rule is effective with actual notice for purposes of enforcement on 5 a.m. on July 16, 2010. This rule will remain in effect through 7 p.m. on August 13, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0458 and are available online by going to *http://www.regulations.gov/*, inserting USCG–2010–0458 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule. This is because it would be impracticable for the Coast Guard to publish an NPRM and final rule before the zone is needed on July 16, 2010.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. There is a need to establish the safety zone before July 16, 2010, in order to protect watercraft and the general public from hazards associated with fixed moorings and stationary vessels in the harbor.

Basis and Purpose

In 2009, Fourth Mate Productions formally proposed mooring five vessels in and around He'eia Kea Small Boat Harbor and main pier with the State of Hawaii's permission and after meeting with numerous local users and environmental and boating agency officials.

In June 2010 and after all environmental and permitting requirements were met, Fourth Mate Productions was given permission to place moorings and five stationary vessels in He'eia Kea Small Boat Harbor.

Due to He'eia Kea Small Boat Harbor's heavy traffic during daylight hours, the Coast Guard determined that a safety zone was appropriate to ensure safe and orderly transit around the moorings and five stationary vessels by all other watercraft and the general public.

Discussion of the Rule

The Coast Guard is establishing a temporary safety zone in He'eia Kea Small Boat Harbor located in Kaneohe Bay, Oahu, Hawaii. This safety zone is in the shape of a box bounded by the points: 21°26′30.9″ N, 157°48′40.4″ W; 21°26′53.4″ N, 157°48′33.8″ W (aka Light #2); 21°26′40.9″ N, 157°48′10.5″ W, and 21°26′30.4″ N, 157°48′20.57″ W (aka Kealohi Pt) thence along the coast to the beginning point. The zone will extend from the surface of the water to the ocean floor. The zone will be enforced from 5 a.m. on July 16, 2010, through 7 p.m. on August 13, 2010.

Entry into or remaining in the safety zone will be prohibited unless authorized by the Coast Guard Captain of the Port Honolulu zone. Vessels desiring to transit through the zone can request permission by contacting the Honolulu Captain of the Port on VHF Channel 81A or at phone numbers 808–563–9906 and 808–842–2600.

Regulatory Analyses

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

Regulatory Planning and Review

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

This zone will have not have a significant impact on the harbor's commercial use since nearly all the westward and eastward portions of the small boat harbor will remain open for business. Furthermore, vessels will be able to transit in the temporary safety zone with permission from the Captain of the Port, and escort vessels will be freely available on a case by case basis and once entry into the safety zone is granted.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels using the He'eia Kea Small Boat Harbor between July 16 and August 13, 2010. This safety zone will not have a significant economic impact on a substantial number of small entities because this rule will only be in effect for a limited period of time, vessels will be able to transit around the safety zone, and will be allowed to transit in and around the temporary safety zone in He'eia Kea Small Boat Harbor with prearranged vessel escorts once permission to transit the zone is granted.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this 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 rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T14–199 to read as follows:

§ 165.T14–205 Safety Zone; He'eia Kea Small Boat Harbor, Kaneohe Bay, Oahu, Hawaii.

(a) *Location.* The following area is a temporary safety zone: All waters contained within a specified area around five moored vessels in the He'eia Kea Small Boat Harbor located in Kaneohe Bay, Oahu, Hawaii. This safety zone is bounded by the points: 21°26′30.9″ N, 157°48′40.4″ W; 21°26′53.4″ N, 157°48′33.8″ W (aka Light #2); 21°26′40.9″ N, 157°48′10.5″ W, and 21°26′30.4″ N, 157°48′20.57″ W (aka Kealohi Pt) thence along the coast to the beginning point. This safety zone extends from the surface of the water to the ocean floor.

These coordinates are based upon the National Oceanic and Atmospheric Administration Coast Survey, Pacific Ocean, Oahu, Hawaii, chart 19359.

(b) *Regulations.* (1) Entry into or remaining in the safety zone described in paragraph (a) of this section is prohibited unless authorized by the Coast Guard Captain of the Port Honolulu zone.

(2) Persons desiring to transit in the safety zone may contact the Honolulu Captain of the Port on VHF channel 81A (157.075 MHz), VHF channel 16 (156.800 MHz), or at telephone numbers 1–808–563–9906 and 808–842–2600 to seek permission to transit the area with a designated escort vessel. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(c) *Effective period.* This rule is effective from 5:00 a.m. local (HST) time on July 16, 2010 through 7:00 p.m. local (HST) time on August 13, 2010.

(d) *Regulations.* In accordance with the general regulations in 33 CFR part 165, Subpart C, no person or vessel may enter or remain in the zone except for support vessels and personnel, or other vessels authorized by the Captain of the Port or his designated representatives.

(e) *Penalties.* Vessels or persons violating this rule would be subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

Dated: June 24, 2010.

R.E. McFarland,

Commander, U.S. Coast Guard, Acting Captain of the Port Honolulu.

[FR Doc. 2010–18268 Filed 7–26–10; 8:45 am]

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LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 2008–8]

Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: The Librarian of Congress announces that the prohibition against

circumvention of technological measures that effectively control access to copyrighted works shall not apply to persons who engage in noninfringing uses of six classes of copyrighted works.

EFFECTIVE DATE: July 27, 2010.

FOR FURTHER INFORMATION CONTACT: Robert Kasunic, Assistant General Counsel, and David O. Carson, General Counsel, Copyright GC/I&R, P.O. Box 70400, Washington, D.C. 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: In this notice, the Librarian of Congress, upon the recommendation of the Register of Copyrights, announces that the prohibition against circumvention of technological measures that effectively control access to copyrighted works shall not apply to persons who engage in noninfringing uses of six classes of works. This announcement is the culmination of a rulemaking proceeding commenced by the Register on October 6, 2008. A more comprehensive statement of the background and legal requirements of the rulemaking, a discussion of the record and the Register's analysis may be found in the Register's memorandum to the Librarian of Congress dated June 11, 2010, which contains the full explanation of the Register's recommendation. A copy of the Register's memorandum may be found at http://www.copyright.gov/1201. This notice summarizes the Register's recommendation, announces the Librarian's determination, and publishes the regulatory text codifying the six exempted classes of works.

I. Background

A. Legislative Requirements for Rulemaking Proceeding

The Digital Millennium Copyright Act ("DMCA") was enacted to implement certain provisions of the WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty. It established a wide range of rules that govern not only copyright owners in the marketplace for electronic commerce, but also consumers, manufacturers, distributors, libraries, educators, and on–line service providers. It defined whether consumers and businesses may engage in certain conduct, or use certain devices, in the course of transacting electronic commerce.

Chapter 12 of title 17 of the United States Code prohibits circumvention of certain technological measures employed by or on behalf of copyright owners to protect their works (*i.e.*, "access controls"). Specifically, Section 1201(a)(1)(A) provides, in part, that no person shall circumvent a technological measure that effectively controls access to a work protected under this title. In order to ensure that the public will have continued ability to engage in noninfringing uses of copyrighted works, such as fair use, subparagraph (B) limits this prohibition. It provides that the prohibition against circumvention shall not apply to persons who are users of a copyrighted work which is in a particular class of works, if such persons are, or are likely to be in the succeeding three–year period, adversely affected by virtue of such prohibition in their ability to make noninfringing uses of that particular class of works under this title as determined in a rulemaking. The proceeding is conducted by the Register of Copyrights, who is to provide notice of the rulemaking, seek comments from the public, consult with the Assistant Secretary for Communications and Information of the Department of Commerce, and recommend final regulations to the Librarian of Congress. The regulations, to be issued by the Librarian of Congress, announce "any class of copyrighted works for which the Librarian has determined, pursuant to the rulemaking conducted under subparagraph (c), that noninfringing uses by persons who are users of a copyrighted work are, or are likely to be, adversely affected, and the prohibition contained in subparagraph (A) shall not apply to such users with respect to such class of works for the ensuing 3–year period." This is the fourth Section 1201 rulemaking.

B. Responsibilities of Register of Copyrights and Librarian of Congress

The primary responsibility of the Register and the Librarian in this rulemaking proceeding was to assess whether the implementation of access control measures is diminishing the ability of individuals to use copyrighted works in ways that are not infringing and to designate any classes of works with respect to which users have been adversely affected in their ability to make noninfringing uses. Congress intended that the Register solicit input that would enable consideration of a broad range of current or likely future adverse impacts. The statute directs that in conducting the rulemaking, the Register and the Librarian shall examine:

(1) The availability for use of copyrighted works;

(2) The availability for use of works for nonprofit archival, preservation, and educational purposes;

(3) The impact that the prohibition on the circumvention of technological measures applied to copyrighted works has on criticism, comment, news reporting, teaching, scholarship, or research;

(4) The effect of circumvention of technological measures on the market for or value of copyrighted works; and

(5) Such other factors as the Librarian considers appropriate.

These factors to be considered in the rulemaking process require the Register and the Librarian to carefully balance the availability of works for use, the effect of the prohibition on particular uses, and the effect of circumvention on copyrighted works.

C. The Purpose and Focus of the Rulemaking

1. Purpose of the Rulemaking

The task of this rulemaking is to determine whether the availability and use of access control measures has already diminished or is about to diminish the ability of the users of any particular classes of copyrighted works to engage in noninfringing uses of those works similar or analogous to those that the public had traditionally been able to make prior to the enactment of the DMCA. In examining the factors set forth in Section 1201(a)(1)(C), the focus is on whether the implementation of technological protection measures has had an adverse impact on the ability of users to make lawful uses.

2. The Necessary Showing

Proponents of a class of works have the burden of proof. In order to make a *prima facie* case for designation of a class of works, proponents must show by a preponderance of the evidence that there has been or is likely to be a substantial adverse effect on noninfringing uses by users of copyrighted works. *De minimis* problems, isolated harm or mere inconveniences are insufficient to provide the necessary showing. Similarly, for proof of "likely" adverse effects on noninfringing uses, a proponent must prove by a preponderance of the evidence that the harm alleged is more likely than not; a proponent may not rely on speculation alone to sustain a prima *facie* case of likely adverse effects on noninfringing uses. It is also necessary to show a causal nexus between the prohibition on circumvention and the alleged harm.

Proposed classes are reviewed *de novo*. The existence of a previously designated class creates no presumption for consideration of a new class, but rather the proponent of such a class of works must make a prima facie case in each three–year period.

3. Determination of "Class of Works"

The starting point for any definition of a "particular class" of works in this rulemaking must be one of the categories of works set forth in section 102 of the Copyright Act. However, those categories are only a starting point and a "class" will generally constitute some subset of a section 102 category. The determnation of the appropriate scope of a "class of works"; recommended for exemption will also take into account the likely adverse effects on noninfringing uses and the adverse effects that designation of the class may have on the market for or value of copyrighted works.

While starting with a section 102 category of works, or a subcategory thereof, the description of a "particular class"of works ordinarily should be further refined by reference to other factors that assist in ensuring that the scope of the class addresses the scope of the harm to noninfringing uses. For example, the class might be defined in part by reference to the medium on which the works are distributed, or even to the access control measures applied to them. The description of a class of works may also be refined, in appropriate cases, by reference to the type of user who may take advantage of the designation of the class of works or by reference to the type of use of the work that may be made pursuant to the designation. The "class" must be properly tailored not only to address the harm demonstrated, but also to limit the adverse consequences that may result from the creation of an exempted class. In every case, the contours of a "class" will depend on the unique factual circumstances established in the rulemaking record on a case–by–case basis.

D. Consultation with the Assistant Secretary for Communications and Information

Section 1201(a)(1)(C) requires the Register of Copyrights to consult with the Assistant Secretary for Communications and Information of the Department of Commerce (who is also the Administrator of the National Telecommunications and Information Administration) and report and comment on the views of the Assistant Secretary ("NTIA") when she makes her recommendation to the Librarian of Congress.

In addition to informal consultations throughout the course of the rulemaking proceeding, NTIA formally communicated its views in letters to the Register on November 4, 2009, and April 16, 2010. NTIA's views were considered by the Register in forming her recommendation. A discussion of NTIA's substantive analysis of particular proposals is presented in the relevant sections of the Register's recommendation.

II. Solicitation of Public Comments and Hearings

On October 6, 2008, the Register initiated this rulemaking proceeding pursuant to Section 1201(a)(1)(C) with publication of a Notice of Inquiry. The NOI requested written comments from all interested parties, including representatives of copyright owners, educational institutions, libraries and archives, scholars, researchers, and members of the public.

During the initial comment period that ended on December 2, 2008, the Copyright Office received nineteen written comments proposing twenty–five classes of works, all of which were posted on the Office's website. Because some of the initial comments contained similar or overlapping proposals, the Copyright Office arranged related classes into groups, and set forth and summarized all proposed classes in a Notice of Proposed Rulemaking ("NPRM") published on December 29, 2008. This NPRM did not present the initial classes in the form of proposed rule, but merely as "a starting point for further consideration."

The NPRM asked interested parties to submit comments providing support, opposition, clarification, or correction regarding the proposals, and to provide factual and/or legal arguments in support of their positions. The Copyright Office received a total of fifty–six responsive comments before the comment period closed on February 2, 2009, all of which were posted on the Copyright Office website.

Four days of public hearings were conducted by the Register in May 2009 at Stanford University and the Library of Congress. Thirty–seven witnesses, representing proponents and opponents of proposed classes of works, testified on twenty–one proposed classes. Following the hearings, the Copyright Office sent follow–up questions to some of the hearing witnesses, and responses were received during the summer. The entire record in this and the previous section 1201(a)(1)(C) rulemakings are available on the Office's website, http://www.copyright.gov/1201/index.html.

On October 27, 2009, the Librarian of Congress published in the Federal Register a Notice of an interim rule, extending the existing classes of works exempted from the prohibition until the conclusion of the current rulemaking proceeding and the designation of any classes of works to be exempt from the prohibition for the ensuing three–year period by the Librarian of Congress.

III. The Designated Classes

A. Motion pictures on DVDs that are lawfully made and acquired and that are protected by the Content Scrambling System when circumvention is accomplished solely in order to accomplish the incorporation of short portions of motion pictures into new works for the purpose of criticism or comment, and where the person engaging in circumvention believes and has reasonable grounds for believing that circumvention is necessary to fulfill the purpose of the use in the following instances:

- **Educational uses by college and university professors and by college and university film and media studies students;**
- **Documentary filmmaking;**
- **Noncommercial videos.**

DVDs protected by the Content Scrambling System (CSS) have been an issue in this rulemaking proceeding since its inception in 2000. In the 2006 rulemaking proceeding, the Librarian designated a class of "[a]udiovisual works included in the educational library of a college or university's film or media studies department, when circumvention is accomplished for the purpose of making compilations of portions of those works for educational use in the classroom by media studies or film professors."

In the current rulemaking, educators sought to renew and, in a number of ways, to expand the existing class of works designated in the last proceeding. The proposed expansions of the class involved extending the class to include all of the motion pictures on CSS–protected DVDs contained in a college or university library (rather than just a film or media studies department) and to encompass classroom use by all college and university professors and students as well as elementary and secondary school teachers and students.

Apart from educators, others sought designation of similar classes of works to address what they contended are adverse impacts on their ability to engage in noninfringing uses of copyrighted works. Documentary filmmakers argued that the prohibition on circumvention adversely affects their ability to use portions of motion pictures in documentary films, many of which would qualify as noninfringing uses for the purposes of criticism or comment. Creators of noncommercial videos that incorporate portions of

motion pictures contained on CSS–protected DVDs also alleged that the prohibition on circumvention adversely affected their ability to engage in noninfringing criticism or comment.

Based on the record in this proceeding, the Register determines that CSS is a technological measure that protects access to copyrighted motion pictures. She also determined that a substantial number of uses in the record with respect to education, documentary filmmaking, and noncommercial videos qualify as noninfringing uses.

NTIA supports expansion of the existing class of audiovisual works to include all college and university level instructors and students but does not believe the record justifies an expansion that would include elementary and secondary school teachers and students. NTIA also recommended limiting the class to address the use of DVDs included in the educational library or departments of the academic institutions. It also supported the proposal to designate a class of works for the benefit of documentary filmmakers. Finally, it expressed general support for the request to designate a class that would permit extraction of film clips for use in noncommercial videos, but suggested a requirement that the clips from the audiovisual work must be for remix videos that are used for social comment or criticism, or that are used in transformative–type works according to established fair use principles.

Given that all of these proposed classes at issue involved motion pictures on CSS–protected DVDs, the Register recommends that the Librarian designate a single class addressing all of these adversely affected uses of DVDs. However, the Register concludes that the record does not support all of the proposed expansions of the existing class of audiovisual works and that in at least one respect, the record supported a contraction of that class.

What the record does demonstrate is that college and university educators, college and university film and media studies students, documentary filmmakers, and creators of noncommercial videos frequently make and use short film clips from motion pictures to engage in criticism or commentary about those motion pictures, and that in many cases it is necessary to be able to make and incorporate high–quality film clips in order effectively to engage in such criticism or commentary. In such cases, it will be difficult or impossible to engage in the noninfringing use without circumventing CSS in order to make high–quality copies of short portions of the motion pictures. Because not all uses by educators, documentary filmmakers or makers of noncommerical videos will be noninfringing or will require such high–quality copies, the class of works recommended by the Register is not as extensive as what was requested by some proponents, and the class contains some limitations. First, proponents for educators failed to demonstrate that high–quality resolution film clips are necessary for K–12 teachers and students, or for college and university students other than film and media studies students. Because other means, such as the use of screen capture software, exist that permit the making of lower–quality film clips without circumventing access controls, the Register finds no justification in the record for expanding the class of works to include such persons as express beneficiaries of the designation of this class of works.

Second, the circumvention of access controls must be accomplished solely in order to enable incorporation of short portions of motion pictures into new works for purposes of criticism of comment. The justification offered by proponents for designating a class of audiovisual works, and a key element of the Register's conclusion that the intended uses will frequently be noninfringing fair uses, was that the uses that justify designation of the class were for purposes of criticism and commentary, which are classic "fair use" purposes. Moreover, all of the evidence in the rulemaking demonstrating noninfringing uses involved the use of short portions of motion pictures. While the Register is persuaded that it would be difficult and imprudent to quantify the precise contours of what constitutes a "short portion," there was no evidence in the record to support the conclusion that anything more than incorporating relatively short portions of motion pictures into a new work for purposes of criticism or commentary would be a fair use. Similarly, in order to meet the requirements of the designated class of works, a new work must be created, whether that work is a compilation of clips for use in the classroom, or a documentary or video incorporating a clip or clips from a copyrighted motion picture.

The final requirement of the recommended class is that the person engaging in the circumvention must reasonably believe that the circumvention is necessary in order to fulfill the purpose of the use – *i.e.*, the noninfringing criticism or commentary. Because alternatives to circumvention such as video capture may suffice in many, and perhaps the vast majority of situations, users must make a reasonable determination that heightened quality is necessary to achieve the desired goal. The justification for designating this class of works is that some criticism and/or commentary requires the use of high–quality portions of motion pictures in order to adequately present the speech–related purpose of the use. Where alternatives to circumvention can be used to achieve the noninfringing purpose, such non–circumventing alternatives should be used. Thus, this limitation seeks to avoid an overly broad class of works given the limited number of uses that may require circumvention to achieve the intended noninfringing end.

The class has also been limited to include only motion pictures rather than all audiovisual works. Because there was no evidence presented that addressed any audiovisual works other than motion pictures, there was no basis for including the somewhat broader class of audiovisual works (which includes not only motion pictures, but also works such as video games and slide presentations).

B. Computer programs that enable wireless telephone handsets to execute software applications, where circumvention is accomplished for the sole purpose of enabling interoperability of such applications, when they have been lawfully obtained, with computer programs on the telephone handset.

The Electronic Frontier Foundation (EFF) proposed a class that would allow circumvention of the technological measures contained on certain wireless phone handsets (known as "smartphones") that prevent third–party software applications from being installed and run on such phones. This circumvention activity is colloquially referred to as "jailbreaking" a phone.

The factual record with respect to this proposed class focused primarily on Apple's iPhone, although there are allegations in the record involving other mobile phone manufacturers as well. EFF asserted, and Apple's testimony confirmed, that any software or application to be used on the iPhone must be validated with the firmware that controls the iPhone's operation. This validation process is intended to make it impossible for an owner of an iPhone to install and use third–party applications on the iPhone that have not been approved for distribution through Apple's iTunes App Store.

EFF argued that jailbreaking is a noninfringing activity for three reasons. First, it alleged that at least in some cases, jailbreaking can be done within

the scope of what is authorized under the license Apple grants to every iPhone user. It stated that "[t]o the extent a jailbreaking technique does not modify any of the individual software programs that comprise the iPhone firmware collection, but instead simply adds additional software components to the collection, the practice may not exceed the scope of the license to 'use the iPhone software' or constitute a 'modification' of any Apple software components, any more than the addition of a new printer driver to a computer constitutes a 'modification' of the operating system already installed on the computer."

Second, EFF asserted that "to the extent a jailbreak technique requires the reproduction or adaptation of existing firmware beyond the scope of any license or other authorization by the copyright owner, it would fall within the ambit of 17 U.S.C. § 117(a)." EFF contended that the iPhone owner is also the owner of the copy of the firmware on the iPhone and that jailbreaking falls within the owner's privilege "to adapt those copies to add new capabilities, so long as the changes do not "harm the interests of the copyright proprietor."

Finally, EFF contended that in any event, jailbreaking constitutes fair use of the firmware because jailbreaking is a purely noncommercial, private use of computer software, a largely functional work that operates the phone, and that the phone owner must reuse the vast majority of the original firmware in order for the phone to operate. Because the phone owner is simply modifying the firmware for her own use on the phone, there is no harm to the market for the firmware.

Apple responded that jailbreaking by purchasers of the iPhone is a violation of the prohibition against circumvention of access controls. It stated that its validation system is necessary to protect consumers and Apple from harm. Apple further contended that modifying Apple's operating system constituted the creation of an infringing derivative work. Specifically, Apple argued that because purchasers of an iPhone are licensees, not owners, of the computer programs contained on the iPhone, Section 117 of the Copyright Act is inapplicable as an exemption to the adaptation right. Apple further argued that the fair use defense codified in § 107 would not apply to jailbreaking activity under the statutory factors.

Based on the record, the Register has determined that the encryption and authentication processes on the iPhone's computer programs are technological measures that control access to the copyrighted work (the firmware) for purposes of § 1201(a)(1). Moreover, the Register finds that the evidence supports the contention that a technological protection measure is adversely affecting adding applications to the iPhone. The critical question is whether jailbreaking an iPhone in order to add applications to the phone constitutes a noninfringing use.

The Register does not find that the contract between Apple and purchasers of the iPhone authorize modification of the iPhone. Moreover, the Register cannot clearly determine whether the various versions of the iPhone contracts with consumers constituted a sale or license of a copy of the computer programs contained on the iPhone. The contractual language is unclear with respect to particular copies of the computer programs. Although Apple retains ownership of the computer programs, the contracts also expressly grant users ownership of the device. Since the "copy" of the computer program is fixed in hardware of the device, it is unclear what ownership status is to be given to the particular copy of the computer program contained in the device. Apple unquestionably has retained ownership of the intangible works, but the ownership of the particular copies of those works is unclear.

Moreover, the state of the law with respect to the determination of ownership is in a state of flux in the courts. Both proponents and opponents cited case law in support of their respective positions, but the Register finds it impossible to determine how a court would resolve the issue of ownership on the facts presented here. While both parties agreed that the Second Circuit's decision in *Krause v. Titleserv*, 402 F.3d 119 (2d Cir. 2005) is "good law," that case dealt with a situation that is distinguishable in many respects from the present situation. The Register finds that the *Krause* case does not provide clear guidance as to how resolve the current issue.

However, the Register does find that the proponent's fair use argument is compelling and consistent with the congressional interest in interoperability. The four fair use factors tend to weigh in favor of a finding of fair use.

Under the first factor in Section 107, it appears fair to say that the purpose and character of the modification of the operating system is to engage in a private, noncommercial use intended to add functionality to a device owned by the person making the modification, albeit beyond what Apple has determined to be acceptable. The user is not engaging in any commercial exploitation of the firmware, at least not when the jailbreaking is done for the user's own private use of the device.

The fact that the person engaging in jailbreaking is doing so in order to use Apple's firmware on the device that it was designed to operate, which the jailbreaking user owns, and to use it for precisely the purpose for which it was designed (but for the fact that it has been modified to run applications not approved by Apple) favors a finding that the purpose and character of the use is innocuous at worst and beneficial at best. Apple's objections to the installation and use of "unapproved" applications appears to have nothing to do with its interests as the owner of copyrights in the computer programs embodied in the iPhone, and running the unapproved applications has no adverse effect on those interests. Rather, Apple's objections relate to its interests as a manufacturer and distributor of a device, the iPhone.

Moreover, Congress has determined that reverse engineering for the purpose of making computer programs interoperable is desirable when certain conditions are met, and has crafted a specific exemption from Section 1201(a)'s prohibition on circumvention in such cases. While an iPhone owner who "jailbreaks" does not fall within the four corners of the statutory exemption in Section 1201(f), the fact that he or she is engaging in jailbreaking in order to make the iPhone's firmware interoperable with an application specially created for the iPhone suggests that the purpose and character of the use are favored.

Turning to the second fair use factor, it is customary for operating systems – functional works – to enable third party programs to interoperate with them. It does not and should not infringe any of the exclusive rights of the copyright owner to run an application program on a computer over the objections of the owner of the copyright in the computer's operating system. Thus, if Apple sought to restrict the computer programs that could be run on its computers, there would be no basis for copyright law to assist Apple in protecting its restrictive business model. The second factor decisively favors a finding of fair use.

Turning to the third factor, "the amount and substantiality of the portion used in relation to the copyrighted work as a whole," EFF admitted that because the Apple firmware is necessary in order to operate the iPhone, it is necessary for individuals who jailbreak their phones to reuse the vast majority of the original firmware. However, the amount of the copyrighted work

modified in a typical jailbreaking scenario is fewer than 50 bytes of code out of more than 8 million bytes, or approximately 1/160,000 of the copyrighted work as a whole. Where the alleged infringement consists of the making of an unauthorized derivative work, and the only modifications are so *de minimis*, the fact that iPhone users are using almost the entire iPhone firmware for the purpose for which it was provided to them by Apple undermines the significance of this factor. While the third factor arguably disfavors a fair use finding, the weight to be given to it under the circumstances is slight.

Addressing the fourth factor, "the effect of the use upon the potential market for or value of the copyrighted work," EFF asserted that the firmware has no independent economic value, pointing out that the iPhone firmware is not sold separately, but is simply included when one purchases an iPhone. EFF also argued that the ability to lawfully jailbreak a phone will increase, not decrease, overall sales of the phones because users will know that by jailbreaking, they can "take advantage of a wider array of third party applications.

Apple responded that unauthorized uses diminish the value of the copyrighted works to Apple. However, Apple is not concerned that the practice of jailbreaking will displace sales of its firmware or of iPhones; indeed, since one cannot engage in that practice unless one has acquired an iPhone, it would be difficult to make that argument. Rather, the harm that Apple fears is harm to its reputation. Apple is concerned that jailbreaking will breach the integrity of the iPhone's "ecosystem." The Register concludes that such alleged adverse effects are not in the nature of the harm that the fourth fair use factor is intended to address.

NTIA does not support designating the proposed class. While acknowledging that permitting iPhone jailbreaking could facilitate innovation, better serve customers, and encourage the market to utilize open platforms, NTIA believes "it might just as likely deter innovation by not allowing the developer to recoup its development costs and to be rewarded for its innovation." NTIA also believes that the proponents' "public policy" arguments should properly be considered by expert regulatory agencies, the Department of Justice, and the Congress. It concludes that the "Register ought only to consider recommending the proposed class if she concludes that the access control measure would be a bar to actions that the above bodies might take in response to policy judgments made at those agencies.

The Register appreciates that many regulatory and policy issues pertaining to jailbreaking and smartphones fall within the competence of other agencies, and the Register has no desire to interfere with those agencies' jurisdiction. However, the only question before the Register and the Librarian is whether Section 1201(a)(1)'s prohibition on circumvention is adversely affecting the ability of users of smartphones from engaging in noninfringing uses of the firmware on their devices. No other agency has the power to limit the application of the prohibition on circumvention in this (or any other) context. Any future action by a federal agency to permit jailbreaking will be futile without an exemption from liability under Section 1201(a)(1), but if a class is not designated in this rulemaking, all that it will mean is that Section 1201 cannot be used to prevent jailbreaking, without prejudice to any other legal or regulatory authority that might limit or prohibit jailbreaking.

On balance, the Register concludes that when one jailbreaks a smartphone in order to make the operating system on that phone interoperable with an independently created application that has not been approved by the maker of the smartphone or the maker of its operating system, the modifications that are made purely for the purpose of such interoperability are fair uses. Case law and Congressional enactments reflect a judgment that interoperability is favored. The Register also finds that designating a class of works that would permit jailbreaking for purposes of interoperability will not adversely affect the market for or value of the copyrighted works to the copyright owner.

Accordingly, the Register recommends that the Librarian designate the following class of works:

> Computer programs that enable wireless communication handsets to execute software applications, where circumvention is accomplished for the sole purpose of enabling interoperability of such applications, when they have been lawfully obtained, with computer programs on the telephone handset.

C. Computer programs, in the form of firmware or software, that enable used wireless telephone handsets to connect to a wireless telecommunications network, when circumvention is initiated by the owner of the copy of the computer program solely in order to connect to a wireless telecommunications network and access to the network is authorized by the operator of the network.

In 2006, the Librarian designated a class of "Computer programs in the form of firmware that enable wireless telephone handsets to connect to a wireless telephone communication network, when circumvention is accomplished for the sole purpose of lawfully connecting to a wireless telephone communication network," in order to permit the circumvention of access controls that prevent the owner of a cellphone from switching service on that cellphone to another wireless communication network. The access controls in question are embedded in the mobile phone's firmware or software and prevent the mobile phone owner from gaining access to the settings that connect the mobile phone to a network (*e.g.*, Verizon's) other than the original network (*e.g.*, AT&T's). Beneficiaries of that designation have now requested that the Librarian again designate a similar class of works. Representatives of wireless communication networks have opposed the request.

As she did three years ago, the Register recognizes that the requests fall within the zone of interest subject to this rulemaking. That is, circumventing a mobile phone lock, without the authority of the copyright owner, to gain access to the protected work (i.e., the firmware) is likely actionable under Section 1201(a)(1) of the Act. Further, a wireless carrier who is harmed by the circumvention of the software lock may bring an action for violation of Section 1201(a)(1) against anyone who circumvents such a technological protection measure.

The proponents of this class have presented a *prima facie* case that the prohibition on circumvention has had an adverse effect on noninfringing uses of firmware on wireless telephone handsets. Proponents have shown that mobile phone locks prevent consumers from legally accessing alternative wireless networks with the phone of their choice. This is the same type of activity that was at issue when the existing class of works was being considered in 2006.

The wireless networks asserted that by using a cellphone on another network, an act that is not authorized

under their contracts, the customers infringe the exclusive right to reproduce copies of the computer software, because use of the mobile phones necessarily involves the making of copies in the random access memory of the mobile phone. Moreover, they asserted that the alteration of the computer programs in order enable the mobile phones to connect to another network constituted the unlawful making of derivative works, in violation of the copyright owner's exclusive right to prepare derivative works.

Proponents of the class asserted that the owners of mobile phones are also the owners of the copies of the computer programs on those phones and that as owners they are entitled to exercise their privileges under Section 117 of the Copyright Act, which gives the owner of a copy of a computer program the privilege to make or authorize the making of another copy or adaptation of that computer program under certain circumstances. The wireless networks responded that their contracts with their customers restrict the uses of the customers' mobile phones and retain ownership of the copies of the computer programs that are loaded onto the mobile phones and enable the phones to operate. They also asserted those contractual restrictions make the networks – and not the customers – the owners of the copies of the computer programs, and therefore the privilege under Section 117 to make copies and adaptations of computer programs does not apply because that privilege is enjoyed only by the owner of the copy of the computer program. They also argued that the privilege does not extend to the customers' conduct because the making of a new copy or adaptation in order to use the mobile phone on a network other than the original network is not, as the statute requires, "an essential step in the utilization of the computer program in conjunction with a machine."

The Register has reviewed the appropriate case law with respect to who is the "owner" of a copy of a computer program for purposes of Section 117 when a license or agreement imposes restrictions on the use of the computer program and has concluded that the state of the law is unclear. The Register cannot determine whether most mobile phone owners are also the owners of the copies of the computer programs on their mobile phones. However, based on the record in this proceeding, the Register finds that the proponents of the class have made a *prima facie* case that mobile phone owners are the owners of those copies. While the wireless networks have made a case that many mobile phone owners may not own the computer program copies because the wireless network's contract with the consumer retains ownership of the copies, they have not presented evidence that this is always the case even if their interpretation of the law governing ownership is correct. The record therefore leads to the conclusion that a substantial portion of mobile phone owners also own the copies of the software on their phones.

The Register also concludes that when the owner of a mobile makes RAM copies of the software in order to operate the phone – even if she is operating it on another network – she is making a noninfringing use of the software under Section 117 because the making of that copy is an essential step in the utilization of that software in conjunction with a machine.

Similarly, the making of modifications in the computer program in order to enable the mobile phone to operate on another network would be a noninfringing act under Section 117. As a general rule, anyone who wishes to switch her mobile phone from one network to another must alter some information embedded in the device. However, in a substantial number of cases those alterations do not appear to implicate Section 117 because the elimination and insertion of codes or digits, or completely reflashing a phone, cannot be considered an infringement of the computer program controlling the device. When specific codes or digits are altered to identify the new network to which the phone will connect, those minor alterations of data also do not implicate any of the exclusive rights of copyright owners. And complete reflashing does not even constitute circumvention of an access control because it actually deletes the copy of the entire work that had been protected by the access control, thereby permanently denying access to that work.

In those cases where more substantial changes must be made to the computer program in order to enable use of the mobile phone on another network, those changes might implicate the exclusive right to prepare derivative works. However, those changes would be privileged under Section 117, which permits the making of "a new copy or adaptation" that is created as an essential step in the utilization of the computer program in conjunction with a machine.

Section 1201(a)(1)(C) factors. As was the case in 2006, the Register finds that the four factors enumerated in Section 1201(a)(1)(C)(i)–(iv) do not weigh either in favor of or against designation of the proposed class of works. Moreover, because it appears that the opposition to designating the proposed class is based primarily on the desires of wireless carriers to preserve an existing business model that has little if anything to do with protecting works of authorship, it is appropriate to address the additional factor ("such other factors as the Librarian considers appropriate") set forth in Section 1201(a)(1)(C)(v). It seems clear that the primary purpose of the locks is to keep consumers bound to their existing networks, rather than to protect the rights of copyright owners in their capacity as copyright owners. This observation is not a criticism of the mobile phone industry's business plans and practices, which may well be justified for reasons having nothing to do with copyright law and policy, but simply a recognition of existing circumstances. Because there appear to be no copyright–based reasons why circumvention under these circumstances should not be permitted, the Register recommends that the Librarian designate a class of works similar to the class designated in 2006.

The Register notes that the 2006 class, and the new one designated herein, are both narrow, apply only to claims under Section 1201(a)(1), and do not establish a general federal policy of ensuring that customers have the freedom to switch wireless communications service providers. The designated classes, both new and old, simply reflect a conclusion that unlocking a mobile phone to be used on another wireless network does not ordinarily constitute copyright infringement and that Section 1201(a)(1), a statute intended to protect copyright interests, should not be used to prevent mobile phone owners from engaging in such noninfringing activity.

NTIA supported designation of a class similar to the class designated in 2006, but proposed that while non–profit entities should be permitted to take advantage of the exemption, commercial users should not. The Register's recommendation, in contrast, would permit some commercial activity, so long as it (1) involves only used handsets, (2) is done by the owner of the copy of the computer program, and (3) is done "solely in order to access such a wireless telecommunications network and access to the network is authorized by the operator of the network." The Register believes that these limitations ensure that the designation of this class will not benefit those who engage in the type of commercial activity that is at the heart of the objections of opponents of the proposed class: the "bulk resellers" who purchase new mobile phone

handsets at subsidized prices and, without actually using them on the networks of the carriers who market those handsets, resell them for profit. The type of commercial activity that would be permitted would be the resale of used handsets after the owners of the handsets have used them and then given or sold them to somebody else, who then resells them just as a used bookstore sells used books. The Register acknowledges that NTIA's general view that the class should not extend to any commercial activity is inconsistent with aspects of the Register's recommendation, but believes that to the extent her recommendation goes beyond what NTIA was willing to endorse, it does so in a way that, in NTIA's words, "prevents *unlawful* use by those that would misuse the exemption for commercial purposes."

However, the applicability of the proposed class to commercial recyclers, such as the ones who had proposed the original class of works, is limited. When the commercial recycler has made a derivative work that is within Section 117's privilege for making "adaptations," the recycler is subject to a significant limitation contained within Section 117: such adaptations may be transferred only with the authorization of the copyright owner. Thus, a recycler who prepares such an adaptation may not transfer ownership of the copy of the adapted computer program to anybody else without the authorization of the copyright owner. On the other hand, a recycler who has not prepared an adaptation is free to resell the mobile phone along with the copy of the computer program contained within it.

The new class is also cabined by existing law in two important respects. First, as with any regulation under Section 1201(a)(1)(C) and (D), the designation of this class offers no safe harbor from liability under Section 1201(a)(2) which strictly prohibits an entity from offering a circumvention service. Second, a wireless carrier's "Terms of Purchase" and "Terms of Service", which are binding contracts, still impose use restrictions on consumers notwithstanding the designation of this class. However, the wireless carrier must seek a remedy by asserting a claim of breach of contract, and not a claim under Section 1201(a)(1).

D. Video games accessible on personal computers and protected by technological protection measures that control access to lawfully obtained works, when circumvention is accomplished solely for the purpose of good faith testing for, investigating, or correcting security flaws or vulnerabilities, if:

•The information derived from the security testing is used primarily to promote the security of the owner or operator of a computer, computer system, or computer network; and

•The information derived from the security testing is used or maintained in a manner that does not facilitate copyright infringement or a violation of applicable law.

Professor J. Alex Halderman proposed two classes of works relating to investigating and correcting security flaws or vulnerabilities created or exploited by technological measures protecting certain kinds of works. The Register concludes that Halderman has made the case for a class pertaining to video games, but has not made the case for a broader class pertaining to literary works, sound recordings and audiovisual works.

In each case, Halderman qualified the scope of the proposed class by restricting it to (1) lawfully obtained works protected by access control measures that create or exploit security flaws or vulnerabilities that compromise the security of personal computers, and (2) cases where circumvention is accomplished solely for the purpose of good faith testing, investigating, or correcting such security flaws or vulnerabilities.

In the current proceeding, Halderman did not present any evidence that the prohibition on circumvention is adversely affecting or is likely, in the next three years, to adversely affect the ability to engage in noninfringing uses of sound recordings or audiovisual works, or of literary works except to the extent that video games may be considered, in part, to constitute audiovisual works associated with such sound recordings. There is no information in the record that would justify again exempting the class designated three years ago.

However, Halderman did present evidence and legal analysis in support of a class of works limited to video games. Under Section 102(a) of the Copyright Act, video games are "hybrid" in that they fall within two statutory classes of works. Video games typically are, in part, computer programs, which are a subset of the statutory category of "literary works." The evidence related to two types of access controls applied to video games: Macrovision's SafeDisc software and Sony's SecuRom software. Halderman asserted that the measures constitute access controls because, in both cases, the measures authenticate discs and enforce access policies.

The alleged underlying noninfringing use involved is two–fold. First, purchasers of video games (including researchers) are engaged in noninfringing use when they install, access, and play authorized copies of such video games while further seeking to protect the security of their computers. Second, researchers in lawful possession of copies of games are engaged in noninfringing uses when they seek solely to research and investigate whether a video game, or the technological measure protecting it, creates security vulnerabilities or flaws. Professor Halderman asserted that such good faith research that does not cause or promote infringement generally constitutes fair use.

Halderman alleged that SecuROM may create security flaws or vulnerabilities. He referred to a number of articles and class action lawsuits suggesting that SecuROM may contain flaws or cause vulnerabilities. He further stated that a single definitive scientific study might quell the "panic, protests, and litigation" to "what may turn out to be nonexistent or easily reparable faults."

Halderman also alleged that harm is caused by Macrovision's SafeDisc. He alleged that SafeDisc was pre–installed on "nearly every copy of the Microsoft Windows XP and Windows 2003 operating systems, [and that] the vulnerability affected nearly one billion PCs, two thousand times more than the [Sony] rootkit,"" the security vulnerability that serviced as the factual basis for designating a class in the last rulemaking. He claimed that the security flaw created by SafeDisc was much more dangerous than the Sony rootkit flaw involved in the previous rulemaking that concluded in 2006, because this flaw allowed attackers to execute unrestricted 'kernel–level' code and read or write to any area of the hard disk or memory of the PC, thus facilitating the complete compromise of the security of the PC.

Opponents raised three principal arguments against Halderman's proposal. First, they argued that he provided little concrete or documented evidence that any security flaws or vulnerabilities associated with access control mechanisms used in connection with video games exist. Second, they argued that there is no evidence that research has been chilled, pointing to

what they called a robust ecosystem within which security experts routinely identify such flaws, collaborate on remedies, and disseminate information to alert computer users of the problems and them to solutions. Third, they argued that Professor Halderman failed to establish that the conduct at issue is prohibited by Section 1201(a)(1), since a statutory exemption (in particular, 17 U.S.C. 1201(j) might apply to the security research.

NTIA has advised the Register that he believes the record supports designating the requested class relating to video games and other works accessible on personal computers. NTIA believed that the proponents have "persuasively argued that without a research exemption, research into all current and future vulnerabilities will be and is chilled now," and concurred with the Librarian's conclusion in 2006 that the research may not be covered completely by the existing statutory exemptions. NTIA further believes that although the Sony Rootkit vulnerability no longer exists, "it seems to be a certainty that new vulnerabilities *will* emerge in the next three years."

Overall, the Register has concluded that the factors set forth in 17 U.S.C. 107 tend to strongly support a finding that such good faith research constitutes fair use. The socially productive purpose of investigating computer security and informing the public do not involve use of the creative aspects of the work and are unlikely to have an adverse effect on the market for or value of the copyrighted work itself. The proponents established an underlying noninfringing use.

The next question is whether the prohibition is causing an adverse effect on such noninfringing uses. The record is essentially limited to SecuRom and SafeDisc. The evidence relating to SecuRom tends to be highly speculative, but Professor Halderman asserted that "this situation has been crying out for an investigation by reputable security researchers in order to rigorously determine the nature of the problem that this system cause[s], and dispel this uncertainty about exactly what's going on." He believed that the prohibition on circumvention is at least in part to blame for the lack of rigorous, independent analysis.

In contrast to SecuROM, SafeDisc has created a verifiable security vulnerability on a large number of computers. Opponents of the proposed class did not dispute that SafeDisc created a security vulnerability, but they argued that the security flaw was patched by Microsoft in 2007, without the need of an exemption. However, SafeDisc was pre–loaded on nearly every copy of Microsoft's Windows XP and Windows 2003 operating systems and was on the market for over six years before a security researcher discovered malware exploiting the security. The vulnerability had the capacity to affect nearly *one billion* PCs.

The record supports the conclusion that since the 2006 rulemaking, substantial vulnerabilities have existed with respect to video games – certainly with respect to SafeDisc and possibly with respect to SecuROM. Within the same class of works, security researchers have proposed investigation of unconfirmed allegations of security vulnerabilities on another technological protection measure (SecureROM) that protects access, but have expressed unwillingness to do so without clear legal authority. Aggregating the evidentiary record, the proponents have shown that they need to be able to fix flaws that are identified in this class of works and they need to be able to investigate other alleged security vulnerabilities in this class.

Opponents argued that there may be no need to designate a class in this proceeding because circumvention may already be excused pursuant to Section 1201(j), which provides an exemption for security testing. However, the Register has concluded, as she did three years ago, that it is unclear whether Section 1201(j) applies in cases where the person engaging in security testing is not seeking to gain access to, in the words of Section 1201(j), "a computer, computer system, or computer network." Therefore, it is appropriate to designate a class of works in this proceeding.

Section 1201(j) does, however, influence both the decision to recommend designation of a class and the decision on how to fashion the class. Section 1201(j) is evidence of Congress's general concern to permit circumvention under appropriate circumstances for purposes of security testing, and it also is evidence of the conditions Congress believes should be imposed on those who take advantage of an exemption for security testing. Accordingly the Register recommends that the Librarian designate a class of video games protected by access controls, when circumvention is done for the purpose of good faith testing for, investigating, or correcting security flaws or vulnerabilities. Further refinements to the class include a requirement that the information derived from the testing be used primarily to promote the security of the owner or operator of a computer, computer system, or computer network; and a requirement that that information be used or maintained in a manner that does not facilitate copyright infringement or a violation of applicable law.

E. Computer programs protected by dongles that prevent access due to malfunction or damage and which are obsolete. A dongle shall be considered obsolete if it is no longer manufactured or if a replacement or repair is no longer reasonably available in the commercial marketplace.

Three years ago, the Librarian designated the above–referenced class of works, which is similar to classes of works designated in each of the previous rulemakings. In the current proceeding the proponent of that class, Joseph V. Montoro, Jr., on behalf of Spectrum Software, Inc., has proposed an expanded class of works related to dongles. Dongles are a type of hardware that attach to either the printer port or the USB port of a computer in order to make secured software function. Montoro stated that dongles are sold along with certain types of software and are necessary for the user to access that software on a computer. He further explained that in order for the dongle to operate properly, the operating system must support the hardware and the required device driver must be installed. Montoro submitted that there are four situations where an exemption is necessary to rectify actual harm: (1) when dongles become obsolete; (2) when dongles fail; (3) where there are incompatibilities between the dongle and the operating system, and (4) where there are incompatibilities between the dongle and certain hardware. Montoro had stressed that his proposal is as much about the computer ecosystem as it is about dongles, in particular. He said that it is important to realize that the dongle, the operating system software and the computer hardware work in tandem and that the proposed class necessarily covers all of these parts.

Representatives of the computer software industry stated that they do not oppose renewing the existing class of works, but object to expanding it beyond its current terms.

As in 2006, the Register finds that the case has been made for designation of a class of works protected by dongles. Montoro has effectively met his burden of proof for a class relating to dongles that are malfunctioning or damaged and that are obsolete, a point on which there is no disagreement in the record. When the dongle no longer functions and is obsolete, there is a substantial adverse effect on noninfringing uses because there is no other means to access the

lawfully acquired software. When a dongle malfunctions or becomes obsolete, a person lawfully entitled to access the software should be able to rely on self–help if remedial measures are not reasonably available in the commercial marketplace. Moreover, the record reveals no evidence of harm to the market for, or value of, copyrighted works protected by dongles since the designation of the original class of works in 2000.

The class, however, should not include cases where a replacement dongle is reasonably available or can be easily repaired. Some copyright owners legitimately use dongles to control access to a computer program by unauthorized users and are entitled to the full benefit of the prohibition as long as reasonable accommodations are offered for malfunctioning or damaged dongles. Montoro has not demonstrated that the standard previously applied – reasonably available in the marketplace – is insufficient to meet the needs of users of copyrighted works whose dongles malfunction or are damaged.

Montoro also argues that the current class should be expanded to reach situations involving incompatibility between the dongle and a new or upgraded version of an operating system. The Register finds that he has failed to submit cogent evidence to support an expanded class in this context. A sufficient record would require more detail about the precise cause of the problems, the scope of the problem, and the noninfringing means available to resolve the problem.

The evidence presented in the record also does not support Montoro's request to expand the class in relation to obsolete hardware, specifically parallel ports on computers. While it appears to be the case that parallel ports may be obsolescent, there is insufficient evidence in the record to support the conclusion that parallel ports are currently, or in the next three years will be, obsolete. In order to make a case for an expanded class in relation to obsolete hardware, Montoro would have to demonstrate that the hardware is, or is likely to be, obsolete in the next three year period (either as a pre–installed item or as an optional configuration), that the unavailability of this obsolete hardware would adversely affect noninfringing uses, and that copyright owners are not meeting the legitimate needs of existing users.

IV. Other Classes Considered, but Not Recommended

A. Subscription based services that offer DRM–protected streaming video where the provider has only made available players for a limited number of platforms, effectively creating an access control that requires a specific operating system version and/or set of hardware to view purchased material; and Motion pictures protected by anti–access measures, such that access to the motion picture content requires use of a certain platform.

Two proposals sought designation of classes of works that would allow circumvention of technological protection measures in order to provide access to motion pictures on platforms other than those authorized by content providers or their licensees.

Megan Carney proposed a class of works in order to allow circumvention of DRM–protected streaming videos offered by subscription based services, where the provider has made players available only for a limited number of platforms. She argued that this restriction of viewing options effectively constitutes an access control by requiring a specific operating system version and/or set of hardware to view purchased material. She sought to use Netflix's "Watch Instantly" streaming video feature, which installs digital rights management and runs only on certain platforms of computer software and hardware. "Watch Instantly" is included, at no charge, in the monthly Netflix membership, but Carney said that she is unable to use it because she does not own a computer that operates on a compatible platform (PCs running Windows or Apple computers with Intel chips). Carney proposed that the Librarian designate a class or works in order to allow a user in her situation to create a separate program to circumvent the DRM on the streaming service system in order to view streaming video content made available by Netflix.

Another proponent, Mark Rizik, proposed a class of works to allow the circumvention of motion pictures on DVDs protected by the CSS access control system, which requires the use of a certain platform for access. Specifically, Rizik would like to view, on a Linux–based computer that does not have a CSS–licensed video player, DVDs that are only viewable on CSS–licensed players. Rizik sought designation of a class in order to permit the creation of an unencrypted digital copy of the DVD by decrypting and extracting contents of DVDs for personal viewing purposes on Linux operating systems.

The Motion Picture Association of America, Time Warner, and a coalition of copyright industry trade associations (the "Joint Creators") opposed these requests. NTIA has advised that it believes that the record does not support granting the requests.

The proponents of both classes of works sought to circumvent the access controls because, they contended, it is too expensive to acquire the hardware and software with the minimum requirements necessary to view motion pictures on the distribution mechanism of their choice. They also argued that there are no reasonable, noninfringing alternatives to circumvention for those wishing to engage in the activity affected by these platform requirements.

Similar classes to those proposed by Carney and Rizik have been requested and denied in the past three rulemakings. Although the streaming video proposal presents a new factual situation, the Register concludes that the legal arguments are fundamentally similar to the proposals relating to the viewing of DVDs on computers with Linux operating systems that were advanced in the previous three rulemakings, when those proposals were rejected. Likewise, arguments for the streaming video and Linux classes fail for fundamentally the same reasons as the earlier Linux proposals, and the Register cannot recommend that the Librarian designate either of these proposed classes of works.

In these rulemakings, proposed classes have regularly been rejected in cases where a user who wished to engage in a noninfringing use of a work using a particular device already had the ability lawfully to engage in the same noninfringing use of the work using a different device. The same principle applies here. Alternative means exist to gain access to and view the motion pictures that Carney and Rizik wish to view after circumventing access controls. In any event, it is unclear from the record regarding streaming videos what is actually prohibiting Carney from being able to access the Netflix "Watch Instantly" feature and, in particular, whether the technological issue is centered around an access control. It cannot be discerned from the record whether Carney cannot gain access due to digital rights management or due to software and/or hardware incompatibility.

Regarding DVD circumvention, many operating systems on the market enable authorized access to the works contained on CSS–protected DVDs. Moreover, CSS–compatible DVD players are in fact available for some Linux systems.

Further, many alternatives exist for both Carney and Rizik, including other streaming video alternatives and online content download sites. There are many reasonably–priced alternatives that may fulfill consumers' wants and needs, including purchasing a DVD player. Mere consumer inconvenience is not sufficient to support the designation of a class of works. The statute does not provide that this rulemaking is to enable the most convenient method of consuming video content. The proponents have merely advanced requests in order to satisfy their convenience and preferences as to how they would like to access media and have failed to demonstrate a need for remedial action. Accordingly, the Register cannot recommend the Librarian designate either proposed class in light of the alternatives that exist in the marketplace today.

B. Lawfully purchased sound recordings, audiovisual works, and software programs distributed commercially in digital format by online music and media stores and protected by technological measures that depend on the continued availability of authenticating servers, when such authenticating servers cease functioning because the store fails or for other reasons; and

Lawfully purchased sound recordings, audiovisual works, and software programs distributed commercially in digital format by online music and media stores and protected by technological measures that depend on the continued availability of authenticating servers, prior to the failure of the servers for technologists and researchers studying and documenting how the authenticating servers that effectuate the technological measures function.

Christopher Soghoian of the Berkman Center for Internet & Society at Harvard University has proposed two classes of works to allow the circumvention of technological measures that depend on the continued availability of authenticating servers (or "DRM servers") for the following uses: (1) by consumers, for access to and ordinary enjoyment of purchased works, and (2) by technologists and researchers, documenting the function of the technological measures. The technological measures in question regulate user access to copyrighted works via connections to remote online authenticating servers, and therefore always require that the server be operational; if the server is shut down, the authentication process cannot take place and access for the user will be denied.

Joint Creators and Time Warner opposed Soghoian's requests, and NTIA has advised the Register that it believes that the record does not support them.

Soghoian's first proposal, regarding DRM servers that control access to lawfully purchased sound recordings, audiovisual works and software programs, was based upon several recent instances where "online music and media stores" that tethered their commercial distribution of digital works to DRM servers ceased operations. The proposal would not permit circumvention of operational DRM servers, but would cover only situations in which the particular authentication server has ceased to function. Soghoian argued that when the DRM servers malfunction or are shut down by their operators, consumers lose the ability to engage in the legitimate, noninfringing usage of content that they lawfully purchased and reasonably expected to continue using. However, there is no evidence that such a loss of rights has actually occurred thus far.

Soghoian argued that, given the record he presents of digital media stores shutting down their DRM servers, and given the increased migration of customers from physical CDs to downloads, it is likely that in the next three years at least one DRM–media store and/or its authenticating servers will shut down, adversely affecting the ability to engage in noninfringing use of the protected works by those who purchased them. He proposed that exempting circumvention of DRM server technology after a server has stopped functioning is a reasonable remedy for these adverse effects under three of the four Section 1201(a)(1)(C) factors.

The Register cannot recommend this proposed class for the simple reason that the proponent has not sustained his burden of demonstrating that the prohibition on circumvention of access controls either has produced, or is likely to produce, any adverse effects on noninfringing uses of the proposed class of works. Here, no such instances of adverse effects have been shown. If, in the absence of current adverse effect, designation of a class of works is to be based solely upon anticipated harm, "the evidence of likelihood of future adverse impact during that time period [must be] highly specific, strong and persuasive." Evidence of such a compelling nature is lacking here as well.

The fundamental question in evaluating this proposal is whether the adverse effects complained of by the proponent, "DRM–based stores that cease to operate or abandon their authenticating server system cause their customers to lose full, and often any, access to, and thus use of, their lawfully purchased works," are real, verifiable and reasonably likely to recur. There are several persuasive reasons in the record to answer this question in the negative.

Regarding the three categories of copyrighted works that Soghoian identified in his proposal, he presented no information that one of them, software in this instance, is even being sold by online retailers using authentication servers. Thus, the Register's review of adverse effects must be restricted to sound recordings and audiovisual works. Soghain asserts that such works were sold by two entities, Circuit City and Google, who, upon deciding to withdraw from the market, fully refunded their customers' purchase costs. In his testimony, Soghoian stated that he was willing to narrow the proposed class to permit circumvention only "in the event that the service does not provide any remedy for consumers." He further stated that a "refund is a totally appropriate and satisfactory remedy." Since the record of DRM–protected audiovisual works reveal only two defunct services and reveals that both provided acceptable remedies, there is no reason for the Register to consider this category of works in her determination.

With regard to sound recordings, of the three retailers who stopped selling DRM–protected works, Yahoo Music has provided full refunds. The two others, MSN Music and Walmart, announced in response to consumer backlash that they would keep their servers operational. The record demonstrates that, thus far, there have been no adverse effects on the noninfringing use of DRM–protected sound recording downloads since purchasers retain identical access and use abilities.

Soghoian's proposed class focused more on future harm, arguing that "there is no reason to believe that other companies or services that fail or are shut down in the future will provide similar corrective steps." He predicted that companies smaller than Microsoft and Walmart will not have the resources to provide refunds or keep authentication servers operating and that given the state of the economy, more companies will be jettisoning their DRM–protected music businesses and may decide simply to deactivate their authentication servers without advance warning. This appears to be pure conjecture. Soghoian presented no evidence supporting his claim that if another online retailer decides to

disable its authentication server, it will leave affected consumers without a remedy. To the contrary, the record shows that the two companies (MSN Music and Walmart) that have discontinued their services are still keeping the servers operational. Thus, the prediction that, within the next three years, consumers will be prevented from accessing and using DRM–protected works due to the cessation of operations by an authentication server is purely hypothetical.

The Register therefore recommends rejection of this proposed class.

Soghoian's second proposal relates to circumvention of the same DRM servers controlling access to the same categories of works as his first proposal. However, instead of being for the direct benefit of consumers, it would aid "technologists and researchers studying and documenting how the authenticating servers that effectuate the technological measures function." Such study and documentation, the proposal states, would take place "prior to the failure of the servers." This is intended to support Soghoian's first proposed user class by providing consumers with documentation about how DRM servers function, so that they can actually understand how to engage in circumvention of works in his first proposed class.

Soghoian's legal argument in support of the "researcher" class rested upon a comparison with a similar class relating to "rootkits" that was designated in the 2006 rulemaking, where the Librarian designated a class to permit circumvention technological measures that (1) control access to lawfully purchased sound recordings and associated audiovisual works on CDs and (2) create or exploit security flaws or vulnerabilities that compromise the security of personal computers, when circumvention is accomplished solely for the purpose of good faith testing, investigating, or correcting such security flaws or vulnerabilities. Soghoian's proposal focused on the purpose of the existing "rootkit" class, contending that because his researcher class is also intended solely for good faith testing, investigation, and correction, it too meets the requirements for exemption from the anti–circumvention statute. He did point out, however, that the cases of failed DRM and copy protection systems do not easily fit into the category of "security flaw or vulnerability."

Soghoian's proposed "research" class of works ultimately rests upon the same speculative argument as his "user" class. Since the record makes clear that the purpose of designating the research class is to facilitate circumvention of works in the "user" class, the arguments supporting the research class fail on the same basis as those supporting the user class. Accordingly, the Register recommends the rejection of this proposed class.

C. Software and information recorded, produced, stored, manipulated or delivered by the software, that a forensic investigator seeks to copy, activate, or reverse engineer in order to obtain evidence in a court proceeding.

Glenn Pannenborg proposed designating a class of works for the benefit of forensic investigators (*i.e.*, court–appointed evidence examiners) seeking evidence in a court proceeding. According to Pannenborg, forensic examiners practicing in the fields of financial or information technology may be faced with evidence that is recorded, produced, stored, manipulated or delivered by software covered under 17 U.S.C. 1201, or evidence that may be the software itself, as in a patent or licensing dispute. He asserted that in order to obtain access to such evidence, a forensic investigator may have to circumvent a technological protection measure in violation of Section 1201(a)(1)(A).

Joint Creators opposed Pannenborg's proposal, and NTIA has advised the Register that it believes the record does not support granting the request.

The Register finds that the proponent in this case has not met the statutory burden of proof. Pannenborg failed to intelligibly describe the nature of authorship of the proposed class of works. Moreover, he presented no compelling evidence, and provides no concrete examples, that noninfringing uses of works in the proposed class have been or will be affected by the circumvention ban. Indeed, he provided little information about the works to which he has apparently been denied access. Because of the lack of such information in the record, an evaluation of whether and the extent to which the prohibition on circumvention caused an adverse effect on noninfringing uses was not possible. The Register, therefore, declines to recommend that the Librarian designate this proposed class of works.

D. Audiovisual works delivered by digital television ("DTV") transmission intended for free, over–the–air reception by anyone, which are marked with a "broadcast flag" indicator that prevents, restricts, or inhibits the ability of recipients to access the work at a time of the recipient's choosing and subsequent to the time of transmission, or using a machine owned by the recipient but which is not the same machine that originally acquired the transmission.

In the 2006 rulemaking, a number of commenters sought the designation of classes of works that target broadcast flags for television and radio broadcasts, noting that such restrictions could possibly interfere with the personal recording of digital broadcast content for time–shifting and format–shifting purposes. The Register rejected those requests, stating that there was no broadcast flag mandate in effect for either television or radio at that time and concluding that no relief could be granted based upon non–existent regulations. The broadcast flag can be described as a digital code embedded in a digital television ("DTV") broadcasting stream, which prevents digital television reception equipment from redistributing broadcast content. The FCC had broadcast flag restrictions, but they were overturned by the United States Court of Appeals for the District of Columbia Circuit.

In the current proceeding, Matt Perkins proposed a new "broadcast flag" class based upon the belief that broadcasters and copyright owners will experiment with copy protection measures to restrict the recording of broadcast television content after the completion of the transition to DTV. He asserted that consumers will experience frustration if their television recording privileges are in any way restricted.

The National Association of Broadcasters ("NAB") opposed this request, and NTIA advised the Register that it believes the record does not support the request.

Perkins has failed to make his case for designating the proposed class. He has generally stated that a broadcast flag would interfere with the recording of digital television programming for personal use. However, he has not met his burden of proof in showing that regulatory action by the Librarian is warranted. There is no broadcast flag mandate for digital television broadcasts in effect, and it is highly speculative as to whether broadcasters and copyright owners will work to implement measures to restrict consumer recording privileges in the new DTV era.

In addition, the record does not indicate that there currently are any devices that include broadcast flags. Furthermore, Perkins' theory in support of his request lacks any explanation or justification as to what noninfringing use would be prevented by the prohibition on circumvention with respect to the broadcast flag and fails to provide evidence that actual harm exists or that it is "likely" to occur in the ensuing three year period. The proposed class is also misguided because it affects redistribution of content and does not appear to be related to an access control technology measure for purposes of Section 1201(a)(1). For the reasons stated above, the Register cannot recommend that the proposed request be granted.

E. Audiovisual works embedded in a physical medium (such as Blu–ray discs) which are marked for "down–conversion" or "down–resolutioning" (such as by the presence of an Image Constraint Token "ICT") when the work is to be conveyed through any of a playback machine's existing audio or visual output connectors, and therefore restricts the literal quantity of the embedded work available to the user (measured by visual resolution, temporal resolution, and color fidelity).

Matt Perkins proposed a class of works based on audiovisual works embedded in Blu–ray discs. He stated that the Blu–ray disc's data structure allows a disc publisher to assign an image constraint token to an audiovisual work. He further explained that a licensed Blu–ray disc player responds to that token by "down–rezzing" the electronic video signal when conveyed over an "untrusted" analog connection (*i.e.*, a trio of RCA cables). He asserted that no such constraints occur when the signal is conveyed over the preferred, "trusted" digital pathway (High–Definition Multimedia Interface ["HDMI"] incorporating High–bandwidth Digital Content Protection ["HDCP"]). He argued that ICT denies access to discarded video details until a condition is satisfied (HDMI connectivity), and therefore that ICT qualifies as an access control measure under Section 1201. He admitted that there is little evidence that ICTs are currently embedded in available Blu–ray discs, but nevertheless asserted that the possible inclusion of an image constraint token will cause user frustration because program content will not be seen in the promised high definition format.

Advanced Access Content System Licensing Administrator, LLC ("AACS LA") opposed the request, and NTIA has advised the Register that it believes the record does not support granting the request.

Perkins' request cannot withstand scrutiny. He has failed to meet his burden of proof demonstrating that relief is warranted with regard to the willful down–conversion of high definition programming recorded on Blu–ray discs. He has not shown that the prohibition on circumvention has had or is likely to have a substantial adverse effect on a clearly identifiable noninfringing use. Similarly, he has not demonstrated the existence of actual harm, or the likelihood of future harm that designation of the proposed class would necessarily rectify. Specifically, he has not provided evidence that ICTs are currently being used on Blu–ray discs to restrict users from accessing the highest resolution format offered by Blu–ray discs. Further, the request is unnecessary because the potential problem described by Perkins is a rapidly disappearing legacy issue related to early generation high definition televisions. The Register recommends that the proposed class of works be rejected.

F. Literary works distributed in ebook format when all existing ebook editions of the work (including digital text editions made available by authorized entities) contain access controls that prevent the enabling either of the book's read–aloud function or of screen readers that render the text into a specialized format.

In 2006, the Librarian designated a class consisting of "Literary works distributed in ebook format when all existing electronic book ("ebook") editions of the work (including digital text editions made available by authorized entities) contain access controls that prevent the enabling either of the book's read–aloud function or of screen readers that render the text into a specialized format." The American Foundation for the Blind ("AFB"), which was the principal proponent of ebook exemptions in 2003 and 2006, has proposed that the Librarian redesignate the existing class to ensure that people who are blind or visually impaired are not excluded from the digital revolution in education, information and entertainment.

In support of its proposal, AFB offered an examination of five ebooks, two which it tested in the PDF format and three which it tested in the Microsoft Lit format. AFB stated that of these five books, only one—or twenty percent of the sample—was accessible. In order to make its case, the AFB had to demonstrate that the prohibition on circumvention has adversely affected, or is likely to adversely affect, users' ability to make noninfringing uses of a particular class of works. There was no dispute that making an ebook accessible to blind and visually impaired persons is a noninfringing use. Therefore, the main question is whether the prohibition on circumvention of technological measures that control access has adversely affected the ability of blind and visually impaired persons to gain access to the literary content in ebooks.

In short, the proponents surveyed five ebook titles and found that three (Brian's Hunt, *The Bridges of Madison County*, and *The Einstein Theory of Relativity*) were not accessible in editions published in the Microsoft Lit format, one (*The Sign of the Fish*) was not accessible in an edition published in the Adobe PDF format, and one (*The Complete Works of Edgar Alan Poe Volume 1*) was accessible in the Adobe PDF format. Thus, four out of the five titles sampled were available in formats that were not accessible.

Proponents of the class presented no other factual information relating to whether (and the extent to which) the prohibition on circumvention actually has had an adverse effect on the ability of blind and visually impaired persons to engage in the noninfringing use of reading ebooks by using screen readers and the read–aloud function offered in many ebooks.

Joint Creators did not oppose the request, but did question whether the prohibition on circumvention of access controls was to blame for the discrepancy between access for the fully sighted and access for the visually impaired. NTIA has advised the Register that it believes that an exemption based on this proposals should be renewed. NTIA did not state that the record supports granting the requested exemption; in fact, it observed that the case made by proponents is weak. Nevertheless, NTIA concluded that despite the limited level of information provided, it is persuaded that harm to these uses and users is likely to exist.

In reviewing the evidence presented in support of designating the proposed class, the first issue that is readily apparent is that two of the five works examined by AFB (*The Einstein Theory of Relativity* and *The Complete Works of Edgar Alan Poe Volume 1*) are in the public domain. Section 1201 does not prohibit circumvention of a technological protection measure when it simply controls access to a public domain work; in such a case, it is lawful to circumvent the technological protection measure and there is no need

for an exemption. Thus, the two works in the public domain included in the tiny sample – forty percent of the entire sample – are irrelevant to the case for an exemption. Even though one of these two public domain works was found to be inaccessible, the prohibition on circumvention cannot be said to be adversely affecting uses of that work given that the prohibition does not apply to public domain works.

Two of the other ebooks cited in support of designating the class — *Brian's Hunt* and *The Bridges of Madison County*, — are alleged to be inaccessible in Microsoft Lit format. However, the proponents did not state whether those titles are accessible and available in other formats, such as the widely–used PDF format. Because the proposed class, like the classes approved in 2003 and 2006, requires that "all existing ebook editions of the work (including digital text editions made available by authorized entities) contain access controls that prevent the enabling either of the book's read–aloud function or of screen readers that render the text into a specialized format," the evidence relating to these two titles is insufficient to justify the designation of the proposed class. If Brian's Hunt and *The Bridges of Madison County* are available in other editions that provide read–aloud and screen reader accessibility, then they are not examples of works justifying redesignation of the class. In failing to even check to see whether *Brian's Hunt* and *The Bridges of Madison County* are available in an accessible format, the proponents failed to meet their burden of proof with respect to those two titles.

The final book offered as an example of inaccessibility was *The Sign of the Fish*, by Joann Klusmeyer. The proponents of the class stated that the book "opened in Acrobat, but content was not accessible." Nothing was said about whether the book was also available in other formats (and, if so, whether those formats were accessible). Again, the proponents presented insufficient evidence to evaluate whether yet another of the limited number of titles in their sample was inaccessible in all ebook formats.

Although the Register could recommend against designation of the proposed class based simply upon the proponents' failure to provide sufficient evidence to evaluate whether any of the three non–public domain books cited by the proponents are inaccessable in all ebook formats, the Register's staff conducted some additional research to determine whether the case could be made that any or all of those books are inaccessible in all formats. With respect to *Brian's Hunt* and *The Bridges of Madison County,* a quick review of the market revealed that both of these works are available as digital texts through Bookshare.org. However, *The Sign of the Fish* is not available in any edition that permits the enabling of the ebook read–aloud function or of screen readers. However, the Register cannot conclude that the prohibition on circumvention has had an adverse effect on the noninfringing use of reading ebooks with screen readers or the read–aloud function when the evidence reveals the case is built upon a single obscure book.

The Register fully supports universal accessibility to ebooks for the blind and visually impaired. However, the rulemaking established by Congress requires proponents to demonstrate, *de novo*, in each rulemaking proceeding, that relief relating to a particular class of works is warranted for the ensuing three–year period. The Register is sympathetic to the needs of the blind and visually impaired, and agrees that as a matter of policy, access to e–books for the visually impaired should be encouraged and that, when there is evidence that the prohibition on circumvention is having an adverse impact on that goal, an appropriate class of works should be designated in this rulemaking. The Register has not hesitated to recommend such classes when the record has supported such a recommendation. However, unless the burden of presenting a *prima facie* case is met, the statutory standard established for this rulemaking does not permit the designation of a class of works. Presenting strong policy arguments in favor of exempting a class of works from the prohibition on circumvention is only part of the battle that a proponent must wage; it is also necessary to provide sufficient facts to justify a finding that the prohibition actually is having or is likely to have an adverse effect on noninfringing uses.

For all of the reasons set forth above, the Register finds no factual basis for designating the proposed class of works. While the Register's recommendations in previous rulemakings made clear that the Register understands and accepts the legal and policy reasons for such an exemption, the constraints established by Congress in this rulemaking proceeding do not permit the designation of a class of works in the absence of a factual record that supports the need for the designation. No such showing has been made in this proceeding.

IV. Conclusion

Having considered the evidence in the record, the contentions of the parties, and the statutory objectives, the Register of Copyrights recommends that the Librarian of Congress publish the five classes of copyrighted works designated above, so that the prohibition against circumvention of technological measures that effectively control access to copyrighted works shall not apply to persons who engage in noninfringing uses of those particular classes of works.

Dated: July 19, 2010

Marybeth Peters,

Register of Copyrights.

Determination of the Librarian of Congress

Having duly considered the recommendation of the Register of Copyrights as summarized above and having accepted that recommendation with respect to all but one of the classes of works under consideration, the Librarian of Congress is exercising his authority under 17 U.S.C. 1201(a)(1)(C) and (D) and is publishing as a new rule the six classes of copyrighted works that shall be subject to the exemption found in 17 U.S.C. 1201(a)(1)(B) from the prohibition against circumvention of technological measures that effectively control access to copyrighted works set forth in 17 U.S.C. 1201(a)(1)(A).

The Librarian has considered but rejected the Register's recommendation with respect to the proposed class of works consisting of literary works distributed in ebook format. This class of works was proposed by the American Foundation for the Blind (AFB) and is identical to that for which an exemption was granted in 2006 and similar to the class for which an exemption was granted in 2003.

The Librarian understands, and agrees with, the Register regarding the requirement that a decision on a proposed class of works be made based on the record developed in the rulemaking proceeding. In the view of the Librarian, the proposed exemption should be granted because: (1) the record includes statements on the likelihood of access not being available to blind individuals, (2) no one opposed the exemption, and (3) there are broad benefits to society in making works accessible to the visually impaired. The Librarian notes that, in contrast with its actions in both 2003 and 2006, the Copyright Office did not submit any post–hearing questions on this proposed exemption. Such development of the record would have been helpful. The Librarian also notes that the Assistant Secretary for Communications and Information of the Department of

Commerce, with whom the Register is required by Section 1201(a)(l)(C) to consult when she makes her recommendation, supports granting the exemption.

Accordingly, the Librarian is designating the class of works relating to literary works distributed in ebook format.

Notwithstanding the above, the Librarian is aware that, in the past two years, the Register and her legal staff have invested a great deal of time in analyzing the myriad of issues that combine to make it difficult for blind and print–disabled persons to obtain access to certain e–books. The Copyright Office has hosted comprehensive meetings with stakeholders, solicited public comment on the application of domestic and international law to accessibility, participated in interagency and intergovernmental meetings in Washington, DC and Geneva, and, with the World Intellectual Property Organization, co–sponsored a major international training program for experts from developing countries. Through this work, the Register has come to believe that more general Congressional attention on the issue of accessibility is merited. I agree with the Register in this determination.

The section 1201 process is a regulatory process that is at best ill–suited to address the larger challenges of access for blind and print–disabled persons. The exemption that the Librarian is approving here offers a solution to specific concerns that were raised in the narrow context of the rulemaking. Moreover, it is a temporary solution, as the 1201 process begins anew every three years.

Outside of section 1201and the issue of technological protection measures, the Register has been examining whether copyright law, and to some extent related disabilities and education laws, adequately serve the blind and print–disabled population in the digital age. In particular, the Register has learned that, even where books are published electronically for the general public, the digital format used or licensed may be employed in a way that is incompatible with Braille readers and other assistive technologies on which blind and print-disabled persons rely. In the long run, this incompatibility may lead to delays, cost challenges and standards issues that may off-set the long-awaited benefits of digital media. Copyright and content issues cannot be divorced from the general goal of ensuring that hardware devices are designed with accessibility in mind. The Librarian fully supports the Register in her examination of these issues and urges Congress to work with the Copyright Office to consider accessibility beyond the contours of this 1201 rulemaking.

List of Subjects in 37 CFR 201

Copyright, Exemptions to prohibition against circumvention.

Final Regulations

For the reasons set forth in the preamble, 37 CFR part 201 is amended as follows:

PART 201–GENERAL PROVISIONS

■ 1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702

■ 2. Section 201.40 is amended by revising paragraph (b) to read as follows:

§ 201.40 Exemption to prohibition against circumvention.

* * * * *

(b) *Classes of copyrighted works.* Pursuant to the authority set forth in 17 U.S.C. 1201(a)(1)(C) and (D), and upon the recommendation of the Register of Copyrights, the Librarian has determined that the prohibition against circumvention of technological measures that effectively control access to copyrighted works set forth in 17 U.S.C. 1201(a)(1)(A) shall not apply to persons who engage in noninfringing uses of the following five classes of copyrighted works:

(1) Motion pictures on DVDs that are lawfully made and acquired and that are protected by the Content Scrambling System when circumvention is accomplished solely in order to accomplish the incorporation of short portions of motion pictures into new works for the purpose of criticism or comment, and where the person engaging in circumvention believes and has reasonable grounds for believing that circumvention is necessary to fulfill the purpose of the use in the following instances:

(i) Educational uses by college and university professors and by college and university film and media studies students;

(ii) Documentary filmmaking;

(iii) Noncommercial videos.

(2) Computer programs that enable wireless telephone handsets to execute software applications, where circumvention is accomplished for the sole purpose of enabling interoperability of such applications, when they have been lawfully obtained, with computer programs on the telephone handset.

(3) Computer programs, in the form of firmware or software, that enable used wireless telephone handsets to connect to a wireless telecommunications network, when circumvention is initiated by the owner of the copy of the computer program solely in order to connect to a wireless telecommunications network and access to the network is authorized by the operator of the network.

(4) Video games accessible on personal computers and protected by technological protection measures that control access to lawfully obtained works, when circumvention is accomplished solely for the purpose of good faith testing for, investigating, or correcting security flaws or vulnerabilities, if:

(i) The information derived from the security testing is used primarily to promote the security of the owner or operator of a computer, computer system, or computer network; and

(ii) The information derived from the security testing is used or maintained in a manner that does not facilitate copyright infringement or a violation of applicable law.

(5) Computer programs protected by dongles that prevent access due to malfunction or damage and which are obsolete. A dongle shall be considered obsolete if it is no longer manufactured or if a replacement or repair is no longer reasonably available in the commercial marketplace.

(6) Literary works distributed in ebook format when all existing ebook editions of the work (including digital text editions made available by authorized entities) contain access controls that prevent the enabling either of the book's read–aloud function or of screen readers that render the text into a specialized format.

Dated: July 20, 2010

James H. Billington,

The Librarian of Congress.

[FR Doc. 2010–18339 Filed 7–26–10; 8:45 am]

BILLING CODE 1410–30–S

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 209

[Docket No. FRA–2004–17530; Notice No. 2]

RIN 2130–ZA03

Inflation Adjustment of the Ordinary Maximum and Aggravated Maximum Civil Monetary Penalties for a Violation of the Hazardous Material Transportation Laws and Regulations

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: FRA is adjusting the ordinary maximum penalty and the aggravated maximum penalty that it will apply when assessing a civil monetary penalty for a violation of the Federal hazardous material transportation laws or a regulation, special permit, or approval issued under those laws. The aggravated maximum penalty is available only for a violation that results in death, serious illness, or severe injury to any person or substantial destruction of property. In particular, FRA is increasing the ordinary maximum civil monetary penalty per violation from $50,000 to $55,000 and the aggravated maximum civil penalty from $100,000 to $110,000. The minimum civil monetary penalty for a violation related to training remains at $450. The minimum civil monetary penalty per violation for other hazardous material violations remains at $250. These adjustments are required by the Federal Civil Penalties Inflation Adjustment Act of 1990 as amended by the Debt Collection Improvement Act of 1996.

DATES: *Effective Date:* September 27, 2010.

FOR FURTHER INFORMATION CONTACT: Roberta J. Stewart, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue, SE., Mail Stop 10, Washington, DC 20590 (telephone 202–493–6027), *roberta.stewart@dot.gov.*

SUPPLEMENTARY INFORMATION: The Federal Civil Penalties Inflation Adjustment Act of 1990 (Inflation Act) requires that an agency adjust by regulation each maximum civil monetary penalty (CMP), or range of minimum and maximum penalties, within that agency's jurisdiction by October 23, 1996, and adjust those penalty amounts once every four years thereafter to reflect inflation. Public Law 101–410, 104 Stat. 890, 28 U.S.C. 2461, note, as amended by Section 31001(s)(1) of the Debt Collection Improvement Act of 1996, Public Law 104–134, 110 Stat. 1321–373, April 26, 1996. Congress recognized the important role that civil penalties play in deterring violations of Federal laws and regulations and realized that inflation has diminished the impact of these penalties. In the Inflation Act, Congress found a way to counter the effect that inflation has had on the civil penalties by having the agencies charged with enforcement responsibility administratively adjust the civil penalties.

This final rule is published under the authority of 49 U.S.C. 5123 and 5124, which provide civil and criminal penalties for violations of Federal hazardous material transportation law or a regulation, order, special permit or approval issued under that law. The hazardous material transportation regulations are issued by the Pipeline and Hazardous Materials Safety Administration (PHMSA). 49 CFR 1.53(b). FRA is authorized as the delegate of the Secretary of Transportation to enforce the hazardous material statutes and regulations. 49 CFR 1.49(s).

Calculation of the Adjustment

The Inflation Act requires each Federal agency to periodically adjust CMPs that it administers to consider the effects of inflation. The Inflation Act is set forth in a note to 29 U.S.C. 2461. According to Section 5 of the Inflation Act, the maximum and minimum CMPs must be increased based on a "cost-of-living adjustment" determined by the increase in the Consumer Price Index (CPI) for the month of June of the calendar year preceding the adjustment as compared to the CPI for the month of June in the year in which the last adjustment was made. The Inflation Act also specifies that the amount of the adjustment must be rounded to the nearest multiple of $100 for a penalty between $100 and $1,000; that the amount of the adjustment must be rounded to the nearest multiple of $5,000, for a penalty between $10,000 and $100,000; and that the first CMP adjustment is limited to 10 percent of the original penalty amount. Any increased CMP applies only to violations that occur after the date the increase takes effect. FRA utilizes Bureau of Labor Statistics data to calculate inflation adjusted CMP amounts.

Section 7120 of the Hazardous Materials Safety and Security Reauthorization Act of 2005 (Title VII of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users ("SAFETEA–LU," Pub. L. 109–59, 119 Stat. 1905)) amended 49 U.S.C. 5123(a) to reset the maximum and minimum CMPs for a knowing violation of the Federal hazardous material transportation laws, 49 U.S.C. 5101 *et seq.,* or a regulation, order, special permit, or approval issued under that law as follows:

—Maximum civil penalty: $50,000, except that amount may be increased to $100,000 for a violation that results in death, serious illness, or severe injury to a person or substantial destruction of property.

—Minimum civil penalty: $250, except that the minimum civil penalty for a violation related to training is $450.

Before the enactment of SAFETEA–LU, the inflation-adjusted maximum civil penalty for a hazardous material violation was $32,500, and the inflation-adjusted minimum civil penalty for a hazardous materials violation was $275. 69 FR 30590, May 28, 2004. To implement these SAFETEA–LU amendments to the maximum and minimum penalties, FRA issued a final rule that was published on December 26, 2006, 71 FR 77293, making the new maximum and minimum penalties effective with respect to violations on or after December 26, 2006.

Under the Inflation Act, FRA is now required to adjust the maximum and minimum civil penalties set forth in 49 U.S.C. 5123(a), as amended by SAFETEA–LU. Because these adjustments are the first adjustments to the amounts reset in SAFETEA–LU, an increase in the maximum and minimum civil penalty amounts is limited to 10 percent.

Because this adjustment and the amount thereof are mandated by statute, notice of proposed rulemaking is unnecessary, and there is good cause to make the adjusted ordinary maximum and aggravated maximum civil penalties applicable to any violation occurring on or after September 27, 2010. 5 U.S.C. 553(b), (d).

PHMSA recently issued a final rule to adjust its maximum and minimum civil monetary penalties per the Inflation Act. *See* 74 FR 68701 (December 29, 2009). FRA's maximum and minimum CMPs that it assesses for violations of the hazardous material transportation laws and regulations have historically mirrored PHMSA's. However, for this round of CMP inflation adjustments, FRA notes that there is one discrepancy between PHMSA's adjusted CMPs and FRA's adjusted CMPs. Because PHMSA's inflation adjustments were performed in calendar year 2009, PHMSA calculated its new maximum

and minimum penalties using the CPIs from June 2008 and June 2005. FRA, on the other hand, is calculating the inflation adjustment of its CMPs for hazardous material violations in calendar year 2010, and is therefore using the CPIs from June 2009 and June 2005. The CPI increase between June 2008 and June 2005 was greater than the CPI increase between June 2009 and June 2005. As calculated by PHMSA, its minimum CMP for violations related to training increased ten percent from $450 to $495. 74 FR 68701. In FRA's calculations, as described below, the minimum CMP for violations related to training remains at $450, due to the different years of CPIs used to calculate the inflation increase.

Calculations To Determine Hazardous Material Civil Monetary Penalty Updates for Violations On or After September 27, 2010

1. Ordinary and Aggravated Maximum Civil Monetary Penalties

As required, this year FRA reevaluated the ordinary and aggravated maximum hazardous material civil penalties and concluded that they should be increased to $55,000 and $110,000, respectively, as the next calculations show. The June 2009 CPI of 646.121 (the CPI in the year before the year that the present adjustment is being made) divided by the CPI for June 2005 of 582.6 (the year that the then-current maximum penalty of $32,500 was reset by SAFETEA–LU) equals an inflation factor of 1.10903; $50,000 times 1.10903 equals $55,451.50. The raw inflation adjustment amount of $5,452 is rounded to the nearest $5,000, which is $5,000. Because this is the first adjustment for this penalty, any increase is capped at 10 percent of the current penalty amount; $5,000 is 10 percent of $50,000 and does not exceed the 10 percent limit. Therefore, the inflation-adjusted ordinary maximum CMP is $50,000 plus $5,000, or $55,000, and is applicable to all of the hazardous material laws and regulations enforced by FRA.

Applying the same calculations to the $100,000 aggravated maximum penalty for certain, more serious violations, $100,000 times 1.10903 equals $110,903. The raw inflation adjustment amount of $10,903 is rounded to the nearest $5,000, which is $10,000. Because this is the first adjustment for this penalty, any increase is capped at 10 percent of the current penalty amount; $10,000 is 10 percent of $100,000 and does not exceed the 10 percent limit. Therefore, the inflation-adjusted aggravated maximum CMP for certain hazardous material violations is $110,000. This maximum may apply to CMPs for a violation of the hazardous material laws or regulations that results in death, serious illness, or severe injury to a person or substantial destruction of property. The new ordinary and aggravated maximum CMPs will apply to violations that occur on or after September 27, 2010.

2. Minimum Civil Monetary Penalty for Hazardous Materials Violations Related to Training

FRA also reevaluated the minimum CMP for a training violation and determined that it should remain at $450, as the following calculations show: $450 times the inflation factor of 1.10903 equals $499. The raw inflation adjustment amount of $49 is rounded to the nearest $100, which is $0. The inflation-adjusted minimum CMP for training violations therefore does not change, and remains at $450.

3. Minimum Civil Monetary Penalty for All Other Hazardous Material Violations

Applying the adjustment calculation, FRA has determined that the minimum CMP for all other hazardous material violations should remain at $250, as the following calculations show: $250 times the inflation factor of 1.10903 equals $277. The raw inflation adjustment amount of $27 is rounded to the nearest $100, which is $0. Therefore, the minimum CMP remains at $250.

Public Participation

FRA is proceeding to a final rule without providing a notice of proposed rulemaking or an opportunity for public comment. Public comment is unnecessary because, in making these technical amendments, FRA is not exercising discretion in a way that could be informed by public comment. As such, notice and comment procedures are "impracticable, unnecessary, or contrary to the public interest" within the meaning of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B). Likewise, the adjustments required by the Inflation Act are ministerial acts over which FRA has no discretion, making public comment unnecessary. FRA is issuing these amendments as a final rule applicable to all future hazardous material civil penalty cases under its authority to cite for violations that occur on or after the effective date of this final rule.

Regulatory Impact

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This rule has been evaluated in accordance with existing policies and procedures. It is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget (OMB). This rule is not significant under DOT Regulatory Policies and Procedures. 44 FR 11034. The cost of complying with existing substantive regulations is not being increased. The adjustment for inflation of the maximum and minimum CMP is a limited ministerial act over which the agency has no discretion. The economic impact of the final rule is minimal to the extent that preparation of a regulatory evaluation is not warranted.

B. Regulatory Flexibility Determination

FRA certifies that this final rule will not have a significant economic impact on a substantial number of small entities. This rule applies to shippers and carriers of hazardous material and persons who manufacture, mark, certify, or sell packagings, containers and packaging components as qualified for use in transporting hazardous materials in commerce, some of whom are small entities. However, there is no economic impact on any person who complies with Federal hazardous material transportation law and the regulations, orders, special permits and approvals issued under that law.

C. Federalism

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"), and the President's May 20, 2009 memorandum on "Preemption" (74 FR 24693, May 22, 2009). As amended in 2005, 49 U.S.C. 5125(h) provided that the preemption provisions in Federal hazardous material transportation law do "not apply to any * * * penalty * * * utilized by a State, political subdivision of a State, or Indian tribe to enforce a requirement applicable to the transportation of hazardous material." Accordingly, this final rule does not have any preemptive effect on the amount or nature of penalties imposed by a State, local, or Indian Tribal government for violations of their requirements which are consistent with requirements in Federal hazardous material transportation law and the regulations prescribed under that law. Preparation of a federalism assessment is not warranted.

D. International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or 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. This rulemaking is purely domestic in nature and is not expected to affect trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

E. Paperwork Reduction Act

There are no new information collection requirements in this final rule.

F. Compliance With the Unfunded Mandates Reform Act of 1995

The final rule issued today will not result in the expenditure, in the aggregate, of $141,300,000 or more in any one year by State, local, or Indian Tribal governments, or the private sector, and thus preparation of a statement is not required.

G. Environmental Assessment

There are no significant environmental impacts associated with this final rule.

H. Energy Impact

According to definitions set forth in Executive Order 13211, there will be no significant energy action as a result of the issuance of this final rule.

I. 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 (Volume 65, Number 70, pages 19477–78) or online at *http://www.dot.gov/privacy.html.*

List of Subjects in 49 CFR Part 209

Administrative practice and procedure, Hazardous materials transportation, Penalties, Railroad safety, Reporting and recordkeeping requirements.

The Final Rule

■ In consideration of the foregoing, Part 209 of Subtitle B, Chapter II of Title 49 of the Code of Federal Regulations is amended as follows:

PART 209—[AMENDED]

■ 1. The authority citation for Part 209 continues to read as follows:

Authority: 49 U.S.C. 5123, 5124, 20103, 20107, 20111, 20112, 20114; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 209.103 [Amended]

■ 2. Section 209.103 is revised by:
■ a. Removing the numerical amount "$50,000" in paragraph (a) and replacing it with the numerical amount "$55,000"; and
■ b. Removing the numerical amount "$100,000" in paragraph (a)(1) and replacing it with the numerical amount "$110,000"; and
■ c. Removing the date of "August 10, 2005" in paragraph (c) and replacing it with "September 27, 2010".

§ 209.105 [Amended]

■ 3. Section 209.105(c) is revised by:
■ a. Removing the numerical amount "$50,000" in the last sentence and replacing it with the numerical amount "$55,000"; and
■ b. Removing the numerical amount "$100,000" in the last sentence and replacing it with the numerical amount "$110,000".

Appendix B to Part 209—[AMENDED]

■ 4. Appendix B to Part 209 is amended by:
■ a. Removing the numerical amount "$50,000" in the first paragraph below the heading "APPENDIX B TO PART 209—FEDERAL RAILROAD ADMINISTRATION GUIDELINES FOR INITIAL HAZARDOUS MATERIAL ASSESSMENTS" and replacing it with the numerical amount "$55,000"; and
■ b. Removing the numerical amount "$100,000" in the first paragraph below the heading "APPENDIX B TO PART 209—FEDERAL RAILROAD ADMINISTRATION GUIDELINES FOR INITIAL HAZARDOUS MATERIALS ASSESSMENTS" and replacing it with the numerical amount "$110,000".

■ 5. Footnote 2 to Appendix B to Part 209 is amended by:

■ a. Removing the numerical amount "$50,000" and replacing it with the numerical amount "$55,000"; and

■ b. Removing the numerical amount "$100,000" and replacing it with the numerical amount "$110,000".

Issued in Washington, DC, on July 21, 2010.

Joseph C. Szabo,

Administrator, Federal Railroad Administration.

Note: This appendix will not appear in the Code of Federal Regulations.

Appendix: "Step-by-Step Calculations to Determine Civil Monetary Penalty Updates: 2010"

Step-by-Step Calculations to Determine Hazardous Material Civil Penalty Inflation Adjustments: 2010

Ordinary and Aggravated Maximum Civil Penalties

These calculations follow U.S. Department of Transportation and Government Accountability Office (GAO), formerly the General Accounting Office, guidance to determine if the minimum civil monetary penalty (CMP) should be updated according to the Inflation Act. (Sources for guidance: (1) GAO attachment to memorandum with subject "Annual Review of Department of Transportation's (DOT) Civil Penalties Inflation Adjustment," dated July 10, 2003; (2) policy paper entitled "Federal Civil Penalties Inflation Adjustment Act of 1990").

Maximum Civil Monetary Penalties

The current ordinary maximum CMP is $50,000, set on August 10, 2005, by Section 7120 of the Hazardous Materials Safety and Security Reauthorization Act of 2005 (Title VII of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users ("SAFETEA–LU," Pub. L. 109–59, 119 Stat. 1905)), which amended 49 U.S.C. 5123(a).

Step 1: Find the Consumer Price Index (CPI). (BLS, 1967 Base, U.S. City Average).

The CPI for June of the preceding year, i.e., CPI for June 2009 = 646.121

The CPI for June of the year the CMP was last set or adjusted under the Inflation Act, i.e., CPI for June 2005 = 582.6

Step 2: Calculate the Cost of Living Adjustment (COLA), or the Inflation Factor.

$$\text{COLA} = \frac{\text{CPI for June 2009}}{\text{CPI for June 2005}} = \frac{646.121}{582.6} = 1.10903$$

Step 3: Find the Raw Inflation Adjustment or Inflation Adjustment Before Rounding.

Raw Inflation Adjustment = CMP × COLA = $50,000 × 1.10903 = $55,451.50 ≈ $55,452

Step 4: Round the Raw Inflation Adjustment Amount.

Recall that the increase in the CMP is rounded, according to the rounding rules.

Increase = Raw Inflation Adjustment − Original CMP = $55,452 − $50,000 = $5,452

Use the following rounding rule: "If the current unadjusted penalty is greater than $10,000 and less than or equal to $100,000, round the *increase* to the nearest multiple of $5,000." (Federal Civil Penalties Inflation Adjustment Act of 1990, p. 4.) Multiples of $5,000 are $0, $5,000, $10,000. * * * The nearest multiple of $5,000 is therefore $5,000. Rounded, the $5,452 increase = $5,000

Step 5: Find the Inflation Adjusted Penalty After Rounding.

CMP after rounding = Original CMP + Rounded Increase = $50,000 + $5,000 = $55,000

Step 6: Apply a 10% Ceiling if necessary.

10% of $50,000 is $5,000, so the increase does not exceed the 10% cap.

Step 7: Determine New Penalty.

The new maximum CMP = $55,000

With respect to hazardous material violations that occur on or after [insert date 60 days after publication], the maximum CMP rises from $50,000 to $55,000.

The current maximum CMP for a hazardous material violation that results in death, serious illness, or severe injury to any person or substantial destruction of property is $100,000, set on August 10, 2005, by Section 7120 of the Hazardous Materials Safety and Security Reauthorization Act of 2005 (Title VII of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users ("SAFETEA–LU," Pub. L. 109–59, 119 Stat. 1905)), which amended 49 U.S.C. 5123(a).

Step 1: Find the Consumer Price Index (CPI). (BLS, 1967 Base, U.S. City Average).

The CPI for June of the preceding year, i.e., CPI for June 2009 = 646.121

The CPI for June of the year the CMP was last set or adjusted under the Inflation Act, i.e., CPI for June 2005 = 582.6

Step 2: Calculate the Cost of Living Adjustment (COLA), or the Inflation Factor.

$$\text{COLA} = \frac{\text{CPI for June 2009}}{\text{CPI for June 2005}} = \frac{646.121}{582.6} = 1.10903$$

Step 3: Find the Raw Inflation Adjustment or Inflation Adjustment Before Rounding.

Raw Inflation Adjustment = CMP × COLA = $100,000 × 1.10903 = $110,903 ≈ $110,900

Step 4: Round the Raw Inflation Adjustment Amount.

Recall that the increase in the CMP is rounded, according to the rounding rules.

Increase = Raw Inflation Adjustment − Original CMP = $110,900 − $100,000 = $10,900.

Use the following rounding rule: "If the current unadjusted penalty is greater than $10,000 and less than or equal to $100,000, round the *increase* to the nearest multiple of $5,000." (Federal Civil Penalties Inflation Adjustment Act of 1990, p. 4.) Multiples of $5,000 are $0, $5,000, $10,000. * * * The nearest multiple of $5,000 is therefore $10,000. Rounded, the $10,900 increase = $10,000.

Step 5: Find the Inflation Adjusted Penalty After Rounding.

CMP after rounding = Original CMP + Rounded Increase = $100,000 + $10,000 = $110,000

Step 6: Apply a 10% Ceiling if necessary.

This is the first time that the statutorily reset CMP is being adjusted, so the 10% cap applies; 10% of $100,000 is $10,000, so the increase does not exceed the 10% cap.

Step 7: Determine New Penalty.

The new aggravated maximum CMP for certain hazardous material violations = $110,000.

With respect to hazardous material violations that occur on or after [insert date 60 days after publication], this aggravated maximum CMP rises from $100,000 to $110,000.

Minimum Civil Monetary Penalty for Training Violations

The current minimum CMP for hazardous material violations related to training is $450, set on August 10, 2005, by Section 7120 of the Hazardous Materials Safety and Security Reauthorization Act of 2005.

Step 1: Find the Consumer Price Index (CPI). (BLS, 1967 Base, U.S. City Average)

The CPI for June of the preceding year, i.e., CPI for June 2009 = 646.121.

The CPI for June of the year the CMP was last set or adjusted under the Inflation Act, i.e., CPI for June 2005 = 582.6

Step 2: Calculate the Cost of Living Adjustment (COLA), or the Inflation Factor.

$$\text{COLA} = \frac{\text{CPI for June 2009}}{\text{CPI for June 2005}} = \frac{646.121}{582.6} = 1.10903$$

Step 3: Find the Raw Inflation Adjustment or Inflation Adjustment Before Rounding.

Raw Inflation Adjustment = CMP × COLA = $450 × 1.10903 = $499

Step 4: Round the Raw Inflation Adjustment Amount.

Recall that the increase in the CMP is rounded, according to the rounding rules.

Increase = Raw Inflation Adjustment − Original CMP = $499 − $450 = $49

Use the following rounding rule: "If the current unadjusted penalty is greater than $100 and less than or equal to $1,000, round the *increase* to the nearest multiple of $100." (Federal Civil Penalties Inflation Adjustment Act of 1990, p. 4)

Multiples of $100 are $0, $100, $200.

The nearest multiple of $100 is therefore $0. Rounded, the $49 increase = $0.

Step 5: Find the Inflation Adjusted Penalty After Rounding.

CMP after rounding = Original CMP + Rounded Increase = $450 + $0 = $450.

Step 6: Apply a 10% Ceiling if necessary.

The penalty amount did not increase, so the 10% cap does not apply.

Step 7: Determine New Penalty.

The new minimum CMP for training violations = $450

With respect to hazardous material violations that occur on or after [insert date 60 days after publication], the minimum CMP for training violations remains $450.

Minimum Civil Monetary Penalty for All Other Hazardous Material Violations

The current minimum CMP is $250, set on August 10, 2005, by Section 7120 of the Hazardous Materials Safety and Security Reauthorization Act of 2005 (Title VII of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users ("SAFETEA–LU," Pub.

Step 1: Find the Consumer Price Index (CPI). (BLS, 1967 Base, U.S. City Average).

The CPI for June of the preceding year, *i.e.,* CPI for June 2009 = 646.121

The CPI for June of the year the civil penalty was last set or adjusted under the Inflation Act, i.e., CPI for June 2005 = 582.6

Step 2: Calculate the Cost of Living Adjustment (COLA), or the Inflation Factor.

$$\text{COLA} = \frac{\text{CPI for June 2009}}{\text{CPI for June 2005}} = \frac{646.121}{582.6} = 1.10903$$

Step 3: Find the Raw Inflation Adjustment or Inflation Adjustment Before Rounding.

Raw Inflation Adjustment = CMP × COLA = $250 × 1.10903 = $277

Step 4: Round the Raw Inflation Adjustment Amount.

Recall that the increase in the CMP is rounded, according to the rounding rules.

Increase = Raw Inflation Adjustment − Original CMP = $277 − $250 = $27

Use the following rounding rule: "If the current unadjusted penalty is greater than $100 and less than or equal to $1,000, round the *increase* to the nearest multiple of $100." (Federal Civil Penalties Inflation Adjustment Act of 1990, p. 4) Multiples of $100 are $0, $100, $200.* * *

The nearest multiple of $100 is therefore $0. Rounded, the $27 increase = $0.

Step 5: Find the Inflation Adjusted Penalty After Rounding.

CMP after rounding = Original CMP + Rounded Increase = $250 + $0 = $250.

Step 6: Apply a 10% Ceiling if Necessary.

The penalty amount did not increase, so the 10% cap does not apply.

Step 7: Determine New Penalty.

The new minimum CMP = $250

With respect to hazardous materials violations, other than training violations, that occur on or after September 27, 2010, the minimum CMP remains $250.

[FR Doc. 2010–18321 Filed 7–26–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS-R9-IA-2008-0116]
[90100-1660-1FLA B6]

RIN 1018–AW38

Endangered and Threatened Wildlife and Plants; Determination on Listing the Black-Breasted Puffleg as Endangered Throughout its Range; Final Rule

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, determine endangered status under the Endangered Species Act of 1973 (Act), as amended, for the black-breasted puffleg (*Eriocnemis nigrivestis),* a hummingbird native to Ecuador.

DATES: This rule becomes effective August 26, 2010.

ADDRESSES: This final rule is available on the Internet at *http://www.regulations.gov*. Comments and materials received, as well as supporting documentation used in the preparation of this rule, is available for public inspection by appointment during normal business hours at: U.S. Fish and Wildlife Service, Branch of Listing, Endangered Species Program, 4401 N. Fairfax Drive, Room 400, Arlington, VA 22203; telephone 703–358–2171.

FOR FURTHER INFORMATION CONTACT: Janine Van Norman, Chief, Branch of Foreign Species, Endangered Species Program, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 420, Arlington, VA 22203; telephone 703–358–2171; facsimile 703–358–1735. If you use a telecommunications devise for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

On May 6, 1991, we received a petition (1991 petition) from Alison Stattersfield, of the International Council for Bird Preservation (ICBP), to list 53 foreign birds under the Act, including the black-breasted puffleg (also referred to in this rule as "puffleg") that is the subject of this final rule. On December 16, 1991, we made a positive 90–day finding and announced the initiation of a status review of the species included in the 1991 petition (56 FR 65207). On March 28, 1994 (59 FR 14496), we published a 12–month finding on the 1991 petition. In that document, we announced our finding that listing the remaining 38 species from the 1991 petition, including the black-breasted puffleg, was warranted but precluded because of other listing activity.

Per the Service's listing priority guidelines (September 21, 1983; 48 FR 43098), we identified the listing priority numbers (LPNs) (ranging from 1 to 12) for all outstanding foreign species in our 2007 Annual Notice of Review (ANOR) (72 FR 20184), published on April 23, 2007. In that notice, the black-breasted puffleg was designated with a LPN 2 and we determined that listing continued to be warranted but precluded. It should be noted that "Table 1 – Candidate Review," in our 2007 ANOR, erroneously noted the black-breasted puffleg as having an LPN of 3. However, the correct LPN in 2007 was 2, as discussed in the body of the notice (72 FR 20184, p. 20197).

Previous Federal Action

On January 12, 1995 (60 FR 2899), we reiterated the warranted-but-precluded status of the remaining species from the 1991 petition, with the publication of the final rule to list the 30 African birds. We made subsequent warranted-but-precluded findings for all outstanding foreign species from the 1991 petition, including the black-breasted puffleg, as published in our annual notices of review (ANOR) on May 21, 2004 (69 FR 29354), and April 23, 2007 (72 FR 20184).

On January 23, 2008, the United States District Court ordered the Service to propose listing rules for five foreign bird species, actions which had been previously determined to be warranted but precluded: The Andean flamingo (*Phoenicoparrus andinus*), black-breasted puffleg (*Eriocnemis nigrivestis*), Chilean woodstar (*Eulidia yarrellii*), medium tree finch (*Camarhynchus pauper*), and the St. Lucia forest thrush (*Cichlherminia lherminieri sanctaeluciae*). The court ordered the Service to issue proposed listing rules for these species by the end of 2008.

On July 29, 2008 (73 FR 44062), we published in the **Federal Register** a notice announcing our annual petition findings for foreign species (2008 ANOR). In that notice, we announced that listing was warranted for 30 foreign bird species, including the black-breasted puffleg, which is the subject of this final rule.

Summary of Comments and Recommendations

In the proposed rule published on December 8, 2008 (73 FR 74427), we requested that all interested parties submit written comments on the proposal by February 6, 2009. We received six comments on the proposed rule. We received one comment from the Center for Biological Diversity supporting the proposed listing, three comments were from peer reviewers, and two other comments were received from the public that contained no substantive information. We did not receive any requests for a public hearing.

Peer Review

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinion from three knowledgeable individuals with scientific expertise that included familiarity with this species and its habitat, biological needs, and threats. We received responses from all three of the peer reviewers.

We reviewed all comments received from the peer reviewers for substantive issues and new information regarding the proposed listing of this species. The peer reviewers generally concurred with our methods and conclusions and provided additional information, clarifications, and suggestions to improve the final listing determination. Peer reviewer comments are addressed

in the following summary and incorporated into the final rule as appropriate.

Peer Reviewer Comments

(1) *Comment*: One commenter indicated that climate change, mining concessions, and competition from an Ecuadorian hummingbird, the gorgeted sunangel (*Heliangelus strophianus*), are threats that were not adequately addressed in the proposed rule.

Our Response: We agree that these issues were not adequately addressed and therefore, have addressed these potential threats in the analysis below. Climate change and interspecific competition are addressed in the Factor E analysis. Mining impacts are addressed in the Factor A analysis under *Other Anthropogenic Factors*.

(2) *Comment*: One peer reviewer indicated that while the science in our proposed rule is generally correct, more recent research had been conducted and pointed out recent research papers. The peer reviewer also provided more recent information on where the species is currently found.

Our Response: We addressed this comment in the analysis below by updating information such as the species' physical description, habitat specifics, current sightings and distribution, and food preferences. We incorporated this new research (e.g., a small number of references pertaining to life history) where appropriate.

(3) *Comment*: Two peer reviewers indicated that the population estimate used in the proposed rule is low; they suggested that the population estimate is more likely between 250 and 999 individuals.

Our Response: We agree and have addressed this in the Population Estimate section and analysis below.

(4) *Comment*: Commenters suggested that the population trends estimate used in the proposed rule is not based on current data and that the estimate should be correlated with habitat loss based on the species' current known locations.

Our Response: We have updated the trends estimate based on more recently available data. Therefore, the final rule incorporates the most current and best available information.

(5) *Comment*: Peer reviewers suggested that we update the information on the species' food base.

Our Response: We agree and have updated this information in the **Species Information,** *Habitat and Life History* section below.

Summary of Changes from Proposed Rule

Several changes were made to update or correct the taxonomy, biology, and life history of the species, and current areas where the species has been sighted. The taxonomy section has been corrected to indicate the correct taxonomic history for this species. Bourcier & Mulsant (1852) first described black-breasted puffleg as *Trochilus nigrivestis* rather than *Eriocnemis nigrivestis*, as erroneously indicated in the proposed rule. Additionally, one peer reviewer clarified that the species' principal habitat is not necessarily Polyleps forest. During 2007 field work mentioned in the 2008 Species Action Plan for the black-breasted puffleg (Jahn and Santander 2008), researchers only found the species in habitat other than *Polylepis* forest; therefore, we have updated this information and incorporated it into the analyses. The species' current known range has been updated to include recent sightings.

Based on new information, we also revised the threats analysis under factor A with respect to the construction of a pipeline being constructed from the Amazon basin to Esmeraldas that was thought to be in black-breasted puffleg habitat. We also updated the Factor E analysis to include synergistic effects of El Niño and deforestation.

Species Information

Species Description

The black-breasted puffleg is endemic to Ecuador and is a member of the hummingbird family (Trochilidae). It is approximately 3.25 inches (in) (8.5 centimeters (cm)) long (Fjeldså and Krabbe 1990, p. 272; Ridgely and Greenfield 2001a, p. 373; Ridgely and Greenfield 2001b, p. 280). The species is locally known as "*Calzadito pechinegro*" or "*Zamarrito pichinegro*" (United Nations Monitoring ProgrammeWorld Conservation Monitoring Centre (UNEP-WCMC) 2008b, p. 1). The Black-breasted puffleg has distinctive white leg plumage (ergo, the name "puffleg"), but is distinctive among other species of pufflegs due to a small, shiny blue "gorget" (coloration below the throat area). Males have entirely black upperparts, mostly blackish green underparts, and dark steel-blue forked tails. Females have shiny, green upper plumage, turning blue toward the tail, with golden-green underparts (BirdLife International (BLI) 2007, p. 1). As with other puffleg hummingbirds, it has a straight black bill.

Taxonomy

This species was first taxonomically described by Bourcier and Mulsant in 1852 and placed in Trochilidae as *Trochilus nigrivestis* (BLI 2009, p. 1). According to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) species database, the black-breasted puffleg is also known by the synonym, *Trichilus nigrivestis* (UNEP-WCMC 2008b). Both CITES and BirdLife International recognize the species as *Eriocnemis nigrivestis* (BLI 2007, p. 1; UNEP-WCMC. 2008b, p. 1). The Service follows the Integrated Taxonomic Information System (ITIS 2008, p. 1) which also recognizes the species as *Eriocnemis nigrivestis;* therefore, we accept the species as *Eriocnemis nigrivestis*.

Habitat and Life History

Black-breasted pufflegs prefer humid high-Andean montane forest such as elfin forests (generally forests at high elevations which contain stunted trees) and forest borders (Fjeldså and Krabbe 1990, p. 272; Jahn 2008, p. 29; Ridgely and Greenfield 2001a, p. 373; Ridgely and Greenfield 2001b, p. 280). This habitat is described as wet cloud forest: Grassy ridges surrounded by stunted montane forest with a dense understory (de Hoyo *et al.* 1999, p. 639). Altitudinal migrants, the species is found between 6,791 and 11,483 feet (ft) (2,070 – 4,570 meters (m)) (del Hoyo *et al.* 1999, p. 639; Fjeldså and Krabbe 1990, p. 272; Lyons and Santander, 2006, p. 1; Ridgely and Greenfield 2001a, p. 374). During the rainy season (November-February) the species is found mainly at higher altitudes above 10,000 ft (3,100 m). It is found at lower elevations 9,006-10,000 ft (2,745-3,100 m) primarily between April and September (Fjeldså and Krabbe 1990, p. 272; del Hoyo *et al.* 1999, p. 639). The species' preferred habitat is mixed forest and forest edges dominated by Ericacea plants at high elevations (Guevara, pers. comm., Jahn 2008, p. 34, Santander *et al.* 2004, pp. 8-9).

Most pufflegs, including the black-breasted puffleg, are considered to be generalist feeders (pollinators) (Ross and Allmon 1990, pp. 356-357). The black-breasted puffleg altitudinal migration coincides with the flowering of certain plants during the rainy season. *Palicourea huigrensis* and *Macleania rupestris* (commonly referred to as chamburo, chaquilulo, choglón, chupa lulún, colca macho, gualicón, hualicón llucho, joyapa, quereme, sagalita, and yurac joyapa (New York Botanical Garden 2009)) are commonly distributed

throughout the species' habitat. The species has been frequently observed using *Palicourea huigrensis* (no common name (NCN)) as its primary nectar source (Bleiweiss and Olalla 1983, pp. 657-658; del Hoyo *et al.* 1999, pp. 530-531; Fjeldså and Krabbe 1990, p. 272). The species also feeds on flower nectar of other shrubs and vines, including: *Thibaudia floribunda* (NCN), *Disterigma* sp. (NCN), *Rubus* sp. (NCN), *Tropaeolum* sp. (NCN), and *Psychotria uliginosa* (NCN) (Bleiweiss and Olalla 1983, pp. 657-658; Collar *et al.* 1992, pp. 516-517; del Hoyo *et al.* 1999, pp. 530-531; Phillips 1998, p. 21). The species has been observed feeding from at least 29 different plant species, including 8 species of Ericaceae (Jahn and Santander 2008, p. 21). Black-breasted pufflegs feed low in the shrubbery along forest margins, often while perched (Fjeldså and Krabbe 1990, p. 272; Ridgely and Greenfield 2001b, p. 280).

As recently as 1990, researchers were unaware of the puffleg's breeding habits (Fjeldså and Krabbe 1990, p. 272), and there continues to be little information (BLI 2007, p. 1). Del Hoyo *et al.* (1999, p. 639) reported that the species breeds from October to March, producing a clutch size of two, and that the female incubates the eggs. Based on the species' seasonal migration (del Hoyo *et al.* 1999, p. 639; Fjeldså and Krabbe 1990, p. 272), breeding presumably occurs at altitudes above 10,000 ft (3,100 m).

Historical Range and Distribution

Historically, the black-breasted puffleg inhabited the elfin forests along the northern ridge-crests of both Volcán Pichincha and Volcán Atacazo in northwest Ecuador (BLI 2007, p. 2; Fjeldså and Krabbe 1990, p. 272; Krabbe *et al.* 1994, p. 9). Habitat loss has been the primary cause of black-breasted puffleg decline (Philips 1998, p. 21, Santander 2004, pp. 10-17) (see Factor A). The number of specimens in museum collections taken in the 19th century up until 1950 is over 100, suggesting the species was once more common (Collar *et al.* 1992, p. 516). The species appears to have been extirpated from Volcán Atacazo, but this has not been verified (World Land Trust 2007, p. 3). On Volcán Atacazo, its presence has not been confirmed since 1902. There was a possible sighting of a female at treeline (11,483 ft; 3,500 m) in 1983 but it has never been confirmed (BLI 2007, 2; Collar *et al.* 1992, p. 174; del Hoyo *et al.* 1999, p. 639). Confirmation of the species on Volcán Atacazo has not been possible because there is a single landowner and access to the area has not been allowed to confirm existence of the species (Jahn 2008, pers. comm.). Following more than 13 years without any observation of the species, the black-breasted puffleg was rediscovered on Volcán Pichincha in 1993 (Jahn 2008, p. 33; Phillips 1998, p. 21).

Current Range and Distribution

Currently, the black-breasted puffleg is known to occur in definitely two, but possibly four, reserves all located north of Quito, Ecuador. The first area is the Yanacocha Reserve on the north side of Volcán Pichincha, approximately 12 miles (mi) (20 kilometers (km)) north of Quito. The second area where it is known to occur is in the Cotacachi-Cayapas Ecological Reserve (below Cayapachupa in the Cordillera (mountain range) de Toisán), which is 87 mi (140 km) north of Quito (Jahn 2008, pers. comm.). Currently the Yanacocha Reserve encompasses approximately 3,300 acres (ac) (1,300 hectares (ha) (WorldLand Trust 2009). A third area where it may occur is in a private reserve, Las Gralarias. This reserve is located in the Pichincha Province, two hours northwest of Quito, where this species was sighted in 2005 and 2006 (Lyons and Santander, 2006, pp. 1-2; Schwartz 2006, as cited in Hull 2009, p. 1). Las Gralarias is a 400ac (162ha) reserve, at an elevation of 5,873 7,776 ft (1,790 2,370 m), the lowest elevation at which a black breasted puffleg has been seen. Another sighting of this species occurred in 2007 in a fourth location, at Hacienda Verdecocha, a private reserve adjacent to the Yanacocha Reserve. Hacienda Verdecocha is approximately 2,396 ac (970 ha) and likely contains black-breasted puffleg habitat (Jahn 2008, p. 33; Jahn & Santander 2008, p. 10). It is unclear whether the birds at the Yanacocha Reserve and the Hacienda Verdecocha Reserve are the same population. The species' current existence at one other potential location (Volcan Atacazo, approximately 15 mi (25 km) southwest of Quito) has not been verified for over 100 years.

The species occurs in temperate elfin forests, generally at altitudes between 6,791 and 11,483 ft (2,070 – 4,570 m) (Fjeldså and Krabbe 1990, p. 272; Jahn & Santander 2008, p. 10; Ridgely and Greenfield 2001a, p. 373; Ridgely and Greenfield 2001b, p. 280). Volcán Pichincha, where the species is known to occur, peaks at 15,699 ft (4,785 m) (Phillips 1998, p. 21). The current extent of the species' range is believed to be between 27 mi^2 (70 km^2) and 54 mi^2 (139 km^2) (BLI 2009; Jahn & Santander 2008, p. 8). This considers the suitable habitat in two locations where the species is believed to occur based on the best available information (BLI 2009, p. 1). However, its range may be somewhat larger due to recent sightings in other protected areas, and also because it may also exist in other suitable locations where it has not been sighted (Guevara 2009 pers. comm., Jahn & Santander 2008, pp. 21-23).

Population Estimates

The black-breasted puffleg is believed to be restricted to two to three subpopulations (Hacienda Verdecocha is adjacent to the Yanacocha Reserve so that is likely one combined population). Its total population size ranges from 200 to 270 individuals, with a declining trend (BLI 2009, p. 1; Jahn 2008, p. 35). Recent research suggested that a more accurate estimate may be 250-999 individuals (Jahn and Santander 2008, p. 19); however, there are no supporting data for this estimate at this time. One additional subpopulation may exist on Volcan Atacazo (Jahn and Santander 2008, p. 35), although it has not been documented. BirdLife International, a global organization that consults with and assimilates information from species experts, estimated that the species has experienced a population decline of between 50 and 79 percent in the past 10 years, with more than 20 percent of this loss having occurred within the past 5 years. (BLI 2007, p. 4). This rate of decline is predicted to continue (BLI 2009, p. 1).

Conservation Status

The black-breasted puffleg is protected by various Federal, local, and international means. It is identified as a critically endangered species under Ecuadorian law (Rodriguez 2002, p. 91). This species is also classified as "Critically Endangered" in the 2009 International Union for Conservation of Nature (IUCN) Red List. It has an extremely small range, and the population is restricted to possibly two or three locations (BLI 2009, p. 1, Jahn and Santander 2008, p. 10). Critically endangered is IUCN's most severe category of extinction assessment, which equates to extremely high risk of extinction in the wild. IUCN criteria include rate of decline, population size, area of geographic distribution, and degree of population and distribution fragmentation. BirdLife International (BLI), which is cited throughout this document, is the authority for birds on the IUCN Red List. The black-breasted puffleg was listed on Appendix II of CITES on October 22, 1998. Additionally, in 2005, the mayor of Quito, Ecuador, designated the puffleg as its emblem. Lastly, several private reserves provide protection to this

species. Yanacocha Reserve, managed by Fundacion Jocotoco, a private nongovernmental organization in Ecuador, was established around 2001 specifically to protect this species. The Yanacocha Reserve is managed for ecotourism, environmental education, and conservation initiatives.

Factors Affecting the Species

Section 4 of the Act and its implementing regulations (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. The five–factor analysis under the Act requires an analysis of current and future potential impacts to the species. Listing actions may be warranted based on any of the above threat factors, singly or in combination. We evaluated the best available scientific and commercial information under the five listing factors to determine whether it met the definition of endangered or threatened. Each of these factors is discussed below.

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

The black-breasted puffleg occurs on volcanic mountain ranges restricted to elfin forests along the northern ridge-crests within 87 miles (140 km) northwest of Quito, Ecuador (BLI 2007, p. 2; Fjeldså and Krabbe 1990, p. 272; Krabbe *et al.* 1994, p. 9). The species has not been confirmed on Volcán Atacazo since 1902 (BLI 2007, 2; Collar *et al.* 1992, p. 174), although it may have been sighted there in 1983 (Jahn 2008, p. 33). The species occurs at altitudes between 6,791 and 11,483 ft (2,070 – 4,570 m) (Fjeldså and Krabbe 1990, p. 272; Jahn & Santander 2008, p. 10, Ridgely and Greenfield 2001a, p. 373; Ridgely and Greenfield 2001b, p. 280, Santander 2008, p. 33). Within the current range of the black-breasted puffleg, approximately 93 percent of the habitat has been destroyed, and the current extent of the species' range is approximately 54 mi^2 (139 km^2) ((BLI 2009, p. 1; Hirschfeld 2007, pp. 178-179; Jahn & Santander 2008, p. 8). Threats include human population pressures such as clearing for agricultural expansion and fires caused by slash-and-burn agricultural practices (Jahn and Santander 2008, p. 24).

Habitat loss due to deforestation is the primary cause of black-breasted puffleg declines (BLI 2009, p. 1; Philips 1998, p. 21). Current threats consist primarily of deforestation due to use by local people for firewood, charcoal, and agriculture (BLI 2009, p 2). Deforestation activities also include clearance of forested habitat for commercial use or grazing (Hirschfeld 2007, pp. 178-179). Habitat destruction and alteration also occur as a result of intentional fires to convert forested areas to pasture or cropland (Goodland 2002, pp. 16-17; Hirschfeld 2007, pp. 178-179; Phillips 1998, pp. 20-21).

Deforestation rates and patterns: The conversion of habitat significantly increased between 1996 and 2001 compared with the period between 1982 and 1996. The ridge-crests within the range of the black-breasted puffleg are relatively level. Local settlers have cleared the majority of forested habitat within the species' range for timber products (charcoal production) or converted it to potato cultivation and grazing (BLI 2009, p. 2, Bleiweiss and Olalla 1983, p. 656; del Hoyo 1999, pp. 530-531). Some ridges are almost completely devoid of natural vegetation, and even if black-breasted pufflegs still occur in these areas, their numbers are most likely quite low (BLI 2009, p. 2). Within the species' range, aerial photographs of the northern and western slopes of Volcan Pichincha between 1982 and 2001 showed a continued loss of forested area, while agricultural area increased by 24 percent (Santander 2004, p. 10).

The areas outside of Reserves (see Refugia) but still within the range of the black-breasted puffleg continue to be affected by habitat loss and fragmentation. An analysis of deforestation rates and patterns using satellite imagery in the western Andean slopes of Colombia and Ecuador was conducted. Researchers found that from 1973 through 1996, a total of 82,924 ha (204,909 ac) of tropical forests within the area studied were converted to other uses (Viña *et al.* 2004, pp. 123-124). This corresponds to a nearly one-third total loss of primary forest habitat or a nearly 2 percent mean annual rate within the study area. More recent reports identified similar forest habitat losses in Ecuador. Between the years 1990 and 2005, Ecuador lost a total of 7.31 million ac (2.96 million ha) of primary forest, which represents a 16.7 percent deforestation rate and a total loss of 21.5 percent of forested habitat since 1990 (Butler 2006, pp. 1-3; FAO 2003, p. 1).

Other Anthropogenic Factors: Habitat destruction and pollution due to oil development and distribution (Goodland 2002, pp. 16-17; Hirschfeld 2007, pp. 178-179) and increased access and habitat destruction resulting from road development (Hirschfeld 2007, pp. 178-179) have been indicated as other threats to this species' habitat. In the proposed rule, we discussed that, in 2001, the Ecuadorian government agreed to construct a pipeline to transport heavy oil from the Amazon basin to Esmeraldas on the Pacific Coast (Goodland 2002, pp. 16-17). The environmental impact study (EIS) conducted in 2001 revealed that the proposed route went through black-breasted puffleg habitat (Goodland 2002, pp. 16-17). However, the EIS was done almost 10 years ago. More recent satellite mapping shows that much of the area that was previously puffleg habitat is already destroyed, with little habitat remaining above 9,186 ft (2,800 m). The puffleg is found at lower elevations 9,006-10,000 ft (2,745-3,100 m) primarily between April and September. However, the species is found mainly at higher altitudes 10,000 ft (3,100 m) above the altitude at which the pipeline was constructed. Although this pipeline was constructed, this occurred in the past and is not a current or future threat.

The pipeline may pass through suitable puffleg habitat on the northwestern slope of Volcán Pichincha (Jahn and Santander 2008, p. 17). However this pipeline, in terms of its construction, is not a significant threat impacting the black-breasted puffleg because the pipeline construction already occurred. There is no indication that any other pipelines will be constructed in the black-breasted puffleg's range. There is the potential for oil spill leaks, but the threat of this is minimal. Because the species is found mainly at higher altitudes in reserves above the altitude of the pipeline, the puffleg habitat that potential oil spill leaks would likely affect is small. Therefore, we find that neither the pipeline, nor habitat destruction and pollution due to oil development are current or future threats to this species.

Mining was suggested to be a threat to this species by a peer reviewer; however, mining has not been found to be a threat to this species (also see Factor D). Mining has been controversial in Ecuador and there has been pressure from foreign mining companies to allow mining for resources such as copper and diamonds. In March 2009, shortly after

Ecuador's new mining law was enacted, the Confederation of Indigenous Nationalities of Ecuador (CONAIE) filed a lawsuit stating that the country's new mining law is unconstitutional because it failed to consult with indigenous organizations whose territories will be affected by a proposed activity (CONAIE 2009). Although the mining law is being disputed, mining may be allowed for resources in Junín and Zamora, Ecuador, to the west and southwest of Quito (Ecuador Mining News 2009, Ecometals Ltd 2009). However, mining is not allowed in the two to three reserves where the black-breasted puffleg is currently believed to exist. CONAIE, is working diligently to ensure that mining does not occur (CONAIE 2009, Earthworks 2009). Mining does not appear to be a major factor impacting the black-breasted puffleg; therefore, we have determined that mining is not a threat to the species.

We evaluated roads as a potential threat to the species. The existing subpopulations of black-breasted puffleg appear to be concentrated in protected areas (see Refugia below), which are not currently threatened by roads. Roads can destroy habitat, facilitate invasion by exotic species, expose birds to traffic hazards, and increase human access into habitat, facilitating further exploitation and habitat destruction (Hunter 1996, pp. 158-159). However, in this case, roads do not appear to be a major factor impacting the black-breasted puffleg; therefore, we have determined that roads are not a threat to the species.

Refugia: Although reserves exist to protect species, reserves can also bring with them unintended consequences. Reserves may have repercussions, such as the potential to initiate additional road development through species' habitat, and increase pressures on species' habitat from tourism (such as the increase in pollution, trash, and other waste). Reserves may also increase pressure to surrounding habitat by locals who supplement their income through ecotourism, but who also may use the land detrimentally as described under factor A (Stem *et al*. 2003, pp. 322-347; Pitts 2010, pp. 86, 197). Reserves, with their increased tourism, can also cause an increase in invasive species (FAO 2010, p. 1).

Several reserves exist with a primary intention of protecting this species. In the proposed rule, we found that Yanacocha Reserve was negatively affected by human population pressures, including clearing for agricultural expansion and fires caused by slash-and-burn agricultural practices (Philips 1998, p. 21). Hunting, extraction of nontimber resources (such as orchids), and tourism were considered to have a minor impact within the Reserve (BLI 2007, p. 12). However, the best available information now indicates that if these practices still occur, they (1) occur outside of the reserves and (2) they do not occur to the degree that they threaten the continued or future existence of the species.

Summary of Factor A

The black-breasted puffleg prefers humid high-Andean montane forests at altitudes between 6,791 and 11,483 ft (2,070 – 4,570 m) (Jahn 2008, p. 10; Ridgely and Greenfield 2001a, p. 373; Ridgely and Greenfield 2001b, p. 280). The current populations are small and limited to a narrow elevational band in the volcanic mountains generally to the north of Quito, existing in fragmented, disjunct, and isolated habitat. Although the species' range is partly in at least two protected areas, the habitat around the reserves continues to be altered and destroyed by human activities. Further, some of the protected areas are private reserves which are not officially recognized by the Ministry of Environment (Jahn and Santander 2008, p. 9), and their long term protection is not guaranteed. Efforts are under way to restore and protect more suitable habitat for the species (Jahn 2008, p. 28). Outside of its refugia, the areas around the reserves is somewhat negatively affected by tourism, local human pressures, roads, and invasive species associated with the reserves. Nevertheless, we find that unintended consequences of refugia are not a threat to the species. However, habitat destruction, alteration, and conversion are key factors in the species' historical decline and continue to be factors negatively affecting the status of the species outside of the Reserves where this species is found. Therefore, based on the best available information, we find that the present destruction, modification, and curtailment of habitat is a significant threat to the black-breasted puffleg.

B. Overutilization for commercial, recreational, scientific, or educational purposes

In 1987, the black-breasted puffleg was listed on Appendix II of CITES. CITES is an international agreement between governments to ensure that the international trade of CITES-listed plant and animal species does not threaten species' survival in the wild. There are currently 175 CITES Parties (member countries or signatories to the Convention). Under this treaty, CITES Parties (signatories to the Convention) regulate the import, export, and re-export of CITES-protected plants and animal species (also see Factor D). Trade must be authorized through a system of permits and certificates that are provided by the designated CITES Scientific and Management Authorities of each CITES Party (CITES 2007). In the United States, the U.S. Fish and Wildlife Service serves as the Scientific and Management Authorities.

CITES provides varying degrees of protection to more than 32,000 species of animals and plants that are traded as whole specimens, parts, or products. Under CITES, a species is listed at one of three levels of protection (i.e., regulation of international trade), which have different permit requirements (CITES 2007). Appendix II includes species requiring regulation of international trade in order to ensure that trade of the species is compatible with the species' survival. International trade in specimens of Appendix-II species is authorized when the permitting authority has determined that the export will not be detrimental to the survival of the species in the wild and that the specimens to be exported were legally acquired (UNEP-WCMC 2008a, p. 1).

At times a species may be listed as endangered under the U.S. Endangered Species Act, and concurrently listed under Appendix II of CITES, rather than the more restrictive Appendix I, which does not allow commercial trade of wild specimens. Although CITES Appendix II allows for commercial trade, in order for specimens of this species to be traded internationally (i.e., exported from its country of origin), a determination has to be made that (1) The export will not be detrimental to the survival of the species in the wild and (2) the specimen was legally acquired. In this case, it is unlikely that a determination could be made that the export would not be detrimental to the survival of the species in the wild.

Between the time the puffleg was listed in CITES in 1987 and 2010, there were 5 CITES-permitted international shipments containing 17 specimens of the black-breasted puffleg. These shipments occurred between 1996 and 2002 (UNEP-WCMC 2008c, p. 1). According to the World Conservation Monitoring Centre trade data (UNEP-WCMC 2008c, p. 1), all of the CITES transactions involved the transport of dead specimens. Nine were traded for scientific purposes, six for commercial purposes, and two were for personal use. Trade involving the United States included three specimens that were imported into the United States and seven that were reexported from the United States.

Even though this species is listed under Appendix II of CITES, and commercial trade is allowed, we believe that international trade controlled via valid CITES permits is not a threat to the species. CITES adequately regulates international trade because the export of Appendix II species requires the determination that the export will not be detrimental to the survival of the species in the wild. Therefore, we find that international trade does not pose a threat to the species.

We are unaware of any other information currently available that addresses the occurrence of overutilization for commercial, recreation, scientific, or education purposes that may be affecting the black-breasted puffleg. There is no known historic or cultural use of this species by local populations. As such, we do not consider overutilization to be a threat to the species.

C. Disease or predation

We are not aware of any occurrence of disease or predation that may be causing a decline of the black-breasted puffleg. As a result, we do not consider disease or predation to be a threat to the black-breasted puffleg.

D. The inadequacy of existing regulatory mechanisms

The black-breasted puffleg is identified as a critically endangered species under Ecuadorian law and Decree 3,516 of 2003–Unified Text of the Secondary Legislation of the Ministry of Environment (Ecolex 2003b, p. 36). Decree 3,516 summarizes the law governing environmental policy in Ecuador and provides that the country's biodiversity be protected and used primarily in a sustainable manner. Appendix 1 of Decree No. 3,516 lists the Ecuadorian fauna and flora that are considered endangered. Species are categorized as critically endangered (En peligro critico), endangered (En peligro), or vulnerable (Vulnerable) (Ecolex 2003b, p. 17). Resolution No. 105 of January 28, 2000, and Agreement No. 143 of January 23, 2003, regulate and prohibit commercial and sport hunting of all wild bird species, except those specifically identified by the Ministry of the Environment or otherwise permitted (Ecolex 2000, p. 1; Ecolex 2003a, p. 1). The Ministry of the Environment does not permit commercial or sport hunting of the black-breasted puffleg because of its status as a critically endangered species (Ecolex 2003b, p. 17). However, we do not consider hunting (Factor B) to be a current threat to the black-breasted puffleg, so this law does not reduce any threats to the species.

Ecuador has numerous laws and regulations pertaining to forests and forestry management. These include: The Forestry Act (comprised of Law No. 74 of 1981 Forest Act and conservation of natural areas and wildlife (Faolex 1981, p. 1-54), and Law No. 17 of 2004 Consolidation of the Forest Act and conservation of natural areas and wildlife (Faolex 2004, pp. 1-29)); a Forestry Action Plan (1991-1995); the Ecuadorian Strategy for Forest Sustainable Development of 2000 (Estrategia para el Desarrollo Forestal Sostenible); and, Decree 346, which recognizes that natural forests are highly vulnerable (ITTO 2006, p. 225). However, the International Tropical Timber Organization considered ecosystem management and conservation in Ecuador, including effective implementation of mechanisms that would protect the black-breasted puffleg and its habitat, to be lacking (ITTO 2006, p. 229).

The governmental institutions responsible for oversight appear to be under-resourced, and there is a lack of law enforcement on the ground. Despite the creation of a national forest plan, there appears to be a lack of capacity to implement this plan due to insufficient political support. There appears to be unclear or unrealistic forestry standards, inconsistencies in application of regulations, discrepancies between actual harvesting practices and forestry regulations, the lack of management plans for protected areas, and high bureaucratic costs. All these inadequacies have failed to prevent ongoing habitat destruction, such as widespread unauthorized logging (ITTO 2006, p. 229), forest clearing for conversion to agriculture or grazing (Bleiweiss and Olalla 1983, p. 656; del Hoyo 1999, pp. 530-531; Hirschfeld 2007, pp. 178-179), habitat destruction and alteration as a result of fire caused by slash-and-burn agriculture (Goodland 2002, pp. 16-17; Hirschfeld 2007, pp. 178-179; Phillips 1998, pp. 20-21); and increased access and habitat destruction resulting from road development (Hirschfeld 2007, pp. 178-179). In addition, most of Ecuador's forests are privately owned or owned by communities (ITTO 2006, p. 224). The management and administration of Ecuador's forest resources and forest harvest practices is insufficient and unable to protect against unauthorized forest harvesting, degradation, and conversion (ITTO 2006, p. 229). Thus, Ecuadorian forestry regulations have not mitigated the threat of habitat destruction (Factor A).

The Ecuadorian government recognizes 31 different legal categories of protected lands (e.g., national parks, biological reserves, geo-botanical reserves, bird reserves, wildlife reserves, etc.). As of 2006, the amount of protected land (both forested and non-forested) in Ecuador totaled approximately 11.5 million ac (4.67 million ha) (ITTO 2006, p. 228). However, only 38 percent of these lands have appropriate conservation measures in place to be considered protected areas according to international standards. The standards define these areas as areas that are managed for scientific study or wilderness protection, for ecosystem protection and recreation, for conservation of specific natural features, or for conservation through management intervention (IUCN 1994, pp. 17-20). Moreover, only 11 percent have management plans, and less than 1 percent (13,000 ha (32,125 ac)) have implemented those management plans (ITTO 2006, p. 228).

The black-breasted puffleg occurs in only a few reserves (BLI 2009, p. 2; Jahn and Santander 2008, p. 33; Santander, *et al.* 2004, p. 1; World Land Trust 2007, p. 1) in the Pichincha mountain range. Some of the area is being managed for ecotourism, environmental education, and conservation initiatives, including restoration (Fundacion Jocotoco 2006, p. 1). However, outside of the Reserves, there are ongoing human population pressures from expanding agriculture, along with slash-and-burn agricultural practices (BLI 2009, pp. 1-2) (Factor A). Thus, while black-breasted puffleg habitat is being protected in several relatively small government and privately owned reserves, regulatory mechanisms associated with protected land do not mitigate the impact of threats to the species' habitat from habitat loss and destruction.

The black-breasted puffleg is listed on Appendix II of CITES. CITES, an international treaty among 175 nations, including Ecuador and the United States, entered into force in 1975. In the United States, CITES is implemented through the U.S. Endangered Species Act (ESA). The Secretary of the Interior has delegated the Department's responsibility for CITES to the Director of the U.S. Fish and Wildlife Service (USFWS) and established the CITES Scientific and Management Authorities to implement the treaty. Under this treaty, member countries work together to ensure that international trade in animal and plant species is not detrimental to the survival of wild populations by regulating the import, export, and re-export of CITES-listed animal and plant species (USFWS 2008, p. 1). As discussed under Factor B, we do not consider international trade to be

a threat impacting the black-breasted puffleg. Therefore, protection under this Treaty is an adequate regulatory mechanism.

Summary of Factor D

Ecuador has adopted numerous laws and regulatory mechanisms to administer and manage its wildlife, such as the black-breasted puffleg and its habitat. Under Ecuadorian law, the black-breasted puffleg is listed as endangered and ranges partly within two to three protected areas. As discussed under Factor A, habitat destruction, degradation, and fragmentation continue throughout the existing range of the black-breasted puffleg. With respect to CITES, we found that CITES is an adequate regulatory mechanism with respect to international trade or overutilization (Factor B), and is not a threat to this species. However, on-the-ground enforcement of Ecuador's laws and oversight of the local jurisdictions implementing and regulating activities destructive to the species' habitat are insufficient in conserving the black-breasted puffleg or its habitat. Therefore, we find that the existing regulatory mechanisms, as implemented, are inadequate to either eliminate or mitigate the primary threat of habitat destruction to the black-breasted puffleg.

E. Other natural or manmade factors affecting the continued existence of the species

Interspecific Competition: One peer reviewer suggested that another species of hummingbird, the gorgeted sunangel (*Heliangelus strophianus*), may be a potential threat (Jahn 2008, pp. 34, 36-37) to the black-breasted puffleg. This species occupies a similar ecological niche and may be moving northward into the black breasted puffleg's habitat due to loss of suitable habitat. The gorgeted sunangel consumes similar plant species and is slightly larger in size than the black-breasted puffleg. Only one aggressive interaction between the species has been observed; however, they both aggressively defend their territories (Guevara 2009, pers. comm.). Loss of the gorgeted sunangel's habitat may exacerbate the threat posed to the puffleg in the form of competition from the gorgeted sunangel moving upward in altitude into the black-breasted puffleg's range.

Small, Declining Population Size: The black-breasted puffleg population has declined primarily as a result of habitat loss (Bleiweiss and Olalla 1983, pp. 656-661; BLI 2009, p. 1; Collar *et al.* 1992, pp. 516-517) (Factor A). A collection of over 100 museum specimens suggests that the species was more common and more widespread than the currently known populations (BLI 2004, p. 2; Collar *et al.* 1994, p. 121). The black-breasted puffleg inhabits a narrow elevational strip between 6,791 and 11,483 ft (2070 - 4570 m) (BLI 2010, p 1; Fjeldså and Krabbe 1990, p. 272; Krabbe *et al.* 1994, pp. 8-9). Within the species' range, aerial photographs of the northern and western slopes of Volcan Pichincha between 1982 and 2001 showed a continued loss of forested area while agricultural area increased by 24 percent (Santander, et. al. 2004, p. 10). As indicated above, the current extent of the species' range is believed to be between 27 mi^2 (70 km^2) and 54 mi^2 (139 km^2). The total population is currently estimated to be 200-270 individuals, and believed to be in decline (BLI 2010, p. 1).

Rare species (i.e., species with small population sizes or restricted ranges) may be vulnerable to a variety of stochastic processes that can affect their risk of extinction on various timescales. Whether a rare species may meet the definition of a threatened or an endangered species under the Act depends on the potential threats involved, the probable timescale of the potential threat, and the characteristics of the species and its habitat. Factors can include the species' dependence on a specific habitat type and its inability to move away from a stressor or habitat degradation. Although the Trochilinae hummingbirds tend to be food generalists (Ross and Allmon 1990, pp. 356-357), the black-breasted puffleg is restricted to a small geographic range. Rare species such as this puffleg that are experiencing declining populations and threats are particularly vulnerable to risks such as inbreeding depression, loss of genetic variation, and accumulation of new mutations. Inbreeding can have individual or population-level consequences, either by increasing the phenotypic expression (the outward appearance or observable structure, function, or behavior of a living organism) of recessive, deleterious alleles or by reducing the overall fitness of individuals in the population (Charlesworth & Charlesworth 1987, p. 231; Shaffer 1981, p. 131). Small, isolated populations of wildlife species are also susceptible to demographic problems (Shaffer 1981, p. 131), which may include reduced reproductive success of individuals and skewed sex ratios. Once a population is reduced below a certain number of individuals, it can tend to rapidly decline towards extinction (Franklin 1980, pp. 147-148; Gilpin and Soulé 1986, p. 25; Holsinger 2000, pp. 64-65; Soulé 1987, p. 181).

The black-breasted puffleg's restricted range, combined with its small, declining population (BLI 2009, unpaginated; del Hoyo *et al.* 1999, p. 639; Fjeldså and Krabbe 1990, p. 272; Krabbe *et al.* 1994, p. 9), makes the species particularly vulnerable to the threat of adverse natural (e.g., genetic, demographic, or environmental) and manmade (e.g., deforestation, habitat alteration, fire) events that destroy individuals and their habitat (Harris and Pimm, 2008, p. 164; Holsinger 2000, pp. 64-65; Primack 1998, pp. 279-308; Young and Clarke 2000, pp. 361-366). Due to lack of short- and long term viability of its existing population, we consider the black-breasted puffleg to be at risk of extinction.

Climate Change: The Intergovernmental Panel on Climate Change (IPCC) was established in 1988 by the World Meteorological Organization and the United Nations Environment Program in response to growing concerns about climate change and, in particular, the effects of global warming. Although the extent of warming likely to occur is not known with certainty at this time, the IPCC has concluded that warming of the climate is unequivocal, and that continued greenhouse gas emissions at or above current rates will cause further warming (Meehl *et al.* 2007, p. 749). Eleven of the 12 years from 1995 through 2006 rank among the 12 warmest years in the instrumental record of global surface temperature since 1850 (IPCC 2007). Climate-change scenarios estimate that the mean air temperature could increase by more than 3 °C (5.4 °F) by 2100 (IPCC 2007, p. 46). We recognize that there are scientific differences of opinion on many aspects of climate change, including the role of natural variability in climate. We rely primarily on synthesis documents (e.g., IPCC 2007) that present the consensus view of a very large number of experts on climate change from around the world. We have found that these synthesis reports, as well as the scientific papers used in those reports or resulting from those reports, represent the best available scientific information we can use to inform our decision.

However, climate change models that are currently available are not yet able to make meaningful predictions of climate change for specific, local areas (Parmesan and Matthews 2005, p. 354). We do not have models to predict how the climate in the range of this bird species will change, and we do not know how any change that may occur would affect these species. However,

models and research suggest that climate change is an additional stress for species such as the black breasted puffleg that are already threatened by other environmental changes to their habitats (McCarty 2001, p. 325; Brook *et al* 2008, pp. 453-454). Warming has been predicted to occur to a greater degree in the higher altitudes than in the lower altitudes (Bradley 2006, p. 1). Although we do not find that climate change, in and of itself, is a threat to the species, a discussion of the synergistic effects of El Niño, deforestation, and drought follows.

Regional and localized models are less prevalent and sometimes absent with respect to climate change. Research has been conducted with respect to the interactions between El Niño and deforestation and how it affects montane cloud forests (Laurance 1998, p. 413, Laurance and Williamson 2001, p. 1529; Still 1999, p. 608). From this research, we can predict how increases in temperature due to climate change may subsequently interact with other stressors. In ecosystems such as the one where the black breasted puffleg exists, mountains are frequently shrouded in trade wind clouds and mist in combination with rainfall. This habitat type is termed tropical montane cloud forest. Many features of these ecosystems, such as vegetation morphology, are related to cloud formation. One of the most significant characteristics is horizontal precipitation, where frequent cloud cover is the deposition of cloud droplets on vegetation (Laurance and Williamson 2001, p. 1529; Still 1999, p. 608). Fragmented forests, such as the one where the black breasted puffleg exists, are more susceptible to droughts in El Niño years (Laurance and Williamson 2001, p. 1529). With increased deforestation, plant evapotranspiration is reduced, subsequently causing a decrease in rainfall, which could in turn increase the vulnerability of the forest to fire. Researchers suggest that there may be a deforestation threshold (Laurance and Williamson 2001, p. 1529). All of these stressors act synergistically, and warming climate could exacerbate the likelihood of drought and subsequent forest fire (Foden *et al.* 2008, pp. 1-4). The relationship between El Niño (and increased El Niño events), deforestation, drought, and forest fires all interacting synergistically increase the likelihood of increased severity in drought and forest fires (Laurance 1998, p. 413).

Research suggests that birds are moving northward to cooler climates in response to climate change (Sorte and Jetz 2008, pp. 865, 866). In part, because the black breasted puffleg's habitat is at high elevations, it has been suggested there may no longer be habitat for this species. The higher elevations could potentially be affected by the synergistic effects of drought, El Niño, and forest fires as discussed above. Plant nectar and other food sources upon which the black-breasted puffleg depends may require a particular humidity level that is associated with cloud forest conditions. Conditions associated with this shift in elevation include possible physiological changes and changes in species assemblages in part due to phenology (when plants bloom based on temperature and daylight), all of which could potentially affect the black breasted puffleg's fitness (Foden *et al* 2008, pp. 1-5). These potential changes act in concert with other threats to the species such as habitat loss and degradation, magnifying the synergistic effects on this species. However, several reserves exist for the explicit protection of black breasted puffleg habitat. Because these reserves exist and contain large swaths of protected forested habitat (believed to be at least 6,096 ac/ 2,467 ha), the threat of drought and forest fires is ameliorated. Therefore, we do not consider the synergistic effects of drought, El Niño, and forest fires to have a significant impact on the species' habitat now or in the foreseeable future.

Invasive species. An increase in the atmospheric concentration of carbon dioxide (CO2) has implications beyond those associated with warming temperatures. The change in CO2 may increase the ability of invasive plant species to outcompete native plant species on which the black-breasted puffleg feeds. Higher concentrations of CO2 may be favorable to invasive plant species (Smith *et al.* 2000, pp. 79-82). Emissions of CO2, considered to be the most significant anthropogenic greenhouse gas, increased due to human activities by approximately 80 percent between 1970 and 2004 (IPCC 2007, p. 36). CO2 emissions from energy use have been projected to increase by 40 to 110 percent between 2000 and 2030 (IPCC 2007, p. 44). We therefore expect continuing production of atmospheric CO2, at or above current levels, as predicted, to contribute to the spread of invasive plant species and have a detrimental impact on the species' habitat.

Summary of Factor E

Projected climate change and its associated consequences (change in species composition, distribution, and elevation) has the potential to affect the black-breasted puffleg. Warmer temperatures may interact with other stressors such as habitat degradation and loss (Brook *et al.* 2008, p. 1). Competition with other species and an increase in invasive plant species, which could outcompete the black-breasted puffleg's food sources, are other potential stressors. Warmer temperatures and greater concentrations of atmospheric carbon dioxide will likely cause changes in the plant species composition in this species' habitat, as well as likely shift the black-breasted puffleg altitudinal distribution (Jahn 2008). However, this species is a generalist feeder and has been seen in lower elevations in reserves and protected areas. We believe that the above stresses to the species are buffered by the establishment of reserves and protected areas for this species.

The black-breasted puffleg is currently restricted to possibly three small and declining populations within a small geographic range. The limited availability of suitable habitat makes it vulnerable to genetic and demographic risks that negatively impact the species' short- and long-term viability. The species' population size has declined considerably within the past 10 years (50-79 percent), and this rate of decline is expected to continue. Other threats to the species include possible competition and displacement by the Gorgeted sunangel, displacement of the black-breasted puffleg's food sources by nonnative invasive plant species, and genetic isolation due to habitat fragmentation and isolation of small populations.

Based on the best available information, we have determined that the species is particularly vulnerable to the threat of adverse natural (e.g., genetic, demographic) and manmade events (introduction of invasive species and drought and fires caused by habitat loss and destruction) that destroy individuals and their habitat. The genetic and demographic risks are exacerbated by the manmade factors. Therefore, we find that other natural or manmade factors are threats to the continued existence of the black-breasted puffleg.

Conclusion and Determination

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the black-breasted puffleg. The extreme lack of data for this species makes it difficult to discern a trend in population numbers with statistical confidence. We believe it is reasonable to infer that the trend is downward; the best available scientific and commercial data suggest that over the past two decades, this species has

likely significantly declined in abundance.

There are three primary factors impacting the continued existence of the black-breasted puffleg: (1) Habitat destruction, fragmentation, and degradation (factor A); (2) limited, declining population size and isolation of remaining subpopulations (factor E); and (3) inadequate regulatory mechanisms (factor D). The black-breasted puffleg, a small hummingbird with two to three subpopulations, occupies a narrow range of distribution, preferring temperate elfin forests at altitudes of between 6,791 and 11,483 ft (2,070 and 4,570 m). The species is an altitudinal migrant, spending the breeding season (November-February) in the humid elfin forest and the rest of the year at slightly lower elevations based on available food sources.

The primary threat to this species, widespread deforestation, has led to habitat loss. Conversion of primary forests to human settlement and agricultural uses has led to the fragmentation of habitat throughout the range of the black-breasted puffleg and isolation of the remaining populations. Its habitat, which is already disturbed and fragmented, continues to be altered by anthropogenic factors such as habitat alteration, introduction of invasive species, and habitat destruction and fragmentation as a result of local sustenance use, particularly agriculture. Although the puffleg is listed as a critically endangered species under Ecuadorian law and part of its range occurs within a protected area, implementation of existing regulatory mechanisms are inadequate to protect the species (Factor D), as they have been ineffective in curbing the primary threat to the black-breasted puffleg, which is habitat loss or alteration (Factor A).

The total population size of the black-breasted puffleg is estimated to range from 200 to 270 adult individuals, with a declining trend. The black-breasted puffleg's restricted range, combined with its small population size, makes the species particularly vulnerable to the threat of adverse natural (e.g., genetic, demographic, or environmental) and manmade (e.g., deforestation, habitat alteration, fire) events that destroy individuals and their habitat.

The population of this species has declined between 50 and 79 percent in the past 11 years. More than 20 percent of this loss occurred within the past 6 years, including the possible local extirpation of the species from Volcán Atacazo. These rates of decline are expected to continue. Habitat destruction, alteration, conversion, and fragmentation (Factor A) have been and continue to be factors in the black-breasted puffleg's decline. The impacts of habitat loss are exacerbated by the inadequacy of existing regulatory mechanisms (Factor D) and the species' already small and declining population size, making the black-breasted puffleg particularly vulnerable to natural and human factors (e.g., genetic isolation and possible inbreeding, and the introduction of invasive species) (Factor E). We consider the threats to the black-breasted puffleg to be equally present and of the same magnitude throughout the species' current range. Based on the best available scientific and commercial information regarding the past, present, and potential future threats faced by the black-breasted puffleg, this species warrants protection under the Act, and we determine that the black-breasted puffleg is endangered throughout its range.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and encourages and results in conservation actions by Federal and State governments, private agencies and groups, and individuals.

Section 7(a) of the Act, as amended, and as implemented by regulations at 50 CFR part 402, requires Federal agencies to evaluate their actions within the United States or on the high seas with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. However, given that the black-breasted puffleg is not native to the United States, no critical habitat is being proposed for designation with this rule.

Section 8(a) of the Act authorizes limited financial assistance for the development and management of programs that the Secretary of the Interior determines to be necessary or useful for the conservation of endangered and threatened species in foreign countries. Sections 8(b) and 8(c) of the Act authorize the Secretary to encourage conservation programs for foreign endangered species and to provide assistance for such programs in the form of personnel and the training of personnel.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered and threatened wildlife. As such, these prohibitions would be applicable to the black-breasted puffleg. These prohibitions, pursuant to 50 CFR 17.21, make it illegal for any person subject to the jurisdiction of the United States to "take" (take includes: Harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or to attempt any of these) within the United States or upon the high seas, import or export, deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce, any endangered wildlife species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken in violation of the Act. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 for endangered species and 17.32 for threatened species. With regard to endangered wildlife, a permit must be issued for the following purposes: For scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities.

Required Determinations

National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et. seq.)

We have determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining our reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited in this proposed rule is available on the Internet at *http://www.regulations.gov* or upon request from the Endangered Species Program, Branch of Listing, U.S. Fish and Wildlife Service (see **FOR FURTHER INFORMATION CONTACT**).

Author(s)

The primary authors of this final rule are the staff of the Endangered Species Program, Branch of Foreign Species, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.11(h) by adding a new entry for "Puffleg, black-breasted" in alphabetical order under BIRDS, to the List of Endangered and Threatened Wildlife, to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*		*	*
BIRDS							
*	*	*	*	*		*	*
Puffleg, black-breasted	*Eriocnemis nigrivestis*	Ecuador, South America	Entire	E	767	NA	NA
*	*	*	*	*		*	*

Dated: June 29, 2010

Jeffrey L. Underwood,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2010–18018 Filed 7–26–10; 8:45 am]

BILLING CODE 4310–55–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R9-IA-2008-0108]

[90100-1660-1FLA B6]

RIN 1018-AW01

Endangered and Threatened Wildlife and Plants; Final Rule to List the Medium Tree-Finch (*Camarhynchus pauper*) as Endangered Throughout Its Range

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine endangered status for the medium tree-finch (*Camarhynchus pauper*) under the Endangered Species Act of 1973, as amended (Act). This species is native to Floreana Island, one of the Galapagos Islands in Ecuador. This rule implements the protections of the Act for this species.

DATE: This final rule is effective August 26, 2010.

ADDRESSES: The supporting file for this rule is available for public inspection, by appointment, during normal business hours, Monday through Friday, in Suite 400, 4401 N. Fairfax Drive, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Janine Van Norman, Chief, Branch of Foreign Species, Endangered Species Program, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 420, Arlington, VA 22203; telephone 703-358-2171; facsimile 703-358-1735. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Background

In this final rule, we determine endangered status for the medium tree-finch (Camarhynchus pauper) under the Act.

Previous Federal Actions

Section 4(b)(3)(A) of the Act requires us to make a finding (known as a "90–day finding'') on whether a petition to add, remove, or reclassify a species from the list of endangered or threatened species has presented substantial information indicating that the requested action may be warranted. To the maximum extent practicable, the finding shall be made within 90 days following receipt of the petition and published promptly in the **Federal Register**. If we find that the petition has presented substantial information indicating that the requested action may be warranted (a positive finding), section 4(b)(3)(A) of the Act requires us to commence a status review of the species if one has not already been initiated under our internal candidate assessment process. In addition, section 4(b)(3)(B) of the Act requires us to make a finding within 12 months following receipt of the petition on whether the requested action is warranted, not warranted, or warranted but precluded by higher-priority listing actions (this finding is referred to as the "12–month finding''). Section 4(b)(3)(C) of the Act requires that a finding of warranted but precluded for petitioned species should be treated as having been resubmitted on the date of the warranted but precluded finding, and is therefore subject to a new finding within 1 year and subsequently thereafter until we take action on a proposal to list or withdraw our original finding. The Service publishes an annual notice of resubmitted petition findings (annual notice) for all foreign species for which listings were previously found to be warranted but precluded.

On May 6, 1991, we received a petition (hereafter referred to as the 1991 petition) from the International Council for Bird Preservation (ICBP), to add 53 species of foreign birds to the list of Threatened and Endangered Wildlife

(50 CFR 17.11(h)), including the medium tree-finch that is the subject of this final rule. In response to the 1991 petition, we published a positive 90–day finding on December 16, 1991 (56 FR 65207), for all 53 species, and announced the initiation of a status review. On March 28, 1994 (59 FR 14496), we published a 12–month finding on the 1991 petition, along with a proposed rule to list 30 African birds under the Act. In that document, we proposed listing 15 of the 53 bird species included in the 1991 petition, and announced our finding that listing the remaining 38 species from the 1991 petition, including the medium tree-finch, was warranted but precluded because of other listing activity.

On May 21, 2004 (69 FR 29354), and April 23, 2007 (72 FR 20184), we published in the **Federal Register** notices announcing our annual petition findings for foreign species. In those notices, we made warranted but precluded findings for all outstanding foreign species from the 1991 petition, including the medium tree-finch which is the subject of this final rule.

Per the Service's listing priority guidelines (September 21, 1983; 48 FR 43098), our 2007 annual notice of review (ANOR) (April 23, 2007; 72 FR 20184) identified the listing priority numbers (LPNs) (ranging from 1 to 12) for all outstanding foreign species, including the medium tree-finch, which was designated with an LPN of 11. The medium tree-finch does not represent a monotypic genus. As reported in the 2007 ANOR, the magnitude of threat to the species was moderate as the species was common in the forested highlands and its habitat had not been highly degraded. The immediacy of threat was nonimminent because the species' habitat is protected by the area's national park and World Heritage Site status.

On January 23, 2008, the United States District Court ordered the Service to propose listing rules for five foreign bird species, actions which had been previously determined to be warranted but precluded: The Andean flamingo (*Phoenicoparrus andinus*), black-breasted puffleg (*Eriocnemis nigrivestis*), Chilean woodstar (*Eulidia yarrellii*), medium tree-finch (*Camarhynchus pauper*), and the St. Lucia forest thrush (*Cichlherminia herminieri sanctaeluciae*). The court ordered the Service to issue proposed listing rules for these species by the end of 2008.

On July 29, 2008 (73 FR 44062), we published in the **Federal Register** a notice announcing our annual petition findings for foreign species. In that notice, we announced that proposing 30 taxa for listing under the Act is warranted. In order to comply with the recent court-order, the medium tree-finch was included as one of the 30 taxa for which listing is warranted.

Summary of Comments and Recommendations

In the proposed rule published on December 8, 2008 (73 FR 74434), we requested that all interested parties submit written comments on the proposal by February 6, 2009. We received six comments. We received a comment from the Center for Biological Diversity supporting the proposed listing. Three comments received were from peer reviewers, and two other comments were received from the public that contained no substantive information. We did not receive any requests for a public hearing.

During the comment period for the proposed rule, we received three comments containing substantive information. No comments in opposition of the rule were received. All substantive information provided during the comment period has either been incorporated directly into this final determination or addressed below.

New clarifying information, particularly concerning the degree of threat by the parasitic fly (*Philornis downsi*) and confirmation of the success of the goat eradication program, was provided by one peer reviewer and has been incorporated into this finding.

Peer Review

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinion from four knowledgeable individuals with scientific expertise that included familiarity with the medium tree-finch and its habitat, biological needs, and threats. We received responses from three of the peer reviewers.

We reviewed all comments received from the peer reviewers for substantive issues and clarifying information regarding the listing of the medium tree-finch. The peer reviewers generally concurred with our methods and conclusions and provided additional clarifications and suggestions to improve the final rule. Peer reviewer comments are addressed in the following summary and incorporated into this final rule as appropriate.

Public Comments

Comment 1: Three independent specialists agreed that our description and analysis of the biology, habitat, population trends were accurate and agreed generally with our conclusions. One researcher provided recent information on the medium tree finch's nesting success between 2004 and 2008; indicating that between 4 and 8 percent of nests produced fledglings.

Our Response: This information has been considered and incorporated into the rulemaking as appropriate.

Comment 2: Three commenters supported the proposed listing.

Our Response: While general support of a listing is not, in itself, a substantive comment that we take into consideration as part of our five-factor analysis, we appreciate the support of these commenters. Support is important to the conservation of foreign species.

Comment 3: One commenter suggested that tourist visitation to the Scalesia highlands (the preferred habitat of the Medium Tree finch) increased more than tenfold since 2004, indicating that there has been an increase in the number of bus rides and highland tours.

Our Response: We acknowledge that tourism may be increasing on Floreana Island; however, no supporting information was provided with the comment for corroboration. The United Nations Educational, Scientific, and Cultural Organization (UNESCO) 2007 report indicated that visitation has grown in Galapagos from 40,000 in 1991 to over 120,000 in 2006 (pp. 9-10). This is discussed in factor B, below.

Comment 4: One commenter provided additional information on this species, specifically three research papers — two published in 2008 and the other in 2007— regarding the avian parasite discussed in factor C below.

Our Response: The Service has reviewed the research, and the information has been considered and incorporated into the rulemaking as appropriate.

Summary of Changes from Proposed Rule

A commenter pointed out a typographical mistake, which we have corrected. Santa Maroa Island was corrected to Santa María Island. We also updated the clutch size to clarify that it is generally between two and three for this species, rather than between two and four, which was the size indicated in the proposed rule. Additionally, the medium tree-finch population estimate and trend has been updated in this document (see Species Information below).

Species Information

The medium tree-finch (*Camarhynchus pauper*) is endemic to Floreana Island in the Galapagos Islands, Ecuador (Harris 1982, p. 150; Sibley and Monroe 1990, p. 771; BirdLife International (BLI) 2010). This

species is one of the 14 species of Darwin's finches, collectively named in recognition of Charles Darwin's work on the theory of evolution (Grant 1986, p. 6). It is approximately 12.5 centimeters (cm) (5 inches (in)) in length (Harris 1982, p. 150; BLI 2010). Medium tree-finches have wings and tails that are short and rounded, and often hold their tails slightly cocked in a wren-like manner (Jackson 1985, p. 188). Males have a black head, neck, and upper breast (Harris 1982, p. 150; Jackson 1985, p. 188; Fitter *et al.* 2000, p. 78), and an underside that is gray-brown, and white or yellowish in color (BLI 2010). Their tail and back are olive green (Fitter *et al.* 2000, p. 78). Females have a head that is more gray-brown (BLI 2010), and a body that is generally olive-green above and pale yellowish below (Fitter *et al.* 2000, p. 78). It is similar to the large and small tree-finches of the same genus, but differs from the large tree-finch (*Camarhynchus psittacula*) primarily due to its significantly smaller and less parrot-like beak, and from the small tree-finch (*Camarhynchus parvulus*) because of its larger beak (Harris 1982, p. 150; BLI 2010). It is also known as the Charles tree-finch, the Santa María tree-finch, and the Floreana tree-finch (Sibley and Monroe 1990, p. 771). This is due to the fact that the island of Floreana is also referred to as Charles Island or Santa María Island, the official Spanish name of the island (Harris 1973, p. 265; Grant 1986, Appendix). The species is locally known as "*Pinzón Mediano de árbol*" (Castro and Phillips 1996, p. 130).

The species was first taxonomically described by Ridgeway in 1890 (Sibley and Monroe 1990, p. 771). Sulloway (2008a, pers. comm.) recently conducted an analysis of the relative numbers of tree-finch specimens in the California Academy of Sciences' collections, compared with the frequencies found by Dr. Sonia Kleindorfer between 2000 and 2006. Sulloway found that the population of the medium tree-finch did not significantly change for over a century, during which time settlers and introduced animals and plants were present on Floreana (2008b, pers. comm.). Sulloway's analysis indicates that the medium tree-finch is much less common today than it was prior to 1961 (Sulloway 2008a, pers. comm.). Specifically, the chance of seeing a medium tree-finch today is approximately 25 percent less than it would have been more than 50 years ago, as compared to the likelihood of spotting a large or small tree-finch (Sulloway 2008a, pers. comm.). As reported by Sulloway (2008a, pers. comm.) and O'Connor *et al.* (2009, p. 862), the population density of the medium tree-finch is declining. O'Connor *et al* found (2008a) density of the species decreased from 154 birds/km^2 (59 birds/mi^2) in 2004 to 60 birds/km^2 (23 birds/mi^2) in 2008.

In 1996, Stotz *et al.* considered the relative abundance of the species to be "common" (1996, p. 262). BirdLife International currently estimates the population to be between 1,000 and 2,499 birds (2010, p. 1). In 2006, Fessl *et al.* reported that there were about 300 breeding pairs remaining on Floreana (2006a, p. 745). In another study, researchers compared bird abundance survey data from 2004 and 2008 in order to estimate the population density of the medium tree-finch in the highlands of Floreana (O'Connor *et al.* 2008, 20 pp). Based on the results of their study, O'Connor *et al.* (2008, p. 1) estimate that the total medium tree-finch population in 2008 consisted of 860 to 1,220 individuals (an average of 72 birds/km^2 (28 birds/mi^2)) observed in their prime habitat. Their study also showed that the population density of the species overall decreased from 154 birds/km^2 (59 birds/mi^2) in 2004 to 60 birds/km^2 (23 birds/mi^2) in 2008 (pp. 6-7).

Habitat and Life History

Floreana, one of the 19 principal islands that make up the Galapagos archipelago (McEwen 1988, p. 234), is 173 km^2 (67 mi^2) in area, and has a maximum elevation of 640 meters (m) (2,100 feet (ft)) (Swash and Still 2005, p. 10).

The medium tree-finch mainly occurs in the moist highland forests (i.e., the *Scalesia* zone, named for the dominant tree species, *Scalesia* spp., found in this zone) (Stewart 2006, p. 193; Kleindorfer 2007, p. 796), primarily above 300 m (984 ft) (Castro and Phillips 1996, p. 130). The *Scalesia* zone begins at an altitude of 180 - 200 m (591 - 656 ft), and ends at approximately 600 m (1,968 ft) ((Wiggins and Porter 1971, p. 22; Stephenson 2000, p. 34). On Floreana, the medium tree-finch's habitat is a lush evergreen cloud forest dominated by *Scalesia pedunculata* (daisy tree), the largest of the 20 species of *Scalesia* found in the Galapagos, (Jackson 1985, p. 95; Fitter *et al.* 2000, p. 137). *Scalesia* form dense stands with *S. pedunculata* frequently reaching 15 m (49 ft) in height, and 20 m (66 ft) or more given good environmental conditions (Wiggins and Porter 1971, p. 22; Fitter *et al.* 2000, p. 137). A large amount of the *Scalesia* zone has been destroyed on the inhabited islands. The zone is the best area for agriculture because the garúa (dense sea mist that sometimes blankets the highlands) keeps the area well watered during the cool season (Jackson 1985, p. 61; Fitter *et al.* 2000, p. 137). Currently, 12 to 17 km^2 (4.6 to 6.6 mi^2) of *Scalesia*-dominated forest is believed to remain (O'Conner *et al.* 2008; p. 8).

On Floreana, other common trees in the *Scalesia* zone are the endemic trees *Croton scouleri* (Galápagos croton) and *Zanthoxylum fagara* (lime prickly-ash). Dominant plant species include *Phoradendron henslowii* (mistletoe), the shrub *Macraea laricifolia*, and introduced fruit species such as *Citrus limetta, Passiflora edulis*, and *Psidium guajava* (Christensen and Kleindorfer 2008, p. 5). Beneath the top of the canopy, epiphytes (plants that live on another plant without causing harm to the host plant) cover trunks, branches, twigs, and even leaves of some plant species (Wiggins and Porter 1971, p. 24; Fitter *et al.* 2000, p. 137). Common epiphytes found in the *Scalesia* zone are mosses, liverworts, ferns, *Peperomia*, bromeliads (such as *Tillandsia*), and orchids (Wiggins and Porter 1971, pp. 22, 24; Jackson 1985, p. 60; Fitter *et al.* 2000, p. 137). Epiphytes are a prominent feature of the moist zones of the Galapagos Islands because of the large amount of time that clouds and mist cover the upper reaches of the higher islands (Fitter *et al.* 2000, p. 137).

In 1996, researchers reported that the elevational zone in which the medium tree finch is most common is "Hill Tropical," described as hills and lower slopes in the altitude range of 500 – 900 m (1,640 – 2,953 ft) (Stotz *et al.* 1996, pp. 121, 262). The species reaches its minimum elevation in relatively low-relief lowland areas and its maximum elevation at 600 m (1,969 ft) (Stotz *et al.* 1996, p. 262). As a result, one can infer from this data that the medium tree-finch is predominantly found at the highest end of its elevational distribution, between 500 and 600 m (1,640 and 1,969 ft).

These researchers found that the medium tree-finch forages at more than one level within its habitat; specifically, they noted that it can be found foraging from the understory (undergrowth) to the canopy (Stotz *et al.* 1996, pp. 120, 262). *Camarhynchus* species were found to spend a little less than 25 percent of their time foraging at the ground level, while spending the majority of their time foraging above ground (Bowman 1963, p. 132). The medium tree-finch uses its powerful tip-biting bill to search under twigs and foliage, probe crevices in the bark of trees, and cut into tough woody tissues in search of insect larvae (Bowman 1963, pp. 117, 125), which is its primary food source (Bowman 1963,

p. 121). The species also feeds, to a lesser extent, on seeds (Bowman 1963, p. 121), nectar, young buds, and leaves (Castro and Phillips 1996, p. 130).

The medium tree-finch prefers to forage and nest in the tree *Scalesia pedunculata* (O'Connor *et al.* 2009, p. 855). Its clutch size is generally between two and three (Fessl *et al* 2006a, p. 740, Dudaniec *et al.* 2007, pp. 326-327; O'Connor *et al.* 2009, p. 855). The nests of Darwin's finches are similar in construction from one species to another: the male builds a dome-shaped nest, made from twigs, grass, pieces of bark, lichens, feathers, and other materials, with a small, round side entrance (Jackson 1985, p. 191). In a study of the nesting success of the small tree-finch in the highlands of Santa Cruz Island in the Galapagos, Kleindorfer (2007, p. 796) found that all nests were located 6 to 10 m (20 to 33 ft) above the ground, on horizontal branches of *Scalesia pedunculata,* and were positioned by interweaving surrounding smaller twigs and leaves.

Range and Distribution

In 1982, Harris reported that the species was common in the highlands on Floreana and uncommon to rare on the coast (p. 150). Although the current range of the medium tree-finch is officially estimated to be 23 km² (9 mi²) (BLI 2010), which encompasses the entire highland area of Floreana, the medium tree-finch is restricted to fragmented forest patches within the highlands. The actual available habitat has been estimated to be approximately 4 to 17 km² (4.5 to 6.5 mi²) (O'Connor *et al.* (2008, p. 8; O'Connor *et al.* 2009, p. 856).

Conservation Status

The medium tree-finch is identified as a critically endangered species under Ecuadorian law, Decree No. 3,516–Unified Text of the Secondary Legislation of the Ministry of Environment (ECOLEX 2003b). As of 2010, this poorly known species is considered "Critically endangered" by the International Union for Conservation of Nature (IUCN). This is because it (1) has a very small range, (2) is restricted to a single island, and (3) recent information suggests that it is declining rapidly due to the parasite *Philornis downsi.* (BLI 2010, p. 1).

In 1996, in a review of neotropical birds, Stotz *et al.* described the conservation priority for the medium tree-finch as "high." During this review, they defined this species as "threatened," which generally equated to range or habitat restriction, and already showing signs of serious population decline (1996, p. 262).

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations 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. The five listing factors 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; and (E) other natural or manmade factors affecting its continued existence. Below is an analysis of these five factors.

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Floreana has the longest history of human habitation of any of the Galapagos Islands (Schofield 1989, p. 229; Fitter *et al.* 2000, p. 207). It was first settled in 1832, 3 years before Darwin's historic visit (Jackson 1985, p. 3; Stewart 2006, pp. 55, 68). With human settlement came changes to the habitat on Floreana, including clearing of native vegetation for agriculture and ranching, as well as the introduction of nonnative animals and plants (Grant *et al.* 2005, p. 501).

The medium tree-finch prefers to nest and forage in the tree *Scalesia pedunculata* (O'Connor *et al.* 2009, p. 856). Currently, *S. pedunculata* only occurs in small patches in the highlands of Floreana because much of the highlands have been cleared for agriculture, destroyed by introduced mammals, and outcompeted by invasive plants (O'Connor *et al.* 2008, p. 2). Although the Galapagos National Park covers 97 percent of the land in the Galapagos Islands, a disproportionate amount of the limited moist highlands falls in the remaining 3 percent (Stewart 2006, p. 105), meaning the majority of the medium tree-finch's habitat is unprotected. A large amount of the highlands has been cleared or altered for farming. Much of it has been further degraded or destroyed by the introduction of animals and plants (Stewart 2006, p. 105). Currently, only 12 to 17 km² (4.5 to 6.5 mi²) of habitat for the medium tree-finch remains in the highlands of Floreana, and it continues to decline due to the factors described below.

Agriculture and Ranching

Birds, such as the medium tree-finch, are currently facing problems in the highlands of inhabited islands like Floreana due to the extensive destruction and degradation of habitat as a result of agriculture (Castro and Phillips 1996, pp. 22-23; Fitter *et al.* 2000, p. 74; BLI 2010). On Floreana, the highlands (or *Scalesia* zone) cover an area of approximately 21 km² (8 mi²) (O'Connor *et al.* 2008, pp. 2-3). Within this highland forest, approximately 4 km² (1.5 mi²) has been cleared for agriculture (O'Connor *et al.* 2008, p. 8). Agriculture is concentrated at higher elevations because of the availability of richer soil and greater moisture (Schofield 1989, p. 233). The *Scalesia* zone is the richest zone in terms of soil fertility and productivity (Jackson 1985, p. 61), and therefore has been extensively cleared for agricultural and cattle ranching purposes (Grant 1986, p. 30; Harris 1982, p. 37; Jackson 1985, pp. 61, 233). Stotz *et al.* (1996) found that the medium tree-finch forages in multiple strata, including the understory (p. 262). When the forest is cleared, as is done with agriculture and ranching, the understory layer is destroyed which, can have a negative effect on the species (Stotz *et al.* 1996, p. 121).

Introduced Species

Introduced species are currently considered a major threat to the native species of the Galapagos Islands (Causton *et al.* 2006, p. 121; Fitter *et al.* 2000, p. 218). Since the early 1800s, humans have introduced animals and plants to the Galapagos Islands that have threatened the native vegetation (Schofield 1989, pp. 227, 233). These are further discussed below.

Animals

When settlers arrived in the Galapagos Islands, they brought with them domestic animals, some of which escaped and started feral populations (Jackson 1985, p. 233). On Floreana, introduced livestock animals include goats (*Capra hircus*), donkeys (*Equus asinus*), cattle (*Bos taurus)*, and pigs (*Sus scrofa domesticus)* (Christensen and Kleindorfer 2008, pp. 383-391; Jackson 1985, p. 232). These animals impact the island by significantly altering the habitat. Goats and donkeys damage vegetation by trampling and grazing to the point where native plants are not able to regenerate as easily as before. Wild pigs dig up and eat plant roots. (Schofield 1989, pp. 229-233;

Grant *et al.* 2005, p. 501). This impact, in addition to predation of endemic species by introduced cats (*Felis catus*) and introduced black rats (*Rattus rattus*) (discussed under Factor C), have been linked with the extinction of at least four bird species on the island of Floreana: the large ground finch (*Geospiza magnirostris*), the sharp beaked ground finch (*Geospiza difficilis*), the Floreana mockingbird (*Nesomimus trifasciatus*) (Christensen and Kleindorfer 2008, pp. 383-391; Grant *et al.* 2005, p. 501; Harris 1982, pp. 36-37; Sulloway 1982, pp. 68-69, 88-89), and most recently the warbler finch (*Certhidea fusca*) (Grant *et al.* 2005, p. 501).

Introduced animals magnify the detrimental effects of clearing large areas of native vegetation on Floreana for agriculture and ranching (Grant 1986, p. 30), by further degrading and destroying the habitat (Grant *et al.* 2005, p. 501). The habitat of the medium tree-finch continues to be altered by herbivore degradation caused by free-ranging domestic livestock (BLI 2010; Jackson 1985, p. 110; Lawesson 1986, p. 12). Lawesson (1986) reported that the *Scalesia* forest on Floreana is under the most immediate threat from introduced animals (p. 13).

Goats: Of all the introduced animals in the Galapagos Islands, goats are the most destructive (Fitter *et al.* 2000, p. 218; Schofield 1989, p. 227). Goats were probably introduced to the Galapagos Islands in the 19th century by whalers, fisherman, and pirates, who were looking for an alternative source of meat (Charles Darwin Research Station 2008a; Fitter *et al.* 2000, p. 218). They were also brought to the islands by settlers as livestock (Charles Darwin Research Station 2008a). Goats are able to adapt to varying conditions extremely well and therefore they thrive at all elevations in the Galapagos Islands (Schofield 1989, p. 229), from the arid lowlands to the moist highlands (Fitter *et al.* 2000, p. 218). They have a rapid reproductive rate, which has allowed their population to flourish at the expense of native animals and vegetation (Jackson 1985, pp. 232-233). Goats destroy native vegetation by eating plants down to the ground (Smith 2005, p. 304), converting forests into barren grasslands and causing erosion (Charles Darwin Research Station 2008a). Because goats are able to eat a variety of vegetation, they have quickly eaten their way across an island (Smith 2005, p. 304). A study of goats on Santiago Island in the Galapagos showed that at higher elevations, browsing by goats had eliminated young trees of the dominant forest overstory species consisting of *Scalesia pedunculata, Zanthoxylum fagara,* and *Psidium galapageium*, in addition to the forest understory (Schofield 1989, p. 229). On Floreana, Schofield reported that approximately 77 percent of the plant species other than cacti were either reduced in number or completely eliminated by goats ((1989, p. 229). As discussed in detail below, however, eradication programs have significantly reduced the goat population on Floreana Island.

Cattle: Cattle were introduced to Floreana in 1832 (Hoeck 1984, as cited in Schofield 1989, p. 231). Initially, cattle were kept at lower elevations, but with inadequate moisture available in the lower zones, they were allowed to move into the highlands (Kastdalen 1982, p. 9). Cattle trample and heavily graze native vegetation (Hamann 1981 and Van der Werff 1979, as cited in Schofield 1989, p. 231). When allowed to roam freely through highland forests, they essentially destroy the understory layer (Stotz *et al.* 1996, p. 121). On Santa Cruz Island, cattle inhibited growth of *Scalesia pedunculata* (Kastdalen 1982, p. 8). Schofield (1989) reports that no organized effort has been made to eliminate cattle, but restrictions by the Galapagos National Park Service encourage ranchers to fence in herds on Floreana (p. 232). However, cattle still stray into native vegetation to graze (Schofield 1989, pp. 232, 234).

Donkeys: In 1887, large numbers of donkeys (*Equus asinus*) were seen grazing on hillsides and at the summit on Floreana (Slevin 1959, as cited in Schofield 1989, p. 232). By 1932, donkeys had already tramped out regular paths through the vegetation on Floreana (Wittmer 1961, as cited in Schofield 1989, p. 232). On Santa Cruz, Kastdalen (1982) noted that they followed cattle into the humid highlands (p. 9). Studies have shown that donkeys on Floreana have depleted some populations of *Scalesia* spp. and *Alternanthera nesiotes*, another endemic plant (Eliasson 1982, p. 10). As discussed in detail below, however, eradication programs have significantly reduced the donkey population on Floreana Island.

Pigs: Pigs (*Sus scrofa*) have lived in the Galapagos Islands for over 150 years (Schofield 1989, p. 232). In 1835, Darwin remarked upon the many wild pigs he observed in the forests on Floreana (Schofield 1989, p. 232). Pigs live primarily at higher elevations, where abundant forage is available year-round (Schofield 1989, p. 232). Pigs destroy native vegetation (Jackson 1985, p. 233) directly by digging up and eating plants (Hoeck 1984, as cited in Schofield 1989, p. 232).

Eradication Programs: Since the Galapagos National Park and the Charles Darwin Foundation were established in 1959, efforts to control and eradicate introduced animals have been ongoing (Galapagos Conservancy n.d.(a)). In 1965, the Charles Darwin Research Station began the first eradication program to rid the Galapagos island of Santa Fé of goats (Fitter *et al.* 2000, p. 218). Ten years after the program began, the last goat was culled and now, the vegetation on the island has recovered and native species are beginning to thrive once again (Fitter *et al.* 2000, p. 218). Over the years, many of these control programs have been successful in eradicating introduced animals from some of the Galapagos Islands including ridding Santiago Island of 25,000 feral pigs (Smith 2005, p. 305), removing goats from Española, Plaza Sur, Santa Fe, Marchena and Rábida Islands (Smith 2005, p. 305), and the very successful "Project Isabela," which recently eliminated goats from Pinta, donkeys and goats from northern Isabela, and donkeys, goats, and pigs from Santiago Island (Galapagos Conservancy n.d.(b)).

As a result of the success of Project Isabela, the Charles Darwin Foundation is planning and implementing several projects in partnership with the Galapagos National Park Service, including eradication of goats and donkeys from Floreana (Charles Darwin Foundation n.d.(c)). In December 2006, the Galapagos National Park started a project with the goal of restoring the ecology of Floreana (Galapagos Conservation Trust News 2007). The first phase of "Project Floreana" was to eradicate some of the introduced animals, such as goats and donkeys, in order to stop the continuing degradation of the vegetation of the island and allow some of the native and endemic plant species to recover (Galapagos Conservation Trust News 2007). From the experience gained during Project Isabela, the program was able to eradicate 98 percent of the donkeys and goats on Floreana in 22 days (Galapagos Conservation Trust News 2007). Due to the removal of these invasive species, it is expected that within the next few years the benefits to the ecosystem on Floreana will be seen (Galapagos Conservation Trust News 2007). This will result in an increase in native flora and fauna, and the repopulation of native flora and fauna in areas previously destroyed on Floreana by herbivore degradation (Galapagos Conservation Trust News 2007).

Plants

On Floreana, small populations of *Scalesia* forest still exist in the highlands, but these areas are under pressure and competition from agriculture and the aggressive *Psidium guajava* (guava) and *Lantana camara* (Lawesson 1986, p. 13). Introduced plants outcompete native vegetation, taking sun, water, and nutrients from native species (Smith 2005, p. 304). Agriculture is concentrated at higher elevations because of the rich soil and moisture available in these areas. As a result, escapes by introduced agricultural plants are more frequently found in the humid highland forests (Schofield 1989, p. 233). Schofield found that accidental escape of introduced plant species, as well as the purposeful introduction of these species, has altered the highland habitat where tree-finches occur (1989, pp. 233-235). Christensen and Kleindorfer found that the medium tree-finch frequently forages on introduced fruit species (2008, pp. 383-391). This observation may suggest that the species is able to adapt to and potentially benefit from this change in its environment (Christensen and Kleindorfer 2008, pp. 383-391). These researchers did not observe any species of tree-finch, including the medium tree-finch, nesting in an introduced plant species (Christensen and Kleindorfer 2008, pp. 383-391). However, a further study by O'Connor *et al.* (2008, p. 17) found that the majority (99 percent) of nests built by medium tree-finches were constructed in native species, *Scalesia pedunculata* (83 percent), *Zanthoxylum fagara* (14 percent), and *Croton scouleri* (2 percent), with 1 percent of the nests built in the introduced species, guava.

Guava: The cultivated guava, with its edible fruits, is the most widespread introduced plant species in the Galapagos Islands (Schofield 1989, p. 233). Guava has been characterized as out of control and invading vast areas of native vegetation in the humid highlands on Floreana (Eckhardt 1972, p. 585; Eliasson 1982, p. 11; Tuoc 1983, p. 25). It is an aggressive introduced plant that covers 8,000 ha (19,768 ac) on Floreana (Parque Nacional Galápagos n.d(a)). The dispersal of guava is aided by introduced cattle, which eat the fruits and then wander from the farm into the National Park and excrete the seeds in their dung (De Vries and Black 1983, p. 19; Tuoc 1983, p. 25). In addition, as cattle graze, they trample other vegetation, providing the open spaces and abundant light needed for the germination of guava seeds (Van der Werff 1979, as cited in Schofield 1989, p. 233). Once guava becomes established in an open habitat, it grows quickly and shades seedlings of native species like *Scalesia pedunculata*, thus preventing their growth (Parque Nacional Galápagos n.d.(a); Perry 1974, p. 12).

One obvious step to take in order to minimize the further spread of guava is to fence cattle (De Vries and Black, p. 19; Tuoc 1983, p. 25). Although some residents have already done this, herds of free-ranging cattle are unable to be restricted in this manner (Schofield 1989, pp. 233-234). In 1971, a campaign was started to cut down guava trees on Santa Cruz Island (Schofield 1989, p. 234). One report indicated that over 95,000 guava trees had been eliminated between 1980 and 1981 (Tuoc 1983, p. 25). Schofield suggested that this program should be expanded to other islands with large populations of guava ((1989, p. 234).

Other Plant Species: Floreana is also impacted by other introduced plant species. *Lantana camara* was introduced as an ornamental on Floreana in 1832, and now covers 3,000 ha (7,413 ac) (Parque Nacional Galápagos n.d.(a)). A quickly spreading tropical shrub, that displaces native vegetation, it is now found on Floreana from the arid region up to the Scalesia forest (Hamann 1984, as cited in Schofield 1989, p. 234). Citrus trees (*Citrus* spp.) have been reported as "common" (Eliasson 1982, p. 11) and have invaded the native vegetation at higher elevations on Floreana (Eliasson 1982, p. 11; Porter 1973, p. 276). Cattle and pigs aide in the further spread of citrus trees (*Citrus spp.*) by feeding on the fruits and dispersing seeds in new locations (Wittmer 1961, as cited in Schofield 1989, p. 234).

Summary of Factor A

The medium tree-finch is found primarily in the moist highland forests (i.e., the *Scalesia* zone) on the island of Floreana. Since the island was first settled in 1832, the habitat of the medium tree-finch has been cleared for agriculture and ranching, and further degraded by introduced animals and plants. Herbivores, such as goats, donkeys, cattle, and pigs, destroy the species' habitat by trampling and grazing heavily on native vegetation, including *Scalesia pedunculata*, the tree primarily used by the medium tree-finch for nesting and foraging. In addition, cattle and pigs help to spread introduced plants, such as guava and citrus trees, by feeding on the fruits and depositing the seeds into native vegetation. Although an eradication program was started in December 2006 to eliminate goats and donkeys from Floreana, we are not aware of any current programs to remove cattle and pigs from the island. As a result, these species will continue to destroy and degrade the habitat of the species. Therefore, we find that the medium tree-finch is at significant risk by the habitat destruction of the moist highland forests of Floreana, as a result of agriculture and introduced species.

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

We are not aware of any scientific or commercial information that indicates that overutilization of the medium tree-finch for commercial, recreational, scientific, or educational purposes poses a threat to this species. There is no known use by collectors or hunters of this species. A comment received on the proposed rule suggested that tourist visitation to the Scalesia highlands (the preferred habitat of the Medium Tree finch) increased more than tenfold since 2004. The commenter indicated that there has been an increase in the number of bus rides and highland tours. However, no corroborating data was provided with the comment. A UNESCO 2007 report on the Galapagos Islands did indicate that visitation has grown in Galapagos from 40,000 in 1991 to over 120,000 in 2006 (pp. 9-10). This included all Galapagos islands, and the increase mentioned an increase in tourist boats. There was no specific mention of Floreana Island. According to this report, tourism is being monitored at many levels in Ecuador. The unintended negative effects are recognized and are being addressed (UNESCO 2007, Annex 3, pp. 1-3). Although tourism may be increasing on Floreana Island, a review of the best available information does not indicate that tourism is a threat to this species. As a result, we are not considering overutilization a contributing factor to the continued existence of the medium tree-finch.

C. Disease or Predation

Disease

The discovery of an introduced parasitic fly (*Philornis downsi*) on Floreana Island has raised significant concerns about the impact this parasite is having on the medium tree-finch (Fessl *et al.* 2006b, p. 59; Wiedenfeld *et al.* 2007, p. 17; Dudaniec *et al.* 2008; O'Connor *et al.* 2009, p. 853). This parasite was recently added to the IUCN's Global Invasive Species Database (O'Connor *et al.* pp 864-865). In March 1997, Fessl, Couri, and

Tebbich first observed the presence of *P. downsi* in the nests of Darwin's finches on the Galapagos Islands (Fessl and Tebbich 2002, p. 445). Since then, researchers have found that *P. downsi* may cause up to 100 percent mortality to exposed nestlings (Dudaniec and Kleindorfer 2006, p. 17). This parasite is believed to be the most significant threat to the medium tree-finch (Causton *et al.*, 2006; p. 125; O'Connor *et al.* 2009, p. 853).

P. downsi was sampled by the entomologists S.B. and J. Peck and B.J. Sinclair in 1989, although the fly was not formally identified until the collections were examined in detail in 1998 (Fessl *et al.* 2001, p. 318; Fessl and Tebbich 2002, p. 445). However, it now appears that *P. downsi* was present in the Galapagos Islands at least 40 years ago. It was recently identified from collections made on Santa Cruz Island in 1964 (Causton *et al.* 2006, pp. 134, 143). We are not aware of any information indicating when *P. downsi* may have been introduced to the island of Floreana.

P. downsi is a fly (Muscidae) from a genus of obligate bird parasites (Couri 1985, as cited in Fessl and Tebbich 2002, p. 445; Fessl *et al.* 2001, p. 317), and depends on a host for its survival. The adult fly is free-living, non-parasitic, and feeds on fruits, flowers, and decaying material (Fessl *et al.* 2001, p. 317; Fessl *et al.* 2006b, p. 56). Larvae of *P. downsi* belong to the group of external blood feeders – first, second, and third instar (developmental stage) larvae are haematophages which suck blood from nestlings at night and then retreat to the bottom of the nest during the day (Dodge and Aitken 1968 and Skidmore 1985, as cited in Fessl *et al.* 2006b, p. 56). Adult flies lay eggs inside the nasal cavities of newly hatched nestlings (usually one to three days old). These fly eggs then hatch into first instar larvae (Fessl *et al.* 2006a, p. 744; Muth 2007, as cited in Dudaniec at al. 2008). As the larvae reach their second instar stage, they exit the nasal cavities of nestlings and begin to live as nest-dwelling haematophagous larvae (Fessl *et al.* 2006a, p. 744). Second and third instar larvae of *P. downsi* seem to be exclusively external (Fessl *et al.* 2006b, p. 59), feeding on the blood and tissues of nestlings (Dudaniec and Kleindorfer 2006, pp. 15-16). The majority of larvae reach their third instar stage at the time of host fledging (Dudaniec at al. 2008, p. 5). At this stage, the larvae of *P. downsi* detach from the nestling and form their pupae at the bottom of the nesting material, remaining for approximately 2 weeks before emerging as adult flies (Dudaniec and Kleindorfer 2006, p. 16; Fessl *et al.* 2006b, p. 56).

P. downsi occurs in finch nests on Floreana (Wiedenfeld *et al.* 2007, p. 17), and has been shown to significantly lower fledgling success of the finches (Fessl and Tebbich 2002, pp. 448-450). A number of studies have associated *Philornis spp.* parasitism with mortality (Fessl and Tebbich 2002, p. 448), and reductions in nestling growth and development (Fessl *et al.* 2006b, p. 58), and a reduction in hemoglobin levels (Dudaniec *et al.* 2006, p. 88). In Causton *et al.*'s proposed ranking system, *P. downsi* was given the highest invasiveness ranking affecting fauna endemic to the Galapagos Islands, because this insect seriously impacts species of high conservation value in the Galapagos (Causton *et al.* 2006, pp. 123, 134). The ranking system was based on species' trophic functional role, distribution in Galapagos, and history of invasiveness in areas other than the Galapagos Islands.

In 2002, 97 percent of finch nests were infected with the *P. downsi* parasite on Santa Cruz Island, both in the lower arid zone and the higher *Scalesia* zone of the island (Fessl and Tebbich 2002, p. 449). Parasitism by *P. downsi* caused complete brood loss in approximately 19 percent of the infected finch nests and partial brood loss (defined as the loss of one or two nestlings) in an additional 8 percent of the finch nests studied (Fessl and Tebbich 2002, p. 448). They also found that in parasitized nests, the percentage of successful fledglings differed significantly depending upon brood size: Nests with only one nestling always failed, nests with two nestlings successfully fledged nestlings 50 percent of the time, and nests with three or four nestlings successfully fledged nestlings 75-85 percent of the time (Fessl and Tebbich 2002, p. 448).

In 2006, nesting success in the medium tree-finch was examined for the first time (Fessl *et al.* 2006a, p. 746). In an experimental study conducted on Santa Cruz Island, researchers found that high mortality of nestlings was directly attributable to parasitism by *P. downsi*, as evidenced by a near threefold increase in fledgling success in a parasite-reduced group (87 percent) versus a parasite-infested control group (34 percent) (pp. 58-59). They also found that within four days, mass gain was significantly higher (an almost twofold positive difference) in the parasite-reduced group than in the parasite-infested control group (Fessl *et al.* 2006b, p. 58). In studies of other avian species, fledgling body mass has been found to be a key factor for juvenile survival (Magrath 1991, pp. 343-344; Tinbergen and Boerlijist 1990, pp. 1123-1124). As a result, Fessl *et al.* (2006b, p. 59) concluded that the results of their study showed that given the significant difference in body mass between the two groups, parasitized nests will likely provide less recruitment into the breeding population. Further, because species with small broods have been found to suffer higher parasite loads and higher nestling mortality (Fessl and Tebbich 2002, pp. 445, 449-450), infestation of *P. downsi* on species with naturally low clutch sizes, such as the medium tree-finch, is of particular concern (Fessl *et al.* 2006b, p. 59).

Dudaniec *et al.* found a significant negative correlation between *P. downsi* parasite intensity and hemoglobin concentrations (2006, pp. 88, 90, 92). She also found a positive correlation between parasite intensity and immature red blood cell counts in small ground finches studied on Santa Cruz and Floreana Islands. Small ground finch nestlings with higher *P. downsi* densities suffered from lower hemoglobin concentrations and reduced fledging success (Dudaniec *et al.* 2006, p. 92). Furthermore, nestlings with lower parasite intensity had higher hemoglobin levels and increased fledging success (Dudaniec *et al.* 2006, p. 93). The same researchers also found a negative correlation between the number of immature red blood cells and hemoglobin levels in nestlings (2006, p. 92). The fitness impacts to nestlings of lower hemoglobin levels are significant (Dudaniec *et al.* 2006, p. 93). Other researchers found that 6 of 63 monitored nests produced fledglings (O'Connor *et al.* 2008, p. 1). The results of another study showed that low hemoglobin levels in nestlings reduce the transport of oxygen to tissues (O'Brien *et al.* 2001, p. 75).

Thus, fledglings that are anemic (hemoglobin deficient) from parasite feeding may have a reduced ability to sustain flight and consequently a reduced ability to escape predators and find food (O'Brien *et al.* 2001, p. 75). The high hemoglobin levels found by Dudaniec *et al.* in mature birds, combined with their observation that adult finches were never found to be actively parasitized, suggests that adult birds are not physiologically affected by *P. downsi* (2006, p. 92). Fessl *et al.* reported extremely high levels of blood loss in nestlings (18 to 55 percent) caused by *P. downsi* larvae ((2006a, p. 745). Daily blood loss over 10 percent is likely to have negative impacts on nestlings, including health problems and developmental deficiencies, while

blood loss over 25 percent would become lethal (Kaneko, pers. comm., as cited in Gold and Dahlsten 1983, p. 569).

Another study of tree-finches in the highlands of Floreana showed that the medium tree-finch had the highest *P. downsi* parasite intensity (an average of 52 parasites per nest), compared to the small and large tree-finches (O'Connor *et al.* 2009, pp. 853–866). Of 63 active medium tree-finch nests, only 16 nests had nestlings that survived to six days post-hatching, and only 4 nests produced fledglings (O'Connor *et al.* 2009, pp. 853-866). Most nests failed to produce fledglings: Approximately 68.8 percent (11 of 16) of medium tree-finch nests suffered total brood loss, while 18.8 percent (3 of 16) of nests had partial brood loss (O'Connor *et al.* 2009, pp. 853-866). *P. downsi* larvae or pupae were found in 100 percent (16 of 16) of medium tree-finch nests, and all nestlings had *P. downsi* parasites (O'Connor *et al.* 2009, pp. 853-866). The majority (54 percent) of nestling mortality in medium tree-finches was due to parasitism by *P. downsi* (O'Connor *et al.* 2009, pp. 853-866). All nestlings found dead in nests had large open wounds on their bodies and significant loss of blood or body fluids, all of which are signs of *P. downsi* parasitism (O'Connor *et al.* 2009, pp. 853-866). O'Connor *et al.* discuss the reasons why the *P. downsi* parasite intensity is high in the medium tree-finch (2009, pp. 853-866). One possible explanation is that the medium tree-finch's preferred breeding habitat is next to an agricultural area, where the close proximity of the agriculture fields (with citrus trees and other fruits) act as a feeding location for the adult flies (O'Connor *et al.* 2009, pp. 853-866). In addition, moist highlands favor consistent breeding of medium tree-finches, thus providing flies with a dependable supply of nestlings for *P. downsi* larvae to feed upon (O'Connor *et al.* 2009, pp. 853-866). Currently, the medium tree-finch has the highest *P. downsi* parasite intensity of any finch species on Floreana, and the second highest of any finch species studied on the Galapagos Islands (O'Connor *et al.* 2009, pp. 853-866).

A study by Wiedenfeld *et al.* (2007) found that there was a significant increase in the number of *P. downsi* parasites (larvae, pupae, or puparia) per nest at higher altitudes (i.e., in the humid highlands) (pp. 17-18). According to their study, the distribution of *P. downsi* seems to be related to the amount of humidity and moisture available on the islands (Wiedenfeld *et al.* 2007, p. 18). Although it appears that the fly does more poorly in dry conditions (either in the lowland, arid zone of islands, or during drought), birds similarly do more poorly in these situations (Wiedenfeld *et al.* 2007, p. 18). In addition, during years of abundant rainfall when birds breed more successfully, the flies are also likely to be more plentiful and therefore, can cause higher mortality (Wiedenfeld *et al.* 2007, p. 18).

Researchers believe that finches do not suffer from any type of endemic haematophagous ectoparasite (Fessl *et al.* 2006b, p. 56). Therefore, medium tree-finches have not developed an adaptive response to this kind of introduced pathogen (Altizer *et al.* 2003, pp. 593, 594). Because the medium tree-finch is newly parasitized by *P. downsi*, it may experience significant initial mortality since the host has not yet developed a strong behavioral or immunological defense mechanism against the parasite (Dudaniec and Kleindorfer 2006, pp. 18-19).

As many of the above studies show, finches have a slim chance of reproducing without avoiding effects of *P. downsi* mortality (Dudaniec and Kleindorfer 2006, p. 18; Wiedenfeld *et al.* 2007, p. 18). Researchers suggest that the decline and possible local extinction of one of Darwin's finches, the warbler finch (*Certhidea fusca*), on Floreana by 2004 may have been partially caused by *P. downsi* although there is no conclusive evidence (Grant *et al.* 2005 p. 502; Fessl *et al.* 2006b, p. 59; Dudaniec and Kleindorfer 2006, p. 13).

Although it is better to eliminate invasive species before they are able to genetically adapt to the local environment in which they have colonized (Frankham 2005, p. 385), early eradication often does not occur. A long-term eradication program in conjunction with continuous quarantine and monitoring practices is needed to eradicate *P. downsi* (Dudaniec *et al.* 2008).

Programs to eradicate *P. downsi* from the Galapagos Islands are difficult and costly (Fessl *et al.* 2006b, p. 59). Fessl *et al.* (2006b, pp. 57-59) found that a single insecticide treatment of 1 percent pyrethrin solution (done at a nestling age of 4 days) was sufficient to reduce the number of parasites per nest to almost zero. This treatment offers one short-term solution to locally protect single nests of species of high conservation concern (Fessl *et al.* 2006b, p. 59). However, this treatment is not feasible as a long-term solution for controlling the fly on the Galapagos Islands.

The Charles Darwin Foundation (CDF) has begun an effort to develop biological control approaches for *P. downsi* (Charles Darwin Foundation n.d.(c)). In 2008, CDF received $58,000 for Phase I of the CDF Priority Project "Control of the parasitic fly *P. downsi*" (Charles Darwin Foundation 2008b, 2008c). This project studies the biology and life history of *P. downsi*, aiding in the development of effective, long-term control methods that will not harm other species (Charles Darwin Foundation 2008b). CDF reports that control methods are urgently needed to eliminate the threat of extinction among bird species, such as the medium tree-finch, affected by this parasite (Charles Darwin Foundation 2008b). A recent study reported that sterile insect technique (SIT) may be effective in controlling this parasite (Dudaniec *et al.*, 2010, p. 582); however, it has not been fully tested.

Predation

Floreana has a suite of introduced predators including black rats (*Rattus rattus*) and cats (*Felis catus*) (O'Connor *et al.* 2009, pp. 864). These predators feed on eggs, nestlings, and even adult birds (Castro and Phillips 1996, p. 22), and have seriously depleted native populations (Grant *et al.* 2005, p. 501; Jackson 1985, p. 232).

Rats: Second only to the parasitic fly (*Philornis downsi*), black rats are one of the worst introduced species to the Galapagos Islands. They destroy bird nests and eggs and consume hatchlings (Charles Darwin Foundation 2008d; Charles Darwin Research Station 2008b). Rats arrived in the Galapagos Islands on ships beginning in the late 1600s, and currently are found on all inhabited islands, including Floreana (Charles Darwin Research Station 2008b). Because rats can easily climb, they have been implicated in the population declines of tree nesting birds such as the mangrove finch (*Camarhynchus heliobates*) (Charles Darwin Research Station 2008b). The CDF's long term plan is to successfully eradicate introduced rats on all islands, a necessary measure in order to restore the Galapagos Islands and its endemic species (Charles Darwin Research Station 2008b). One of the next steps in accomplishing this goal is to develop the capacity to attempt a rat eradication program on large islands such as Floreana (Charles Darwin Research Station 2008b).

Cats: Cats are highly predatory animals, targeting birds and other native species (Charles Darwin Foundation 2008b; Charles Darwin Research Station 2008c; Smith 2005, p. 304). Cats were introduced to the Galapagos Islands by ships and as domestic pets of settlers

(Charles Darwin Research Station 2008c). Both feral and domestic cats prey upon and impact the survival of Darwin's finches, and are a threat to endemic species on Floreana (Charles Darwin Research Station 2008c). In the 19th century, cats may have caused significant declines in the populations of large ground finches, sharp-beaked ground finches, and mockingbirds, pushing them toward extinction on Floreana (Grant *et al.* 2005, p. 501). All three species mostly forage on the ground and are approachable (Grant *et al.* 2005, p. 501). However, the more arboreal finches, such as the medium tree-finch, may be less vulnerable to predation by cats, unless their nests are constructed unusually low in the vegetation (Grant *et al.* 2005, p. 501). The Galapagos National Park Service and the CDF are working to control and eradicate domestic and feral cats on all of the islands (Charles Darwin Research Station 2008c). This plan includes working with communities to gain acceptance and compliance with the sterilization or removal of domestic cats, and the development of an eradication program to eliminate feral cats from natural areas on all populated islands, such as Floreana (Charles Darwin Research Station 2008c).

A study of tree-finches in the highlands of Floreana found that one third of medium tree-finch nests experienced nestling predation in both 2006 and 2008. Egg depredation was observed in 22 percent of the nests (but only in 2008) (O'Connor *et al.* 2009, pp. 853-866). Predators such as rats feed on agricultural products being grown in the agricultural areas. Because agricultural areas are close to the breeding sites of the medium tree-finch, these areas provide a base for the continued persistence and movement of introduced predators, mainly rodents, into medium tree finch habitat (O'Connor *et al.* 2009, pp. 853-866).

Summary of Factor C

As stated above, we believe, based on an abundance of research, that *Philornis downsi*, the introduced parasitic fly, is the most significant threat to the survival of the medium tree-finch (Causton *et al.*, 2006 as cited in O'Connor *et al.* 2009, p. 854). The larvae feed on finch nestlings, causing mortality, reduced nestling growth, lower fledgling success, and a reduction in hemoglobin levels, which all combine to severely affect the reproductive success of the species. The medium tree-finch has the highest *P. downsi* parasite intensity of all the finch species found on Floreana, and the second highest rate of parasitism by *P. downsi* of any finch species studied in the Galapagos Islands. Although a study examining the biology of *P. downsi* and how to control it began in 2008, a long-term (and wide-spread) control method for the parasitic fly has not yet been developed. As a result, the medium tree-finch and its reproductive success will continue to be negatively impacted by *P. downsi*. Therefore, we find that parasitism by *P. downsi* is a significant threat to the continued existence of the medium tree-finch.

Introduced predators on Floreana, such as black rats and cats, feed on eggs and nestlings, causing dramatic reductions in native populations. One study found that 33 percent of medium tree-finch nests experienced nestling predation; and egg depredation was observed in 22 percent of the nests. In an effort to help restore endemic species in the Galapagos Islands, one goal of CDF is to develop programs to eradicate introduced rats and cats on all islands. However, we do not have information to indicate that the eradication program has been completed on Floreana island. Therefore, we find that predation is a threat to the continued existence of the medium tree-finch.

D. Inadequacy of Existing Regulatory Mechanisms

The medium tree-finch is identified as a critically endangered species under Ecuadorian law and Decree No. 3,516–Unified Text of the Secondary Legislation of the Ministry of Environment of 2002 (ECOLEX 2003b). Decree No. 3,516 of 2002 summarizes the legislation governing environmental policy in Ecuador and provides that the country's biodiversity be protected and used primarily in a sustainable manner (ECOLEX 2003b). Appendix 1 of Decree No. 3,516 lists the Ecuadorian fauna and flora that are considered threatened or in danger of extinction. Species are categorized as critically endangered (En peligro crítico), endangered (En peligro), or vulnerable. Resolution No. 105–Regulatory control of hunting seasons and wildlife species in the country, and Agreement No. 143–Standards for the control of hunting seasons and licenses for hunting of wildlife, regulate and prohibit commercial and sport hunting of all wild bird species except those specifically identified by the Ministry of the Environment or otherwise permitted (ECOLEX 2000; ECOLEX 2003a). The Ministry of the Environment does not permit commercial or sport hunting of the medium tree-finch because of its status as a critically endangered species (ECOLEX 2003b). However, we do not consider hunting (Factor B) to be a risk to the medium tree-finch since it is not known to have ever been hunted. Although this law does not reduce any threats to the species, hunting is not a threat to the species, so it is not applicable.

The first legislation to specifically protect the Galapagos Islands and its wildlife and plants was enacted in 1934 and further supplemented in 1936, but effective legislation was not passed until 1959, when the Ecuadorian government passed new legislation declaring the islands a National Park (Fitter *et al.* 2000, p. 216; Jackson 1985, pp. 7, 230; Stewart 2006, p. 164). Ecuador designated 97 percent of the Galapagos land area as the National Park, leaving the remaining 3 percent distributed between the inhabited areas on Santa Cruz, San Cristóbal, Isabela, and Floreana Islands (Jackson 1985, p. 230; Schofield 1989, p. 236). National park protection, however, does not mean the area is maintained in a pristine condition. The park land area is divided into various zones signifying the level of human use (Parque Nacional Galápagos n.d(b)). Although Floreana Island includes a large "conservation and restoration" zone, it also includes a significantly sized "farming" zone (Parque Nacional Galápagos n.d.(b)), where agricultural and grazing activities continue to impact the habitat.

In March 1998, the National Congress and the Ecuadorian President enacted the Law of the Special Regimen for the Conservation and Sustainable Development of the Province of the Galapagos, which has given the islands some legislative support to establish regulations related to the transport of introduced species and implement a quarantine and inspection system (Causton *et al.* 2000, p. 10; Instituto Nacional Galápagos n.d.; Smith 2005, p. 304). As a result, in 1999, the Inspection and Quarantine System for Galapagos (SICGAL) was implemented (Causton *et al.* 2006, p. 121), with the aim of preventing introduced species from reaching the islands (Causton *et al.* 2000, p. 10; Charles Darwin Foundation n.d.(d)). Inspectors are stationed at points of entry and exit in the Galapagos Islands and Continental Ecuador, where they check freight and luggage for permitted and prohibited items (Charles Darwin Foundation n.d.(d)). The goal is to rapidly contain and eliminate newly arrived species (detected by SICGAL and early warning monitoring programs) that are considered threats for the Galapagos Islands (Causton *et al.* 2006, p. 121). However, a scarcity of information on alien insect species currently in the Galapagos Islands prevents officials from knowing whether or not a newly detected insect is in fact

a recent introduction (Causton *et al.* 2006, p. 121). Without the necessary information to make this determination, they cannot afford to spend the time and resources on a rapid response when the "new introduction" is actually a species that already occurs elsewhere in the Galapagos Islands (Causton *et al.* 2006, p. 121).

The April 2007 World Heritage Centre-IUCN monitoring mission report assessed the state of conservation in the Galapagos Islands. Based on information gathered during their monitoring mission and multiple meetings, they found continuing problems with regulatory mechanisms in the Galapagos Islands (UNESCO World Heritage Centre 2007, pp. 9-10). The UNESCO World Heritage Centre indicated that there is a continuing lack of political will, leadership, and authority and it is a limiting factor in the full application and enforcement of the Special Law for Galapagos. They also reported that there appears to be a general lack of effective enforcement (UNESCO World Heritage Centre 2007, p. 9).

The risk from invasive species is rapidly increasing, while the Agricultural Health Service of Ecuador (SESA) and SICGAL have inadequate staff and capacity to deal with the nature and scale of the problem (UNESCO World Heritage Centre 2007, p. 9). SICGAL estimates that 779 invertebrates [interpreted as 779 individuals] entered the Galapagos Islands via aircraft in 2006 (UNESCO World Heritage Centre 2007, p. 9). In addition, the staff of the Galapagos National Park lack the capacity and facilities for effective law enforcement (UNESCO World Heritage Centre 2007, pp. 9-10).

Previous UNESCO-IUCN Galapagos mission reports (in 2005 and 2006) to the World Heritage Committee have consistently outlined major threats to the long-term conservation of the Galapagos Islands, including the introduction of non-native plant and animal species, and the inability to apply laws (UNESCO World Heritage Centre News 2007b). UNESCO World Heritage Centre reports that despite an excellent legal framework, national government institutions encounter difficulties in ensuring its full application (UNESCO World Heritage Centre News 2007b).

The Galapagos Islands were declared a World Heritage Site (WHS) under the auspices of the United Nations Educational, Scientific and Cultural Organization (UNESCO) in 1978 (UNESCO World Heritage Centre n.d.(a)), as they were recognized to be "cultural and natural heritage of outstanding universal value that needs to be protected and preserved" (UNESCO World Heritage Centre n.d.(b)). The aim of establishment as a WHS is conservation of the site for future generations (UNESCO World Heritage Centre 2008). However, in June 2007, due to threats to this site posed by introduced invasive species, increasing tourism, and immigration, the World Heritage Committee placed the Galapagos on the "List of World Heritage Sites in Danger." Placement on this list is intended to increase support for a site's conservation (UNESCO World Heritage Centre News 2007a). In March 2008, the UNESCO World Heritage Centre/United Nations Foundation project for invasive species management provided funding of 2.19 million U.S. dollars (USD) to the Ecuadorian National Environmental Fund's "Galapagos Invasive Species" account to support invasive species control and eradication activities on the islands (UNESCO World Heritage Centre News 2008). In addition, the Ecuador government previously had contributed 1 million USD to this fund (UNESCO World Heritage Centre News 2008), demonstrating the government of Ecuador's commitment to reducing the threat of invasive species to the islands.

Summary of Factor D

Ecuador has developed numerous laws and regulatory mechanisms to manage wildlife in the Galapagos Islands. The medium tree-finch is listed as critically endangered under Ecuadorian law. Ninety-seven percent of the land in the Galapagos Islands is designated as the National Park. Some of this park land on Floreana is identified as a "farming" zone, where agricultural and grazing activities continue to threaten the habitat of the species. Although tourism is a problem generally throughout the Galapagos Islands, it was not found to be a specific threat to this species. Additional regulations have created an inspection and quarantine system in order to prevent the introduction of nonnative species, but are not being effectively enforced. Additionally, this program does little to eradicate species already introduced to the Galapagos Islands. Therefore, we find that the existing regulatory mechanisms currently in place are inadequate for the conservation of this species.

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

This species exists on a single island with decreasing available habitat. The population is believed to be between 1,000 and 2,499 individuals and decreasing in size. Small, declining populations are vulnerable to demographic stochasticity. In basic terms, demographic stochasticity is defined by chance changes in the population growth rate for the species (Gilpin and Soulé 1986, p. 27). Population growth rates are influenced by individual birth and death rates (Gilpin and Soulé 1986, p. 27), immigration and emigration rates, and changes in population sex ratios. Natural variation in survival and reproductive success of individuals and chance disequilibrium of sex ratios may act in concert to contribute to demographic stochasticity (Gilpin and Soulé 1986, p. 27). Genetic stochasticity is caused by changes in gene frequencies due to genetic drift, and diminished genetic diversity, and effects due to inbreeding (i.e., inbreeding depression) (Lande 1995, p. 786). Inbreeding can have individual or population-level consequences, either by increasing the phenotypic expression (the outward appearance, or observable structure, function, or behavior of a living organism) of recessive, deleterious alleles or by reducing the overall fitness of individuals in the population (Shaffer 1981, p. 131; Charlesworth and Charlesworth 1987, p. 231). Environmental stochasticity is defined as the susceptibility of small, isolated populations of wildlife species to natural levels of environmental variability and related "catastrophic" events (e.g., severe storms, prolonged drought, extreme cold spells, wildfire) (Mangel and Tier 1994, p. 612; Young 1994, pp. 410-412; Dunham *et al.* 1999, p. 9).

The population size is significant because critically small and declining populations such as that of the medium tree finch face higher extinction risk than large, stable populations. Therefore, this species may be more vulnerable to extinction relative to other species with larger, more stable population sizes facing similar threats. Small, declining populations of wildlife species may be susceptible to demographic and genetic problems (Shaffer 1981, pp. 130-134). These threat factors, which may act in concert, include: Natural variation in survival and reproductive success of individuals, chance disequilibrium of sex ratios, changes in gene frequencies due to genetic drift, diminished genetic diversity and associated effects due to inbreeding (i.e., inbreeding depression), dispersal of just a few individuals, a few clutch failures, a skewed sex ratio in recruited offspring over just one or a few

years, and chance mortality of just a few reproductive-age individuals.

Various past and ongoing human activities and their secondary influences continue to impact all of the remaining suitable habitats that may still harbor the medium tree-finch (see Factor A). We expect that any additional loss or degradation of habitats that are used by the medium tree-finch will have disproportionately greater impacts on the species due to the population's small and declining population size.

We expect that the medium tree-finch's increased vulnerability to demographic stochasticity and inbreeding will be operative even in the absence of any human-induced threats or stochastic environmental events, which only act to further exacerbate the species' vulnerability to local extirpations and eventual extinction. Demographic and genetic stochastic forces typically operate synergistically. Initial effects of one threat factor can later exacerbate the effects of other threat factors (Gilpin and Soulé 1986, pp. 25-26). For example, any further decrease of the populations will, by definition, result in the further removal of individuals, which will exacerbate the other threats.

Small, declining populations such as the medium tree-finch may also susceptible to natural levels of environmental variability and related "catastrophic" events (e.g., severe storms, prolonged drought, extreme cold spells, wildfire), which we will refer to as environmental stochasticity (Dunham *et al.* 1999, p. 9; Mangel and Tier 1994, p. 612; Young 1994, pp. 410-412). A single stochastic environmental event can severely reduce existing wildlife populations and, if the affected population is already small and declining, it is likely that demographic stochasticity or inbreeding may become operative, which would place the population in jeopardy (Gilpin and Soulé 1986, p. 27; Lande 1995, pp. 787-789).

Summary of Factor E

The small and declining numbers that make up the medium tree-finch's population makes it susceptible to natural environmental variability or chance events. In addition to its declining numbers, the high level of parasitism by *P. downsi* makes the species more susceptible to genetic and demographic stochasticity. Therefore, we find that demographic stochastic events are an additional threat to the continued existence of the medium tree-finch.

Determination for the Medium Tree-finch

We have carefully assessed the best available scientific and commercial information regarding the past, present, and potential future threats faced by the medium tree-finch. The species is currently at risk throughout all of its range, primarily due to the immediate and ongoing threat of the introduced parasitic fly *Philornis downsi*. The clearing of native vegetation for agriculture, the destruction and degradation of habitat caused by introduced animals and plants (Factor A); disease and predation, particularly by the parasitic fly (Factor C); inadequate existing regulatory mechanisms (Factor D); and small population size (Factor E) are threats to this species.

Philornis downsi is the most severe threat to the survival of the medium tree-finch (Causton *et al.* 2006). As shown in numerous studies (Fessl and Tebich 2002, Dudaniec *et al.* 2006, Fessl *et al.* 2006b, O'Connor *et al.* 2009, and Dudaniec *et al* 2010), the fitness costs of *P. downsi* parasitism in finches is severe, with high incidences of nestling mortality. This parasite causes lower fledgling success, reduced nestling growth, and a reduction in hemoglobin levels (i.e. anemia) in nestlings. Currently, the medium tree-finch has the highest *P. downsi* parasite intensity of all the finch species found on Floreana, and the second highest of any finch species studied in the Galapagos Islands (O'Connor *et al.* 2009, pp. 853-866). These researchers also found *P. downsi* in 100 percent of medium tree-finch nests, causing parasitism of all nestlings (2009, pp. 853-866). Their study found that only 6.3 percent of active medium tree-finch nests produced fledglings, with the majority (54 percent) of nestling mortality caused by *P. downsi* parasitism. With severely low reproductive success, the medium tree-finch is likely to provide very little recruitment into the breeding population. Since finches are not known to suffer from a similar type of endemic parasite, it appears that they have not yet developed an adaptive response or defense mechanism against this kind of parasite. Therefore, a long-term control method for *P. downsi* is needed in order to eliminate this threat to the species.

The medium tree-finch is found only on the island of Floreana; primarily in the moist highland forests (i.e. the *Scalesia* zone) which currently covers approximately 21 km^2 (8 mi^2). Because of the significant amounts of moisture and fertile soil available in the highlands, approximately 4 km^2 (1.5 mi^2) of the highland forests on Floreana have been altered or cleared for agricultural purposes. Although the Galapagos National Park covers 97 percent of the land in the Galapagos Islands, the remaining 3 percent includes a large portion of the moist highlands on inhabited islands, such as Floreana, which allows farming to continue in this area today. Introduced animals, both domestic livestock and feral populations, have magnified the negative effects of clearing large areas of native vegetation for agriculture and ranching. Herbivores destroy the species' habitat on Floreana by trampling and grazing heavily on native vegetation, including *Scalesia pedunculata*, the tree primarily used by the medium tree-finch for nesting and foraging. Non-native fruit trees, easily spread by cattle and pigs, grow quickly and shade native seedlings of this species' preferred habitat of *Scalesia pedunculata*.

Even though the Galapagos National Park Service encourages ranchers to fence in their cattle on Floreana, cattle still stray into native vegetation to graze. Other introduced species, such as black rats and cats, predate on the eggs and nestlings of birds. One study (O'Connor *et al.* 2009) found that 33 percent of medium tree-finch nests experienced nestling predation, while egg depredation was observed in 22 percent of the nests. Because agricultural areas are close to the breeding sites of the medium tree-finch, non-native, introduced predators, mainly rats are able to easily access the habitat of the medium tree-finch. Although an eradication program has been developed on Floreana to eliminate some of the introduced species, such as donkeys and goats, we are not aware of current programs to remove other herbivores or introduced predators from Floreana. Even though the medium tree-finch is listed as a critically endangered species under Ecuadorian law and its range includes the Galapagos National Park, existing regulatory mechanisms are inadequate to protect the habitat of the species and have been ineffective in controlling the primary threat to the medium tree-finch, which is parasitism by *Philornis downsi*.

The Endangered Species Act defines an endangered species as "any species which is in danger of extinction throughout all or a significant portion of its range," and a threatened species as "any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." Based on the immediate and ongoing significant threat to the medium tree-

finch throughout its entire range, as described above, we determine that the medium tree-finch is in danger of extinction throughout all of its range. Therefore, on the basis of the best available scientific and commercial information, we have determined the species is in danger of extinction throughout all of its range primarily due to ongoing threats to its habitat (Factor A), predation (Factor C), and inadequacy of regulatory mechanisms (Factor D), and we determine endangered status for the medium tree-finch.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and encourages and results in conservation actions by Federal governments, private agencies and groups, and individuals.

Section 7(a) of the Act, as amended, and as implemented by regulations at 50 CFR part 402, requires Federal agencies to evaluate their actions within the United States or on the high seas with respect to any species that is listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. However, given that this species is not native to the United States, no critical habitat is being proposed for designation with this rule.

Section 8(a) of the Act authorizes the provision of limited financial assistance for the development and management of programs that the Secretary of the Interior determines to be necessary or useful for the conservation of endangered species in foreign countries. Sections 8(b) and 8(c) of the Act authorize the Secretary to encourage conservation programs for foreign endangered species and to provide assistance for such programs in the form of personnel and the training of personnel.

We may issue permits to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 for endangered species, and at 17.32 for threatened species. With regard to endangered wildlife, a permit must be issued for the following purposes: For scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities.

Required Determinations

National Environmental Policy Act

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), need not be prepared in connection with regulations under section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited in this proposed rule is available on the Internet at *http://www.regulations.gov or upon request from the Endangered Species Program, U.S. Fish* and Wildlife Service (see the **FOR FURTHER INFORMATION CONTACT** section).

Author

The primary author of this final rule is staff of the Branch of Foreign Species, Endangered Species Program, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Arlington, VA 22203.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.11(h) by adding a new entry for "Tree-finch, medium" in alphabetical order under "BIRDS" in the List of Endangered and Threatened Wildlife, as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
BIRDS							
*	*	*	*	*	*	*	
Tree-finch, medium	Ecuador (Galapagos Islands)	Entire	E	767	NA	NA.	
Camarhynchus pauper							
*	*	*	*	*	*	*	

* * * * *

Dated: July 7, 2010

Wendi Weber,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2010–18025 Filed 7–26–10; 8:45 am]

BILLING CODE 4310–55–S

Proposed Rules

Federal Register
Vol. 75, No. 143
Tuesday, July 27, 2010

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

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 36, 39, 40, 51, 70, and 150

[NRC–2010–0075]

RIN 3150–AI79

Licenses, Certifications, and Approvals for Material Licensees

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations by revising the provisions applicable to the licensing and approval processes for byproduct, source and special nuclear material licenses, and irradiators. The proposed changes would clarify the definitions of "construction" and "commencement of construction" with respect to materials licensing actions instituted under the NRC's regulations. In addition, this action also contains a correction to a typographical error. The NRC is undertaking this rulemaking action to conform its regulations to the scope of its regulatory authority under the Atomic Energy Act of 1954, as amended (AEA), to improve the effectiveness and efficiency of the licensing and approval processes for future applications, as well as resolve certain inconsistencies that currently exist within the NRC's regulations with respect to the use and definition of the terms "construction" or "commencement of construction" for certain materials licensees.

DATES: Submit comments by September 27, 2010. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: Please include Docket ID NRC–2010–0075 in the subject line of your comments. For instructions on submitting comments *see* Section I of this document, for accessing documents related to this action, *see* Section V in the **SUPPLEMENTARY INFORMATION** section of this document. You may submit comments by any one of the following methods.

Federal Rulemaking Web Site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2010–0075. Address questions about NRC dockets to Carol Gallagher, telephone 301–492–3668; e-mail *Carol.Gallagher@nrc.gov.*

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

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

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

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

FOR FURTHER INFORMATION CONTACT: Ms. Tracey Stokes, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; *telephone:* 301–415–1064; *e-mail: tracey.stokes@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Submitting Comments
II. Background
III. Discussion
IV. Discussion of Proposed Amendments by Section
V. Availability of Documents
VI. Agreement State Compatibility
VII. Plain Language
VIII. Voluntary Consensus Standards
IX. Environmental Impact—Categorical Exclusion
X. Paperwork Reduction Act Statement
XI. Regulatory Analysis
XII. Regulatory Flexibility Certification
XIII. Backfit Analysis

I. Submitting Comments

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

II. Background

On December 11, 2008, following a briefing on uranium recovery activities by the NRC staff and representatives from the U.S. Environmental Protection Agency, the U.S. Department of the Interior, Bureau of Land Management, the Navajo Nation, Acoma Pueblo, Wyoming Department of Environmental Quality, New Mexico Environment Department, Navajo Allottees, National Mining Association, International Forum on Sustainable Options for Uranium Production, and the Natural Resources Defense Council, the Commission issued a January 8, 2009, Staff Requirements Memorandum (ADAMS Accession No. ML090080206) directing staff to provide the Commission with a proposed rulemaking to revise 10 CFR 40.32, "General requirements for issuance of specific licenses," to determine whether limited work authorization (LWA) provisions are appropriate for uranium in-situ recovery facilities.

During the briefing, a concern was noted regarding the inability of part 40 licensees and applicants to engage in site preparation activities (*e.g.,* clearing land, site grading and erosion control, and construction of main access roadways, non-security related guardhouses, utilities, parking lots, or administrative buildings not used to process, handle or store classified information) given the broad prohibition against construction in § 40.32(e). Currently, 10 CFR 40.32(e) prohibits an applicant for a license for a uranium enrichment facility or for a license to possess and use source and byproduct materials for uranium milling, production of uranium hexafluoride, or for any other activity requiring NRC authorization from commencing construction of the plant or facility in which the activity will be conducted before the NRC's decision to issue the proposed license. For the purposes of this section, the term "commencement of construction" is defined generally as

meaning any clearing of land, excavation, or other substantial action that would adversely affect the environment of a site. Section 40.32(e) clarifies that "commencement of construction" is not intended to mean site exploration, construction of roads necessary for site exploration, borings to determine foundation conditions, or other pre-construction monitoring or testing to establish background information related to the suitability of the site or the protection of environmental values. Similar prohibitions on construction exist with respect to 10 CFR parts 30, 36, and 70.

Currently, a part 40 licensee or applicant may only engage in site preparation activities beyond site exploration if the applicant or licensee requests, and is granted, either a specific license to conduct such activities under part 40, or an exemption from § 40.32(e). Although the staff indicated that exemptions from 10 CFR 40.32(e) have been utilized in the past to allow site preparation activities prior to licensing, and that appropriate exemptions continue to be an available alternative for applicants, the Commission noted during the December 11, 2008, briefing that this manner of regulation was inappropriate for long-term resolution of the issue. Following the briefing, the Commission received a letter from the Nuclear Energy Institute (NEI) dated March 3, 2009, in which NEI expressed its support of the Commission's memorandum directing staff to initiate a rulemaking regarding 10 CFR 40.32 (ADAMS Accession No. ML090710372).

III. Discussion

On October 9, 2007 (72 FR 57416; corrected at 73 FR 22786 (April 28, 2008)), the NRC issued a final rule amending the regulation defining "construction" for utilization and production facilities and amending the requirements applicable to limited work authorizations (LWAs) for nuclear power plants (LWA rulemaking). (ADAMS Accession Nos. ML071210205 and ML081050554). As part of that rulemaking, the Commission revised the scope of activities that are considered construction for which a construction permit, combined license, or LWA is necessary; specified the scope of construction activities that may be performed under an LWA; and changed the review and approval process for LWA requests. The NRC's revised definition for "construction" expressly excludes site exploration; preparation of the site for construction of a facility (e.g., clearing of the site, grading, installation of drainage, erosion and other environmental mitigation measures, and construction of temporary roads and borrow areas); erection of fences and other access control measures; excavations; erection of support buildings for use in connection with the construction of the facility; building of service facilities; procurement or fabrication of components or portions of the proposed facility occurring at other than the final, in-place location at the facility; as well as some activities that are nuclear power reactor specific. In undertaking the LWA rulemaking (October 9, 2007; 72 FR 57416), the NRC recognized that the AEA does not authorize the NRC to require an applicant to obtain permission before undertaking site preparation activities, of the type listed above, that do not implicate radiological health and safety or common defense and security considerations.

The Atomic Energy Commission (AEC) (the NRC's predecessor agency) prohibited pre-licensing construction of nuclear power plants in the agency's initial 1960 definition of construction for production and utilization facilities (25 FR 8712; September 9, 1960). On March 21, 1972 (37 FR 5745), the AEC expanded its definition of construction and developed the LWA process, whereby applicants for nuclear power plant licenses were permitted to engage in site preparation activities, including excavation and other on-site activities before a construction permit was issued. The AEC's 1972 rulemaking was a direct result of the enactment of the National Environmental Policy Act of 1969 (NEPA), and the Commission's implementation of that statute.[1] The LWA process remained largely unchanged until the 2007 LWA rulemaking.

The NRC's regulations for materials licenses do not provide for pre-licensing construction activities of the type allowed parts 50 and 52 applicants. Prior to 1971, the AEC prohibited the construction of materials facilities prior to the agency's decision to issue a license. Initially the AEC required that any application for a Part 70 plutonium processing and fuel fabrication plant be filed at least six months prior to the beginning of plant construction. (36 FR 17573; September 2, 1971). The intent behind this requirement was to allow the AEC an opportunity to conduct a pre-construction review to determine whether the applicant's design basis for the principal structures, systems and components, and its quality assurance program provided reasonable assurance of protection against natural phenomena and the consequences of potential accidents. (36 FR 9786; May 28, 1971). This regulation was only applicable to plutonium processing and fuel fabrication applicants.

Thereafter, on December 1, 1971 (36 FR 22848), the AEC published notice of its intent to redefine the term "commencement of construction" as that term was then applied to part 50 production and utilization facilities subject to then Appendix D of part 50. By the same notice, the AEC indicated that it was also considering the adoption of similar amendments to parts 30, 40, and 70 that would provide for NRC environmental review prior to commencement of construction of materials licensee plants and facilities. The proposed amendments introduced to parts 30, 40, and 70 a new definition of "commencement of construction;" required that applications for materials licenses under these parts be filed at least 9 months prior to commencement of construction of plants or facilities in which the licensed activates will be conducted; and added as a condition of issuance of the requested license that the AEC staff had made a favorable environmental review determination prior to commencement of construction of such plants or facilities. The AEC subsequently revised these regulations (38 FR 5745; March 21, 1972) and provided a mechanism for AEC exemptions to allow the continuation of site preparation and construction activities begun prior to the effective date of the proposed amendments, provided that such activities were conducted so as to minimize their environmental impact, and to conform the time for filing applications for plutonium process and fuel fabrication plants to 9 months prior to commencement of construction.

In response to the requirements imposed by the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA), the NRC again amended part 40 to require that a final environmental assessment be completed by the NRC prior to commencement of construction of a mill that produces byproduct material (45 FR 65521; October 3, 1980). In reaching this decision, the NRC noted that,

> [M]illing results in the production of large quantities of byproduct material as tailings per year. When construction of a mill commences, nearly irrevocable commitments are made regarding tailings disposal. Given that each mill tailings pile constitutes a low-level waste burial site containing long-lived radioactive materials, the Commission believes that prudence requires that specific

[1] *See Carolina Power and Light Co.* (*Shearon Harris Nuclear Power Plant, Units 1, 2, 3 & 4*), CLI–74–22, 7 AEC 939, 943 (1974). *See also Kansas Gas and Electric Co.* (*Wolf Creek Nuclear Generating Station, Unit 1),* CLI–77–1, 5 NRC 1, 5 (1977).

methods of tailings disposal, mill decontamination, site reclamation, surety arrangements, and arrangements to allow for transfer of site and tailings ownership be worked out and approved before a license is granted.

Id. at 65529. The NRC concluded that commencement of construction of other types of plants and facilities in which byproduct, source, and special nuclear materials are used and possessed would also result in similar commitments of resources, and accordingly, the NRC amended parts 30 and 70 to conform to the amendments effectuated in part 40.

The October 9, 2007 (72 FR 57416, 57427) LWA rulemaking examined the nature and extent of the NRC's responsibilities under NEPA, and based upon that evaluation the NRC revised the definition of construction in 10 CFR 50.10 to expressly exclude certain activities. The NRC determined that its NEPA obligations and responsibilities arise only when the Commission undertakes a Federal action within the agency's statutory responsibility. Specifically, the NRC noted that NEPA, a procedural statute, does not expand the NRC's jurisdiction beyond the scope of the AEA. *Id.* The NRC further determined that,

> [W]hile NEPA may require the NRC to consider the environmental effects caused by the exercise of its permitting/licensing authority, the statute cannot be the source of the expansion of the NRC's authority to require * * * other forms of permission for activities that are not reasonably related to radiological health and safety or protection of the common defense and security. Since NEPA cannot expand the Commission's * * * authority under the AEA, the elimination of the blanket inclusion of site preparation activities in the [then existing] definition of construction does not violate NEPA.

71 FR 61330, 61332; (October 17, 2006); *see also* 72 FR 57416, 57427 (October 9, 2007). In light of the foregoing, the NRC amended its definition of construction in § 50.10 and its NEPA regulations in 10 CFR part 51 to include a definition of construction that was consistent with the § 50.10 definition and the NRC's authority under the AEA. Given the NRC's determination that site preparation activities did not constitute construction, the NRC provided that the effects of these activities would only be considered in order to establish a baseline against which the incremental effect of the subsequent major Federal action (*i.e.,* the Commission's issuance of a license) would be measured.

Since the completion of the LWA rulemaking, which added to part 51 a definition of "construction," the NRC's definition of what constitutes construction for material licenses in Parts 30, 36, 40, 70, and 150 has been inconsistent with the definition the NRC established in parts 50, 51, and 52. Activities that do not constitute construction under 10 CFR parts 50, 51, and 52, are currently classified as construction under 10 CFR parts 30, 36, 40, 70, and 150. Accordingly, the site preparation activity from which a materials license applicant or licensee is currently prohibited from engaging, are the same activities that the NRC determined in the LWA rulemaking were not within the scope of the agency's licensing review. As was indicated during the Commission's December 2008 briefing, materials applicants and licensees, as well as the NRC's staff, have struggled with the inconsistency that currently exists within the NRC's regulations.

Staff and materials license applicants have been reconciling the contrary regulatory definitions through the exemption process. But given the agency's position on the scope of its AEA authority, the NRC believes that the regulatory provisions themselves should be reconciled, furthering regulatory efficiency and economy. Accordingly, the NRC proposes to implement conforming amendments in 10 CFR parts 30, 36, 40, and 70 that would establish a consistent definition of "construction" or "commencement of construction." Within the proposed definition of commencement of construction for 10 CFR parts 30, 36, 40, and 70, the NRC has included any activity that has a reasonable nexus to the radiological health and safety or the common defense and security with the purpose of ensuring that the types of site preparation activities instituted pursuant to the revised regulation do not consist of activities that are related to radiological safety, radiological controls, physical protection or information security. For example, in § 51.4, the exclusion of fences and other access control measures from the definition of construction does not pertain to those fences and controls intended to secure and protect radiological materials, but rather to those fences and controls intended to protect the integrity of the site during the preparation activities. The NRC requests comments on its proposal to align the terms "construction" and "commencement of construction" within major licensing parts of its regulations.

The NRC is aware that some interested entities have suggested that an LWA process, similar to that promulgated for 10 CFR parts 50 and 52 licensees, should be developed for materials applicants and licensees. However, upon review, it is not clear at this time that an LWA process applicable to materials licenses is appropriate, or even necessary. A review of recent requests for exemption from the construction prohibition shows that most requests would have been rendered unnecessary by a materials construction definition that conforms to Part 51. It is unclear whether the licensing process for materials licenses would be enhanced by an LWA process that allows some safety or security-related construction to occur in advance of the license, or whether an LWA process might be more appropriate for larger materials facilities, such as uranium in situ recovery facilities or uranium enrichment facilities.

Furthermore, given the NRC's explicit statement in 1980 of the breadth of issues that should be resolved prior to constructing parts 30, 40, and 70 facilities,[2] there is some question as to whether an LWA process is appropriate in the context of materials licensing, which would permit safety or security-related construction to occur prior to a conclusion that a license should be issued. In the UMTRCA-related rulemaking, the NRC found that construction activities at plants and facilities in which source or byproduct materials are possessed and used for the production of uranium hexafluoride and commercial waste disposal by land burial should not precede the environmental review as they "are likely to result in [irrevocable and/or irretrievable] environmental impacts, the propriety of which cannot be ascertained until [the Part 51] environmental appraisals are completed and documented." (45 FR 65521, 65529; October 3, 1980). Accordingly, the NRC is not including in the proposed rule language an LWA process for 10 CFR parts 30, 36, 40, or 70 licensees and applicants, and to the extent that an applicant for a 10 CFR parts 30, 36, 40, or 70 license wishes to perform site activities that are related to radiological health and safety or preservation of the common defense and security, the applicant would be prohibited from doing so under the proposed rule until the NRC has completed its environmental review and concluded that a license should be issued. Nevertheless, the NRC invites comments on the utility of an LWA process for 10 CFR parts 30, 36, 40, and 70, including whether such a process would be appropriate for all, or merely some, materials licenses.

The revisions proposed in this rulemaking would have the effect of

[2] *See* UMTRCA Rulemaking, 45 FR 65521, 65529 (October 3, 1980).

providing a definition of "construction" that is consistent throughout the NRC's regulations and within the scope of the NRC's environmental review conducted under the part 51 definition of "construction." Exemptions would no longer be necessary for certain site preparation activities currently undertaken by materials license applicants. Currently, the NRC's regulations in part 51 require that an applicant for a materials license, license amendment, or license renewal submit an environmental report with its application. The NRC's regulations further dictate the nature and scope of the NRC's environmental assessment. Those provisions are not being revised by this rulemaking. The instructive provisions in part 51 would continue to remain applicable.

Currently, to the extent that a potential applicant, an applicant, or a licensee engages in activities that the NRC has indicated do not constitute construction subject to NRC regulation, the entity does so at its own risk, as such activity does not presume that the NRC will conclude that a license should be issued upon completion of its review. This is consistent with the underlying concept that these site preparation activities do not result from Federal approval of activities within the responsibility of the NRC under the AEA and, therefore, they will have relevance to the NRC action only to the extent that the impacts of those activities influence an analysis of any subsequent licensing action's cumulative environmental impacts.

The NRC is also proposing a typographical correction to the regulations in 10 CFR 39.13(a). Part 39 was issued March 17, 1987 (52 FR 8225), by the NRC to specify radiation safety requirements for the use of licensed material in well-logging operations. Section 39.13(a) directs applicants for a specific license for well logging to satisfy the general requirements in § 30.33 for byproduct material, § 40.32 for source material, and § 70.33 for special nuclear material. However, § 70.33 pertains to renewal of licenses and not to general requirements for special nuclear material licensing. The general requirements regulation for special nuclear material licenses is in § 70.23. The reference to § 70.33 in the current version of § 39.13(a) is the result of a typographical error, and the NRC is proposing to correct § 39.13(a) so that the reference for the general requirements for special nuclear material licenses will refer to § 70.23.

IV. Discussion of Proposed Amendments by Section

Section 30.4 Definitions.

In 2007, the NRC added a definition for the term "construction" in 10 CFR part 51, "Environmental protection regulations for domestic licensing and related regulatory functions," to exclude certain site preparation activities from the definition. The NRC's decision to exclude these site preparation activities from the definition of construction was based upon the NRC's determination that these activities lacked a reasonable nexus to radiological health and safety or common defense and security considerations. This determination is equally applicable to the licensing actions in part 30, which are subject to the NEPA implementing regulations in part 51, including the part 51 definition for "construction." Accordingly, this section would be revised to add a definition for "construction" and conform the definition for "commencement of construction" to be consistent with the concepts used to define "construction" in 10 CFR 51.4, recognizing those activities the Commission has already determined do not affect, as a general matter, radiological health and safety or common defense and security.

Section 30.33 General requirements for issuance of specific licenses.

In this section, paragraph (a)(5) would be revised to delete the definition of "commencement of construction" contained in the last two sentences of the paragraph.

Section 36.2 Definitions.

In 2007, the NRC revised the definition for the term "commencement of construction" in 10 CFR part 51, "Environmental protection regulations for domestic licensing and related regulatory functions," to exclude certain site preparation activities from the definition. The NRC's decision to exclude these activities from the definition of construction was based upon the NRC's determination that these activities lacked a reasonable nexus to radiological health and safety or common defense and security considerations. This section would be revised to add definitions for "construction" and "commencement of construction" to be consistent with the definition adopted by the NRC in 10 CFR 51.4.

Section 36.13 Specific licenses for irradiators.

In this section, paragraph (a) would be revised to exclude § 30.33(a)(5) as a requirement for an applicant to receive a specific license under this part. Currently § 36.13(a) provides that an applicant for a part 36 license shall satisfy both the general requirements in § 30.33 and the requirements in part 36. Section 30.33(a)(5) contains the provision regarding commencement of construction. Section 36.15 of the existing regulations also addresses a part 36 applicant's or licensee's obligations with respect to the commencement of construction. The prohibition on the commencement of construction imposed by § 36.15 varies from that required by § 30.33(a)(5), so that the current language in § 36.13(a) creates a conflict. The proposed amendment would resolve the matter to make it clear that the part 36 requirements are applicable to the part 36 licensee.

Section 36.15 Commencement of construction.

This section would be revised to modify references from "start of construction" to "commencement of construction" to create consistency in the terminology used in the NRC's regulations. Additionally, given the proposed insertion of a revised definition for "commencement of construction" in § 36.2, the definition of "construction" in this section would be deleted.

Section 39.13 Specific licenses for well-logging.

In this section, paragraph (a) would be revised to correct a typographical error. The reference to § 70.33 would be revised to read § 70.23.

Section 40.4 Definitions.

In 2007, the NRC added a definition for the term "construction" in 10 CFR part 51, "Environmental protection regulations for domestic licensing and related regulatory functions," to exclude certain site preparation activities from the definition. The NRC's decision to exclude these activities from the definition of construction was based upon the NRC's determination that these activities lacked a reasonable nexus to radiological health and safety or common defense and security considerations. This determination is equally applicable to the licensing actions in part 40, which are subject to the NEPA implementing regulations in part 51, including the part 51 definition for "construction." Accordingly, this section would be revised to add a definition for "construction" and conform the definition for "commencement of construction" to be

consistent with the definition of "construction" in 10 CFR 51.4.

Section 40.32 General requirements for issuance of specific licenses.

In this section, paragraph (e) would be revised to delete the definition of "commencement of construction" contained in the last two sentences of the paragraph.

Section 51.4 Definitions.

The existing definition in this section for the term "construction" was added to address part 50 nuclear power reactor licenses, and allows for possible pre-license construction through a limited work authorization that is available to part 50 applicants, but contains language that is not, by its terms, limited to part 50 licensees. A comparable limited work authorization is not being proposed for materials licenses. The result is that commencement of construction provisions in parts 30, 40, and 70 refer the staff to part 51 for an environmental review based on activities not included in the part 51 definition of construction. To resolve these inconsistencies, the definition of "construction" would be revised to distinguish between a part 50 licensing action and a materials licensing action. This section would be revised to add a paragraph defining "construction" for materials licenses.

Section 70.4 Definitions.

In 2007, the NRC added a definition for the term "construction" in 10 CFR part 51, "Environmental protection regulations for domestic licensing and related regulatory functions," to exclude certain site preparation activities from the definition. The NRC's decision to exclude these activities from the definition of construction was based upon the NRC's determination that these activities lacked a reasonable nexus to radiological health and safety or common defense and security considerations. This determination is equally applicable to the licensing actions in Part 70, which are subject to the NEPA implementing regulations in Part 51, including the Part 51 definition for "construction." Accordingly, this section would be revised to add a definition for "construction" and conform the definition for "commencement of construction" to be consistent with the definition of "construction" in 10 CFR 51.4.

Section 70.23 Requirements for the approval of applications.

In this section, paragraph (a)(7) would be revised to delete the definition of "commencement of construction" contained in the last two sentences of the paragraph.

Section 150.31 Requirements for Agreement State regulation of byproduct material.

In this section, paragraph (b)(3)(iv) would be revised to modify and conform the definition for "commencement of construction" to that proposed in parts 30, 40, and 70, such that the Agreement State meaning is consistent with that of the NRC.

V. Availability of Documents

You can access publicly available documents related to this document, including the following documents, using the following methods:

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

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, or 301–415–4737, or by e-mail to *PDR.Resource@nrc.gov.*

Federal Rulemaking Web Site: Public comments and supporting materials related to this proposed rule can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2010–0075.

Document	PDR	Web	ADAMS	NRC Staff
Staff Requirements Memorandum—Briefing on Uranium Recovery, January 9, 2009	X	X	ML090080206	X
Letter from the Nuclear Energy Institute dated March 3, 2009	X	X	ML090710372	X
Limited Work Authorizations for Nuclear Power Plants; Final Rule; Correction, April 28, 2008 (73 FR 22786) (Docket ID NRC–2008–0222)	X	X	ML081050554	X
Limited Work Authorizations for Nuclear Power Plants; Final Rule, October 9, 2007 (72 FR 57416) (Docket ID NRC–2008–0222)	X	X	ML071210205	X

VI. Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" which became effective on September 3, 1997 (62 FR 46517), NRC program elements (including regulations) are placed into compatibility categories A, B, C, D, NRC, or adequacy category, Health and Safety (H&S). Category A includes program elements that are basic radiation protection standards or related definitions, signs, labels, or terms necessary for a common understanding of radiation protection principles and should be essentially identical to those of NRC. Category B includes program elements that have significant direct transboundary implications and should be essentially identical to those of the NRC.

Compatibility Category C are those program elements that do not meet the criteria of Category A or B, but the essential objectives of which an Agreement State should adopt to avoid conflict, duplication, gaps, or other conditions that would jeopardize an orderly pattern in the regulation of agreement material on a nationwide basis. Compatibility Category D are those program elements that do not meet any of the criteria of Category A, B, or C, and do not need to be adopted by Agreement States. Compatibility Category NRC are those program elements that address areas of regulation that cannot be relinquished to Agreement States pursuant to the AEA or provisions of Title 10 of the Code of Federal Regulations and should not be adopted by Agreement States. Category H&S are program elements that are not required for compatibility, but have a particular health and safety role (*e.g.,* adequacy) in the regulation of agreement material and the State should adopt the essential objectives of the NRC program elements.

The NRC has analyzed the proposed rule in accordance with the procedure established within Part III, "Categorization Process for NRC Program Elements," of Handbook 5.9 to

Management Directive 5.9, "Adequacy and Compatibility of Agreement State Programs" (a copy of which may be viewed at *http://www.nrc.gov/reading-rm/doc-collections/management-directives/).* The proposed revisions are categorized as follows:

DRAFT COMPATIBILITY TABLE FOR PROPOSED RULE

NRC Regulation section	Change	Section title	Compatibility category	
			Existing	New
30.4	Amend	Definition—Commencement of Construction—paragraph 1.	D	D.
30.4	New	Definition—Commencement of Construction—paragraph 2.		NRC.
30.4	New	Definition—Construction—paragraphs 1–8 and 9(i).		D.
30.4	New	Definition—Construction—paragraph 9(ii)		NRC.
30.33(a)(5)	Amend	General requirements for issuance of specific licenses.	D	D.
36.2	New	Definition—Commencement of Construction—paragraph 1.		D.
36.2	New	Definition—Commencement of Construction—paragraph 2.		NRC.
36.2	New	Definition—Construction—paragraphs 1–8 and 9(i).		D.
36.2	New	Definition—Construction—paragraph 9(ii)		NRC.
36.13(a)	Amend	Specific licenses for irradiators	H&S	H&S.
36.15	Amend	Commencement of construction	D	D.
39.13(a)	Amend	Specific licenses for well-logging	H&S	H&S.
40.4	Amend	Definition—Commencement of Construction—paragraph 1.	C—States with authority to regulate uranium mill activities (11e.(2) byproduct material). D—States without authority.	C—States with authority to regulate uranium mill activities (11e.(2) byproduct material). D—States without authority.
40.4	New	Definition—Commencement of Construction—paragraph 2.		NRC.
40.4	New	Definition—Construction—paragraphs 1–8 and 9(i).		C—States with authority to regulate uranium mill activities (11e.(2) byproduct material). D—States without authority.
40.4	New	Definition—Construction—paragraph 9(ii)		NRC.
40.32(e)	Amend	General requirements for issuance of specific licenses.	H&S—States with authority to regulate uranium mill activities (11e.(2) byproduct material). NRC—States without authority.	H&S—States with authority to regulate uranium mill activities (11e.(2) byproduct material). NRC—States without authority.
51.4	Amend	Definitions	NRC	NRC.
70.4	Amend	Definition—Commencement of Construction—paragraph 1.	D	D.
70.4	New	Definition—Commencement of Construction—paragraph 2.		NRC.
70.4	New	Definition—Construction—paragraphs 1–8 and 9(i).		D.
70.4	New	Definition—Construction—paragraph 9(ii)		NRC.
70.23(a)(7)	Amend	Requirements for the approval of applications	NRC	NRC.
150.31(b)(3)(iv)	Amend	Requirements for Agreement State regulation of byproduct material.	C—States with authority to regulate uranium mill activities (11e.(2) byproduct material). D—States without authority.	C—States with authority to regulate uranium mill activities (11e.(2) byproduct material). D—States without authority.
150.31(b)(3)(iv)(A)	New	Requirements for Agreement State regulation of byproduct material.		C—States with authority to regulate uranium mill activities (11e.(2) byproduct material). D—States without authority.

DRAFT COMPATIBILITY TABLE FOR PROPOSED RULE—Continued

NRC Regulation section	Change	Section title	Compatibility category	
			Existing	New
150.31(b)(3)(iv)(B)	New	Requirements for Agreement State regulation of byproduct material.		C—States with authority to regulate uranium mill activities (11e.(2) byproduct material). D—States without authority.

VII. Plain Language

The Presidential memorandum dated June 1, 1998, entitled "Plain Language in Government Writing" directed that the Government's writing be in plain language. This memorandum was published on June 10, 1998 (63 FR 31883). In complying with this directive, the NRC made editorial changes to improve the organization and readability of the existing language of the paragraphs being revised. These types of changes are not discussed further in this document. The NRC requests comments on this proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the **ADDRESSES** heading of the preamble to this proposed rule.

VIII. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. The NRC is proposing to redefine the scope of activities constituting "construction" for materials licenses. The NRC is not aware of any voluntary consensus standards that address the proposed subject matter of this proposed rule. The NRC will consider using a voluntary consensus standard if an appropriate standard is identified. If a voluntary consensus standard is identified for consideration, the submittal should explain why the standard should be used.

IX. Environmental Impact—Categorical Exclusion

The NRC has determined that the changes made in this rule to parts 30, 36, 39, 40, 51, 70, and 150 fall within the types of actions described in categorical exclusions 10 CFR 51.22(c)(1), (c)(2), and (c)(3)(i). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this regulation.

X. Paperwork Reduction Act Statement

This proposed rule does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing information collection requirements were approved by the Office of Management and Budget, control numbers 3150–0017, 3150–0158, 3150–0130, 3150–0020, 3150–0021, 3150–0009, and 3150–0032.

Public Protection Notification.

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

XI. Regulatory Analysis

A draft regulatory analysis has not been prepared for this regulation. This rule amends the NRC's regulations to conform the definitions of "construction" and "commencement of construction" as they appear in parts 30, 36, 40, 70, and 150, to the parts 50, 51, and 52 definitions implemented by the LWA rulemaking, revised to reference non-nuclear power plant licensees. This amendment does not impose any new burden or reporting requirements on the licensee or NRC for compliance. Also, this rule does not involve an exercise of NRC discretion, and therefore does not necessitate preparation of a regulatory analysis.

XII. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule affects only material licensees. The companies that apply for a license in accordance with the regulations affected by this proposed rule do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

XIII. Backfit Analysis

The NRC's backfit provisions are found in the regulations at §§ 50.109, 52.39, 52.63, 52.83, 52.98, 52.145, 52.171, 70.76, 72.62, and 76.76. The requirements contained in this proposed rule do not involve any provisions that would impose backfits on nuclear power plant licensees as defined in 10 CFR parts 50 or 52, or on licensees for gaseous diffusion plants, independent spent fuel storage installations or special nuclear material as defined in 10 CFR parts 70, 72 and 76, respectively, and as such a backfit analysis is not required. Therefore, a backfit analysis need not be prepared for this proposed rule to address these classes of entities. With respect to parts 30, 36, 39, and 40 licensees, the NRC has determined that there are no provisions for backfit in these parts, and as such, a backfit analysis need not be prepared for this proposed rule to address these licensees.

List of Subjects

10 CFR Part 30

Byproduct material, Criminal penalties, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 36

Byproduct material, Criminal penalties, Nuclear materials, Reporting and recordkeeping requirements, Scientific equipment, Security measures.

10 CFR Part 39

Byproduct material, Criminal penalties, Nuclear materials, Oil and gas exploration—well logging, Reporting and recordkeeping requirements, Scientific equipment, Security

measures, Source material, Special nuclear material.

10 CFR Part 40

Criminal penalties, Government contracts, Hazardous materials transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 51

Administrative practice and procedure, Environmental impact statement, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 70

Criminal penalties, Hazardous materials transportation, Material accounting and control, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 150

Criminal penalties, Hazardous materials transportation, Intergovernmental relations, Nuclear materials, Reporting and recordkeeping requirements, Security measures, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR parts 30, 36, 39, 40, 51, 70, and 150.

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

1. The authority citation for Part 30 continues to read as follows:

Authority: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. No. 109–58, 119 Stat. 549 (2005).

Section 30.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. In § 30.4, the definition for the term "Commencement of construction" is revised, and the term "Construction" is added in alphabetical order to read as follows:

* * * * *

§ 30.4 Definitions.

* * * * *

Commencement of construction means taking any action defined as "construction" or any site-preparation activity at the site of a facility subject to the regulations in this part that has a reasonable nexus to:

(1) Radiological health and safety; or

(2) Common defense and security.

* * * * *

Construction means the installation of foundations, or in-place assembly, erection, fabrication, or testing for any structure, system, or component of a facility or activity subject to the regulations in this part that are related to radiological safety or security. The term "construction" does not include:

(1) Changes for temporary use of the land for public recreational purposes;

(2) Site exploration, including necessary borings to determine foundation conditions or other preconstruction monitoring to establish background information related to the suitability of the site, the environmental impacts of construction or operation, or the protection of environmental values;

(3) Preparation of the site for construction of the facility, including clearing of the site, grading, installation of drainage, erosion and other environmental mitigation measures, and construction of temporary roads and borrow areas;

(4) Erection of fences and other access control measures that are not related to the safe use of, or security of, radiological materials subject to this part;

(5) Excavation;

(6) Erection of support buildings (e.g., construction equipment storage sheds, warehouse and shop facilities, utilities, concrete mixing plants, docking and unloading facilities, and office buildings) for use in connection with the construction of the facility;

(7) Building of service facilities (e.g., paved roads, parking lots, railroad spurs, exterior utility and lighting systems, potable water systems, sanitary sewerage treatment facilities, and transmission lines);

(8) Procurement or fabrication of components or portions of the proposed facility occurring at other than the final, in-place location at the facility; or

(9) Taking any other action that has no reasonable nexus to:

(i) Radiological health and safety, or

(ii) Common defense and security.

* * * * *

3. In § 30.33, paragraph (a)(5) is revised to read as follows:

§ 30.33 General requirements for issuance of specific licenses.

(a) * * *

(5) In the case of an application for a license to receive and possess byproduct material for the conduct of any activity which the NRC determines will significantly affect the quality of the environment, the Director, Office of Federal and State Materials and Environmental Management Program or his designee, before commencement of construction of the plant or facility in which the activity will be conducted, on the basis of information filed and evaluations made pursuant to subpart A of part 51 of this chapter, has concluded, after weighing the environmental, economic, technical, and other benefits against environmental costs and considering available alternatives, that the action called for is the issuance of the proposed license, with any appropriate conditions to protect environmental values. Commencement of construction prior to such conclusion shall be grounds for denial of a license to receive and possess byproduct material in such plant or facility.

* * * * *

PART 36—LICENSES AND RADIATION SAFETY REQUIREMENTS FOR IRRADIATORS

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

Authority: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

5. In § 36.2, definitions for the terms "Commencement of construction"and "Construction" are added in alphabetical order to read as follows:

§ 36.2 Definitions.

* * * * *

Commencement of construction means taking any action defined as "construction" or any site-preparation activity at the site of a facility subject to the regulations in this part that has a reasonable nexus to:

(1) Radiological health and safety; or

(2) Common defense and security.

Construction means the installation of foundations, or in-place assembly, erection, fabrication, or testing for any structure, system, or component of a facility or activity subject to the regulations in this part that are related

to radiological safety or security. The term "construction"does not include:

(1) Changes for temporary use of the land for public recreational purposes;

(2) Site exploration, including necessary borings to determine foundation conditions or other preconstruction monitoring to establish background information related to the suitability of the site, the environmental impacts of construction or operation, or the protection of environmental values;

(3) Preparation of the site for construction of the facility, including clearing of the site, grading, installation of drainage, erosion and other environmental mitigation measures, and construction of temporary roads and borrow areas;

(4) Erection of fences and other access control measures that are not related to the safe use of, or security of, radiological materials subject to this part;

(5) Excavation;

(6) Erection of support buildings (e.g., construction equipment storage sheds, warehouse and shop facilities, utilities, concrete mixing plants, docking and unloading facilities, and office buildings) for use in connection with the construction of the facility;

(7) Building of service facilities (e.g., paved roads, parking lots, railroad spurs, exterior utility and lighting systems, potable water systems, sanitary sewerage treatment facilities, and transmission lines);

(8) Procurement or fabrication of components or portions of the proposed facility occurring at other than the final, in-place location at the facility; or

(9) Taking any other action that has no reasonable nexus to:

(i) Radiological health and safety, or

(ii) Common defense and security.

* * * * *

6. In § 36.13, paragraph (a) is revised to read as follows:

§ 36.13 Specific licenses for irradiators.

* * * * *

(a) The applicant shall satisfy the general requirements specified in §§ 30.33(a)(1)–(4) and 30.33(b) of this chapter and the requirements contained in this part.

* * * * *

7. Section 36.15 is revised to read as follows:

§ 36.15 Commencement of construction.

Commencement of construction of a new irradiator may not occur prior to the submission to NRC of both an application for a license for the irradiator and the fee required by § 170.31 of this chapter. Any activities undertaken prior to the issuance of a license are entirely at the risk of the applicant and have no bearing on the issuance of a license with respect to the requirements of the Atomic Energy Act of 1954 (Act), as amended, and rules, regulations, and orders issued under the Act.

PART 39—LICENSES AND RADIATION SAFETY REQUIREMENTS FOR WELL LOGGING

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

Authority: Secs. 53, 57, 62, 63, 65, 69, 81, 82, 161, 182, 183, 186, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

9. In § 39.13, paragraph (a) is revised to read as follows:

§ 39.13 Specific licenses for well logging.

* * * * *

(a) The applicant shall satisfy the general requirements specified in § 30.33 of this chapter for byproduct material, in § 40.32 of this chapter for source material, and in § 70.23 of this chapter for special nuclear material, as appropriate, and any special requirements contained in this part.

* * * * *

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

10. The authority citation for part 40 continues to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95–604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97–415, 96 Stat. 2067 (42 U.S.C. 2022); sec. 193, 104 Stat. 2835, as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. No. 109–59, 119 Stat. 594 (2005).

Section 40.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

11. In § 40.4, the definition for the term "Commencement of construction" is revised, and the term "Construction" is added in alphabetical order to read as follows:

§ 40.4 Definitions.

* * * * *

Commencement of construction means taking any action defined as "construction" or any site preparation activity at the site of a facility subject to the regulations in this part that has a reasonable nexus to:

(1) Radiological health and safety; or

(2) Common defense and security.

* * * * *

Construction means the installation of production wells, the installation of foundations, or in-place assembly, erection, fabrication, or testing for any structure, system, or component of a facility or activity subject to the regulations in this part that are related to radiological safety or security. The term "construction" does not include:

(1) Changes for temporary use of the land for public recreational purposes;

(2) Site exploration, including necessary borings to determine foundation conditions or other preconstruction monitoring to establish background information related to the suitability of the site, the environmental impacts of construction or operation, or the protection of environmental values;

(3) Preparation of the site for construction of the facility, including clearing of the site, grading, installation of drainage, erosion and other environmental mitigation measures, and construction of temporary roads and borrow areas;

(4) Erection of fences and other access control measures that are not related to the safe use of, or security of, radiological materials subject to this part;

(5) Excavation;

(6) Erection of support buildings (e.g., construction equipment storage sheds, warehouse and shop facilities, utilities, concrete mixing plants, docking and unloading facilities, and office buildings) for use in connection with the construction of the facility;

(7) Building of service facilities (*e.g.,* paved roads, parking lots, railroad spurs, exterior utility and lighting systems, potable water systems, sanitary sewerage treatment facilities, and transmission lines);

(8) Procurement or fabrication of components or portions of the proposed facility occurring at other than the final, in-place location at the facility; or

(9) Taking any other action that has no reasonable nexus to:

(i) Radiological health and safety, or

(ii) Common defense and security.

* * * * *

12. Section 40.32, paragraph (e) is revised to read as follows:

§ 40.32 General requirements for issuance of specific licenses.

* * * * *

(e) In the case of an application for a license for a uranium enrichment facility, or for a license to possess and use source and byproduct material for uranium milling, production of uranium hexafluoride, or for the conduct of any other activity which the NRC determines will significantly affect the quality of the environment, the Director, Office of Federal and State Materials and Environmental Management Programs or his designee, before commencement of construction, on the basis of information filed and evaluations made pursuant to subpart A of part 51 of this chapter, has concluded, after weighing the environmental, economic, technical and other benefits against environmental costs and considering available alternatives, that the action called for is the issuance of the proposed license, with any appropriate conditions to protect environmental values. Commencement of construction prior to this conclusion is grounds for denial of a license to possess and use source and byproduct material in the plant or facility.

* * * * *

PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

13. The authority citation for Part 51 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2201, 2297f); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note). Subpart A also issued under National Environmental Policy Act of 1969, secs. 102, 104, 105, 83 Stat. 853–854, as amended (42 U.S.C. 4332, 4334, 4335); and Pub. L. 95–604, Title II, 92 Stat. 3033–3041; and sec. 193, Pub. L. 101–575, 104 Stat. 2835 (42 U.S.C. 2243). Sections 51.20, 51.30, 51.60, 51.80, and 51.97 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241, and sec. 148, Pub. L. 100–203, 101 Stat. 1330–223 (42 U.S.C. 10155, 10161, 10168). Section 51.22 also issued under sec. 274, 73 Stat. 688, as amended by 92 Stat. 3036–3038 (42 U.S.C. 2021) and under Nuclear Waste Policy Act of 1982, sec. 121, 96 Stat. 2228 (42 U.S.C. 10141). Sections 51.43, 51.67, and 51.109 also issued under Nuclear Waste Policy Act of 1982, sec. 114(f), 96 Stat. 2216, as amended (42 U.S.C. 10134(f)).

14. In § 51.4, the definition for the term "Construction" is revised to read as follows:

§ 51.4 Definitions.

* * * * *

Construction means:

(1) For production and utilization facilities, the activities in paragraph (i) of this definition, and does not mean the activities in paragraph (ii) of this definition.

(i) Activities constituting construction are the driving of piles, subsurface preparation, placement of backfill, concrete, or permanent retaining walls within an excavation, installation of foundations, or in-place assembly, erection, fabrication, or testing, which are for:

(A) Safety-related structures, systems, or components (SSCs) of a facility, as defined in 10 CFR 50.2;

(B) SSCs relied upon to mitigate accidents or transients or used in plant emergency operating procedures;

(C) SSCs whose failure could prevent safety-related SSCs from fulfilling their safety-related function;

(D) SSCs whose failure could cause a reactor scram or actuation of a safety-related system;

(E) SSCs necessary to comply with 10 CFR part 73;

(F) SSCs necessary to comply with 10 CFR 50.48 and criterion 3 of 10 CFR part 50, appendix A; and

(G) Onsite emergency facilities (i.e., technical support and operations support centers), necessary to comply with 10 CFR 50.47 and 10 CFR part 50, appendix E.

(ii) Construction does not include:

(A) Changes for temporary use of the land for public recreational purposes;

(B) Site exploration, including necessary borings to determine foundation conditions or other preconstruction monitoring to establish background information related to the suitability of the site, the environmental impacts of construction or operation, or the protection of environmental values;

(C) Preparation of a site for construction of a facility, including clearing of the site, grading, installation of drainage, erosion and other environmental mitigation measures, and construction of temporary roads and borrow areas;

(D) Erection of fences and other access control measures that are not safety or security related, and do not pertain to radiological controls;

(E) Excavation;

(F) Erection of support buildings (e.g., construction equipment storage sheds, warehouse and shop facilities, utilities, concrete mixing plants, docking and unloading facilities, and office buildings) for use in connection with the construction of the facility;

(G) Building of service facilities (*e.g.,* paved roads, parking lots, railroad spurs, exterior utility and lighting systems, potable water systems, sanitary sewerage treatment facilities, and transmission lines);

(H) Procurement or fabrication of components or portions of the proposed facility occurring at other than the final, in-place location at the facility;

(I) Manufacture of a nuclear power reactor under a manufacturing license under subpart F of part 52 of this chapter to be installed at the proposed site and to be part of the proposed facility; or

(J) With respect to production or utilization facilities, other than testing facilities and nuclear power plants, required to be licensed under Section 104.a or Section 104.c of the Act, the erection of buildings which will be used for activities other than operation of a facility and which may also be used to house a facility (e.g., the construction of a college laboratory building with space for installation of a training reactor).

(2) For materials licenses, taking any site-preparation activity at the site of a facility subject to the regulations in 10 CFR parts 30, 36, 40, and 70, that has a reasonable nexus to radiological health and safety or the common defense and security; provided, however, that construction does not mean:

(i) Those actions or activities listed in paragraphs (1)(ii)(A)—(H) of this definition; or

(ii) Taking any other action that has no reasonable nexus to radiological health and safety or the common defense and security.

* * * * *

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

15. The authority citation for part 70 continues to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended, (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282, 2297f); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846). Sec. 193, 104 Stat. 2835 as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. No. 109–58, 119 Stat. 594 (2005).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by

Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.81 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.82 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

16. In § 70.4 the definition for the term "Commencement of construction" is revised and the term "Construction" is added in alphabetical order to read as follows:

§ 70.4 Definitions.

* * * * *

Commencement of construction means taking any action defined as "construction" or any site-preparation activity at the site of a facility subject to the regulations in this part that has a reasonable nexus to:

(1) Radiological health and safety; or

(2) Common defense and security.

* * * * *

Construction means the installation of foundations, or in-place assembly, erection, fabrication, or testing for any structure, system, or component of a facility or activity subject to the regulations in this part that are related to radiological safety or security. The term "construction" does not include:

(1) Changes for temporary use of the land for public recreational purposes;

(2) Site exploration, including necessary borings to determine foundation conditions or other preconstruction monitoring to establish background information related to the suitability of the site, the environmental impacts of construction or operation, or the protection of environmental values;

(3) Preparation of the site for construction of the facility, including clearing of the site, grading, installation of drainage, erosion and other environmental mitigation measures, and construction of temporary roads and borrow areas;

(4) Erection of fences and other access control that are not related to the safe use of, or security of, radiological materials subject to this part;

(5) Excavation;

(6) Erection of support buildings (*e.g.,* construction equipment storage sheds, warehouse and shop facilities, utilities, concrete mixing plants, docking and unloading facilities, and office buildings) for use in connection with the construction of the facility;

(7) Building of service facilities (*e.g.,* paved roads, parking lots, railroad spurs, exterior utility and lighting systems, potable water systems, sanitary sewerage treatment facilities, and transmission lines);

(8) Procurement or fabrication of components or portions of the proposed facility occurring at other than the final, in-place location at the facility; or

(9) Taking any other action that has no reasonable nexus to:

(i) Radiological health and safety, or

(ii) Common defense and security.

* * * * *

17. In § 70.23, paragraph (a)(7) is revised to read as follows:

§ 70.23 Requirements for the approval of applications.

(a) * * *

(7) Where the proposed activity is processing and fuel fabrication, scrap recovery, conversion of uranium hexafluoride, uranium enrichment facility construction and operation, or any other activity which the NRC determines will significantly affect the quality of the environment, the Director of Nuclear Material Safety and Safeguards or his designee, before commencement of construction of the plant or facility in which the activity will be conducted, on the basis of information filed and evaluations made pursuant to subpart A of part 51 of this chapter, has concluded, after weighing the environmental, economic, technical, and other benefits against environmental costs and considering available alternatives, that the action called for is the issuance of the proposed license, with any appropriate conditions to protect environmental values. Commencement of construction prior to this conclusion is grounds for denial to possess and use special nuclear material in the plant or facility.

* * * * *

PART 150—EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES AND IN OFFSHORE WATERS UNDER SECTION 274

18. The authority citation for part 150 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 274, 73 Stat. 688 (42 U.S.C. 2201, 2021); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. No. 109–58, 119 Stat. 594 (2005).

Sections 150.3, 150.15, 150.15a, 150.31, 150.32 also issued under secs. 11e(2), 81, 68 Stat. 923, 935, as amended, secs. 83, 84, 92 Stat. 3033, 3039 (42 U.S.C. 2014e(2), 2111, 2113, 2114). Section 150.14 also issued under sec. 53, 68 Stat. 930, as amended (42 U.S.C. 2073).

Section 150.15 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 150.17a also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 150.30 also issued under sec. 234, 83 Stat. 444 (42 U.S.C. 2282).

19. In § 150.31, paragraph (b)(3)(iv) is revised to read as follows:

§ 150.31 Requirements for Agreement State regulation of byproduct material.

* * * * *

(b) * * *

(3) * * *

(iv) Prohibit commencement of construction with respect to such material prior to complying with the provisions of paragraph (b)(3)(i) through (iii) of this section. As used in this paragraph:

(A) The term *commencement of construction* means taking any action defined as "construction" or any site-preparation activity at the site of a facility subject to the regulations in this part that has a reasonable nexus to radiological health and safety.

(B) The term *construction* means the installation of foundations, or in-place assembly, erection, fabrication, or testing for any structure, system, or component of a facility or activity subject to the regulations in this part that are related to radiological safety or security. The term "construction" does not include:

(*1*) Changes for temporary use of the land for public recreational purposes;

(*2*) Site exploration, including necessary borings to determine foundation conditions or other preconstruction monitoring to establish background information related to the suitability of the site, the environmental impacts of construction or operation, or the protection of environmental values;

(*3*) Preparation of the site for construction of the facility, including clearing of the site, grading, installation of drainage, erosion and other environmental mitigation measures, and construction of temporary roads and borrow areas;

(*4*) Erection of fences and other access control measures that are not related to the safe use of or security of radiological materials subject to this part;

(*5*) Excavation;

(*6*) Erection of support buildings (*e.g.,* construction equipment storage sheds, warehouse and shop facilities, utilities, concrete mixing plants, docking and unloading facilities, and office buildings) for use in connection with the construction of the facility;

(*7*) Building of service facilities (*e.g.,* as paved roads, parking lots, railroad spurs, exterior utility and lighting systems, potable water systems, sanitary sewerage treatment facilities, and transmission lines);

(*8*) Procurement or fabrication of components or portions of the proposed facility occurring at other than the final, in-place location at the facility; or

(*9*) Taking any other action which has no reasonable nexus to radiological health and safety.

* * * * *

Dated at Rockville, Maryland, this 21st day of July 2010.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2010–18344 Filed 7–26–10; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0701; Directorate Identifier 2010–NM–017–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Services B.V. Model F.28 Mark 0100 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:

Two reports have been received where, during inspection of the vertical stabilizer of F28 Mark 0100 aeroplanes, one of the bolts that connect the horizontal stabilizer control unit actuator with the dog-links was found broken (one on the nut side & one on the head side). In both occasions, the bolt shaft was still present in the connection and therefore the horizontal stabilizer function was not affected. If a single dog-link connection fails, the complete stabilizer load is taken up by the remaining dog-link connection. * * *

To address and correct this unsafe condition EASA [European Aviation Safety Agency] issued AD 2007–0287 [corresponding FAA AD 2008–22–14] that required a one-time inspection of the affected bolts, * * * and replacement of failed bolts with serviceable parts. EASA AD 2007–0287 also required the installation of a tie wrap through the lower bolts of the horizontal stabilizer control unit, to keep the bolt in place in the event of a bolt head failure.

Recent examination revealed that the bolts failed due to stress corrosion, attributed to excessive bolt torque. Investigation of the recently failed bolts showed that the modification as required by AD 2007–0287 is not adequate.

* * * * *

Loss of horizontal stabilizer function could result in partial loss of control of the airplane. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by September 10, 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 the Fokker service information identified in this proposed AD, contact Fokker Services B.V., Technical Services Dept., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands; telephone +31 (0)252–627–350; fax +31 (0)252–627–211; e-mail *technical services.fokkerservices@stork.com;* Internet *http://www.myfokkerfleet.com.*

For the Goodrich service information identified in this proposed AD, contact Goodrich Corporation, Landing Gear, 1400 South Service Road, West Oakville L6L 5Y7, Ontario, Canada; telephone 905–825–1568; e-mail *jean.breed@goodrich.com;* Internet *http://www.goodrich.com/TechPubs.*

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: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0701; Directorate Identifier 2010–NM–017–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 9, 2008, we issued AD 2008–22–14, Amendment 39–15710 (73 FR 70261, November 20, 2008). That AD required actions intended to address an unsafe condition on the products listed above.

Since we issued AD 2008–22–14, we have received information that the actions required in AD 2008–22–14 are insufficient to prevent the unsafe condition from occurring. The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2009–0216, dated October 7, 2009 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

Two reports have been received where, during inspection of the vertical stabilizer of F28 Mark 0100 aeroplanes, one of the bolts that connect the horizontal stabilizer control unit actuator with the dog-links was found broken (one on the nut side & one on the head side). In both occasions, the bolt shaft was still present in the connection and therefore the horizontal stabilizer function was not affected. If a single dog-link connection fails, the complete stabilizer load is taken up by the remaining dog-link connection. Any failed connection should be detected and corrected at the next scheduled inspection.

To address and correct this unsafe condition EASA issued AD 2007–0287 [corresponding FAA AD 2008–22–14] that required a one-time inspection of the affected bolts, Part Number (P/N) 23233–1, and replacement of failed bolts with serviceable parts. EASA AD 2007–0287 also required the installation of a tie wrap through the lower bolts of the horizontal stabilizer control unit, to keep the bolt in place in the event of a bolt head failure.

Recent examination revealed that the bolts failed due to stress corrosion, attributed to excessive bolt torque. Investigation of the recently failed bolts showed that the modification as required by AD 2007–0287 is not adequate.

To address the stress corrosion, the manufacturer of the bolt, Goodrich, has introduced a bolt with an improved corrosion protection, P/N 23233–3, through Service Bulletin 23100–27–29.

For the reasons described above, this EASA AD retains the requirements of AD 2007–0287, which is superseded, and adds the requirement to replace the affected P/N 23233–1 bolts with improved bolts. Concurrently, the tie-wrap must be removed.

Loss of horizontal stabilizer function could result in partial loss of control of the airplane. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Fokker Services B.V. has issued Fokker Service Bulletin SBF100–27–092, dated April 27, 2009. Goodrich has issued Service Bulletin 23100–27–29, dated November 14, 2008. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 4 products of U.S. registry.

The actions that are required by AD 2008–22–14 and retained in this proposed AD take about 3 work-hours per product, at an average labor rate of $85 per work-hour. Based on these figures, the estimated cost of the currently required actions is $255 per product.

We estimate that it would take about 7 work-hours per product to comply with the new basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $1,550 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $8,580, or $2,145 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–15710 (73 FR 70261, November 20, 2008) and adding the following new AD:

Fokker Services B.V.: Docket No. FAA–2010–0701; Directorate Identifier 2010–NM–017–AD.

Comments Due Date

(a) We must receive comments by September 10, 2010.

Affected ADs

(b) This AD supersedes AD 2008–22–14, Amendment 39–15710.

Applicability

(c) This AD applies to Fokker Services B.V. Model F.28 Mark 0100 airplanes, certificated in any category, all serial numbers.

Subject

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

Reason

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

Two reports have been received where, during inspection of the vertical stabilizer of F28 Mark 0100 aeroplanes, one of the bolts that connect the horizontal stabilizer control unit actuator with the dog-links was found broken (one on the nut side & one on the head side). In both occasions, the bolt shaft was still present in the connection and therefore the horizontal stabilizer function was not affected. If a single dog-link connection fails, the complete stabilizer load is taken up by the remaining dog-link connection. * * *

To address and correct this unsafe condition EASA [European Aviation Safety Agency] issued AD 2007–0287 [corresponding FAA AD 2008–22–14] that required a one-time inspection of the affected bolts, * * * and replacement of failed bolts with serviceable parts. EASA AD 2007–0287 also required the installation of a tie wrap through the lower bolts of the horizontal stabilizer control unit, to keep the bolt in place in the event of a bolt head failure.

Recent examination revealed that the bolts failed due to stress corrosion, attributed to excessive bolt torque. Investigation of the recently failed bolts showed that the modification as required by AD 2007–0287 is not adequate.

* * * * *

Loss of horizontal stabilizer function could result in partial loss of control of the airplane.

Compliance

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

Restatement of Requirements of AD 2008–22–14

Actions and Compliance

(g) Unless already done, within 6 months after December 26, 2008 (the effective date of AD 2008–22–14), do the following actions.

(1) Perform a one-time inspection (integrity check) for failure of the lower bolts of the stabilizer control unit dog-links, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–27–091, dated August 31, 2007. If a failed bolt is found, before further flight, replace the bolt with a serviceable bolt in accordance with the Accomplishment Instructions of the service bulletin.

(2) Install a tie-wrap through the lower bolts of the stabilizer control unit, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–27–091, dated August 31, 2007.

New Requirements of This AD: Actions

(h) Within 30 months after the effective date of this AD, do the actions specified in paragraphs (h)(1) and (h)(2) of this AD concurrently. Accomplishing the actions of both paragraphs (h)(1) and (h)(2) of this AD terminates the actions required by paragraph (g) of this AD.

(1) Remove the tie-wrap, P/N MS3367–2–9, from the lower bolts of the horizontal stabilizer control unit, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–27–092, dated April 27, 2009.

(2) Remove the lower bolts, P/N 23233–1, of the horizontal stabilizer control unit and install bolts, P/N 23233–3, in accordance with the Accomplishment Instructions of Goodrich Service Bulletin 23100–27–29, dated November 14, 2008.

(i) After accomplishing the requirements of paragraph (h) of this AD, do not install a bolt having P/N 23233–1 or a tie-wrap having P/N MS3367–2–9.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No difference.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *Attn:* Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

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

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

Related Information

(k) Refer to MCAI EASA Airworthiness Directive 2009–0216, dated October 7, 2009; Fokker Service Bulletin SBF100–27–091, dated August 31, 2007; Fokker Service Bulletin SBF100–27–092, dated April 27, 2009; and Goodrich Service Bulletin 23100–27–29, dated November 14, 2008; for related information.

Issued in Renton, Washington, on July 21, 2010.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–18399 Filed 7–26–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0864; Directorate Identifier 2008–NM–202–AD]

RIN 2120–AA64

Airworthiness Directives; DASSAULT AVIATION Model Falcon 10 Airplanes; Model FAN JET FALCON, FAN JET FALCON SERIES C, D, E, F, and G Airplanes; Model MYSTERE–FALCON 200 Airplanes; Model MYSTERE–FALCON 20–C5, 20–D5, 20–E5, and 20–F5 Airplanes; Model FALCON 2000 and FALCON 2000EX Airplanes; and Model MYSTERE–FALCON 50 and MYSTERE–FALCON 900 Airplanes, and FALCON 900EX Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: We are revising an earlier NPRM for the products listed above. This action revises the earlier NPRM by expanding the scope. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

During maintenance on one aircraft, it was discovered that the overpressure capsules were broken on both pressurization valves. Failure of the pressurization control regulating valve (overpressure capsule) will affect the aircraft's overpressure protection * * *.

* * * * *

The unsafe condition is overpressurization, which can result in injury to the occupants and possible structural failure leading to loss of control of the airplane. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by August 23, 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 Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.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: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2009–0864; Directorate Identifier 2008–NM–202–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

We proposed to amend 14 CFR part 39 with an earlier NPRM for some of the specified products, which was published in the **Federal Register** on September 21, 2009 (74 FR 48021). That earlier NPRM proposed to require actions intended to address the unsafe condition for the products listed above.

Since that NPRM was issued, we have determined that Model FAN JET FALCON SERIES C, D, E, F, and G airplanes are also subject to the identified unsafe condition. We have revised the applicability in this supplemental NPRM to include these airplanes.

Comments

We have considered the following comments received on the earlier NPRM.

Request To Extend Compliance Time for Certain Airplanes

Dassault Aviation (Dassault) requests that we extend the compliance times in Table 1 of the earlier NPRM for Model MYSTERE-FALCON 900, FALCON 900EX, Model FALCON 2000, and FALCON 2000EX airplanes from 1,630 flight hours to 1,640 flight hours. Dassault explains that 1,640 flight hours is the correct amount of time for the 1,600-flight-hour B-check interval and +40-flight-hour tolerance indicated in the "General" section of each airplane's Chapter 5 Maintenance Schedule. Dassault notes that this extended compliance time has been approved by the European Aviation Safety Agency.

We agree, for the reasons provided by the commenter. We have revised Table 1 of this supplemental NPRM accordingly.

Request To Include Current Maintenance Procedure

Dassault requests that we identify the current maintenance procedures in the AD. Dassault explains that later versions of the maintenance procedures have been created since the earlier NPRM was issued. Dassault also suggests that we add the phrase for Table 2 of this AD, "as may be amended from time to time by Dassault Aviation."

We partially agree. For the reasons provided by the commenter, we agree to identify the current maintenance procedures and have revised the Maintenance Procedure column of Table 2 of this supplemental NPRM accordingly. We do not agree to add the phrase, "as may be amended from time to time by Dassault Aviation," as it contradicts FAA policy. We cannot refer to procedures or documents in our AD that do not yet exist. Operators may request approval to use a later revision of the specified maintenance procedure as an alternative method of compliance with the proposed requirements under the provisions of paragraph (h)(1) of this supplemental NPRM.

Explanation of Change Made to This Supplemental NPRM

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

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.

Certain changes described above expand the scope of the earlier NPRM. As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this proposed AD.

Differences Between This AD and the MCAI or Service Information

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

We might also have 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.

Explanation of Change to Costs of Compliance

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 1,082 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $91,970, or $85 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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:

Dassault Aviation: Docket No. FAA–2009–0864; Directorate Identifier 2008–NM–202–AD.

Comments Due Date

(a) We must receive comments by August 23, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the airplanes identified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category.

(1) DASSAULT AVIATION Model Falcon 10 airplanes, Model FAN JET FALCON, FAN JET FALCON SERIES C, D, E, F, and G airplanes, and Model MYSTERE-FALCON 20–C5, 20–D5, 20–E5, and 20–F5 airplanes; all serial numbers, equipped with Liebherr or ABG–Semca pressurization outflow valves.

(2) DASSAULT AVIATION Model MYSTERE-FALCON 200 airplanes, Model MYSTERE-FALCON 50 and MYSTERE-FALCON 900, and FALCON 900EX airplanes, and Model FALCON 2000 and FALCON 2000EX airplanes; all serial numbers.

Subject

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

Reason

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

"During maintenance on one aircraft, it was discovered that the overpressure capsules were broken on both pressurization valves. Failure of the pressurization control regulating valve (overpressure capsule) will affect the aircraft's overpressure protection * * *".

* * * * *

The unsafe condition is overpressurization, which can result in injury to the occupants and possible structural failure leading to loss of control of the airplane.

Compliance

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

Inspection and Replacement

(g) Unless already done, do the following actions

(1) Within 6 months after the effective date of this AD, or before reaching the applicable time in the "Inspection Threshold" column specified in Table 1 of this AD, whichever occurs later, and thereafter at intervals not to exceed the applicable time in the "Inspection Interval" column specified in Table 1 of this AD: Inspect for overpressure tightness on both regulating valves using a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA) (or its delegated agent).

TABLE 1—COMPLIANCE TIMES

Affected airplanes	Inspection threshold (whichever occurs later)		Inspection interval
Model FAN JET FALCON, FAN JET FALCON SERIES C, D, E, F, and G airplanes, and Model MYSTERE-FALCON 20–C5, 20–D5, 20–E5, and 20–F5 airplanes equipped with Liebherr or ABG–Semca valves part number (P/N) 209xx0xxx0x;	Prior to the accumulation of 1,250 total flight hours on the regulating valve since new.	Within 1,250 flight hours after the valve was cleaned in accordance with this AD.	1,250 flight hours.
Model MYSTERE-FALCON 200 airplanes;			

TABLE 1—COMPLIANCE TIMES—Continued

Model Falcon 10 airplanes, equipped with Liebherr or ABG–Semca valves P/N 209xx0xxx0x.			
Model MYSTERE-FALCON 50 airplanes	Prior to the accumulation of 1,630 total flight hours on the regulating valve since new.	Within 1,630 flight hours after the valve was cleaned in accordance with this AD.	1,630 flight hours.
Model MYSTERE-FALCON 900, FALCON 900EX (including "F900EX–EASy" and "F900DX"), Model FALCON 2000, and FALCON 2000EX (including "F2000EX–EASy" and "F2000DX") airplanes.	Prior to the accumulation of 1,640 total flight hours on the regulating valve since new.	Within 1,640 flight hours after the valve was cleaned in accordance with this AD.	1,640 flight hours.

Note 1: Guidance on inspecting for overpressure tightness on both regulating valves can be found in the applicable airplane maintenance manual identified in Table 2 of this AD.

TABLE 2—MAINTENANCE MANUAL GUIDANCE

For affected airplanes—	See Dassault maintenance procedure—	In maintenance manual—
Model Falcon 10 airplanes, equipped with Liebherr or ABG–Semca valves P/N 209xx0xxx0x.	21–32–01, dated July 2009	Dassault Falcon 10 Maintenance Manual.
Model FALCON 900EX (including "F900EX–EASy" and "F900DX") airplanes.	21–314, dated September 2008	Dassault Falcon 900EX EASy Maintenance Manual.
Model FALCON 2000 and FALCON 2000EX (including "F2000EX–EASy") airplanes.	21–314, dated November 2008	Dassault Falcon 2000 Maintenance Manual.
Model FALCON F2000DX airplanes	21–314, dated November 2008	Dassault Falcon 2000DX Maintenance Manual.
Model FAN JET FALCON, FAN JET FALCON SERIES C, D, E, F, and G airplanes,.		
MYSTERE-FALCON 20–C5, 20–D5, 20–E5, and 20–F5 airplanes; equipped with Liebherr or ABG–Semca valves part number (P/N) 209xx0xxx0x.	21–31–10, dated October 2008	Dassault Fan Jet Falcon Maintenance Manual.
Model MYSTERE-FALCON 50 airplanes	21–160, dated January 2009	Dassault Falcon 50/50EX Maintenance Manual.
Model MYSTERE-FALCON 200 airplanes	051.0, dated December 2008	Dassault Falcon 200 Maintenance Manual.
Model MYSTERE-FALCON 900 airplanes	21–308, dated October 2008	Dassault Falcon 900 Maintenance Manual.

(2) If any leak is found during any inspection required by paragraph (g)(1) of this AD, before further flight, replace the affected valve with a serviceable unit, using a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA (or its delegated agent).

Note 2: Guidance on replacing regulating valves can be found in the applicable airplane maintenance manual identified in Table 2 of this AD.

FAA AD Differences

Note 3: This AD differs from the MCAI as follows: Although paragraph (3) of the compliance section of the MCAI allows flight in accordance with the master minimum equipment list (MMEL) provisions after leaks are found, paragraph (g)(2) of this AD requires replacing affected valves before further flight.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *Attn:* Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

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

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

Related Information

(i) Refer to MCAI EASA Airworthiness Directive 2008–0072, dated April 18, 2008, for related information.

Issued in Renton, Washington, on July 16, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–18292 Filed 7–26–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0700; Directorate Identifier 2010–NM–123–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702), CL–600–2D15 (Regional Jet Series 705), and CL–600–2D24 (Regional Jet Series 900) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

The manufacturer has informed Transport Canada that a certain number of the resolver stators, which were installed in the angle of attack (AOA) transducers, were not cleaned correctly. This condition can degrade the AOA transducer performance at low temperatures resulting in freezing of the AOA transducer resolver, which may provide inaccurate AOA data to the Stall Protection System (SPS). If not corrected, this condition can result in early or late activation of the stick shaker and/or stick pusher.

These conditions could result in reduced ability of the flight crew to maintain a safe flight and landing of the airplane. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by September 10, 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: Joseph Licata, Aerospace Engineer, Avionics and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7361; 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–2010–0700; Directorate Identifier 2010–NM–123–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

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2010–13, dated May 6, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

The manufacturer has informed Transport Canada that a certain number of the resolver stators, which were installed in the angle of attack (AOA) transducers, were not cleaned correctly. This condition can degrade the AOA transducer performance at low temperatures resulting in freezing of the AOA transducer resolver, which may provide inaccurate AOA data to the Stall Protection System (SPS). If not corrected, this condition can result in early or late activation of the stick shaker and/or stick pusher.

These conditions could result in reduced ability of the flight crew to maintain a safe flight and landing of the airplane. The required actions include an inspection to determine if certain AOA transducers are installed and replacement of affected transducers. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Bombardier has issued Alert Service Bulletin A670BA–27–054, Revision A, dated January 18, 2010. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

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

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 380 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $32,300, or $85 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc.: Docket No. FAA–2010–0700; Directorate Identifier 2010–NM–123–AD.

Comments Due Date

(a) We must receive comments by September 10, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702), CL–600–2D15 (Regional Jet Series 705), and CL–600–2D24 (Regional Jet Series 900) airplanes, certificated in any category, equipped with Thales angle of attack transducers having part number (P/N) C16258AA.

Subject

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

Reason

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

''The manufacturer has informed Transport Canada that a certain number of the resolver stators, which were installed in the angle of attack (AOA) transducers, were not cleaned correctly. This condition can degrade the AOA transducer performance at low temperatures resulting in freezing of the AOA transducer resolver, which may provide inaccurate AOA data to the Stall Protection System (SPS). If not corrected, this condition can result in early or late activation of the stick shaker and/or stick pusher.'' These conditions could result in reduced ability of the flight crew to maintain a safe flight and landing of the airplane.

Compliance

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

Inspection

(g) Within 750 flight hours after the effective date of this AD, inspect the serial number of each AOA transducer having P/N C16258AA to determine if the serial number is identified in paragraph 1.A. of Bombardier Alert Service Bulletin A670BA–27–054, Revision A, dated January 18, 2010, in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin A670BA–27–054, Revision A, dated January 18, 2010. A review of airplane maintenance records is acceptable in lieu of this inspection if the serial number of the AOA transducer can be conclusively determined from that review.

(1) If the serial number is not listed in paragraph 1.A. of Bombardier Alert Service Bulletin A670BA–27–054, Revision A, dated January 18, 2010, no further action is required by this AD other than compliance with paragraph (h) of this AD.

(2) If the serial number is listed in paragraph 1.A. of Bombardier Alert Service Bulletin A670BA–27–054, Revision A, dated January 18, 2010, and has the suffix "C", no further action is required by this AD other than compliance with paragraph (h) of this AD.

(3) If the serial number is listed in paragraph 1.A. of Bombardier Alert Service Bulletin A670BA–27–054, Revision A, dated January 18, 2010, and does not have the suffix "C", before further flight, replace the AOA transducer with a new or serviceable transducer, in accordance with Part C of the Accomplishment Instructions of Bombardier Alert Service Bulletin A670BA–27–054, Revision A, dated January 18, 2010.

Note 1: To replace any AOA transducer, the replacement AOA transducer must either be outside of the affected serial numbers as identified in paragraph 1.A. of Bombardier Alert Service Bulletin A670BA–27–054, Revision A, dated January 18, 2010, or have the suffix "C".

(h) As of the effective date of this AD, no AOA transducer having both a serial number and P/N C16258AA as identified in paragraph 1.A. of Bombardier Alert Service Bulletin A670BA–27–054, Revision A, dated January 18, 2010, may be installed on any airplane unless the AOA transducer has been inspected by the manufacturer and identified with the suffix "C".

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft

Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

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

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

Related Information

(j) Refer to MCAI Canadian Airworthiness Directive CF–2010–13, dated May 6, 2010; and Bombardier Alert Service Bulletin A670BA–27–054, Revision A, dated January 18, 2010; for related information.

Issued in Renton, Washington, on July 16, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–18291 Filed 7–26–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–1182; Airspace Docket No. 09–ASW–37]

Proposed Amendment of Class E Airspace; Searcy, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Searcy, AR. Decommissioning of the Searcy non-directional beacon (NDB) at Searcy Municipal Airport, Searcy, AR, has made this action necessary for the safety and management of Instrument Flight Rules (IFR) operations at Searcy Municipal Airport.

DATES: 0901 UTC. Comments must be received on or before September 10, 2010.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2009–1182/Airspace Docket No. 09–ASW–37, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2009–1182/Airspace Docket No. 09–ASW–37." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (*see* **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

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

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by modifying Class E airspace extending upward from 700 feet above the surface for standard instrument approach procedures at Searcy Municipal Airport, Searcy, AR. Airspace reconfiguration is necessary due to the decommissioning of the Searcy NDB and the cancellation of the NDB approach. Geographic coordinates would also be adjusted in accordance with the FAA's National Aerospace Charting Office. Controlled airspace is necessary for the safety and management of IFR operations at the airport.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9T, dated August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009, is amended as follows:

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

* * * * *

ASW AR E5 Searcy, AR [Amended]

Searcy Municipal Airport, AR
(Lat. 35°12′38″ N., long. 91°44′15″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Searcy Municipal Airport.

Issued in Fort Worth, TX, on July 12, 2010.

Roger M. Trevino,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2010–18257 Filed 7–26–10; 8:45 am]

BILLING CODE 4901–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0604; Airspace Docket No. 10–ACE–5]

Proposed Amendment of Class E Airspace; Kaiser/Lake Ozark, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace for the Kaiser/Lake Ozark, MO, area. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAPs) at Camdenton Memorial Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: 0901 UTC. Comments must be received on or before September 10, 2010.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2010–0604/Airspace Docket No. 10–ACE–5, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2010–0604/Airspace Docket No. 10–ACE–5." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

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

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), part 71 by adding additional Class E airspace extending upward from 700 feet above the surface for the Kaiser/Lake Ozark, MO area, to accommodate SIAPs at Camdenton Memorial Airport, Camdenton, MO. Additional controlled airspace is needed for the safety and management of IFR operations at the airport.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9T, dated August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation

listed in this document would be published subsequently in the Order.

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

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009, is amended as follows:

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

* * * * *

ACE MO E5 Kaiser/Lake Ozark, MO [Amended]

Kaiser/Lake Ozark, Lee C. Fine Memorial Airport, MO
(Lat. 38°05′46″ N., long. 92°32′58″ W.)
Camdenton, Camdenton Memorial Airport, MO
(Lat. 37°58′26″ N., long. 92°41′28″ W.)
Osage Beach, Grand Glaize-Osage Beach Airport, MO
(Lat. 38°06′38″ N., long. 92°40′50″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Lee C. Fine Memorial Airport, and within a 6.3-mile radius of Camdenton Memorial Airport, and within 4 miles each side of the 155° bearing from the airport extending from the 6.3 mile radius to 10.5 miles southeast of the airport, and within a 6.3-mile radius of Grand Glaize-Osage Beach Airport.

Issued in Fort Worth, TX, on July 1, 2010.

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2010–18259 Filed 7–26–10; 8:45 am]

BILLING CODE 4901–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0404; Airspace Docket No. 10–ASW–7]

Proposed Amendment of Class E Airspace; Corpus Christi, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace in the Corpus Christi, TX area. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAPs) at Corpus Christi International Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: 0901 UTC. Comments must be received on or before September 10, 2010.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2010–0404/Airspace Docket No. 10–ASW–7, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2010–0404/Airspace Docket No. 10–ASW–7." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (*see* **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except

Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

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

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by adding additional Class E airspace extending upward from 700 feet above the surface for SIAPs at Corpus Christi International Airport, Corpus Christi, TX. The addition of the RNAV (RNP) RWY 35 SIAP at the airport has created the need to extend Class E airspace to the south of the existing controlled airspace. The geographic coordinates of Aransas County Airport will also be adjusted in accordance with the FAA's National Aeronautical Navigation Services. Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9T, dated August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009, is amended as follows:

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

* * * * *

ASW TX E5—Corpus Christi, TX [Amended]

Corpus Christi International Airport, TX
(Lat. 27°46′13″ N., long. 97°30′04″ W.)
Corpus Christi NAS/Truax Field, TX
(Lat. 27°41′34″ N., long. 97°17′25″ W.)
Port Aransas, Mustang Beach Airport, TX
(Lat. 27°48′43″ N., long. 97°05′20″ W.)
Rockport, San Jose Island Airport, TX
(Lat. 27°56′40″ N., long. 96°59′06″ W.)
Rockport, Aransas County Airport, TX
(Lat. 28°05′10″ N., long. 97°02′37″ W.)
Ingleside, T.P. McCampbell Airport, TX
(Lat. 27°54′47″ N., long. 97°12′41″ W.)
Robstown, Nueces County Airport, TX
(Lat. 27°46′43″ N., long. 97°41′26″ W.)
Corpus Christi VORTAC, TX
(Lat. 27°54′14″ N., long. 97°26′42″ W.)

That airspace extending upward from 700 feet above the surface within a 7.5 mile radius of Corpus Christi International Airport and within 1.4 miles each side of the 200° radial of the Corpus Christi VORTAC extending from the 7.5 mile radius to 8.5 miles north of the airport, and within 1.5 miles each side of the 316° bearing from Corpus Christi International Airport extending from the 7.5 mile radius to 10.1 miles northwest of the airport, and within 2 miles each side of the 179° bearing from Corpus Christi International Airport extending from the 7.5-mile radius to 14 miles south of the airport, and within an 8.8-mile radius of Corpus Christi NAS/Truax Field, and within a 6.3-mile radius of Mustang Beach Airport, and within a 6.4-mile radius of T.P. McCampbell Airport, and within a 6.3-mile radius of Nueces County Airport, and within a 7.6-mile radius of Aransas County Airport, and within 2 miles each side of the 010° bearing from the Aransas County Airport extending from the 7.6 mile radius to 9.9 miles north of the airport, and within a 6.5-mile radius of San Jose Island Airport, and within 8 miles west and 4 miles east of the 327° bearing from the San Jose Island Airport extending from the airport to 20 miles northwest of the airport, and within 8 miles east and 4 miles west of the 147° bearing from San Jose Island Airport extending from the airport to 16 miles southeast of the airport, excluding that portion more than 12 miles from and parallel to the shoreline.

Issued in Fort Worth, TX, on July 12, 2010.

Roger M. Trevino,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2010–18261 Filed 7–26–10; 8:45 am]

BILLING CODE 4901–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0607; Airspace Docket No. 10–ACE–7]

Proposed Amendment of Class E Airspace; Boonville, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Boonville, MO. Decommissioning of the Viertel non-directional beacon (NDB) at Jesse Viertel Memorial Airport, Boonville, MO, has made this action necessary for the safety and management of Instrument Flight Rules (IFR) operations at Jesse Viertel Memorial Airport.

DATES: 0901 UTC. Comments must be received on or before September 10, 2010.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2010–

0607/Airspace Docket No. 10–ACE–7, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the ground floor of the building at the above address.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2010–0607/Airspace Docket No. 10–ACE–7." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (*see* **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

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

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by modifying Class E airspace extending upward from 700 feet above the surface for standard instrument approach procedures at Jesse Viertel Memorial Airport, Boonville, MO. Airspace reconfiguration is necessary due to the decommissioning of the Viertel NDB and the cancellation of the NDB approach. Controlled airspace is necessary for the safety and management of IFR operations at the airport.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9T, dated August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009, is amended as follows:

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

* * * * *

ACE MO E5 Boonville, MO [Amended]

Jesse Viertel Memorial Airport, MO
(Lat. 38°56′48″ N., long. 92°40′58″ W.)
Hallsville VORTAC
(Lat. 39°06′49″ N., long. 92°07′42″ W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of Jesse Viertel Memorial Airport, and within 2.4 miles each side of the Hallsville VORTAC 249° radial extending from the 6.9-mile radius of the airport to 19.4 miles southwest of the VORTAC.

Issued in Fort Worth, TX, on July 1, 2010.

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2010–18260 Filed 7–26–10; 8:45 am]

BILLING CODE 4901–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 2

[EPA–HQ–OAR–2009–0924; FRL–9179–4]

RIN 2060–AQ04

Proposed Confidentiality Determinations for Data Required Under the Mandatory Greenhouse Gas Reporting Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental proposal.

SUMMARY: This action supplements EPA's July 7, 2010 "Proposed Confidentiality Determinations for Data Required under the Mandatory Greenhouse Gas Reporting Rule and Proposed Amendment to Special Rules Governing Certain Information Obtained under the Clean Air Act". In this action, EPA is proposing confidentiality determinations for the data elements proposed to be added or revised in the "Proposed Rulemaking: Revision of Certain Provisions of the Mandatory Reporting of Greenhouse Gases Rule," also signed today. This action addresses only the confidentiality of the new and revised data elements proposed in the concurrent notice.

DATES: *Comments.* Comments must be received on or before August 26, 2010, or by September 10, 2010 if a public hearing is held (*see* below).

Public Hearing. EPA does not plan to conduct a public hearing unless requested. To request a hearing, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section by August 3, 2010. Upon such request, EPA will hold the hearing on August 11, 2010 in the Washington, DC area starting at 9 a.m., local time. EPA will provide further information about the hearing on its Web page if a hearing is requested.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2009–0924, by one of the following methods:

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

E-mail: GHGReportingCBI@epa.gov.

Fax: (202) 566–1741.

Mail: Environmental Protection Agency, EPA Docket Center (EPA/DC), Mailcode 6102T, Attention Docket ID No. EPA–HQ–OAR–2009–0924, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

Hand Delivery: EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2009–0924. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility 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 Air Docket is (202) 566–1742.

FOR FURTHER GENERAL INFORMATION CONTACT: Carole Cook, Climate Change Division, Office of Atmospheric Programs (MC–6207J), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343–9263; fax number: (202) 343–2342; e-mail address: *GHGMRR@epa.gov.* For technical information, contact the Greenhouse Gas Reporting Rule Hotline at: *http://www.epa.gov/climatechange/emissions/ghgrule_contactus.htm.* Alternatively, contact Carole Cook at 202–343–9263.

SUPPLEMENTARY INFORMATION: *Additional Information on Submitting Comments:* To expedite review of your comments by Agency staff, you are encouraged to send a separate copy of your comments, in addition to the copy you submit to the official docket, to Carole Cook, U.S. EPA, Office of Atmospheric Programs, Climate Change Division, Mail Code 6207–J, Washington, DC 20460, telephone (202) 343–9263, e-mail *GHGReportingCBI@epa.gov.*

Regulated Entities. This supplemental action affects entities required to submit annual greenhouse gas (GHG) reports under 40 CFR Part 98. The Administrator determined that Part 98 is subject to the provisions of Clean Air Act (CAA) section 307(d). *See* CAA section 307(d)(1)(V) (the provisions of CAA section 307(d) apply to "such other actions as the Administrator may determine"). The Mandatory Greenhouse Gas Reporting Rule and this action affect fuel and chemicals suppliers, and direct emitters of GHGs. Affected categories and entities include those listed in Table 1 of the preamble to the "Proposed Confidentiality Determinations for Data Required under the Mandatory Greenhouse Gas Reporting Rule and Proposed Amendment to Special Rules Governing Certain Information Obtained under the Clean Air Act" (75 FR 39094).

Acronyms and Abbreviations. The following acronyms and abbreviations are used in this document.

CAA Clean Air Act
CBI confidential business information
CFR Code of Federal Regulations
EPA U.S. Environmental Protection Agency
GHG greenhouse gas
U.S. United States

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I. General Information

A. Background

Under Part 98 of the final Mandatory Greenhouse Gas Reporting Rule (74 FR 56259, October 30, 2009, and subsequent amendments), hereinafter referred to as Part 98, EPA will collect data from facilities that directly emit GHGs from their processes or stationary fuel combustion sources ("direct emitters") as well as upstream suppliers of fuels and industrial GHGs ("suppliers").

Following the publication of the proposed Mandatory GHG Reporting Rule on April 10, 2009 (74 FR 16448), EPA received comments both supporting and opposing the public release of data collected under Part 98. Industry commenters generally expressed concern that EPA would disclose reported data that industry considers trade secrets or confidential business information, hereinafter collectively referred to as CBI. Other commenters favored disclosure of information, and some argued that all of the information gathered under Part 98 should be "emission data" and hence not entitled to confidential treatment.

In response to these comments, EPA initiated a rulemaking to establish the confidentiality status of Part 98 data elements and procedures for handling Part 98 data. On July 7, 2010, EPA published the "Proposed Confidentiality Determinations for Data Required under the Mandatory Greenhouse Gas Reporting Rule and Proposed Amendment to Special Rules Governing Certain Information Obtained under the Clean Air Act" (75 FR 39094), herinafter referred to as the July 7, 2010 confidentiality proposal.

Concurrent to today's action, EPA signed the "Proposed Rulemaking: Revision of Certain Provisions of the Mandatory Reporting of Greenhouse Gases Rule" herinafter referred to as the Part 98 amendment proposal. The Part 98 Amendments proposal, if finalized, would result in changes to certain part 98 data elements. Because the July 7, 2010 confidentiality proposal was issued before the Part 98 amendment proposal, it did not address the revised and new data elements in the amendments proposal. This action contains EPA's proposed confidentiality determination for the new and revised data elements included in the Part 98 amendment proposal.

B. Proposed Changes to the Part 98 Reporting Requirements

As mentioned above, EPA proposed amendments to Part 98 that, if finalized, would make clarifying and technical changes to reporting requirements. Proposed revisions include allowing greater flexibility or simplified calculation methods for certain sources, amending data reporting requirements and definitions, and providing technical corrections, clarifying and other amendments. The proposed amendments include addition of new reporting requirements and deletion of certain existing reporting requirements.

The proposed amendments include changes to the data elements required by 40 CFR part 98, subpart A and the following Part 98 subparts promulgated in 2009:

- Subpart C, General Stationary Fuel Combustion Sources;
- Subpart D, Electricity Generation;
- Subpart F, Aluminum Production;
- Subpart G, Ammonia Manufacturing;
- Subpart V, Nitric Acid Production;
- Subpart X, Petrochemical Production;
- Subpart Y, Petrochemical Production;
- Subpart OO, Suppliers of Industrial Greenhouse Gases; and
- Subpart PP, Suppliers of Carbon Dioxide.

After consideration of public comment, EPA intends to issue a final action.

C. Proposed Confidentiality Determinations for the Proposed New and Revised Data Elements

In the July 7, 2010 confidentiality proposal, EPA described the methodology and rationale for the proposed confidentiality determinations. To make the proposed determinations, EPA first grouped the Part 98 data elements into 22 data categories (11 direct emitter data categories and 11 supplier data categories) and then proposed confidentiality determinations on a category basis. Exceptions to this approach were made for three of the supplier data categories, where confidentiality determinations were made for individual data elements within the category rather than by category. For the list of all 22 data categories and brief descriptions of the data elements within each category, please *see* Section II.C (for direct emitter data categories) and Section II.D (for supplier data categories) of the July 7, 2010 confidentiality proposal.

As discussed in Section I.B of today's supplemental proposal, in the Part 98 amendment proposal, EPA proposed amending part 98 to add, delete and revise certain data elements. Today's action contains EPA's proposed confidentiality determination for the proposed new and revised data elements.

Consistent with the approach set forth in the July 7, 2010 confidentiality proposal, each new or revised data element is assigned to one of the 22 data categories based on the type and characteristics of the data element. Because the scopes of the existing data categories are sufficient to cover the proposed new data elements, no new data category is proposed. For a list of the new and revised data elements addressed in the Part 98 amendments proposal and their assigned data categories, please *see* Memorandum "Data Category Assignments for the Proposed Revisions to the Part 98 Reporting Requirements" in Docket EPA–HQ–OAR–2009–0924 and on the Web site (*http://www.epa.gov/climatechange/emissions/CBI.html.*)

As mentioned above, EPA proposed confidentiality determinations for part 98 data on a category basis except for three supplier categories, where confidentiality determinations were made for individual data elements within the category rather than by category. These three supplier data categories are: "Greenhouse Gases Reported", "Production/Throughput Quantities and Composition", and "Unit/Process Operating Characteristics". Except for data elements assigned to the three supplier data categories listed above, EPA proposes in this supplemental notice to apply the confidentiality determination (and supporting rationales) for the data category to which the proposed new or revised data element is assigned.

For each revised data element, EPA assessed whether the proposed revisions to the data element changed the existing data category assignment. The proposed changes to existing data elements were generally minor changes to correct references, clarify the reporting requirement, or simplify reporting. None of the proposed revisions to the existing data elements affect the existing category assignments for these data elements.

The proposed amendments to part 98 would add two new data elements to the "Production/Throughput Quantities and Composition" supplier data category and three new data elements to the "Unit/Process Operating Characteristics" supplier data category. As previously mentioned, confidentiality determinations were proposed for individual data elements within these categories rather than on a category basis. Similarly, EPA evaluated individually the confidentiality status of the proposed new data elements assigned to these two data categories.

In the July 7, 2010 confidentiality proposal, EPA proposed to determine that *none* of the Part 98 supplier data qualify as "emission data" as that term is defined at 40 CFR 2.301(a)(i).[1] EPA then proposed CBI determinations for supplier data by considering the confidentiality determination criteria at 40 CFR 2.208. In particular, EPA focused on whether release of the data is likely to cause substantial harm to the business's competitive position. *See* 40 CFR 2.208(e)(1). Consistent with this approach, EPA proposes the following CBI determinations for the proposed new supplier data elements in the "Production/Throughput Quantities and Composition" and "Unit/Process Operating Characteristics" supplier data categories.

One new data element added to the "Production/Throughput Quantities and Composition" data category requires facilities that produce fluorinated GHGs to report the concentration of each fluorinated GHG contained in their products. These data would be reported in a one-time report submitted by fluorinated GHG production facilities by March 31, 2011. The other new data element assigned to this data category would require fluorinated GHG production facilities to submit a revised report of the concentrations of fluorinated GHGs when changes are made to the compositions of their products. EPA proposes that these data elements be considered CBI. Like the other product specific data elements included in this data category in the July 7, 2010 confidentiality proposal, these two data elements would provide sensitive information on product composition that is not already publicly available and would likely harm the competitive position of fluorinated GHG producers. For more detailed rationales in support of our proposed CBI determination for these two new data elements, please *see* Section II.D.3 of the July 7, 2010 confidentiality proposal, which discusses the ways in which product-specific production quantities and product composition data could be used by competitors of a reporting facility to gain insights and develop market strategies that would harm the reporter's competitive position.

The three new data elements added to the data category for "Unit/Process Operating Characteristics" consist of the following data elements:

- The location of the mass flow meter in the process chain in relation to the points of CO_2 stream capture, dehydration, compression, and other processing (40 CFR part 98, subpart PP).
- The location of the volumetric flow meter in the process chain in relation to the points of CO_2 stream capture, dehydration, compression, and other processing (40 CFR part 98, subpart PP).
- Date on which changes were made to fluorinated GHG concentrations in a product or the date on which production of a new product commenced (40 CFR part 98, subpart OO).

The location of flow meters does not provide information on the design or operation of a facility's production processes or the design or operation of any CO_2 compression, dehydration, or other purification process that may be present at the facility. Facilities are not required to provide detailed and potentially sensitive information about their facilities, such as descriptions or diagrams of their processes. Rather reporters are only required to report limited information on the location of a flow meter in terms of its position relative to other processes, such as the CO_2 stream capture, dehydration, compression, and other processing. Similarly, the date on which manufacture of a new product commenced or changes were made to the composition of a fluorinated GHG product does not disclose the actual composition of the product, the raw materials used to make the product, the method of manufacture, or the efficiency of the manufacturing process. The manufacture of a new product and changes to existing product lines is often publicly available through company marking materials and other sources (*e.g.,* publication or revisions to Material Safety Data Sheets). Since the disclosure of these data elements is unlikely to harm the competitive position of the reporter, we propose these three data elements would not be entitled to confidential treatment.

When finalized, the changes to the data elements may not be exactly the same as those proposed in the Part 98 amendment proposal; however, we expect that any revisions to data elements in the final amendment would still logically fall into the same or another data category that is addressed in the confidentiality proposal and would therefore be covered by the confidentiality determination for that data category. If the final amendments differ from those included in the Part 98 amendment proposal, EPA will address those changes in the final confidentiality determination action.

D. Request for Comments

This supplemental action provides affected businesses, other stakeholders, and the general public an opportunity to provide comment on the proposed confidentiality determinations for the proposed new and revised data elements. For the proposed new and revised data elements, we are soliciting comment on the issues raised in the July 7, 2010 confidentiality proposal as they apply to the new and revised data elements addressed in the part 98 amendment proposal and this supplemental notice. Specifically, we are soliciting comment on whether the data category assignments for the proposed new and revised data elements are reasonable and appropriate (*i.e.,* whether the proposed new and revised data elements are sufficiently similar to the other data elements listed in their assigned data category or whether a different data category would be more appropriate). We are also soliciting comment on whether the proposed confidentiality determinations for these data elements are appropriate, whether any specific circumstances exist that would warrant different confidentiality determinations for these data elements, and whether any unique circumstances exist where a limited process would be appropriate to re-evaluate EPA's final determinations for these data elements. For a list of the proposed new and revised data elements and their assigned data categories, please *see* the memorandum "Data Category Assignments for the Proposed Revisions to the Part 98 Reporting Requirements" in Docket EPA–HQ–OAR–2009–0924 and on the Web site (*http://www.epa.gov/climatechange/emissions/CBI.html.*)

We are also interested in receiving suggestions on appropriate formats for publishing the proposed new and revised data elements (both CBI and non-CBI data). For those new and revised data elements for which we propose confidential treatment, we are soliciting suggestions for the best methods of aggregating the data and comment on whether publishing any of the new and revised data elements in ranges at the facility-level would provide valuable information that aggregated data may not convey.

In today's notice we are soliciting comment only on the proposed confidentiality determinations for the new and revised data elements contained in the Part 98 amendment proposal. We are not soliciting further comment on those data elements in the July 7, 2010 confidentiality proposal for

[1] Section 114(c) of the CAA requires that "emission data" shall be publicly available.

which no changes are proposed in the Part 98 amendment proposal.

II. Statutory and Executive Order Reviews

The statutory and executive order reviews do not apply to this notice because this notice does not propose any regulatory changes. For a complete discussion of the statutory and executive order reviews as they apply to the proposed amendments to 40 CFR part 2, *see* the notice "Proposed Confidentiality Determinations for Data Required under the Mandatory Greenhouse Gas Reporting Rule and Proposed Amendment to Special Rules Governing Certain Information Obtained under the Clean Air Act" (75 FR 39094).

List of Subjects 40 CFR Part 2

Environmental protection, Administrative practice and procedure, Reporting and recordkeeping requirements.

Dated: July 20, 2010.

Lisa P. Jackson,

Administrator.

[FR Doc. 2010–18229 Filed 7–26–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2010–0321, FRL–9180–5]

Approval and Promulgation of Implementation Plans; New York Prevention of Significant Deterioration of Air Quality and Nonattainment New Source Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the New York State Implementation Plan (SIP) submitted by the New York State Department of Environmental Conservation on March 3, 2009. The proposed revisions would create a new New York State Prevention of Significant Deterioration of Air Quality (PSD) regulations program and modify the existing New York State Nonattainment New Source Review (NNSR) regulations in the SIP. These proposed revisions also address changes mandated by the revised Federal New Source Review (NSR) regulations, referred to as the "2002 NSR Reform Rules." EPA's 2002 NSR Reform Rules, proposed by New York State for inclusion in the New York SIP with some changes, include provisions for baseline emissions calculations, an actual-to-projected-actual methodology for calculating emissions changes, options for plantwide applicability limits, and recordkeeping and reporting requirements. If EPA finalizes approval of New York's regulations, New York will implement its own PSD and NNSR State regulations. EPA notes that, in this proposal, no action is being taken on certain items of New York's revisions that relate to the Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule ("Tailoring Rule").

DATES: Comments must be received on or before August 26, 2010.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–R02–OAR–2010–0321, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- E-mail: *Werner.Raymond@epa.gov*.
- *Fax:* 212–637–3901.
- *Mail:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.
- *Hand Delivery:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R02–OAR–2010–0321. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866. EPA requests, if at all possible, that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Frank Jon, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4085; e-mail address: *jon.frank@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, references to "EPA," "we," "us," or "our," are intended to mean the Environmental Protection Agency. The supplementary information is arranged as follows:

I. What is being addressed in this document?
II. What is the background for this action?
III. What is EPA's analysis of New York's NSR rule revisions?
IV. What action is EPA proposing to take?
V. Statutory and Executive Order Reviews

I. What is being addressed in this document?

On March 3, 2009, the State of New York, through the New York State Department of Environmental Conservation (NYSDEC), submitted to EPA Region 2 revisions to the New York

State Implementation Plan (SIP). The submittal consists of revisions to three regulations that are already part of the New York SIP. The affected regulations are: 6 New York Code of Rules and Regulations (NYCRR) Part 231, New Source Review for New and Modified Facilities; 6 NYCRR Part 200, General Provisions; and 6 NYCRR Part 201, Permits and Certificates. The revisions were made to create a new New York State PSD regulation program and to update the existing New York State nonattainment regulations consistent with changes to the Federal NSR regulations published on December 31, 2002 (67 FR 80186). In today's action, EPA is proposing to approve those revisions with the caveat that EPA is not proposing action at this time on (1) the PSD permitting threshold provisions to the extent that those provisions require permits for sources of greenhouse gas (GHG) emissions that equal or exceed the 100/250 tons per year (tpy) GHG levels but are less than the thresholds identified in EPA's final Tailoring Rule at 75 FR 31514, 31606 (June 3, 2010); and (2) the PSD significance level provisions of New York's rule to the extent that those provisions treat as significant GHG emissions increases that are less than the thresholds identified in the final Tailoring Rule. *Id.* In accordance with the final Tailoring Rule, New York is expected to submit a letter to EPA addressing these issues shortly. *Id.* After receiving New York's letter, EPA will take action with respect to these additional items. Today's proposed approval with respect to GHG emissions above the Tailoring Rule thresholds is premised on our understanding that the New York State PSD regulations provide authority to regulate GHG emissions within EPA's meaning of the term "subject to regulation." *See* 75 FR 31582. This understanding is based upon EPA's review of New York's definition of "Regulated NSR Contaminant," which includes any contaminant that is "subject to regulation" under the Clean Air Act. 6 NYCRR § 231–4.1(43). New York is also expected to address its authority to regulate GHG emissions in its letter. In the event that New York articulates the view that it does not have authority to regulate greenhouse gases, EPA will revisit this issue before taking final action.

II. What is the background for this action?

On December 31, 2002, EPA published final rule changes to 40 Code of Federal Regulations (CFR) parts 51 and 52, regarding the Clean Air Act's PSD and Nonattainment New Source Review (NNSR) programs. 67 FR 80186. Available at *http://www.epa.gov/nsr/fr/20021231_80186.pdf*. On November 7, 2003, EPA published a final action on the reconsideration of the December 31, 2002 final rule changes. 68 FR 63021. In that November 7th final action, EPA added the definition of "replacement unit," and clarified an issue regarding plantwide applicability limitations (PALs). On June 13, 2007, EPA revised the rules to remove provisions for pollution control projects and clean units. 72 FR 32526. EPA further revised the rules on December 21, 2007, to clarify when facilities must keep records and report emissions when a "reasonable possibility" test shows that projected emissions increases could equal or exceed 50% of the Clean Air Act's NSR significant levels for a regulated NSR pollutant. 72 FR 72607. Collectively, these four final actions are referred to as the "2002 NSR Reform Rules." The 2002 NSR Reform Rules are part of EPA's implementation of parts C and D of title I of the Clean Air Act (CAA), 42 U.S.C. 7470–7515. Part C of title I of the CAA, 42 U.S.C. 7470–7492, is the PSD program, which applies in areas that meet the National Ambient Air Quality Standards (NAAQS)—"attainment" areas—as well as in areas for which there is insufficient information to determine whether the area meets the NAAQS—"unclassifiable" areas. Part D of title I of the CAA, 42 U.S.C. 7501–7515, is the NNSR program, which applies in areas that are not in attainment of the National Ambient Air Quality Standards (NAAQS)—"nonattainment areas." Collectively, the PSD and NNSR programs are referred to as the "New Source Review" or "NSR programs". EPA regulations implementing these programs are contained in 40 CFR 51.165, 51.166, 52.21, 52.24, and part 51, Appendix S. The CAA's NSR programs are preconstruction permitting programs applicable to new and modified stationary sources of air pollutants regulated under the CAA.

The NSR programs include a combination of air quality planning and air pollution control technology requirements. Briefly, section 109 of the CAA, 42 U.S.C. 7409, requires EPA to promulgate primary NAAQS to protect public health and secondary NAAQS to protect public welfare. Once EPA sets those standards, States must develop, adopt, and submit to EPA for approval, a SIP that contains emissions limitations and other control measures to attain and maintain the NAAQS. Each SIP is required to contain a preconstruction review program for the construction and modification of any stationary source of air pollution to: (1) Assure that the NAAQS are achieved and maintained; (2) protect areas of clean air; (3) protect air quality related values (such as visibility) in national parks and other areas; (4) assure that appropriate emissions controls are applied; (5) maximize opportunities for economic development consistent with the preservation of clean air resources; and (6) ensure that any decision to increase air pollution is made only after full public consideration of the consequences of the decision.

The 2002 NSR Reform Rules made changes to four areas of the NSR programs. In summary, the 2002 Rules: (1) Provide a new method for determining baseline actual emissions; (2) adopt an actual-to-projected-actual methodology for determining whether a major modification has occurred; (3) allow major stationary sources to comply with plant-wide applicability limits (PALs) to avoid having a significant emissions increase that triggers the requirements of the major NSR program; and (4) require new recordkeeping and reporting. On November 7, 2003, EPA published a final action on its reconsideration of the 2002 NSR Reform Rules (68 FR 63021), which added a definition for "replacement unit" and clarified an issue regarding PALs. After the 2002 NSR Reform Rules were finalized and effective (March 3, 2003), various petitioners challenged numerous aspects of the 2002 NSR Reform Rules, along with portions of EPA's 1980 NSR Rules (45 FR 5276, August 7, 1980). On June 24, 2005, the DC Circuit Court issued a decision on the challenges to the 2002 NSR Reform Rules. *New York* v. *United States,* 413 F.3d 3 (DC Cir. 2005). In summary, the DC Circuit Court vacated portions of the Rules pertaining to clean units and pollution control projects, remanded a portion of the Rules regarding recordkeeping, *e.g.,* 40 CFR 52.21(r)(6) and 40 CFR 51.166(r)(6), and either upheld or did not comment on the other provisions included as part of the 2002 NSR Reform Rules. On June 13, 2007, EPA revised the Rules to remove provisions for pollution control projects and clean units. On December 21, 2007, EPA took final action regarding the remanded portion on recordkeeping by promulgating the reasonable possibility in recordkeeping rule. Today's action is consistent with the decision of the DC Circuit Court because New York's submittal does not include any portions of the 2002 NSR Reform Rules that were vacated as part

of the DC Circuit Court's June 2005 decision.

The 2002 NSR Reform Rules require that State agencies adopt and submit revisions to their SIP permitting programs implementing the minimum program elements of the 2002 NSR Reform Rules no later than January 2, 2006. (Consistent with changes to 40 CFR 51.166(a)(6)(i), State agencies are now required to adopt and submit SIP revisions within three years after new amendments are published in the **Federal Register**.) State agencies may meet the requirements of 40 CFR part 51, and the 2002 NSR Reform Rules, with different but equivalent regulations. However, if a State decides not to implement any of the new applicability provisions, that State is required to demonstrate that its existing program is at least as stringent as the Federal program. On March 3, 2009, the State of New York submitted a SIP revision for the purpose of revising the State's NSR permitting provisions. These changes were made primarily to adopt EPA's 2002 NSR Reform Rules with a few modifications. As discussed in further detail below, EPA believes the revisions contained in the New York submittal are approvable for inclusion into the New York SIP, with the caveat that we are taking no action on the specific items identified in Section I of this proposal related to the Tailoring Rule thresholds.

III. What is EPA's analysis of New York's NSR rule revisions?

New York currently has an approved NNSR program for new and modified sources. Today, EPA is proposing to approve revisions to New York's existing NNSR program and a new PSD program. These proposed revisions became State effective on March 5, 2009, and were submitted to EPA on March 3, 2009. Copies of the revised rules, as well as the State's Regulatory Impact Statement (RIS), can be obtained from the Docket, as discussed in the "Docket" section above. In general, the New York State revisions to the rule are similar to the Federal NSR Reform Rules except for a few specific provisions. A discussion of the specific changes to New York's rule, proposed for inclusion in the SIP, that are different from the EPA rules are as follows.

A. Definition for Baseline Period

Under the major NSR program, an existing major facility may modify, or even completely replace, or add, emissions units without obtaining a major NSR permit, so long as the "projected actual emissions" do not increase by a significant amount over the levels emitted during the "baseline period" at the plant as a whole.

The revised New York regulations in 6 NYCRR Part 231 establish a uniform period provision for electric utility steam generating units (EUSGUs) and non-EUSGUs. The revised Part 231 requires that all emissions sources select a baseline period using the annual average of any twenty-four (24) consecutive month period within the five (5) year period that precedes a proposed change. Sources are not allowed to go beyond this time period.

Under the Federal NSR rule, EUSGUs must select a baseline period using any 24-consecutive month period within the 5-year period immediately preceding the actual construction or another 24-consecutive month period that is demonstrated to be more representative. For non-EUSGUs, they must take the average of annual emissions of any 24-consecutive months within the 10-year period that precedes the proposed change. By allowing a longer period for selecting the 24-month average, sources are more likely to find a period of time with high emissions that will result in an increase below significance levels. Though EPA believes that the Federal rule allowing a 10-year look-back for defining the baseline period for non-EUSGUs retains the environmental benefits of the NSR program,[1] the revised Part 231 definition of Baseline Period is more restrictive than the Federal definition for non-EUSGUs because the Federal definition allows only a 5-year look-back period.

B. Single Baseline for Facilities Undergoing NSR Modifications

The revised Part 231 requires that facilities select a single baseline period for all regulated NSR pollutants when calculating baseline actual emissions.

Under the Federal NSR rule, facilities are allowed to choose a different baseline period within the look-back period for each NSR pollutant. This allows sources to pick and choose the baseline period, for each pollutant, most likely to result in an increase below significance levels. New York's approach would not allow for this flexibility, and would increase the likelihood of requiring NSR review for more regulated NSR pollutants. So, this State requirement is more stringent than the Federal requirement.

[1] EPA's environmental impact analysis of the 10-year look-back provision was provided at the time of the 2002 NSR Reform rule in EPA's "Supplemental Analysis of the Environmental Impact of the 2002 Final NSR Improvement Rules" and is available at *http://www.epa.gov/nsr/actions.html#2002.*

C. Plantwide Applicability Limits (PALs)

A PAL is a voluntary option that provides a facility with the ability to manage facility-wide emissions without triggering major NSR review. If a facility keeps the emissions below a plantwide actual emissions cap (that is, an actual PAL), then these regulations allow the facility to avoid the major NSR permitting process when the facility makes alterations to the plant or individual emissions units. In return for this flexibility, the facility must monitor and comply with more stringent requirements for all of the emissions units under the PAL.

The revised Part 231 allows facilities to establish a PAL for an initial term not to exceed 10 years. However, the rule aligns the PAL term with the facility's title V permit so that they both expire at the same time. This will allow the PAL to be renewed with the title V facility under the same administrative and permit review process and will result in PAL renewals earlier than under the Federal rule.

The revised Part 231 also requires a reduction in the PAL of up to 25% or implementation of best available control technology (BACT), whichever is less stringent, by the end of the fifth year of the initial PAL. The earlier PAL renewals and PAL reduction programs under New York's revised Part 231 are more stringent than the Federal rules.

D. The Facility Need Not Be Major for the Specific Nonattainment Pollutant in Order for the Specific Nonattainment Significant Threshold To Apply

New York's revised Part 231 does not require that the facility be an existing major source for the applicable nonattainment pollutant before looking at the specific nonattainment significant threshold for applicability purposes. In other words, a facility only needs to be a major source for one nonattainment pollutant, for example, ozone, for all other nonattainment significant thresholds to apply for applicability purposes. The revised Part 231 for nonattainment areas follows the same applicability procedures as the PSD rules, *i.e.,* the facility only needs to be an existing major stationary source for an attainment pollutant and then all the significant thresholds will apply for applicability purposes. This is more stringent than the Federal requirements in nonattainment areas which indicate that the existing facility must be a major stationary source for that specific nonattainment pollutant before the applicable significant nonattainment pollutant threshold is applied.

E. Reasonable Possibility in Recordkeeping

Revised Part 231 expands upon the requirements of EPA's December 21, 2007 final Reasonable Possibility in Recordkeeping rule by incorporating recordkeeping and/or monitoring requirements for all insignificant modifications. For example, any modification with a "project emission potential" (a term equivalent to EPA's projected actual emissions increase) which is less than 50% of the applicable significant project threshold, or any modification with a project emission potential which, when emissions from independent and unrelated factors such as demand growth are added, is less than 50% of the applicable significant project threshold, must maintain for a minimum of 5 years: (1) A description of the modification; (2) An identification of each new or modified emission sources(s) including the associated processes, and emission units; (3) the calculation of the projected emission potential for each modified emission source(s) including supporting documentation; and (4) the date the modification commenced operation.

The revised Part 231 also extends the pre-construction notification requirement (must submit an application to the NYSDEC) to any facility that proposes a modification with a project emission potential which equals or exceeds 50% of the applicable significant project threshold or proposes a modification with a project emission potential which is less than 50% of the applicable significant project threshold, but equals or exceeds 50% of the applicable significant project threshold when emissions from independent and unrelated factors such as demand growth are added.

For the post-change monitoring requirements, the facilities must keep records of their calculations of emission increases from independent and unrelated factors such as demand growth, monitor post-modification emissions, and submit annual reports to verify the accuracy of their calculations.

Under the Federal NSR rule, provisions for recordkeeping are applicable to: (1) Modifications with a projected actual emissions increase that equals or exceeds 50% of the applicable NSR significant threshold, and (2) modifications with a projected actual emissions increase that is less than 50% of the applicable NSR significance threshold but when emissions attributable to independent and unrelated factors such as demand growth are added, equals or exceeds 50% of the applicable NSR significance threshold. For (1) above, EPA requires emission sources to comply with both pre-change and post-change recordkeeping and reporting requirements. For (2) above, EPA requires only pre-change recordkeeping requirements.

Also, the final Federal Reasonable Possibility Rule only requires EUSGUs to notify the permitting authority, prior to beginning actual construction, for any modification with a project emission potential which equals or exceeds 50% of the applicable significant project threshold. Therefore, the revised Part 231 is more restrictive than the Federal requirements.

Except as described above, the State Part 231 rules are substantively the same as the existing PSD and nonattainment Federal rules.

F. Prevention of Significant Deterioration of Air Quality: 6 NYCRR Part 231

The State rule does not incorporate the portions of the Federal rules that were vacated by the DC Circuit Court, specifically, the clean unit provisions and the pollution control projects exclusion. Except for the items described above in Sections A through E, the revisions included in New York's PSD program are substantively the same and, in some instances (as discussed above), more stringent than the corresponding Federal provisions.

As part of its review of the New York SIP submittal, EPA performed a review of the proposed revisions and has determined that they are consistent with the program requirements for the preparation, adoption and submittal of implementation plans for the Prevention of Significant Deterioration of Air Quality, set forth at 40 CFR 51.166, including the 2002 NSR Reform Rules.

G. Review of New Sources in Nonattainment Areas: 6 NYCRR Part 231

New York's permitting requirements for major sources in nonattainment areas are set forth at 6 NYCRR Part 231. The New York nonattainment NSR program was originally approved into the New York SIP on July 1, 1980 and applies to the construction and modification of any major stationary source of air pollution in a nonattainment area, as required by part D of title I of the CAA. To receive approval to construct, a source that is subject to this regulation must show that it will not cause a net increase in pollution with more than 1:1 offset ratio, will not create a delay in meeting the NAAQS, and will install and use control technology that achieves the LAER. The revisions to this regulation, which EPA is proposing to approve into the SIP, update the existing provisions to be consistent with the current Federal nonattainment rule in 40 CFR 51.165, including the 2002 NSR Reform Rules. These revisions address baseline actual emissions, actual-to-projected-actual applicability tests, and PALs.

The State rule does not incorporate the portions of the Federal rules that were vacated by the DC Circuit Court, specifically, the clean unit provisions and the pollution control projects exclusion. Except for the items described above in Sections A through E, the revisions included in New York's nonattainment NSR program are substantively the same as the 2002 NSR Reform Rules. As part of its review of the New York submittal, EPA performed a review of the proposed revisions and has determined that they are consistent with the program requirements for the preparation, adoption and submittal of implementation plans for New Source Review, set forth at 40 CFR 51.165, including the 2002 NSR Reform Rules.

We note that New York State is required to submit a SIP revision to EPA as a result of the Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$) which was published in the **Federal Register** on May 16, 2008. 73 FR 28321. This rule requires the States to adopt and submit plan revisions to their attainment and nonattainment NSR SIP that incorporate a number of requirements pertaining to $PM_{2.5}$ within 3 years from the date EPA publishes the changes in the **Federal Register**. Consequently, New York State has until May 16, 2011 to submit the required $PM_{2.5}$ changes to EPA.

H. Technical Error and Other Issues

There is a technical error in the revised Part 231. New York must address this technical error by adding the underlined words "*equal or*" as shown below. However, EPA is proposing to approve this regulation into the SIP with the interpretation listed below for this particular definition. Our interpretation, that the language should read as "equal or exceed," is consistent with other sections of Part 231 which do use the term "equal or exceed" when dealing with applicable significant project threshold of a regulated NSR contaminant and manifest New York's intention to apply the language in the Federal rules.

From "Definitions" under 6 NYCRR Part 231–4.1(b)(31):

(31) NSR major modification. Any modification of a major facility that would

equal or exceed the applicable significant project threshold of a regulated NSR contaminant in Table 3, Table 4, or Table 6 of Subpart 231–13 of this Part; and would result in a significant net emissions increase of that contaminant from the major facility.

(i) Any modification with a project emission potential for VOC or NO_X that *equals or* exceeds the applicable significant project threshold or any net emissions increase at a major facility that is significant for VOC or NO_X shall be considered significant for ozone.

With respect to the creation of Emission Reduction Credits (ERCs), the revised 6 NYCRR Part 231 states that for NO_X, PM_{10} or VOC emissions, ERCs must have physically occurred on or after November 15, 1990 but need not be contemporaneous. This November 15, 1990 date is much earlier than the emission inventory base year that New York State uses for planning purposes which is the year 2002. EPA regulations require a State to include ERCs created in the years prior to the emission inventory base year in the future year attainment inventories. ERCs created between November 15, 1990 and 2002 have been properly accounted for in the future year (projection) attainment inventories that are used to account for the reasonable further progress requirements. Therefore, EPA deems that the ERC meets the specific requirements from shutdowns and curtailments contained in 40 CFR part 51, Appendix S, section IV.C.3.

With respect to the creation of ERCs for $PM_{2.5}$, 6 NYCRR Part 231 states that the ERCs must have physically occurred on or after April 5, 2005 but need not be contemporaneous. The year for the last New York State $PM_{2.5}$ emission inventory is 2002. The April 5, 2005 date is more stringent than the Federal requirement of using the emission inventory base year of 2002. Therefore, EPA is proposing to approve the provision with the April 5, 2005 date.

I. Revisions to 6 NYCRR Part 200, "*General Provisions*" *and 6 NYCRR Part 201,* "*Permits and Certificates*"

New York also made administrative changes to Parts 200 and 201 which reflect implementation of the Part 231 provisions. The Part 200 amendments, specifically Subdivision 200.1(bl) was amended to clarify that for emergency power generating stationary internal combustion engines, the potential to emit will be based on a maximum of 500 hours of operation per year per engine unless a more restrictive limitation exists in a permit or registration. A new subdivision 200.1(cl) was added to indicate that routine maintenance determinations are made on a case-by-case basis, taking into account the nature and extent of the activity and its frequency and cost. Section 200.9 was amended to include all Federal materials referenced in the proposed amendments to Part 231. Section 200.10(a) was amended to reflect that the NYSDEC is no longer delegated responsibility for implementation of the Federal Prevention of Significant Deterioration (PSD) Program.

New York's amendments to Part 201 revise the definition for "major stationary source or major source or major facility" at 6 NYCRR 201–2.1(b)(21). The definition will now encompass the term "major facility" and incorporate major facility and significant project thresholds for facilities emitting particulate matter or particles with an aerodynamic diameter less than or equal to a nominal 2.5 micro-meters ($PM_{2.5}$). EPA designated the New York City metropolitan area as nonattainment for the $PM_{2.5}$ standard (70 FR 944). NNSR review is now required for new major facilities and major modifications to existing facilities that emit $PM_{2.5}$ in significant amounts in the $PM_{2.5}$ nonattainment area.

Since the revisions to Parts 200 and 201, including the new or revised definitions are consistent with Federal guidance, EPA is proposing to approve them into the New York SIP. It is important to note that EPA is proposing to approve only those revisions made to Part 200, specifically subparts 200.1, 200.6, 200.7, and 200.9, as effective March 5, 2009, consistent with what has been previously approved into the Federally enforceable New York SIP. EPA is also proposing to approve those revisions to Part 201, specifically subpart 201–2, effective March 5, 2009, as it applies to the implementation of the Part 231 NSR permitting program. EPA is not proposing action on the revisions to section 200.10 since they are references to Federal standards and requirements and are therefore already Federally enforceable standards and requirements.

J. Clean Air Act (CAA) Section 110(l)

Section 110(l) of the CAA provides that "the Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress * * * or any other applicable requirement of this Act."

Approval of New York's Revised Part 231 into the SIP would not violate CAA section 110(l) with respect to either PSD or nonattainment NSR.

1. PSD

With respect to PSD, EPA determines that approval of New York's regulations will not "interfere with * * * attainment or any other applicable requirement" of the statute. New York has never had a PSD SIP. As a result, the regulations currently in place in New York State are the Federal NSR Reform regulations. New York's proposed SIP for PSD is no less stringent than the Federal program, and is in fact more stringent than the Federal program in a number of ways as discussed above in this proposal. Thus, approval of New York's PSD regulations into the SIP will not interfere with any applicable requirement of the CAA.

2. Nonattainment NSR (NNSR)

EPA likewise determines that approval of New York's proposed NNSR SIP also would not interfere with attainment, reasonable further progress or any other applicable requirement of the CAA. New York's NNSR SIP approval dates back to July 1, 1980, well before the 1990 Clean Air Act Amendments. Since then, there have been many improvements in part D of the CAA, and these have been incorporated into New York's revised Part 231. Thus, approval of New York's new NNSR regulation into the SIP will add provisions that will support attainment or reasonable further progress. For example, the current NNSR SIP does not contain up-to-date offset ratios for VOCs and NO_X inasmuch as it predates the ozone transport region, and contains a threshold of 50 tons/year throughout the State for VOCs and NO_X. New York's revised Part 231 addresses these weaknesses. Furthermore, New York's reasonable further progress (RFP) demonstration does not rely on this NSR rule but on other regulations, such as Reasonably Available Control Technology (RACT).

K. Clean Air Act (CAA) Section 193

Section 193 of the CAA specifically provides that "no control requirement in effect, or required to be adopted by an order, settlement agreement, or plan in effect before November 15, 1990, in any area which is a nonattainment area for any air pollutant may be modified after November 15, 1990, in any manner unless the modification insures equivalent or greater emissions reductions of such air pollutant."

As discussed in the preceding section, New York's PSD and NNSR SIP provisions are more stringent than the applicable Federal regulations and the existing NSR SIP approved on July 1,

1980. Because the proposed SIP revision will result in equivalent or greater emission reductions, the proposed SIP revision is consistent with the requirements of section 193 of the CAA.

IV. What action is EPA proposing to take?

EPA is proposing to approve revisions to the New York SIP 6 NYCRR Part 200, 6 NYCRR Part 201 and 6 NYCRR Part 231 which became effective under NYS law on March 5, 2009, and was submitted by the State of New York to EPA on March 3, 2009. Specifically, EPA is proposing to approve subparts 200.1, 200.6, 200.7, and 220.9, as effective March 5, 2009, and subpart 201–2, as effective March 5, 2009, with the caveat that EPA is taking no action on the specific items identified in Section I of this proposal related to the Tailoring Rule thresholds. EPA will take action on these additional items after receiving New York's letter, expected shortly.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

List of Subjects in 40 CFR Part 52

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

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

Dated: July 16, 2010.

Judith A. Enck,

Regional Administrator, Region 2.

[FR Doc. 2010–18365 Filed 7–26–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 10–1061; MB Docket No. 10–117; RM–11601]

FM TABLE OF ALLOTMENTS, GRANTS PASS, OREGON

AGENCY: Federal Communications Commission

ACTION: Proposed rule.

SUMMARY: This document sets forth a proposal to amend the FM Table of Allotments. The Commission requests comment on a petition filed by Three Rivers Broadcasting, LLC proposing the allotment of FM Channel 257A as the second commercial allotment at Grants Pass, Oregon. The channel can be allotted at Grants Pass in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.7 km (5.4 miles) west of Grants Pass, at 42–25–25 North Latitude and 123–26–25 West Longitude. *See* Supplementary Information infra.

DATES: The deadline for filing comments is August 26, 2010. Reply comments must be filed on or before September 10, 2010.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554. In addition to filing comments with the FCC interested parties should serve the petitioner, as follows: Casey McIntosh, Three Rivers Broadcasting, LLC, 2970 Ravenwood Drive, Grants Pass, Oregon 97527

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 10–117, adopted June 10, 2010, and released June 14, 2010. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, S.W., Washington, D.C. 20554.

The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY–B402, Washington, DC 20554, 800–378–3160 or via the company's website, http://www.bcpiweb.com.

This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 does not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible ex parte contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by adding Grants Pass, Channel 257A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief,

Audio Division,

Media Bureau.

[FR Doc. 2010–18265 Filed 7–27–10; 8:45 am]

BILLING CODE 6712–01–S

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 105, 107, and 171

[Docket No. PHMSA–2009–0410 (HM–233B)]

RIN 2137–AE57

Hazardous Materials Transportation: Revisions of Special Permits Procedures

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: PHMSA is proposing to revise its procedures for applying for a special permit to require an applicant to provide sufficient information about its operations to enable the agency to evaluate the applicant's fitness and the safety impact of operations that would be authorized in the special permit. In addition, PHMSA is providing an on-line application option.

DATES: Submit comments by August 26, 2010.

ADDRESSES: You may submit comments identified by the docket number (PHMSA–2009–0410) by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Operations, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* To Docket Operations, Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number for this notice at the beginning of the comment. All comments received will be posted without change to the Federal Docket Management System (FDMS), including any personal information.

- *Docket:* For access to the dockets to read background documents or comments received, go to *http://www.regulations.gov* or DOT's Docket Operations Office (*see* **ADDRESSES**).
- *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 (Volume 65, Number 70; Pages 19477–78).

FOR FURTHER INFORMATION CONTACT: Mr. Steven Andrews or Mr. T. Glenn Foster, Office of Hazardous Materials Standards, PHMSA, at (202) 366–8553 or Mr. Don Burger, Office of Hazardous Materials Special Permits and Approvals, PHMSA, at (202) 366–4511.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal hazardous material transportation law (Federal hazmat law), 49 U.S.C. 5101 *et seq.,* directs the Secretary of Transportation to prescribe regulations for the safe transportation of hazardous material in commerce. (49 U.S.C. 5103) Federal hazmat law authorizes the Secretary to issue variances—termed special permits—from the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) only if a special permit provides for a safety level at least equal to the safety level required under Federal hazmat law/regulations or consistent with the public interest and Federal hazmat law, if a required safety level does not exist. Section 5117(a) authorizes the Secretary of Transportation to issue a special permit from a regulation prescribed in §§ 5103(b), 5104, 5110, or 5112 of the Federal Hazardous Materials Transportation Law to a person transporting, or causing to be transported, hazardous material in a way that achieves a safety level at least equal to the safety level required under the law, or consistent with the public interest, if a required safety level does not exist. The Pipeline and Hazardous Materials Safety Administration (PHMSA) is the administration within the Department of Transportation (DOT) primarily responsible for implementing the Federal hazmat law and issuing special permits.

The HMR generally are performance-oriented regulations that provide the regulated community with a certain amount of flexibility in meeting safety requirements. Even so, not every transportation situation can be anticipated and built into the regulations. Innovation is a strength of our economy and the hazardous materials community is particularly strong at developing new materials and technologies and innovative ways of moving materials. Special permits enable the hazardous materials industry to quickly, effectively, and safely integrate new products and technologies into the production and transportation stream. Thus, special permits provide a mechanism for testing new technologies, promoting increased transportation efficiency and productivity, and ensuring global competitiveness. A special permit must achieve at least an equivalent level of safety to that specified in the HMR, or be consistent with the public interest and Federal hazmat law, if a required safety level does not exist. Implementation of new technologies and operational techniques can enhance safety because the authorized operations or activities often provide a greater level of safety than required under the regulations. And each applicant granted a special permit undergoes a safety fitness evaluation further assuring the safety of transportation under the special permit. Special permits also reduce the volume and complexity of the HMR by addressing unique or infrequent transportation situations that would be difficult to accommodate in regulations intended for use by a wide range of shippers and carriers.

The procedures governing the application, issuance, modification, and termination of special permits are found

at Subpart B of 49 CFR part 107 (*see* §§ 107.101–107.127). An application must include: (1) A citation of the specific regulation or regulations from which the applicant seeks relief; (2) the hazardous materials planned for transportation under the special permit; (3) the mode or modes of transportation that will be utilized; (4) a detailed description of the operation for which the special permit is requested (e.g., alternative ways to qualify packagings for hazardous materials transportation; alternative packagings; alternative hazard communication; alternative stowage or segregation plans; or other alternative procedures or activities) and written description, drawings, flow charts, plans, and supporting documentation; (5) the time period for which the special permit is requested; (6) a statement outlining the reasons for requesting the special permit; and (7) a description of the packaging that will be used under the special permit. Further, PHMSA must review an applicant's safety fitness (*i.e.,* previous incidents, citations) to assure that the applicant will carry out its responsibilities in a safe manner.

In addition, the applicant must demonstrate that a special permit achieves a level of safety at least equal to that required by regulation or, if the required safety level does not exist, that the special permit is consistent with the public interest. To this end, at a minimum, the application must include: (1) Information on shipping and incident history and experience relating to the application; (2) identification of increased risks to safety or property that may result if the special permit is granted and a description of measures that will be taken to mitigate that risk; and (3) analyses, data, or test results demonstrating that the level of safety expected under the special permit is equal to the level of safety achieved by the regulation from which the applicant seeks relief.

PHMSA independently reviews and evaluates the information provided in the special permit application to determine that the special permit will achieve an equal level of safety as provided by the HMR or, if a required level of safety does not exist, that the special permit is consistent with the public interest. This review includes a technical analysis of the alternative proposed in the application, an evaluation of the past compliance history of the applicant (including incident history, enforcement actions, and the like), and coordination, as applicable, with the Federal Motor Carrier Safety Administration (FMCSA), Federal Railroad Administration (FRA), Federal Aviation Administration (FAA), and/or the U.S. Coast Guard to gather additional information relevant to the application and ensure the agency's concurrence with PHMSA's conclusions.

II. Proposals in This NPRM

In this NPRM, PHMSA is proposing to revise the special permits application procedures by clarifying existing requirements and requiring additional, more detailed information to enable the agency to strengthen its oversight of the special permits program. The proposed revisions to the application procedures will allow PHMSA to more effectively assess the level of safety that will be achieved under the special permit. In addition, the proposed revisions will enable PHMSA to better evaluate the fitness of an applicant, including its ability to safely conduct the operations that may be authorized under a special permit. The additional information will also enhance PHMSA's ability to monitor operations conducted under a special permit and to take corrective actions if necessary to ensure safety. In addition, PHMSA is proposing to remove the word "exemption" from Part 107 and from the definition of a "special permit" in § 107.1, Definitions, and § 171.8, Definitions and Abbreviation because the term has become obsolete. Further, § 107.1 was amended following the publication of a final rule entitled "Hazardous Materials: Incorporation of Special Permits Into Regulations," published on May 14, 2010 [75 FR 27205] under Docket No. PHMSA–2009–0289 (HM–233A). The May 14, 2010 final rule revised the definition for "special permit" in 49 CFR part 107 to permit the Associate Administrator of Hazardous Materials Safety to designate signature authority at the Office Director level. The same revision to the definition for "special permit" was made in § 171.8. Both revisions are reflected in this NPRM.

Finally, to increase flexibility and reduce the paperwork burden on applicants, in this NPRM, PHMSA is proposing to implement an on-line application capability for special permits, and to authorize electronic service for several administrative practices and procedures.

III. Section-by-Section Review

Following is a section-by-section review of the amendments proposed in this NPRM.

Part 105

Section 105.35

Section 105.35 specifies the methods by which PHMSA may serve documents during the course of its proceedings, such as registered mail, certified mail, or publication in the **Federal Register**. In an effort to provide an additional alternative to these methods, in this NPRM, we are proposing to add a new paragraph (a)(4) to authorize electronic service if consented to in writing by the party to be served, and electronic service for all special permit and approval actions.

Part 107

Section 107.105

Section 107.105 specifies the requirements for submitting an application for a special permit or a modification of a special permit. In this NPRM, for clarification, we propose to revise paragraph (a) to require that all supporting documentation be written in English. We propose to revise (a)(1) to require that a table of contents be included in the application and to remove the requirement that applications must be submitted in duplicate. In (a)(1)(iii), we also propose to provide the option for applicants to submit applications on-line through the PHMSA website.

In paragraph (a)(2), PHMSA is proposing to request additional information about the applicant, including the applicant's physical address(es) of all known locations where the special permit will be used, a point of contact for information about the special permit, the name of the company president or Chief Executive Officer (CEO), and a Dun and Bradstreet's Data Universal Numbering System (D–U–N–S) identifier.

In paragraph (a)(4), for a manufacturing special permit, PHMSA is proposing to require the street address of each of the facilities of the applicant where manufacturing under the special permit will occur, and, if applicable, the symbol of the packaging manufacturer ("M" number). PHMSA also is proposing to add a new paragraph (a)(5) to require an applicant who must register in accordance with Subpart F or G of Part 107 to provide its registration number or the name of the company to which the registration number is assigned if different from the applicant. Likewise, in the same paragraph, PHMSA is proposing to require an applicant to provide a statement that the registration requirements are not required when these requirements do not apply.

PHMSA is also proposing to revise, re-designate, and add several new paragraphs in paragraphs (c) and (d) of § 107.105 to ensure that a special permit application includes sufficient information on shipping and incident history and experience relating to the initial application, modification or renewal of a special permit, and identification of increased risks to safety or property that may result if a special permit is granted or renewed.

In paragraph (c)(2), PHMSA is proposing to require a description of all operational controls that would apply to the mode or modes of transportation that will be utilized under the special permit. For example, for a shipment of ammonia solutions, the operational controls may include the driver of a transport vehicle and the consignee being trained not to enter the transport vehicle until the ammonia vapors have dissipated.

In paragraph (c)(3), PHMSA is proposing to require alternative hazard communication, including labeling and marking requirements, be included within the detailed description of the proposed special permit. PHMSA is proposing to revise paragraph (c)(5) to require, for transportation by air, a statement outlining the reason(s) the hazardous material is being transported by air if other modes are available. PHMSA is also proposing to revise paragraph (c)(7) to require the quantity of each hazardous material be indicated in addition to the identification and description of the hazardous materials planned for transportation under the special permit.

In addition, PHMSA is proposing to re-designate paragraph (c)(10) as new paragraph (c)(13), and to add new paragraphs (c)(10), (c)(11) and (c)(12) to require the applicant to submit: (1) An estimate of the number of operations expected to be conducted or the number of shipments expected to be transported under the special permit; (2) an estimate of the number of packagings expected to be manufactured under the special permit; and (3) a statement as to whether the special permit being sought is related to a compliance review, inspection activity, or enforcement action, respectively.

Finally, we believe it is essential to understand and analyze the risks of a special permit application, and the analysis should include potential failure modes and consequences. For example, a special permit application that includes Part 178 requirements for design and manufacturing of DOT specification cylinders should include an analysis that addresses failure of a cylinder due to excessive hoop stress, fatigue, and corrosion. The hoop stress may result from inadequate tensile strength, exposure of a cylinder to high temperature, overfilling, and other factors. We believe that the applicant requesting a special permit is the most suitable party to perform a "failure mode and effect analysis (FMEA)" FMEA or a risk assessment that identifies the associated risks and ways to control the risk for a requested special permit. Therefore, in paragraph (d)(3)(i), PHMSA is proposing to add the phrase "failure mode and effect analysis (FMEA)" as an example of documentation that is acceptable to substantiate that the proposed alternative will achieve a level of safety that is at least equal to that required by the regulation from which the special permit is being sought.

Section 107.107

Section 107.107 specifies the requirements for submitting an application for party status to an application or an existing special permit. In paragraph (a), PHMSA is proposing to editorially revise the sentence "Any person eligible to apply for a special permit may apply to be made a party * * *" by removing the word "made." In paragraph (b)(3), PHMSA is proposing to require the applicant to submit the same information that would be required from an applicant for a special permit, including the applicant's physical address(es) of all known locations where the special permit will be used, a point of contact, the name of the company president or Chief Executive Officer (CEO), and a Dun and Bradstreet's Data Universal Numbering System (D–U–N–S) identifier. We also propose to add a new (b)(6) to require a certification that the applicant has not previously been granted party status to the special permit. If the applicant has previously been granted party status, the applicant must follow renewal procedures as specified in § 107.109.

Section 107.109

Section 107.109 specifies the requirements for submitting an application for renewal of a special permit or party status to a special permit. In paragraph (a)(3), PHMSA is proposing to require the applicant to submit the same information that would be required from an applicant for the special permit, including the applicant's physical address(es) of all known new locations not previously identified in the application where the special permit will be used and all locations not previously identified where the special permit was used, a point of contact, the name of the company president or Chief Executive Officer (CEO), and a Dun and Bradstreet's Data Universal Numbering System (D–U–N–S) identifier. In paragraph (a)(4), for clarification, PHMSA is proposing to provide examples of supporting documentation that may require updating when an application for renewal of the special permit is submitted. In paragraph (a)(5), to more fully capture events that may have occurred throughout the life-cycle of the special permit, PHMSA is proposing to add the term "operational" experience to the current requirement that a statement be included in the application describing all relevant shipping and incident experience of which the applicant is aware in connection with the special permit since its issuance or most recent renewal.

PHMSA is also proposing to add new paragraphs (a)(7) and (a)(8). In paragraph (a)(7), PHMSA is proposing to require the applicant to submit additional information for a renewal that is requested after the expiration date of the special permit. Specifically, PHMSA proposes to require: (1) The reason the special permit authorization was allowed to expire; (2) a certification statement that no shipments were transported after the expiration date of the special permit, or a statement describing any transportation under the terms of the special permit after the expiration date, if applicable; and (3) a statement describing the action(s) the applicant will take to ensure future renewal is requested before the expiration date. In paragraph (a)(8), PHMSA is proposing to require the applicant to provide a specific justification why the special permit should be renewed if no operations or shipments have been made since the issuance or renewal of the special permit.

Sections 107.109; 107.113; 107.117; 107.121; 107.123; 107.125; and 171.8

In this NPRM, PHMSA is proposing to revise certain sections in Part 107—"Hazardous Materials Program Procedures" to authorize the use of "electronic service" or "electronic means" to provide greater flexibility in the procedures for the issuance, modification, and termination of special permits. The affected sections are as follows:

§ 107.113 Application processing and evaluation.

§ 107.121 Modification, suspension or termination of special permit or grant of party status.

§ 107.123 Reconsideration.

§ 107.125 Appeal.

Section 107.113 specifies the requirements for the application and processing of: (1) An application for a special permit; (2) modification of a special permit, (3) party to a special permit, or (4) renewal of a special permit to determine if it is complete and conforms to the requirements of the HMR. In paragraph (d), PHMSA is proposing to require that during the processing and evaluation of an application, the Associate Administrator may request additional information from the applicant, including during an on-site review. To enable the agency to better evaluate the applicant's fitness and the safety impact of operations that would be authorized in the special permit, we are also proposing to specify that a failure on the part of the applicant to cooperate with an on-site review may result in the application being deemed incomplete and subsequently being denied.

Section 107.117 specifies the requirements for submitting an application for emergency processing. In paragraph (d)(5), PHMSA is proposing to update the telephone number for the Chief, Hazardous Materials Standards Division, Office of Operating and Environmental Standards, U.S. Coast Guard, U.S. Department of Homeland Security, Washington, DC for an application submitted on an emergency basis and to be utilized by water transportation for the initial mode of transportation.

PHMSA is also proposing to remove the word "exemption(s)" from various sections in part 107 and from the definition of a "special permit" in § 171.8, Definitions and Abbreviation. These proposed amendments are necessary because use of the term "exemption(s)" has been replaced with "special permit(s)" following the publication of a final rule entitled "Hazardous Materials: Incorporation of Statutorily Mandated Revisions to the Hazardous Materials Regulations," published on December 9, 2005 [70 FR 73156] under Docket No. PHMSA–2005–22208 (HM–240). The December 9, 2005 final rule changed the term "exemption" to "special permit" and provided for a two-year period when the special permit is first granted, and a four-year period for renewals.

The affected sections are as follows:

§ 107.109

§ 107.113

§ 107.121

§ 107.123

§ 171.8

III. Rulemaking Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This NPRM is published under the authority of 49 U.S.C. 5103(b), which authorizes the Secretary to prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce. 49 U.S.C. 5117(a) authorizes the Secretary of Transportation to issue a special permit from a regulation prescribed in §§ 5103(b), 5104, 5110, or 5112 of the Federal Hazardous Materials Transportation Law to a person transporting, or causing to be transported, hazardous material in a way that achieves a safety level at least equal to the safety level required under the law, or consistent with the public interest, if a required safety level does not exist. If adopted as proposed, the final rule would amend the regulations to revise the special permit application requirements and provide an on-line capability for applications.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget (OMB). This proposed rule is not considered a significant rule under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). In this NPRM, PHMSA is proposing to revise the special permits application procedures by requiring additional, more detailed information to enable the agency to strengthen its oversight of the special permits program. PHMSA recognizes there may be additional costs related to the proposals to require additional information in the special permits application procedures. However, we believe these costs are minimized by the proposals to allow for electronic means for all special permits and approvals actions, and the proposals to authorize electronic means as an alternative to written means of communication. Taken together, the provisions of this proposed rule will promote the continued safe transportation of hazardous materials while reducing paperwork burden on applicants and administrative costs for the agency.

C. Executive Order 13132

This proposed rule was analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This proposed rule would preempt state, local and Indian tribe requirements but does not propose any regulation that has substantial direct effects on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply. Federal hazardous material transportation law, 49 U.S.C. 5101–5128, contains an express preemption provision (49 U.S.C. 5125(b)) preempting state, local and Indian tribe requirements on certain covered subjects.

D. Executive Order 13175

This proposed rule was analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this proposed rule does not have tribal implications and does not impose substantial direct compliance costs on Indian tribal governments, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

The Regulatory Flexibility Act (5 U.S.C. 601–611) requires each agency to analyze regulations and assess their impact on small businesses and other small entities to determine whether the rule is expected to have a significant impact on a substantial number of small entities. The NPRM proposes revisions to current special permit application requirements that may increase the time that would be required to complete such an application. Although many of the applicants may be small businesses or other small entities, PHMSA believes that the addition of an on-line application option will significantly reduce the burden imposed by the application requirements. Therefore, PHMSA certifies that the provisions of this NPRM would not have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates Reform Act of 1995

This proposed rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $141.3 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector.

G. Paperwork Reduction Act

PHMSA has an approved information collection under OMB Control Number 2137–0051, "Rulemaking, Special Permits, and Preemption Requirements." This NPRM may result in a slight increase in the annual burden and costs under this information collection due to proposed changes to require an applicant to provide additional information about its operations to enable the agency to evaluate the applicant's fitness and the safety impact of operations that would be authorized in the special permit. Some of this increased burden will be minimized because of proposed changes to allow for electronic means for all special permits and approvals actions, and the proposals to authorize electronic means as an alternative to written means of communication.

Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it has been approved by OMB and displays a valid OMB control number. 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 and recordkeeping requests. This notice identifies a revised information collection request, including a new form, that PHMSA will submit to OMB for approval based on the requirements in this proposed rule. PHMSA has developed burden estimates to reflect changes in this proposed rule. PHMSA estimates that the additional information collection and recordkeeping burden as proposed in this rule would be as follows:

OMB Control No. 2137–0051:

Affected Number of Annual Respondents: 3,500.

Affected Number of Annual Responses: 3,500.

Net Increase in Annual Burden Hours: 865.

Net Increase in Annual Burden Costs: $34,600.

PHMSA specifically requests comments on the information collection and recordkeeping burdens associated with developing, implementing, and maintaining these requirements for approval under this proposed rule.

Requests for a copy of this information collection should be directed to Deborah Boothe or T. Glenn Foster, Office of Hazardous Materials Standards (PHH–11), Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001, Telephone (202) 366–8553. Address written comments to the Dockets Unit as identified in the **ADDRESSES** section of this rulemaking.

We must receive comments regarding information collection burdens prior to the close of the comment period identified in the **DATES** section of this rulemaking. In addition, you may submit comments specifically related to the information collection burden to the PHMSA Desk Officer, Office of Management and Budget, at fax number 202–395–6974.

H. 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 number contained in the heading of this document may be used to cross-reference this action with the Unified Agenda.

I. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4347), requires Federal agencies to consider the consequences of major federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. Given that this rulemaking proposes to require additional, more detailed information from applicants and strengthen agency oversight, this proposed change in regulation would increase safety and environmental protections. There are no significant environmental impacts associated with this proposed rule.

List of Subjects

49 CFR Part 105

Administrative practice and procedure, Hazardous materials transportation.

49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

In consideration of the foregoing, PHMSA proposes to amend 49 CFR Parts 105, 107, and 171 as follows:

PART 105—HAZARDOUS MATERIALS PROGRAM DEFINITIONS AND GENERAL PROCEDURES

1. The authority citation for part 105 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

2. In § 105.35, add paragraph (a)(4) to read as follows:

§ 105.35 Serving documents in PHMSA proceedings.

(a) * * *

* * * * *

(4) *Electronic service.* (i) Service by electronic means if consented to in writing by the party to be served.

(ii) For all special permits and approvals actions, electronic service is authorized.

* * * * *

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

3. The authority citation for part 107 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub. L. 104–121 sections 212–213; Pub. L. 104–134 section 31001; 49 CFR 1.45, 1.53.

4. In § 107.1, revise the definition of "special permit" to read as follows:

§ 107.1 Definitions.

* * * * *

Special permit means a document issued by the Associate Administrator, or other designated Department official, under the authority of 49 U.S.C. 5117 permitting a person to perform a function that is not otherwise permitted under subchapter A or C of this chapter, or other regulations issued under 49 U.S.C. 5101 et seq. (e.g., Federal Motor Carrier Safety routing requirements).

* * * * *

5. Revise § 107.105 to read as follows:

§ 107.105 Application for special permit.

(a) *General.* Each application for a special permit or modification of a special permit and all supporting documents must be written in English and submitted for timely consideration at least 120 days before the requested

effective date and conform to the following requirements:

(1) The application, including a table of contents must:

(i) Be submitted to the Associate Administrator for Hazardous Materials Safety (Attention: Special Permits, PHH–31), Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001;

(ii) Be submitted with any attached supporting documentation by facsimile (fax) to: (202) 366–3753 or (202) 366–3308; or

(iii) Be submitted by electronic mail (e-mail) to: *Specialpermits@dot.gov;* or on-line at: *http://www.phmsa.dot.gov/hazmat/regs/sp-a*.

(2) The application must state the name, mailing address, physical address(es) of all known locations where the special permit will be used, e-mail address (if available), and telephone number of the applicant. If the applicant is not an individual, the application must state the company name, mailing address, physical address(es) of all known locations where the special permit will be used, e-mail address (if available), and telephone number of an individual designated as the point of contact for the applicant for all purposes related to the application; the company Chief Executive Officer (CEO) or president; and the Dun and Bradstreet's Data Universal Numbering System (D–U–N–S) identifier.

(3) If the applicant is not a resident of the United States, in addition to the information listed in paragraph (a)(2) of this section, the application must identify and designate an agent for service in accordance with § 105.40 of this part.

(4) For a manufacturing special permit, in addition to the information listed in paragraph (a)(2) of this section, the application must state the name and street address of each of the facilities of the applicant where manufacturing under the special permit will occur, and the symbol of the packaging manufacturer ("M" number), if applicable.

(5) For persons required to be registered in accordance with subpart F or G of this part, in addition to the information listed in paragraph (a)(2) of this section, the application must provide the registration number or the name of the company to which the registration number is assigned if different from the applicant. For persons not required to be registered in accordance with Subpart F or G of this part, in addition to the information listed in paragraph (a)(2) of this section, the application must provide a statement indicating that registration is not required.

(b) *Confidential treatment.* To request confidential treatment for information contained in the application, the applicant must comply with § 105.30(a).

(c) *Description of special permit proposal.* The application must include the following information that is relevant to the special permit proposal:

(1) A citation of the specific regulation from which the applicant seeks relief;

(2) The proposed mode or modes of transportation, including a description of all operational controls required for the mode or modes of transportation;

(3) A detailed description of the proposed special permit (e.g., alternative packaging, test, procedure, activity, or hazard communication, including marking and labeling requirements) including, as appropriate, written descriptions, drawings, flow charts, plans and other supporting documents;

(4) A specification of the proposed duration or schedule of events for which the special permit is sought;

(5) A statement outlining the applicant's basis for seeking relief from compliance with the specified regulations and, if the special permit is requested for a fixed period, a description of how compliance will be achieved at the end of that period. For transportation by air, a statement outlining the reason(s) the hazardous material is being transported by air if other modes are available;

(6) If the applicant seeks emergency processing specified in § 107.117, a statement of supporting facts and reasons;

(7) Identification and description, including the quantity, of the hazardous materials planned for transportation under the special permit;

(8) Description of each packaging, including specification or special permit number, as applicable, to be used in conjunction with the requested special permit;

(9) For alternative packagings, documentation of quality assurance controls, package design, manufacture, performance test criteria, in-service performance and service-life limitations;

(10) An estimate of the number of operations expected to be conducted or number of shipments to be transported under the special permit;

(11) An estimate of the number of packagings expected to be manufactured under the special permit, if applicable;

(12) A statement as to whether the special permit being sought is related to a compliance review, inspection activity, or enforcement action;

(13) When a Class 1 material is forbidden for transportation by aircraft except under a special permit (*see* Columns 9A and 9B in the table in 49 CFR 172.101), an applicant for a special permit to transport such Class 1 material on passenger-carrying or cargo-only aircraft with a maximum certificated takeoff weight of less than 12,500 pounds must certify that no person within the categories listed in 18 U.S.C. 842(i) will participate in the transportation of the Class 1 material.

(d) *Justification of special permit proposal.* The application must demonstrate that a special permit achieves a level of safety at least equal to that required by regulation, or if a required safety level does not exist, is consistent with the public interest. At a minimum, the application must provide the following:

(1) Information describing all relevant shipping and incident experience of which the applicant is aware that relates to the application; and

(2) A statement identifying any increased risk to safety or property that may result if the special permit is granted, and a description of the measures to be taken to address that risk; and

(3) Either:

(i) Substantiation, with applicable analyses, data or test results (e.g., failure mode and effect analysis), that the proposed alternative will achieve a level of safety that is at least equal to that required by the regulation from which the special permit is sought; or

(ii) If the regulations do not establish a level of safety, an analysis that identifies each hazard, potential failure mode and the probability of its occurrence, and how the risks associated with each hazard and failure mode are controlled for the duration of an activity or life-cycle of a packaging.

6. Revise § 107.107 to read as follows:

§ 107.107 Application for party status.

(a) Any person eligible to apply for a special permit may apply to be a party to an application or an existing special permit, other than a manufacturing special permit.

(b) Each application filed under this section must conform to the following requirements:—

(1) The application must:

(i) Be submitted to the Associate Administrator for Hazardous Materials Safety (Attention: Special Permits, PHH–31), Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East

Building, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001;

(ii) Be submitted with any attached supporting documentation by facsimile (fax) to: (202) 366–3753 or (202) 366–3308; or

(iii) Be submitted by electronic mail (e-mail) to: *Specialpermits@dot.gov,* or on-line at: *http://www.phmsa.dot.gov/hazmat/regs/sp-a.*

(2) The application must identify by number the special permit application or special permit to which the applicant seeks to become a party.

(3) The application must state the name, mailing address, physical address(es) of all known locations where the special permit will be used, e-mail address (if available), and telephone number of the applicant. If the applicant is not an individual, the application must state the company name, mailing address, physical address(es) of all known locations where the special permit will be used, e-mail address (if available), and telephone number of an individual designated as the point of contact for the applicant for all purposes related to the application; the company Chief Executive Officer (CEO) or president; and the Dun and Bradstreet's Data Universal Numbering System (D–U–N–S) identifier.

(4) If the applicant is not a resident of the United States, the application must identify and designate an agent for service in accordance with § 105.40 of part.

(5) For a Class 1 material that is forbidden for transportation by aircraft except under a special permit (*see* Columns 9A and 9B in the table in 49 CFR 172.101), an applicant for party status to a special permit to transport such Class 1 material on passenger-carrying or cargo-only aircraft with a maximum certificated takeoff weight of less than 12,500 pounds must certify that no person within the categories listed in 18 U.S.C. 842(i) will participate in the transportation of the Class 1 material.

(6) The applicant must certify that the applicant has not previously been granted party status to the special permit. If the applicant has previously been granted party status, the applicant must follow renewal procedures as specified in § 107.109.

(c) The Associate Administrator may grant or deny an application for party status in the manner specified in § 107.113(e) and (f) of this subpart.

(d) A party to a special permit is subject to all terms of that special permit, including the expiration date. If a party to a special permit wishes to renew party status, the special permit renewal procedures set forth in § 107.109 apply.

7. Revise § 107.109 to read as follows:

§ 107.109 Application for renewal.

(a) Each application for renewal of a special permit or party status to a special permit must conform to the following requirements:

(1) The application must:

(i) Be submitted to the Associate Administrator for Hazardous Materials Safety (Attention: Special Permits, PHH–31), Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001;

(ii) Be submitted with any attached supporting documentation submitted in an appropriate format by facsimile (fax) to: (202) 366–3753 or (202) 366–3308; or

(iii) Be submitted by electronic mail (e-mail) to: *Specialpermits@dot.gov;* or on-line at: *http://www.phmsa.dot.gov/hazmat/regs/sp-a.*

(2) The application must identify by number the special permit for which renewal is requested.

(3) The application must state the name, mailing address, physical address(es) of all known new locations not previously identified in the application where the special permit will be used and all locations not previously identified where the special permit was used, e-mail address (if available), and telephone number of the applicant. If the applicant is not an individual, the application must state the name, mailing address, physical address(es) of all known new locations not previously identified in the application where the special permit will be used and all locations not previously identified where the special permit was used, e-mail address (if available), and telephone number of an individual designated as the point of contact for the applicant for all purposes related to the application; the company Chief Executive Officer (CEO) or president; and the Dun and Bradstreet's Data Universal Numbering System (D–U–N–S) identifier.

(4) The application must include either a certification by the applicant that the original application, as it may have been updated by any application for renewal, remains accurate (*e.g.* all section references, shipping descriptions, etc.) and complete; or include an amendment to the previously submitted application as is necessary to update and assure the accuracy and completeness of the application, with certification by the applicant that the application as amended is accurate and complete.

(5) The application must include a statement describing all relevant operational, shipping, and incident experience of which the applicant is aware in connection with the special permit since its issuance or most recent renewal. If the applicant is aware of no incidents, the applicant must so certify. When known to the applicant, the statement must indicate the approximate number of shipments made or packages shipped, as applicable, the number of shipments or packages involved in any loss of contents, including loss by venting other than as authorized in subchapter C.

(6) When a Class 1 material is forbidden for transportation by aircraft, except under a special permit (see Columns 9A and 9B in the table in 49 CFR 172.101), an application to renew a special permit to transport such Class 1 material on passenger-carrying or cargo-only aircraft with a maximum certificated takeoff weight of less than 12,500 pounds must certify that no person within the categories listed in 18 U.S.C. 842(i) will participate in the transportation of the Class 1 material.

(7) If the renewal is requested after the expiration date of the special permit, the following information is required:

(i) The reason the special permit authorization was allowed to expire;

(ii) A certification statement that no shipments were transported after the expiration date of the special permit, or a statement describing any transportation under the terms of the special permit after the expiration date, if applicable; and

(iii) A statement describing the action(s) the applicant will take to ensure future renewal is requested before the expiration date.

(8) If no operations or shipments have been made since the issuance or renewal of the special permit, the applicant must provide specific justification as to why the special permit should be renewed.

(b) If at least 60 days before an existing special permit expires the holder files an application for renewal that is complete and conforms to the requirements of this section, the special permit will not expire until final administrative action on the application for renewal has been taken.

8. In § 107.113, revise paragraphs (a), (d), (f)(5), (g), and (h) to read as follows:

§ 107.113 Application processing and evaluation.

(a) The Associate Administrator reviews an application for special permit, modification of special permit, party to special permit, or renewal of a special permit to determine if it is

complete and conforms with the requirements of this subpart. This determination will be made within 30 days of receipt of the application for special permit, modification of special permit, or party to special permit, and within 15 days of receipt of an application for renewal of a special permit. If an application is determined to be incomplete, the applicant is informed of the reasons.

* * * * *

(d) During the processing and evaluation of an application, the Associate Administrator may conduct an on-site review or request additional information from the applicant. A failure to cooperate with an on-site review may result in the application being deemed incomplete and subsequently being denied. If the applicant does not respond to a written or electronic request for additional information within 30 days of the date the request was received, the application may be deemed incomplete and denied. However, if the applicant responds in writing or by electronic means within the 30-day period requesting an additional 30 days within which it will gather the requested information, the Associate Administrator may grant the 30-day extension.

* * * * *

(f) * * *

(5) The applicant is fit to conduct the activity authorized by the special permit. This assessment may be based on information in the application, prior compliance history of the applicant, and other information available to the Associate Administrator.

* * * * *

(g) An applicant is notified in writing or by electronic means whether the application is granted or denied. A denial contains a brief statement of reasons.

(h) The initial special permit terminates according to its terms or, if not otherwise specified, 24 months from the date of issuance. A subsequent renewal of a special permit terminates according to its terms or, if not otherwise specified, 48 months after the date of issuance. A grant of party status to a special permit, unless otherwise stated, terminates on the date that the special permit expires.

* * * * *

9. In § 107.117, revise paragraph (d)(5) to read as follows:

§ 107.117 Emergency processing.

* * * * *

(d) * * *

(5) *Water Transportation:* Chief, Hazardous Materials Standards Division, Office of Operating and Environmental Standards, U.S. Coast Guard, U.S. Department of Homeland Security, Washington, DC 20593–0001; (202) 372–1426 (day); 1–800–424–8802 (night).

* * * * *

10. Revise § 107.121 to read as follows:

§ 107.121 Modification, suspension or termination of special permit or grant of party status.

(a) The Associate Administrator may modify a special permit, or grant of party status on finding that:

(1) Modification is necessary so that the special permit reflects current statutes and regulations; or

(2) Modification is required by changed circumstances to meet the standards of § 107.113(f).

(b) The Associate Administrator may modify, suspend or terminate a special permit or grant of party status, as appropriate, on finding that:

(1) Because of a change in circumstances, the special permit, or party status no longer is needed or no longer would be granted if applied for;

(2) The application contained inaccurate or incomplete information, and the special permit, or party status would not have been granted had the application been accurate and complete;

(3) The application contained deliberately inaccurate or incomplete information; or

(4) The holder or party knowingly has violated the terms of the special permit or an applicable requirement of this chapter, in a manner demonstrating the holder or party is not fit to conduct the activity authorized by the special permit.

(c) Except as provided in paragraph (d) of this section, before a special permit, or grant of party status is modified, suspended or terminated, the Associate Administrator notifies the holder or party in writing or by electronic means of the proposed action and the reasons for it, and provides an opportunity to show cause why the proposed action should not be taken.

(1) Within 30 days of receipt of notice of the proposed action, the holder or party may file a response in writing or by electronic means that shows cause why the proposed action should not be taken.

(2) After considering the holder's or party's response, or after 30 days have passed without response since receipt of the notice, the Associate Administrator notifies the holder or party in writing or by electronic means of the final decision with a brief statement of reasons.

(d) The Associate Administrator, if necessary to avoid a risk of significant harm to persons or property, may in the notification declare the proposed action immediately effective.

11. Revise § 107.123 to read as follows:

§ 107.123 Reconsideration.

(a) An applicant for special permit, a special permit holder, or an applicant for party status to a special permit may request that the Associate Administrator reconsider a decision under § 107.113(g), § 107.117(e) or § 107.121(c) of this part. The request must—

(1) Be in writing or by electronic means and filed within 20 days of receipt of the decision;

(2) State in detail any alleged errors of fact and law;

(3) Enclose any additional information needed to support the request to reconsider; and

(4) State in detail the modification of the final decision sought.

(b) The Associate Administrator grants or denies, in whole or in part, the relief requested and informs the requesting person in writing or by electronic means of the decision. If necessary to avoid a risk of significant harm to persons or property, the Associate Administrator may, in the notification, declare the action immediately effective.

12. In § 107.125, revise paragraphs (a)(1) and (c) to read as follows:

§ 107.125 Appeal.

(a) * * *

(1) Be in writing or by electronic means and filed within 30 days of receipt of the Associate Administrator's decision on reconsideration; (2) State in detail any alleged errors of fact and law;

* * * * *

(c) The Administrator grants or denies, in whole or in part, the relief requested and informs the appellant in writing or by electronic means of the decision. The Administrator's decision is the final administrative action.

* * * * *

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIOINS

13. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45 and 1.53; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub. L. 104–134 section 31001.

14. Revise the definition for "Special permit" to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Special permit means a document issued by the Associate Administrator, or other designated Department official, under the authority of 49 U.S.C. 5117 permitting a person to perform a function that is not otherwise permitted under subchapter A or C of this chapter, or other regulations issued under 49 U.S.C. 5101 *et seq.* (*e.g.,* Federal Motor Carrier Safety routing requirements).

* * * * *

Issued in Washington, DC, on July 19, 2010, under authority delegated in 49 CFR part 106.

R. Ryan Posten,

Senior Director for Hazardous Materials Safety.

[FR Doc. 2010–18142 Filed 7–26–10; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 171 and 177

[Docket No. PHMSA–2005–22987 (HM–238)]

RIN 2137–AE06

Hazardous Materials: Requirements for the Storage of Explosives During Transportation

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: PHMSA, in coordination with the Federal Motor Carrier Safety Administration (FMCSA), is proposing to enhance existing attendance requirements for explosives stored during transportation by designating the National Fire Protection Association (NFPA) standard 498 as the Federally approved standard for the construction and maintenance of safe havens used for unattended storage of Division 1.1, 1.2, and 1.3 explosives.

DATES: Comments must be received by September 27, 2010.

ADDRESSES: You may submit comments identified by the docket number PHMSA–2005–22987 by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Operations, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* To Docket Operations; Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number for this rule. Note that all comments received will be posted without change, including any personal information provided. Please *see* the discussion of the Privacy Act below.

Docket: For access to the docket to read background documents and comments received, go to *http://www.regulations.gov* at any time or to Room W12–140, Ground Level, Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ben Supko, Office of Hazardous Materials Standards, (202) 366–8553, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Current Federal Requirements Applicable to Explosives Stored During Transportation

A. Hazardous Materials Regulations (HMR), 49 CFR Parts 171–180

Transportation includes the storage of materials "incident to the[ir] movement." (49 U.S.C. 5102(13)). The HMR require hazardous materials stored incidental to movement to meet all applicable requirements for packaging, hazard communication (including shipping papers and emergency response information), and handling that apply when shipments are actually moving in transportation. The HMR include specific carrier requirements for transportation of hazardous materials by rail, air, vessel, and highway, including requirements for loading and unloading, blocking and bracing, stowage, segregation, and compatibility (49 CFR parts 174, 175, 176, and 177, respectively).

Explosive (Class 1) materials are among the most stringently regulated hazardous materials under the HMR. The HMR define a Class 1 material as any substance or article that is designed to function by explosion—that is, an extremely rapid release of gas or heat—or one that, by chemical reaction within itself, functions in a similar manner even if not designed to do so (49 CFR 173.50(a)). Class 1 materials are divided into six divisions depending on the degree and nature of the explosive hazard, as shown in the following table (49 CFR 173.50(b)).

Division	Hazard	Description of hazard	Examples
1.1	Mass explosion hazard	Instantaneous explosion of virtually the entire package or shipment.	grenades, mines, and nitroglycerin.
1.2	Projection hazard without a mass explosion hazard.	Fragments projected outward at some distance	rockets and warheads.
1.3	Fire hazard and either a minor projection hazard or minor blast hazard or both but not a mass explosion hazard.	Fire and possible projection of fragments outward at some distance.	projectiles, signal smoke, and tracers for ammunition.
1.4	Minor explosion hazard	Explosion largely confined to the package and no projection of fragments of any appreciable size or range is expected.	ammunition, airbags, and model rocket motors.
1.5	Very insensitive explosive	Mass explosion hazard, but low probability of initiation or detonation while in transportation.	blasting agents and ammonia-nitrate fuel oil mixture.
1.6	Extremely insensitive article	Negligible probability of accidental initiation or propagation.	insensitive article and military.

The HMR prohibit transportation of an explosive unless it has been examined, classed, and approved by PHMSA's Associate Administrator for Hazardous Materials Safety (49 CFR 173.51). Separate provisions apply to the transportation of new explosives for examination or developmental testing, explosives approval by a foreign government, small arms cartridges, and fireworks manufactured in accordance with APA Standard 87–1 (49 CFR 173.56). Each approval granted by the Associate Administrator contains packaging and other transportation provisions that must be followed by a person who offers or transports the explosive material. In addition to the specific requirements in the approval, the HMR require explosives to be marked and labeled and/or placarded to indicate the explosive hazard. Explosives shipments generally must be accompanied by shipping papers and emergency response information. The same requirements apply to the transportation of hazardous materials whether the materials are incidentally stored or actually moving. In addition, any person who offers for transportation in commerce or transports in commerce a shipment of explosives for which placarding is required under the HMR must develop and implement security plans (49 CFR 172.800(b)). A security plan must include an assessment of possible transportation security risks for the covered shipments and appropriate measures to address the identified risks. At a minimum, a security plan must include measures to prevent unauthorized access to shipments and to address personnel and en route security (49 CFR 172.802(a)). The en route security element of the plan must include measures to address the security risks of the shipment while it is moving from its origin to its destination, including shipments stored incidental to movement (49 CFR 172.802(a)(3)). Thus, a facility at which a shipment subject to the security plan requirements is stored during transportation must itself be covered by the security plan. Security plan requirements are performance-based to provide shippers and carriers with the flexibility necessary to develop a plan that addresses a person's individual circumstances and operational environment.

B. Federal Motor Carrier Safety Regulations (FMCSRs), 49 CFR Parts 350–397

Motor carriers that transport hazardous materials in commerce must also comply with the FMCSRs addressing driver qualifications; vehicle parts and accessories; driving requirements and hours of service; vehicle inspection, repair and maintenance; driving and parking rules for the transportation of hazardous materials; hazardous materials safety permits; and written route plans. The FMCSRs include requirements for storage of explosives incidental to movement. In accordance with the FMCSRs, a motor vehicle that contains Division 1.1, 1.2, or 1.3 explosives must be attended at all times, including during incidental storage, unless the motor vehicle is located on the motor carrier's property, the shipper or consignee's property, or at a safe haven (49 CFR 397.5).

Under the FMCSRs, a safe haven is an area specifically approved in writing by Federal, State, or local government authorities for the parking of unattended vehicles containing Division 1.1, 1.2, and 1.3 explosive materials (49 CFR 397.5(d)(3)). The decision as to what constitutes a safe haven is generally made by the local authority having jurisdiction over the area. The FMCSRs do not include requirements for safety or security measures for safe havens.

In addition, the FMCSRs require any person who transports more than 25 kg (55 pounds) of a Division 1.1, 1.2, or 1.3 material or an amount of a Division 1.5 (explosive) material that requires placarding under Subpart F of Part 172 of the HMR to hold a valid safety permit (49 CFR 385.403(b)). Persons holding a safety permit and transporting Division 1.1, 1.2, and 1.3 materials must prepare a written route plan that meets the requirements of § 397.67(d), which avoids heavily populated areas, places where crowds are assembled, tunnels, narrow streets, or alleys.

Finally, a motor vehicle containing a Division 1.1, 1.2, or 1.3 explosive may not be parked on or within five feet of the traveled portion of a public highway or street; on private property without the consent of the person in charge of the property; or within 300 feet of a bridge, tunnel, dwelling, or place where people work or congregate unless for brief periods when parking in such locations is unavoidable (49 CFR 397.7(a)).

II. Previous Rulemaking Activity in This Matter

A. July 16, 2002 ANPRM (HM–232A)

On July 16, 2002, FMCSA and PHMSA's predecessor agency (the Research and Special Programs Administration) published an advance notice of proposed rulemaking under Docket HM–232A (67 FR 46622) entitled "Security Requirements for Motor Carriers Transporting Hazardous Materials." In the ANPRM, we examined the need for enhanced security requirements for motor carrier transportation of hazardous materials. We requested comments on the issue of storage of explosives at safe havens, as well as a variety of security measures generally applicable to a broader range of hazardous materials.

B. November 16, 2005 ANPRM (HM–238)

Some of the comments submitted in response to the July 16, 2002 ANPRM contained recommendations that the current requirements applicable to the storage of explosives during transportation should be reevaluated to ensure that they adequately account for potential safety and security risks. As a result, PHMSA and FMCSA initiated this rulemaking to evaluate current standards for the storage of explosives in transportation. We published a new ANPRM on November 16, 2005 (70 FR 69493), in which we summarized government and industry standards for explosives storage (which vary greatly by mode of transportation, type of explosives, and whether the explosive is in transportation) and requested comments on a list of concerns regarding the risks posed by the storage of explosives while in transportation. The November 16, 2005 ANPRM is accessible through the Federal eRulemaking Portal (*http://www.regulations.gov*), at docket number PHMSA–2005–22987).

In the ANPRM, PHMSA solicited comments concerning measures to reduce the risks posed by the storage of explosives while they are in transportation and whether regulatory action is warranted. We invited commenters to address issues related to security and storage of other types of high-hazard materials. In addition, the ANPRM provided detailed information addressing the following regulations and industry standards:

- United States Coast Guard Requirements applicable to explosives storage (33 CFR Parts 101–126)
- Bureau of Alcohol, Tobacco, Firearms, and Explosives Regulations for explosives in commerce (27 CFR Part 555)
- National Fire Protection Association (NFPA) 498, "Standard for Safe Havens and Interchange Lots for Vehicles Transporting Explosives" (NFPA 498)
- Institute of Makers of Explosives Safety Library Publication No. 27, "Security in Manufacturing, Transportation, Storage and Use of Commercial Explosives"

• Surface Deployment and Distribution Command, "SDDC Freight Traffic Rules Publication NO. 1C (MFTRP NO. 1C)"

C. July 3, 2008 ANPRM and Public Meeting

On July 3, 2008 PHMSA published a further ANPRM under this docket to re-open the comment period, and announce a public meeting (73 FR 38164) to provide an additional opportunity for interested persons to submit more focused comments on safety issues associated with the storage of explosives transported by highway and standards for establishing, approving, and maintaining safe havens for the temporary storage of explosives during motor vehicle transportation. As discussed above, there are currently no minimum or uniform criteria for Federal, State, or local governments to rely on for the approval of safe havens.

III. Comments on the July 3, 2008 ANPRM

A. Public Meeting

Representatives of the following organizations and government agencies attended the public meeting held on August 7, 2008 (a transcript of the public meeting is accessible through the Federal eRulemaking Portal (*http://www.regulations.gov*):

National Volunteer Fire Council,
Commercial Vehicle Safety Alliance (CVSA),
BNA Daily Environmental Report,
Baker Hughes Corporation,
Sporting Arms and Ammunition Manufacturers Association,
Institute of Makers of Explosives (IME),
Orica, USA,
Science Applications International Corporation,
Automotive Occupant Restraint Council (Autoliv Inc.),
Delphi Corporation,
National Fire Protection Association,
Bureau of Alcohol, Tobacco, Firearms & Explosives, Department of Justice (ATF),
Explosives Safety Board, Department of Defense (DDESB),
Office of Packaging and Transportation Safety, Department of Energy,
Surface Deployment and Distribution Command.

Under FMCSA regulations a motor vehicle which contains a Division 1.1, 1.2, or 1.3 material must be attended at all times by the driver or a qualified representative of the motor carrier that operates it or be parked in a safe haven. A safe haven is an area specifically approved in writing by Federal, State, or local government authorities for the parking of unattended vehicles containing Division 1.1, 1.2, or 1.3 explosive materials. Except for the fact that States select and approve locations where safe havens can be placed, there are no specific safety standards provided in the FMCSRs for safe havens. Participants at the public meeting generally noted that safe havens are not generally available for use by commercial carriers of explosives and that the State/local government approval process can be difficult, and supported adoption of an industry consensus standard, such as NFPA 498.

One solution discussed in the public meeting is the incorporation by reference of an existing, widely used, and accepted standard—such as NFPA 498. According to public meeting participants, NFPA 498 is straightforward, designed for highway transportation, and intended to enhance FMCSA standards. The key focus of NFPA 498 is to provide safety guidelines, such as vehicle inspection, five feet space between trailers, notification of local emergency response of the type and quantity of materials authorized, and no cutting or welding repairs, firearms, or smoking allowed. In addition, NFPA 498 provides some very general security requirements such as a requirement for a security guard or surveillance equipment to protect a safe haven from trespassers.

During the meeting, CVSA noted that its 1990 report entitled "Recommended National Criteria for Establishment and Operation of Safe Havens" (a copy is in the docket) was the most recent effort to catalogue safe havens in the United States. In a brief summary of that report, CVSA stated that the approval process for a safe haven varied greatly between States and even towns of a single State. Further, CVSA indicated that the system in place at the time of the report was susceptible to arbitrary and opaque decisions concerning the designation of safe havens, with little or no provision for public participation or comment.

CVSA suggested that relying on State or local governments to designate and operate safe havens has not been a successful strategy. Instead, private entities use their own facilities to safely store explosives during transportation, but do not make those facilities generally available because of liability concerns. CVSA stated that DOD operates safe havens for military shipments, but that these facilities are not available to commercial carriers.

IME pointed out that the sensitivity of DOD munitions dictates stringent storage standards, but the same standards would likely be excessive for commercial products. IME also suggested that because the explosives industry has implemented a variety of measures to address storage and attendance issues, such as dual drivers, a nationwide network of safe havens is not necessary. Rather, there appears to be a need for safe havens near port locations or transportation end points, such as Seattle, Washington; Savannah, Georgia; Louisville, Kentucky; anywhere in West Virginia; and Morgan, Louisiana.

ATF emphasized that the location of a safe haven is critical to ensure both safety and security, noting that a facility should be removed to the extent possible from populated areas and suggesting that minimum distances should be considered. In response, IME recommended a risk analysis approach for locating safe havens, using tools such as the Institute of Makers of Explosives Safety Analysis for Risk (IMESAFR) software developed by IME. According to IME, IMESAFR is a probabilistic risk assessment tool used to calculate risk to personnel from explosives facilities. As detailed by IME, the system provides a sophisticated methodology for determining appropriate safety measures, because it assesses the unique characteristics of a particular site. DDESB suggested the use of a risk assessment approach that considers ATF quantity distances. IME discussed the differences between transportation storage and permanent storage and suggested that while the ATF requirements for the permanent storage of explosives have proven to be effective in ensuring the protection of the general public, those requirements may not be necessary or practical for temporary storage facilities.

B. Written Comments

We received written comments in response to the July 3, 2008 ANPRM from the following five entities (available for review through the Federal eRulemaking Portal (*http://www.regulations.gov*):

Commenter	Document No.
R & R Trucking, Inc. (R & R Trucking)	PHMSA–2005–22987–0027

Commenter	Document No.
Surface Deployment and Distribution Command, (SDDC).	PHMSA–2005–22987–0028
Sporting Arms and Ammunition Manufacturers Institute, Inc (SAAMI).	PHMSA–2005–22987–0030
Boyle Transportation	PHMSA–2005–22987–0031
Institute of Makers of Explosives (IME)	PHMSA–2005–22987–0032

Generally, the comments indicate that a lack of consistent regulations for the storage of explosives creates a safety concern. However, the comments do not support a prescriptive solution that could limit transportation options or create an undue burden on a particular mode of transportation. Commenters suggest that an effective approach would be one that promotes flexibility and provides several storage options for explosives while they are in transportation.

As indicated above, the intention of the July 3, 2008 ANPRM was to gather information from commenters to help us make a determination regarding further regulatory action. The ANPRM posed several questions and solicited commenter response. Below we paraphrase the 18 questions asked in the ANPRM, provide a summary of the comments applicable to the safe transportation of explosives, and provide our response.

(1) Are safe havens currently available? How many? Where are they located?

Boyle Transportation indicates that there are no commercial safe havens that are available to any motor carrier or transporter of explosives. Boyle Transportation notes that the Department of Defense (DOD) provides secure holding areas at military facilities (some sites require attendance by drivers while parked) but only for motor carriers that are transporting DOD explosives shipments, and that a few motor carriers and explosives manufacturers have facilities for temporary parking of trailers loaded with explosives.

IME states that it has only anecdotal information on the location and operational state of third-party safe havens. IME indicates that given the absence of standards for these sites, this information is likely not reliable, with the exception of sites meeting DOD standards.

R&R Trucking states that public safe havens are not currently available. The safe havens utilized by R&R Trucking are private facilities owned and operated by R&R Trucking.

Sporting Arms and Ammunition Manufacturers Institute, Inc. (SAAMI) indicates that safe havens generally do not exist and references the report CVSA prepared as supporting documentation.

(2) Would a network of safe havens provide a safety benefit?

Boyle Transportation indicates that a network of safe havens would provide a safety benefit. IME suggests safe havens provide a benefit if they are operated in accordance with risk-based performance standards and located at cargo delivery chokepoints, such as ports. R&R Trucking states that safe havens would provide a safety benefit for emergency situations and hours-of-service relief.

SAAMI agrees that a network of safe havens would provide a safety benefit, but notes that there are other options that would obviate the need for such network, including short distance hauling or the use of dual drivers. SAAMI states that safe havens are intended as one alternative to satisfy the applicable attendance requirements for Division 1.1, 1.2, and 1.3 explosives, but suggests that establishment of an extensive safe havens network for routine use by commercial motor carriers likely would not provide a sufficient safety benefit to offset associated costs.

(3) What is the value of a rest stop for the vehicle and the driver?

Boyle Transportation states that safe havens are necessary since most shippers and consignees do not operate 24 hours a day, seven days a week and suggests that without a safe haven either en route or at the destination for arrival during non-working hours, even team drivers would eventually run out of available hours of service when complying with 49 CFR 397.5.

IME and R&R Trucking note rest stops enable a driver to comply with hours-of-service requirements and to address fuel, food, rest, and other personal needs. According to IME, the main benefit of a safe haven, given the safety and security preference for team drivers of Division 1.1, 1.2, and 1.3 materials to meet attendance requirements for long-haul (greater than hours-of-service) trips, is to serve as a buffer between shipping time, transit time and delivery time. IME suggests that a safe haven can be used to stage vehicles prior to delivery, thereby avoiding situations where vehicles must remain on highways or parked at various locations with unknown risk and response capabilities. SAAMI suggests that existing attendance requirements should be modified to allow short absences, *e.g.* for fueling, eating or using a restroom.

(4) Would companies use safe havens or continue using driver teams? Does one promote safety more than the other?

Boyle Transportation notes that safe havens are not a replacement for team drivers since team drivers are required to provide constant attendance and surveillance and suggests that the use of team drivers promotes safety since it is impractical to expect that a single driver would always be able to reach a safe haven without having to stop en route and temporarily leave the motor vehicle unattended. IME agrees that companies will continue to prefer team drivers to meet attendance requirements for Division 1.1, 1.2, and 1.3 materials for trips greater than one driver's hours-of-service period because teams provide faster delivery, better use of equipment, less fuel consumption and enhanced security while the vehicle is in motion or temporarily parked at a rest stop. Additionally, driver teams are healthier and less likely to have accidents than driving alone. IME suggests that there is a need for incidental storage locations as a buffer between shipping time, transit time, and delivery time.

R&R Trucking states that generally motor carriers use a single driver for local deliveries without a required layover; for longer deliveries, whether a single driver or a team driver is used. R&R Trucking suggests that the value of a safe haven with single or team drivers is based on its location and availability and further that providing relief from current attendance requirements would promote safety. SAAMI agrees that motor carriers will continue to utilize team drivers and short-haul deliveries to comply with hours-of-service and attendance requirements. In addition, SAAMI contends that there are significant liability issues associated with the use of safe havens open to all operators; SAAMI does not consider the concept viable.

(5) Would the adoption of standards such as NFPA 498 promote the development of safe havens?

Boyle Transportation answers "possibly." However, it indicates that DOD accounts for a majority of explosives shipments and suggests that PHMSA should work with DOD and the Transportation Security Administration to establish consistent transport rules for explosives and criteria for safe havens.

IME indicates that to enable motor carriers to meet the attendance requirement of 49 CFR 397.5, it supports inclusion in the HMR of performance standards based on those contained in Chapter 4 of NFPA 498 as a replacement for the current requirement for a location approved by State, local, or Federal authorities. IME indicates that it supports providing notice to States and localities that explosives will temporarily be stored at a safe haven in their jurisdiction and requiring a safe haven to conform with local zoning ordinances, provided such requirements would not act as de facto bans on explosives storage in a given jurisdiction. IME suggests that PHMSA-adopted HMR standards that are backed by the agency's preemption authority in 49 U.S.C. 5125 would inject a degree of certainty into the process and could encourage investment in such properties. R&R Trucking agrees that adoption of a DOT standard could encourage some States to designate safe havens. Similarly, SAAMI indicates that safe havens might expand to a limited degree, *e.g.,* near high volume areas of mining or ports, if the requirements for authorization, operation and site selection were standardized and suggests that performance standards could be added to PHMSA regulations to aid those interested in establishing a safe haven.

(6) Do facilities that are being used as safe havens meet the requirements of NFPA 498?

Boyle Transportation, R&R Trucking, and SAAMI all state that some safe havens may meet the NFPA 498 standards, while others conform with DOD standards, or local standards or requirements. IME suggests that DOD-approved safe havens exceed the standard provided in NFPA 498.

(7) Would you expect companies to convert existing facilities that meet NFPA 498 into safe havens?

Boyle Transportation answered "yes," if PHMSA issues regulations that incorporate NFPA 498. IME and R&R Trucking suggest that the decision to convert existing facilities to meet NFPA 498 requirements would be driven by market considerations.

(8) How can PHMSA improve on the safety measures provided in NFPA 498? Should a regulation for safe havens include aggregation limits, time limits, *etc.*?

R&R Trucking states that the NFPA 498 standard is satisfactory, but that a carrier or safe haven operator should be permitted to improve on these standards as they see fit. SAAMI suggests that a safe haven regulation should include both time and aggregation limits with some flexibility for the facility to accept vehicles that would exceed the aggregation limits if refusing entry would increase a safety risk.

IME opposes per vehicle aggregation limits, suggesting that such limits would have the effect of putting more vehicles on the road, adding to congestion, wasting fuel, and increasing the opportunity for accident or mischief. According to IME, the ability to fully load a truck means fewer trucks, fewer trips, fewer miles traveled, and less exposure to accidents or incidents. Further, IME suggests that any site aggregation and/or time limits should be flexible in terms of system-wide impact—turning vehicles away because of the aggregation limits, when they need a place to stop, or pushing vehicles out when time limits expire when they cannot make a delivery will just put vehicles on the road, adding more miles, more exposure, more pressure to remove placards, or other undesirable outcomes. IME concludes that if time/aggregation limits are established and exceeded, local emergency response authorities should be notified.

(9) If we incorporate by reference NFPA 498 into the HMR, should we expect a drop in the number of carriers similar to what occurred when DOD implemented SDDS MFTRP No. 1C?

The commenters generally do not expect that the number of carriers transporting explosives would drop if PHMSA adopted a safe haven standard based on NFPA 498 because carriers primarily rely on dual drivers or short hauls to meet attendance requirements.

IME indicates that the only way PHMSA would see a drop in carriers would be if a carrier relied on a "safe haven" as the only means to meet attendance requirements for the transportation of Division 1.1, 1.2, and 1.3 materials and the safe haven was eliminated because the site did not meet the new requirement. IME suggests that the drop in carriers that occurred with the implementation of SDDS MFTRP No. 1C resulted because the DOD standard is more than a site standard; it requires operational controls for the vehicles and drivers that carriers were unwilling or (unable) to meet. According to IME, adopting NFPA performance-standards would only affect the condition of the site and could result in fewer available safe haven sites rather than fewer carriers.

(10) Would it be more appropriate to align safe havens with the Surface Deployment and Distribution Command (SDDC) MFTRP No. 1C than a consensus standard such as NFPA 498?

The commenters generally agree that the NFPA 498 standard is more appropriate for commercial safe havens and note that it is the standard of choice for fire marshals and fire departments throughout the United States. The commenters suggest that the DOD standard is more stringent than required for commercial shipments and that it would be cost prohibitive to operate a commercial safe haven under the MFTRP. IME suggests that in times of heightened security, DOD should open its military sites to commercial shipments looking for a secure harbor.

(11) What is the impact of eliminating the requirement for safe havens to be approved by Federal, State, or local government officials?

IME indicates that this requirement is arbitrary and subjective and recommends that it should be replaced (not eliminated) with performance standards based on Chapter 4 of NFPA 498. R&R Trucking indicates that it would support a well written regulation that would allow carriers to make a sound business decision to operate safe havens; however, R&R asserts that State and local laws should still prevail on safe haven approval.

(12) Would State and local governments allow the development of safe havens without prior approval?

Commenters are uncertain whether State and local governments would allow the designation of safe havens with prior approval. SAAMI suggests that even without a formal approval process, State and local requirements related to zoning, building permits, and the like would still apply. IME recommends a number of measures to provide State and local governments a role in the process that would attract investment in safe havens while ensuring that State or local requirements do not result in de facto bans on the storage of explosives within a given jurisdiction.

(13) Are zoning restrictions the primary factor restricting the development of safe havens?

All of the commenters agree that zoning restrictions are not insurmountable. Boyle Transportation indicates the initial investment and on-going operating expenses are the primary impediments to safe havens. IME contends that local officials take a "NIMBY" approach to this kind of investment and simply do not approve sites. IME also suggests that another factor inhibiting safe havens investment is the infrequent use of sites as opposed to other uses for such property. SAAMI notes that the primary factors are need and liability, and that an extensive safe haven network is not generally needed. SAAMI states that when there is a local need, it may be related to the operations of a particular company or group of companies in a high volume area. According to SAAMI, a company or group that wishes to establish a safe haven can calculate the cost versus benefit, estimate the risk of the operations for which they are responsible, and work with local governments to obtain building permits in an appropriate location.

(14) What emergency response needs must be taken into consideration when selecting a location for a safe haven and how should they be addressed?

Commenters generally agree that emergency response needs must be considered as part of the process for designating a safe haven. R & R Trucking notes that emergency response needs would vary depending on the location of the safe haven and the type and quantity of explosives authorized at the site. Access to the site, location of local fire department, capability of the local fire department, area to be evacuated in case of a fire, and the effect on the community (including traffic and businesses) in case of a fire or emergency should be considered.

(15) Are areas that house carrier facilities (close proximity to transportation arteries, industrial parks, etc.) sufficient locations for safe havens in terms of emergency response capabilities?

Boyle Transportation, R & R Trucking, and SAAMI all indicate that it would depend on several factors, including: Location of carrier facilities; quantity of explosives involved; and separation distances. According to the commenters each situation would need to be evaluated.

IME indicates that carrier facilities would be sufficient locations. IME indicates also that performance standards based on Chapter 4 of NFPA 498 would minimize the possibility that fire (accidental or intentional) would propagate from one vehicle to another on the site. According to IME, fire is the biggest safety concern for in-transit explosives.

(16) What costs apply to the operation of safe havens?

Commenters generally agree that the costs would include those related to the acquisition of land for the facility, building permits and approvals, construction, and insurance. In addition, commenters note that operating costs would include salaries and training for personnel, taxes and fees, communication, fire suppression materials, office supplies, account auditing, buffer zone maintenance, and overhead (maintenance, electricity, water/sewer, *etc.*)

(17) Would safe haven operators charge a fee to carriers for allowing them to use their safe haven?

Boyle Transportation indicates that the primary issue would be the liability associated with the explosives shipments and suggests that third-party operators would require liability limitations from carriers. IME recommends that a safe haven regulation not include restrictions or limits on fees that would be charged and suggests that the market should dictate the amount of any such fees. R & R Trucking expresses concern that the costs could be prohibitive. SAAMI notes that operators of safe havens likely would be private rather than government entities and would operate a safe haven to support their own operations and not for industry at large due to liability issues.

(18) Is the concept of temporary parking (less than 4 hours) at truck stops and carrier terminals a sufficient alternative to safe havens?

Boyle Transportation indicates that temporary parking at truck stops and carrier terminals is a necessity. In most instances, a long-distance truckload shipment will need to stop at truck stops along the route (for example, the average transportation distance for DOD explosives shipments is nearly 1,000 miles). Carrier terminals are preferable to truck stops since hazardous materials workers at the terminals are trained and familiar with the hazards of the material being transported; also, fueling, change of drivers, and maintenance can be prioritized and accomplished in much less time than if these activities were to be completed at truck stops. Boyle Transportation recommends that carriers that transport explosives should be required to operate at least one safe haven so that there is a safe location for shipments that may exceed temporary parking limits or are frustrated due to the inability of the consignee to receive the freight.

IME indicates that safe havens are an alternative to driver attendance. Explosives vehicles parked temporarily at a truck stop should be attended in accordance with current requirements, and drivers should notify the truck stop operator that the truck is present. IME further states that temporary parking should be permitted only for reasons of food, fuel, and other personal needs. If a truck stop is used as a staging facility, IME recommends that it should meet performance requirements based on those in Chapter 4 of NFPA 498.

SAAMI indicates that in the absence of an extensive safe haven network, drivers must be permitted to use truck stops for rest, fueling, and to meet personal needs. SAAMI recommends that the current attendance requirements should be modified to allow drivers time at a rest stop for such purposes.

General Comments

In addition to answering the specific questions raised in the ANPRM, IME provided additional comments. IME suggests that given the intermodal nature of transportation and distances traveled by some shipments, a system of safe havens, especially where explosives are staged pending intermodal transfers, would provide a useful alternative to other forms of attendance. IME indicates that it does not believe that the current requirement for authorizing safe havens—simply obtaining the approval of a local, State, or Federal authority—is sufficient to ensure that safety and security precautions are in place or to ensure that the safe haven storage option is not arbitrarily denied.

IME expresses concern with existing requirements applicable to explosives storage during transportation:

1. State or local approval of safe havens can, on the one hand, lead to approval of sites without adequate operational, administrative, or engineering controls, and on the other hand, act as a ban when practically no risk exists. PHMSA should revise 49 CFR 397.5(d)(3), to include performance standards for safe havens. Requirements based on Chapter 4 of NFPA 498—Standard for Safe Havens and Interchange Lots for Vehicles Transporting Explosives, edition 2006, National Fire Protection Association

would provide an adequate performance standard for safe havens.

2. There currently is no mechanism under the HMR for reporting thefts or losses. The HMR should either incorporate the ATF requirement on how to report thefts and losses at 27 CFR 555.30(d), or adopt its own theft/loss reporting requirement.

3. The requirement to have an "unobstructed field of view" of the vehicle being attended, set forth in § 397.5(b)(3), should be revised to allow for either in-person or electronic monitoring at safe havens.

IME indicates the risk assessment for a safe haven should take into consideration the probability of an incident on-site (both accidental and intentional), the consequences of such an incident, and the exposure of personnel. There are many acceptable ways in which the risk assessment could be conducted, but IME encourages PHMSA to recognize the software model IMESAFR (Institute of Makers of Explosives Safety Analysis for Risk; IMESAFR was developed by IME in conjunction with APT Research, Inc.) is a probabilistic risk assessment tool used to calculate risk to personnel from explosives facilities, as one, not the only, acceptable means of arriving at a quantitative assessment of the risk. An advantage of quantitative assessment of risk is that it can easily be factored with other risks, options, and alternatives during a system-wide assessment of risk. IME believes that PHMSA should ensure that any information generated, or records maintained, from risk or vulnerability assessments performed in order to meet performance-based standards at safe havens, be protected as security sensitive information pursuant to 49 CFR 1520.7(r). (*See* 49 CFR 15.11).

IV. Discussion of Proposals

PHMSA continues to believe that the lack of Federal standards for safe havens poses a safety concern. Commenters to this rulemaking generally support this view and recommend incorporation of NFPA 498 into the HMR. A summary NFPA 498 is provided below:

1. A safe haven must be located in a secured area that is no closer than 300 ft (91.5m) to a bridge, tunnel, dwelling, building, or place where people work, congregate, or assemble. The perimeter of the safe haven must be cleared of weeds, underbrush, vegetation, or other combustible materials for a distance of 25 ft (7.6 m). The safe haven must be protected from unauthorized persons by warning signs, gates, and patrols. NFPA 498 sections 4.1.1, 4.1.2, 4.1.3, and 4.1.4.

2. When vehicles carrying Class 1 materials are parked in a safe haven, the entrance to the safe haven must be marked with this warning sign:

DANGER
NO SMOKING
NEVER FIGHT EXPLOSIVE FIRES
VEHICLES ON THIS SITE CONTAIN EXPLOSIVES
CALL _____

The sign must be weatherproof with reflective printing, and the letters must be at least 2 in. high. NFPA 498 sections 4.1.4.1 and 4.1.4.2.

3. Watch personnel must be made aware of the explosives, corresponding emergency response procedures, and NFPA 601. NFPA 498 sections 4.1.5 4.1.5.1.

4. A stand-by vehicle in good operating condition that is capable of moving the explosives trailers must be kept at the safe haven. NFPA 498 section 4.1.5.2.

5. Fire protection equipment must be provided—to include portable fire extinguishers and a dependable water supply source. NFPA 498 section 4.1.6

6. Vehicles will be inspected before they enter the safe haven. Any risks (*e.g.,* hot tires, hot wheel bearings, hot brakes, any accumulation of oil or grease, any defects in the electrical system, or any apparent physical damage to the vehicle that could cause or contribute to a fire) that are identified by the inspector must be corrected before the vehicle is permitted to enter the safe haven. NFPA 498 section 4.2.1.1, 4.2.1.2, and 4.2.1.3.

7. Trailers are to be positioned in the safe haven with spacing of not less than 5ft (1.5m) maintained in all directions between parked trailers. Additionally, trailers may not be parked in a manner that would require their movement to move another vehicle. Immediately upon correctly positioning a loaded trailer the tractor must be disconnected and removed from the safe haven. NFPA 498 sections 4.2.2, 4.2.3, and 4.2.4.

8. Trailers in the safe haven must be maintained in the same condition as is required for highway transportation, including placarding. NFPA 498 section 4.2.5.

9. Where a self-propelled vehicle loaded with explosives is stored in a safe haven it must be parked at least 25 ft (7.6 m) from any other vehicles containing explosives, and must be in operable condition, properly placarded, and in a position and condition where it can be moved easily in case of necessity or emergency. NFPA 498 section 4.2.6.

10. No explosives may be transferred from one vehicle to another in a safe haven except in case of necessity or emergency. NFPA 498 section 4.2.7.

11. No vehicle transporting other hazardous materials may be stored in a safe haven unless the materials being transported are compatible with explosives. NFPA 498 section 4.2.8.

12. Except for minor repairs, no repair work involving cutting or welding, operation of the vehicle engine, or the electrical wiring may be performed on any vehicle parked in a safe haven that is carrying explosives. NFPA 498 sections 4.3.1.1 and 4.3.1.2.

13. Except for firearms carried by law enforcement and security personnel where specifically authorized by the authority having jurisdiction, smoking, matches, open flames, spark-producing devices, and firearms are not permitted inside or within 50 ft (15.3 m) of the safe haven, loading dock, or interchange lot. NFPA 498 section 4.3.2 and 4.3.3.

14. Electric lines must not be closer than the length of the lines between the poles, unless an effective means to prevent vehicles from contact with broken lines is employed. NFPA498 section 4.3.4.

15. When any vehicle transporting explosives is stored in a safe haven, at least one trained person, 21 years of age or older, must be assigned to patrol the safe haven on a dedicated basis. Safe havens located on explosives manufacturing facilities or at motor vehicle terminals must employ other means of acceptable security such as existing plant or terminal protection systems or electronic surveillance devices. NFPA 498 section 4.4.1 and 4.4.2.

16. The safe haven operator must maintain an active safety training program in emergency response procedures for all employees working at the safe haven. NFPA 498 section 4.5.

17. Training in accordance with 49 CFR Part 172, Subpart H is required for employees involved with the loading, shipping, or transportation of explosives. NFPA 498 section 4.5.2.

18. The safe haven operator must notify in writing the local law enforcement, fire department, and other emergency response agencies of the safe haven and the maximum quantity of Class 1 materials authorized for the safe haven. The operator must maintain copies of any approval documentation and notifications. NFPA 498 sections 4.6.1 and 4.6.2.

In this NPRM, PHMSA proposes to incorporate NFPA 498 into the HMR. NFPA 498 is an accepted standard that imposes rigorous safety requirements on facilities at which explosives are temporarily stored during transportation. The standard is tailored

to the risks posed by commercially transported explosives. As proposed in this NPRM, any facility that conforms to the safe haven requirements specified in NFPA 498 would be authorized for use as a safe haven. By specifically identifying a standard for safe havens PHMSA is enhancing the current level of safety. Note that nothing in this NPRM is intended to preempt State and local zoning ordinances, building permits, land use restrictions, or other similar requirements that may apply to construction and operation of a safe haven.

In addition, we urge safe haven owners to utilize available explosive distancing tables or risk assessment tools when selecting locations for safe havens. Further, we encourage owners to share this information with State and local officials to support safe haven development. In all cases, owners must fully consider the risk to persons and the surrounding area from the explosives facility.

V. Summary of Changes by Section

In accordance with the comments received and public meeting discussion this NPRM proposes the following changes by section:

Part 171

Section 171.7. We propose to amend paragraph (a)(3) by adding a reference to NFPA 498—Standard for Safe Havens and Interchange Lots for Vehicles.

Part 177

Section 177.835. We propose to add a new paragraph (k) to clearly indicate that Division 1.1, 1.2, and 1.3 explosives may be left unattended by the carrier in a safe haven that meets NFPA 498. This addition would provide a clear, consistent, and measurable Federal requirement for the development and operation of safe havens.

VI. Regulatory Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This rulemaking is issued under authority of the Federal hazardous materials transportation law (49 U.S.C. 5101 *et seq.*), which authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous materials in interstate, intrastate, and foreign commerce.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget (OMB). This rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

Executive Order 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." The incorporation of standards for safe havens into the HMR does not impose significant burden on the explosive industry. The adoption of existing standards applicable to the safe storage of Division 1.1, 1.2, and 1.3 explosives in safe havens provides a clear and specific mechanism for the construction and maintenance of safe havens. This change would provide a Federally approved standard for safe havens in place of the existing arbitrary requirement that allows for State, local, or Federal approval of safe havens.

The industry, as described in the ANPRM comments and during an August 7, 2008 public meeting, indicates that it does not rely on safe havens for the attendance of explosives in transportation. Generally, industry relies on team drivers to move explosives shipments. In most instances team drivers are a safe, efficient, and cost effective means of transporting explosives. The proposed changes would provide explosives carriers with an optional means of compliance; therefore, any increased compliance costs associated with the proposals in this NPRM would be incurred voluntarily by the explosives industry. Ultimately, we expect each company to make reasonable decisions based on its own business operations and future goals. Thus, costs incurred if a company elects to rely on a safe haven to fulfill attendance requirements would be balanced by the safety and security benefits accruing from the decision.

C. Executive Order 13132

Executive Order 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 invited State and local governments with an interest in this rulemaking to comment on the effect that adoption of specific requirements for carriers that transport and store explosives in commerce may have on State or local safety or environmental protection programs. State representatives participating in the public meeting expressed support for the proposed incorporation of safe haven standards into the HMR. The proposed rule provides an option for safe havens to be developed and operated based on existing safety standards. It does not preempt State requirements (*e.g.,* State and local zoning ordinances, building permits, land use restrictions, or other similar requirements). Safe haven owners must continue to follow State and local requirements as applicable.

D. Executive Order 13175

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this proposed rule does not significantly or uniquely affect the communities of the Indian Tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. The proposed rule will not impose increased compliance costs on the regulated industry. Rather, the proposed rule incorporates current standards for the construction and maintenance of safe havens. Overall, this proposed rule should reduce the compliance burden on the regulated industry without compromising transportation safety. Therefore, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

F. Executive Order 13272 and DOT Regulatory Policies and Procedures

This notice has been 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 of draft rules on small entities are properly considered.

G. Paperwork Reduction Act

There are no new information collection requirements in this proposed rule.

H. 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.

I. Unfunded Mandates Reform Act of 1995

This proposed rule does not impose unfunded mandates, under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $141.3 million or more to either State, local, or Tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

J. Privacy Act

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

K. National Environmental Policy Act

The National Environmental Policy Act of 1969 (NEPA) requires Federal agencies to consider the consequences of major Federal actions and that they prepare a detailed statement on actions significantly affecting the quality of the human environment. We requested comments on the potential environmental impacts of regulations applicable to the storage of explosives transported in commerce. We asked for comments on specific safety and security measures that would provide greater benefit to the human environment, or on alternative actions the agency could take that would provide beneficial impacts. No commenters addressed the potential environmental impacts of the proposals in the ANPRM.

Safe havens promote the safe storage of hazardous materials in transportation. Safe havens ensure that explosives are stored in a manner that protects them from release into the environment. This proposed rule does not prohibit or promote the development of safe havens; rather, it ensures that existing and future safe havens meet minimum design and safety criteria. The impact on the environment if any would be a reduction in the environmental risks associated with the unattended storage of explosives in transportation. As a result, we have preliminarily determined that there are no significant environmental impacts associated with this proposed rule. We request comment on this determination.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 177

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Chapters I and III are proposed to be amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45 and 1.53; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub L. 104–134 section 31001.

2. In § 171.7, in the paragraph (a)(3) table, under the entry "National Fire Protection Association," the organization's mailing address is revised and the entry "NFPA 498—Standard for Safe Havens and Interchange Lots for Vehicles Transporting Explosives, 2006 Edition" is added.

The revision and addition read as follows:

§ 171.7 Reference material.

(a) * * *

(3) *Table of material incorporated by reference.* * * *

Source and name of material	49 CFR reference
* * * * * * *	
National Fire Protection Association, 1 Batterymarch Park, Quincy, MA, 1–617–770–3000, www.nfpa.org.	
* * * * * * *	
NFPA 498–Standard for Safe Havens and Interchange Lots for Vehicles Transporting Explosives, 2006 Edition	177.835
* * * * * * *	

PART 177—CARRIAGE BY PUBLIC HIGHWAY

3. The authority citation for part 177 would continue to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.53.

4. In Section 177.835 a new paragraph (k) is added to read as follows:

§ 177.835 Class 1 materials.

* * * * *

(k) *Attendance of Class 1 (explosive) materials.* Division 1.1, 1.2, or 1.3 materials that are stored during transportation in commerce must be attended and afforded surveillance in accordance with 49 CFR 397.5. An area that conforms to NFPA 498 (IBR, *see* § 171.7 of the subchapter) constitutes a Federally approved safe haven for the unattended storage of vehicles containing Division 1.1, 1.2, or 1.3 materials.

Issued in Washington, DC, on July 22, 2010 under authority delegated in 49 CFR Part 106.

R. Ryan Posten,

Senior Director for Hazardous Materials Safety.

[FR Doc. 2010–18368 Filed 7–26–10; 8:45 am]

BILLING CODE 4910–60–P

Notices

Federal Register

Vol. 75, No. 143

Tuesday, July 27, 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

National Agricultural Statistics Service

Notice of Intent To Request Revision and Extension of a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the National Agricultural Statistics Service (NASS) to request revision and extension of a currently approved information collection, the Equine Survey. Revision to burden hours may be needed due to changes in the size of the target population, sampling design, and/or questionnaire length.

DATES: Comments on this notice must be received by September 27, 2010 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535–0227, by any of the following methods:

- *E-mail: ombofficer@nass.usda.gov.* Include docket number above in the subject line of the message.
- *Fax:* (202) 720–6396.
- *Mail:* Mail any paper, disk, or CD–ROM submissions to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue, SW., Washington, DC 20250–2024.
- *Hand Delivery/Courier:* Hand deliver to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue, SW., Washington, DC 20250–2024.

FOR FURTHER INFORMATION CONTACT: Joseph T. Reilly, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Equine Survey.

OMB Number: 0535–0227.

Expiration Date: 11/30/2010.

Type of Request: To revise and extend a currently approved information collection for a period of three years.

Abstract: To improve information regarding the equine industry, several State Departments of Agriculture are expected to contract with the National Agricultural Statistics Service to conduct an Equine Survey in their State within the next 3 years. Equine activities offer unusually varied opportunities for rural development. In addition to providing the livelihood for breeders, trainers, veterinarians, and many others, the horse remains important to recreation. The number of operations, number of animals, and economic information will quantify the importance of the equine industry to State economies. Income data provides a view of the benefits that the industry provides to the State economy and a ranking of its relative importance within both the agricultural sector and the State's total economic sector. The expenditure information provides data regarding the multiplier effect of money from the equine industry, effects of wage rates paid to both permanent and part-time employees, and secondary businesses supported by the industry.

Authority: These data will be collected under authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985 as amended, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This Notice is submitted in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995). NASS also complies with OMB Implementation Guidance, "Implementation Guidance for Title V of the E-Government Act, Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA)," **Federal Register**, Vol. 72, No. 115, June 15, 2007, p. 33376.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 30 minutes per response.

Respondents: Horse owners, breeders, trainers, boarders.

Estimated Number of Respondents: 40,000.

Estimated Total Annual Burden on Respondents: 20,000 hours.

Copies of this information collection and related instructions can be obtained without charge from David Hancock, NASS Clearance Officer, at (202) 690–2388.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, through the use of appropriate automated, electronic, mechanical, technological or other forms of information technology collection methods.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, July 13, 2010.

Joseph T. Reilly,

Associate Administrator.

[FR Doc. 2010–18296 Filed 7–26–10; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Basin Electric Power Cooperative: Deer Creek Station

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of availability of record of decision.

SUMMARY: The Rural Utilities Service, hereinafter referred to as RUS and/or the Agency, has issued a Record of Decision (ROD) for the Environmental Impact Statement (EIS) for the proposed Deer Creek Station Energy Facility project (Project) in Brookings and Deuel Counties, South Dakota. The Administrator of RUS has signed the ROD, which is effective upon signing. The EIS was prepared pursuant to the National Environmental Policy Act of 1969 (NEPA) (U.S.C. 4231 *et seq.*) and

in accordance with the Council on Environmental Quality's (CEQ) regulations for implementing the procedural provisions of NEPA (40 CFR Parts 1500–1508), RUS's NEPA implementing regulations (7 CFR Part 1794), and the Western Area Power Administration's (Western) NEPA implementing regulations (10 CFR Part 1021). Western was the lead federal agency in preparation of the EIS as defined at 40 CFR 1501.5; RUS was a cooperating agency. The purpose of the EIS was to evaluate the potential environmental impacts of and alternatives to Basin Electric Power Cooperative's (Basin Electric) application for a RUS loan and a Western interconnection agreement to construct the proposed Project. The proposed Project's facility would include a new natural gas-fired combustion turbine set, a heat recovery steam generator, and a steam turbine generator set.

ADDRESSES: To obtain copies of the ROD, or for further information, contact: Ms. Lauren McGee, Environmental Scientist, USDA, Rural Utilities Service, 1400 Independence Avenue, SW., Stop 1571, Room 2239–S, Washington, DC 20250–1571, telephone: (202) 720–1482, fax: (202) 690–0649, or e-mail: *lauren.mcgee@wdc.usda.gov.* A copy of the ROD can be viewed online at: *http://www.usda.gov/rus/water/ees/eis.htm.*

SUPPLEMENTARY INFORMATION: Basin Electric's proposed Project is to construct, own, operate, and maintain the Deer Creek Station Energy Facility, a 300 MW combined-cycle natural gas generation facility, water pipeline, transmission line, transmission interconnection(s), and other associated facilities in Brookings and Deuel counties in eastern South Dakota. The purpose for the proposed Project is to serve increased load demand for electric power in the eastern portion of Basin Electric's service area. In 2007, Basin Electric prepared a forecast showing load and capability surpluses/deficits through the year 2021. The forecast predicted that by 2014, there will be a deficit of 800–900 MW for the eastern portion of its service area. The proposed Project's addition of 300 MW of generation will help meet Basin Electric's future energy requirements.

In accordance with NEPA, the CEQ regulations for implementing the procedural provisions of NEPA, and applicable agency NEPA implementing regulations, Western and RUS prepared an EIS to assess the potential environmental impacts associated with the proposed Project. The decision being documented in RUS's ROD is that the Agency agrees to consider, subject to loan approval, funding the proposed Project at the White Site 1 location. More details regarding RUS's regulatory authority, rationale for the decision, and compliance with applicable regulations are included in the ROD. Because two distinct federal actions are being proposed, RUS and Western decided to issue separate RODs.

On February 6, 2009, Western published in the **Federal Register** a Notice of Intent to prepare an EIS for the proposed Project. On February 26, 2010, RUS published its Notice of Availability (NOA) of the Draft EIS for the proposed Project in the **Federal Register**. The U.S. Environmental Protection Agency acknowledged receipt of the Draft EIS on February 5, 2010, from Western. The 45-day comment period ended on March 22, 2010. Because few comments were received which did not result in the substantial modification of the alternatives or the environmental analysis in the Draft EIS, Western and RUS prepared an abbreviated Final EIS to address the comments received. RUS published its NOA of the Final EIS for the proposed Project in the **Federal Register** on June 11, 2010. The U.S. Environmental Protection Agency acknowledged receipt of the Final EIS on May 28, 2010, from Western. The 30-day waiting period ended on June 28, 2010. One comment was received; it was addressed in RUS's ROD.

After considering various ways to meet these future needs, Basin Electric identified construction of the proposed Project as its best course of action. This EIS considered 16 alternatives to meet the future energy requirements of the eastern portion of its service area and five alternative site locations. These alternatives were evaluated in terms of cost-effectiveness, technical feasibility, and environmental factors (*e.g.,* soils, topography and geology, water resources, air quality, biological resources, the acoustic environment, recreation, cultural and historic resources, visual resources, transportation, farmland, land use, human health and safety, the socioeconomic environment, environmental justice, and cumulative effects).

The EIS analyzes in detail the No Action Alternative and the Action Alternative (construction of the Deer Creek Station Energy Facility) at two separate locations: White Site 1 (Brookings County, T111N R48W, Section 25 NE Quarter) and White Site 2 (Brookings County, T111N R48W, Section 2 NW Quarter). The No Action Alternative would expose Basin Electric and its member cooperatives to higher prices by purchasing power on the volatile open electric market. The Action Alternative at White Site 1 would be located approximately 0.5-miles from the existing White Substation, would be further away from occupied residences, and has more suitable site conditions than White Site 2. The Action Alternative at White Site 2 would require the construction of a new substation for interconnection to the grid, would be closer to occupied residences, and has site conditions that are less suitable for the type of development being proposed. The resources or environmental factors that could be affected by the proposed Project were evaluated in detail in the EIS. These issues are summarized in Table ES–1: "Summary of Potential Impacts of Deer Creek Station," of the EIS.

Based on an evaluation of the information and impact analyses presented in the EIS, including the evaluation of all alternatives, and in consideration of the Agency's NEPA implementing regulations, Environmental Policies and Procedures, as amended (7 CFR Part 1794), RUS finds that the evaluation of reasonable alternatives is consistent with NEPA. The Agency has selected the Action Alternative at White Site 1 as its preferred alternative. Because the proposed Project may involve action in floodplains or wetlands, this Notice also serves as a final notice of action in floodplains and wetlands (in accordance to Executive Orders 11988 and 11990). This Notice concludes RUS's compliance with NEPA and the Agency's "Environmental Policies and Procedures."

Dated: July 15, 2010.

Jonathan Adelstein,

Administrator, Rural Utilities Service.

[FR Doc. 2010–18294 Filed 7–26–10; 8:45 am]

BILLING CODE P

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: Friday, July 30, 2010, 12 Noon–1 p.m.

PLACE: Cohen Building, Room 3321, 330 Independence Ave., SW., Washington, DC 20237.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting.

They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b.(c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b.(c)(2) and (6))

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact Paul Kollmer-Dorsey at (202) 203–4545.

Paul Kollmer-Dorsey,

Deputy General Counsel.

[FR Doc. 2010–18479 Filed 7–23–10; 4:15 pm]

BILLING CODE 8610–01–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: International Trade Administration.

Title: U.S. Government Trade Event Information Request.

OMB Control Number: 0625–0238.

Form Number(s): ITA–4136.

Type of Request: Regular submission.

Burden Hours: 200.

Number of Respondents: 400.

Average Hours per Response: 30 minutes.

Needs and Uses: Expanding U.S. exports is a national priority essential to improving U.S. trade performance. The International Trade Administration's (ITA) Advocacy Center marshals federal resources to assist U.S. firms competing for foreign government procurements worldwide. The Advocacy Center works closely with the Trade Promotion Coordination Committee, which is chaired by the Secretary of Commerce and includes 20 federal agencies involved in export promotion. The purpose of the U.S. Government Trade Event Information Request is to collect the necessary information to make an evaluation as to whether a firm qualifies for senior-level U.S. government (USG) support, in the form of attendance at an event including witnessing the signing of a commercial agreement (*e.g.,* most often a contract).

Affected Public: Business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Wendy Liberante, (202) 395–3647.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Wendy Liberante, OMB Desk Officer, FAX number (202) 395–5167 or via the Internet at *Wendy_L._Liberante@omb.eop.gov*.

Dated: July 21, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–18295 Filed 7–26–10; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

International Trade Administration

Proposed Information Collection; Comment Request; Implementation of Tariff Rate Quota Established Under Title V of the Trade and Development Act of 2000 as Amended, for Imports of Certain Worsted Wool

AGENCY: International Trade Administration (ITA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before September 27, 2010.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instrument and instructions should be directed to: Robert Carrigg, Office of Textiles and Apparel, Room 3119, 14th & Constitution Avenue, NW., Washington, DC 20230; Phone number: (202) 482–2573 and fax number: (202) 482–0667.

SUPPLEMENTARY INFORMATION:

I. Abstract

Title V of the Trade and Development Act of 2000 ("the Act") as amended by the Trade Act of 2002, the Miscellaneous Trade Act of 2004, the Pension Protection Act of 2006, and the Emergency Economic Stabilization Act of 2008 contains several provisions to assist the wool products industries. These include the establishment of tariff rate quotas (TRQ) for a limited quantity of worsted wool fabrics. On December 1, 2000, the President issued Proclamation 7383 which delegated authority to the Secretary of Commerce to allocate the TRQ and to issue regulations to implement these provisions. On January 22, 2001, the Department of Commerce (DOC) published regulations establishing procedures for allocation of the tariff rate quotas (66 FR 6459, 15 CFR 335).

Section 501(e) of the Act restricts allocation of imports subject to the TRQ to persons "who cut and sew men's and boys' worsted wool suits and suit-like jackets and trousers in the United States and who apply for an allocation based on the amount of such suits cut and sewn during the prior calendar year." Information must be collected each year from applicants to ensure they meet this requirement and to determine their fair share of the TRQ. The DOC will process this information and issue a license to each eligible person. The license will specify the amount of TRQ granted to each licensee. The applicant shall retain records substantiating the information provided in the TRQ license application for a period of 3 years; and must be made available upon request by an appropriate government official.

The Reallocation of Tariff Rate Quota process states not later than September 30 of each TRQ year, a licensee who will not import the full quantity granted in a license during the TRQ year shall surrender the allocation that will not be used to DOC for purposes of reallocation through a written or electronic notice, including the license control number and the amount being surrendered. The

surrender shall be final, and shall apply only to that TRQ year. DOC will notify licensees of any amount surrendered and the application period for requests for reallocation. A licensee that imported, or intends to import, a quantity exceeding the quantity set forth in its license may apply (state the maximum amount of additional allocation the applicant will be able to use) to receive additional allocation from the amount to be reallocated.

II. Method of Collection

Forms are available on the Internet and by mail to requesting firms.

III. Data

OMB Control Number: 0625–0240.

Form Number(s): ITA–4139 and ITA–4140P.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 20.

Estimated Time per Response: Application process, 3 hours; and reallocation request, 1 hour.

Estimated Total Annual Burden Hours: 160.

Estimated Total Annual Costs: $5,400

IV. Request for Comments

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 22, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–18345 Filed 7–26–10; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

National Center for Toxicological Research, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 3720, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 10–015. *Applicant:* National Center for Toxicological Research, (USFDA), Jefferson, AK 72079. *Instrument:* Electron Microscope. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use: See* notice at 75 FR 37384, June 29, 2010.

Docket Number: 10–023. *Applicant:* University of Virginia, Charlottesville, VA 22903. *Instrument:* Electron Microscope. *Manufacturer:* FEI Company, the Netherlands. *Intended Use: See* notice at 75 FR 37384, June 29, 2010.

Docket Number: 10–029. *Applicant:* Argonne National Laboratory, Lemont, IL 60439. *Instrument:* Electron Microscope. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use: See* notice at 75 FR 37384, June 29, 2010.

Docket Number: 10–030. *Applicant:* University of California, Davis, CA 95616. *Instrument:* Electron Microscope. *Manufacturer:* Elionix Co., Ltd., Japan. *Intended Use: See* notice at 75 FR 37384, June 29, 2010.

Docket Number: 10–031. *Applicant:* National Institutes of Health, Bethesda, MD 20892. *Instrument:* Electron Microscope. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use: See* notice at 75 FR 37384, June 29, 2010.

Docket Number: 10–032. *Applicant:* Battelle Memorial Institute, Richland, WA 99354. *Instrument:* Electron Microscope. *Manufacturer:* FEI Company, the Netherlands. *Intended Use: See* notice at 75 FR 37384, June 29, 2010.

Docket Number: 10–033. *Applicant:* Massachusetts General Hospital, Charlestown, MA 02120. *Instrument:* Electron Microscope. *Manufacturer:* JEOL Ltd., Japan. *Intended Use: See* notice at 75 FR 37384, June 29, 2010.

Docket Number: 10–035. *Applicant:* University of Maine System, St., Bangor, ME 04401. *Instrument:* Electron Microscope. *Manufacturer:* Tescan, Czech Republic. *Intended Use: See* notice at 75 FR 37384, June 29, 2010.

Docket Number: 10–036. *Applicant:* University of Kansas Medical Center, Kansas City, KS 66160. *Instrument:* Electron Microscope. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use: See* notice at 75 FR 37384, June 29, 2010.

Docket Number: 10–037. *Applicant:* University of South Dakota, Vermillion, SD 57069. *Instrument:* Electron Microscope. *Manufacturer:* FEI Company, Czech Republic. *Intended Use: See* notice at 75 FR 37384, June 29, 2010.

Docket Number: 10–040. *Applicant:* Illinois State University, Normal, IL 61790–4120. *Instrument:* Electron Microscope. *Manufacturer:* FEI Company, Czech Republic. *Intended Use: See* notice at 75 FR 37384, June 29, 2010.

Docket Number: 10–041. *Applicant:* Temple University, Philadelphia, PA 19122. *Instrument:* Electron Microscope. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use: See* notice at 75 FR 37384, June 29, 2010.

Docket Number: 10–042. *Applicant:* University of Arkansas for Medical Sciences, Little Rock, AR 72205. *Instrument:* Electron Microscope. *Manufacturer:* FEI, the Netherlands. *Intended Use: See* notice at 75 FR 37384, June 29, 2010.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. *Reasons:* Each foreign instrument is an electron microscope and is intended for research or scientific educational uses requiring an electron microscope. We know of no electron microscope, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Dated: July 21, 2010.

Christopher Cassel,

Director, Subsidies Enforcement Office, Import Administration.

[FR Doc. 2010–18390 Filed 7–26–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Energy and Infrastructure Mission to Saudi Arabia: Third City Stop Added to the Trade Mission Itinerary

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

Mission Description

The United States Department of Commerce, International Trade Administration, U.S. and Foreign Commercial Service (CS) is organizing an energy and infrastructure trade mission to the Kingdom of Saudi Arabia, December 6–8, 2010. Led by a senior Department of Commerce official, the mission to Saudi Arabia is intended to include representatives from a variety of U.S. energy and infrastructure industry suppliers and service providers. The mission will introduce mission participants to end-users and prospective partners whose needs and capabilities are targeted to the respective U.S. participant's strengths. Participating in an official U.S. industry delegation, rather than traveling to Saudi Arabia independently, will enhance the companies' ability to secure meetings in Saudi Arabia, especially in light of discussions on this topic between the Government of Saudi Arabia and the U.S. Ambassador to Saudi Arabia. The mission will include appointments, briefings and receptions in Riyadh and Dhahran, Saudi Arabia's primary energy and infrastructure industry hubs. Trade mission participants will have the opportunity to interact with Commercial Service (CS) specialists covering the energy and infrastructure industries to discuss industry developments, opportunities, and sales strategies.

Commercial Setting

The Saudi Arabian energy and infrastructure sectors rank among the world's most dynamic. Government contracts worth approximately $140 billion have been awarded so far this year, of which around $110 billion were for non-oil projects. U.S. goods exports to Saudi Arabia in 2008 were $12.5 billion, up 20 percent from the previous year.

The Oil and Gas Sector

Being the largest producer and exporter of crude oil, Saudi Aramco, the national oil company, is augmenting capacity to maintain a surplus production of 1.5–2.0 million barrels per day. The company is also expanding its Master Gas System, building an NGL recovery plant, a new grass-roots gas plant, and enhancing capacity at an existing plant. While the global recession that began in 2008 has presented new economic challenges, Saudi Arabia is pushing forward with many of its development projects in the oil and gas sector. In March 2009, the Saudi Arabian Ministry of Petroleum and Mineral Resources announced plans to spend approximately $60 billion on upstream and downstream operations through 2014. The budget includes allocations for 144 projects, including 17 mega-projects (those valued at more than $1 billion), 30 large projects, 17 medium-sized projects, and 80 small schemes.

Petrochemicals

Industry sources believe that more than $70 billion in petrochemical projects are under development and Saudi Arabia Basic Industries Corporation has $48 billion projects planned for 2011–2020. The development of downstream, value added industry is a cornerstone of the government's efforts to diversify the economy away from oil and gas. The Saudi Government aims at consolidating the country's position as the leading bulk petrochemicals commodities producer of the 21st century: as such, a new wave of specialty petrochemical products is being developed, including polycarbonates, phenols, engineering plastics and thermoplastic olefins. Recent projects to produce specialty chemicals include the Saudi Kayan Petrochemical Company complex, which will produce the region's first polycarbonates and phenols; the mega Ras Tanura refinery upgrade and integrated petrochemicals complex, which will produce more than 300 different products, and the third-phase Saudi International Petrochemical Company (Sipchem) complex, which will produce synthetic fibers. The planned expansion at Jubail Industrial City II with around 20 petrochemical and infrastructure projects worth more than $21.6 billion dollars will also bring various opportunities for U.S. petrochemical and engineering companies, as well as to American U.S. manufacturers/suppliers of equipment, parts, supplies, and services related to the petrochemical industry.

Construction

At a time when some Middle Eastern countries are facing financial difficulties, Saudi Arabia's star is clearly rising. With tens of billions of dollars of projects awarded, the Saudi construction sector is rolling forward. Saudi Arabia's ambitious rail plans are fueling activity in the infrastructure sector, with $30 billion worth of contracts under way or at the bidding stage. Likewise, the Saudi real estate market is set to grow significantly over the next four years. Saudi Arabia has the largest real estate market in the Gulf Cooperation Council (GCC), with more commercial (office, retail and residential) floor space than all of the other GCC countries combined. This impressive growth is being driven by a combination of a large and growing economy and strong demographic fundamentals. Among Saudi Arabia's super-projects are as many as six "economic cities," to be completed by the year 2020 at an initial cost of US$ 87.8 billion, as part of a public-private partnership strategy led by the Saudi Arabian General Investment Authority (SAGIA). The "cities" are expected to contribute $150 billion to GDP, and to collectively create over 1.5 million jobs by 2020, as well as living space for more than 2.5 million residents. Around $6 billion is being poured into Saudi Arabia's housing sector, to accommodate the population increase. Roughly $2 billion is being spent on schools and universities.

Billions more are going toward ultra-modern mega-commerce and tourism projects, and the country's strongly-competitive industrial sector. Hundreds of new factories are to be constructed. All of this fastpaced construction sector activity is creating a wealth of investment opportunity for American architecture, engineering, design and construction firms.

Saudi Arabia's transport sector—including road infrastructure, airports and seaports—is also part of an ambitious investor-friendly expansion plan. Not surprisingly, these forward-looking plans are fuelling strong demand for a broad variety of cutting-edge construction materials and products from leading international suppliers.

Aviation

The Kingdom of Saudi Arabia is the largest economy in the region. It is also the most populous country in the Gulf Cooperation Council (GCC) and, with its holy sites, is the focus of a vast market for pilgrimage and tourism that stretches across the entire Arab world. The country, however is lagging behind the booming regional aviation industry, and the infrastructure at the country's airports has become a source of concern to the Saudi authorities. Billions of dollars are now being invested in the Kingdom's main airports to improve the

travel experience for the millions of pilgrims and tourists who enter the country each year.

Energy and Infrastructure Trade Mission to Saudi Arabia offers an optional one-day stop in Jeddah for companies in the aviation sector, planned for December 5, 2010. For companies also traveling to Riyadh and Dhahran on December 6–8, additional cost for the optional aviation stop in Jeddah is $1,000 in addition to the trade mission fee. For companies wishing to travel to Jeddah only the cost is $2,000.

Mission Goals

The short term goals of the energy and infrastructure trade mission to Saudi Arabia are to (1) introduce U.S. companies to potential joint-venture partners and other industry representatives, and (2) introduce U.S. companies to industry and government officials in Saudi Arabia to learn about various program opportunities in those industries.

Mission Scenario

In Riyadh, the U.S. mission members will be presented with a briefing by the U.S. Embassy's Counselor for Commercial Affairs, the Senior Commercial Specialist for the energy and infrastructure sectors and other key U.S. Government and corporate officials. Participants will also take part in business matchmaking appointments with Saudi private-sector organizations. In addition, they will attend a networking event with multipliers. In Dhahran, participants will receive a market briefing by the Senior Commercial Specialist for the energy and infrastructure sectors at the U.S. Consulate, and they will participate in one-on-one business matchmaking appointments, and networking activities. Energy participants will also receive a briefing on market opportunities by Saudi Aramco, the world's largest oil corporation.

Matchmaking efforts will involve multipliers such as Council of Saudi Chambers. U.S. participants will be counseled before and after the mission by domestic mission coordinator. Participation in the mission will include the following:

- Pre-travel briefings/webinar on subjects ranging from business practices in Saudi Arabia to security;
- Pre-scheduled meetings with potential partners, distributors, end users, or local industry contacts in Riyadh and Dhahran;
- Transportation to airports in Riyadh and Dhahran;
- Meetings with Saudi Government officials;
- Participation in industry receptions in Riyadh and Dhahran;
- Meetings with CS Saudi Arabia's energy and infrastructure industry specialists in Riyadh and Dhahran; and
- Networking receptions in two cities of the trade mission.

Proposed Mission Timetable

Mission participants will be encouraged to arrive December 5, 2010 and the mission program will proceed from December 6 through December 8, 2010.

December 5 ..	Jeddah.
December 6 ..	Riyadh. Market briefings by U.S. Embassy Riyadh officials. One-on-one business matchmaking appointments. Networking reception.
December 7 ..	Dhahran. Travel to Dhahran. Market briefing by U.S. Consulate Dhahran officials. Networking reception.
December 8 ..	Dhahran. Meeting at Saudi Aramco. One-on-one business matchmaking appointments.

Participation Requirements

All parties interested in participating in the Energy and Infrastructure Trade Mission to Saudi Arabia must complete and submit an application for consideration by the Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. A minimum of 10 and a maximum of 15 companies will be selected to participate in the mission from the applicant pool. U.S. companies already doing business in Saudi Arabia as well as U.S. companies seeking to enter the market for the first time are encouraged to apply.

Fees and Expenses

After a company has been selected to participate on the mission, a payment to the Department of Commerce in the form of a participation fee is required. The participation fee will be $3,680 for large firms and $2,925 for a small or medium-sized enterprise (SME)[1] or small organization, which will cover one representative. The fee for each additional firm representative (large firm or SME) is $500. Expenses for travel, lodging, most meals, and incidentals will be the responsibility of each mission participant.

Energy and Infrastructure Trade Mission to Saudi Arabia offers an optional one-day stop in Jeddah for companies in the aviation sector, planned for December 5, 2010. For companies also traveling to Riyadh and Dhahran on December 6–8, additional cost for the optional aviation stop in Jeddah is $1,000 in addition to the trade mission fee. For companies wishing to travel to Jeddah only the cost is $2,000.

Conditions for Participation

- An applicant must submit a completed and signed mission application and supplemental application materials, including adequate information on the company's products and/or services, primary market objectives, and goals for participation. If the U.S. Department of Commerce receives an incomplete application, the Department may reject the application, request additional information, or take the lack of information into account when evaluating the applications.
- Each applicant must also certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, marketed under the name of a U.S. firm and have at least fifty-one percent U.S. content.

Selection Criteria for Participation

Selection will be based on the following criteria:

- Suitability of a company's products or services to the mission's goals
- Applicant's potential for business in Saudi Arabia, including likelihood of exports resulting from the trade mission
- Consistency of the applicant's goals and objectives with the stated scope of the trade mission (as an example—be in the energy and/or infrastructure sectors indicated in the mission description)

Referrals from political organizations and any documents containing references to partisan political activities (including political contributions) will be removed from an applicant's submission and not considered during the selection process.

Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (*http://www.ita.doc.gov/*

[1] An SME is defined as a firm with 500 or fewer employees or that otherwise qualifies as a small business under SBA regulations (*see http://wwwsba.gov/services/contractingopportunities/sizestandardstopics/index.html*). Parent companies, affiliates, and subsidiaries will be considered when determining business size. The dual pricing reflects the Commercial Service's user fee schedule that became effective May 1, 2008 (*see http://www.export.gov/newsletter/march2008/initiatives.html* for additional information).

doctm/tmcal.html) and other Internet Web sites, press releases to general and trade media, direct mail, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows.

Recruitment for the mission will begin immediately and conclude no later than September 15, 2010. The U.S. Department of Commerce will review all applications immediately after the deadline. We will inform applicants of selection decisions as soon as possible after September 15, 2010. Applications received after that date will be considered only if space and scheduling constraints permit.

Contacts

U.S. Commercial Service Domestic Contact: Sean Timmins, 202–482–1841, *Sean.Timmins@trade.gov*.

U.S. Commercial Service Saudi Arabia Contacts: Mr. Habeeb Saeed, U.S. Commercial Service Riyadh, Tel: 966–1–488–3800, *Habeeb.Saeed@mail.doc.gov*.

Mr. Ishtiaq Hussain, U.S. Commercial Service Dhahran, Tel: 966–3–330–3200, *Ishtiaq.Hussain@mail.doc.gov*.

Natalia Susak,

Global Trade Programs, Commercial Service Trade Missions Program.

[FR Doc. 2010–17742 Filed 7–26–10; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–833]

Certain Polyester Staple Fiber From Taiwan: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On February 5, 2010, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on certain polyester staple fiber from Taiwan. The period of review is May 1, 2008, through April 30, 2009. We gave interested parties an opportunity to comment on the preliminary results. We received comments from Far Eastern Textile Limited. The final weighted-average dumping margin for Far Eastern Textile Limited is listed below in the "Final Results of the Review" section of this notice.

DATES: *Effective Date:* July 27, 2010.

FOR FURTHER INFORMATION CONTACT: Michael A. Romani or Richard Rimlinger, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0198 or (202) 482–4477, respectively.

Background

On February 5, 2010, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain polyester staple fiber (PSF) from Taiwan. *See Certain Polyester Staple Fiber From Taiwan: Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 5964 (February 5, 2010) (*Preliminary Results*). We invited interested parties to comment on the *Preliminary Results.* We received comments from the respondent. The Department has conducted this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The product covered by the order is PSF. PSF is defined as synthetic staple fibers, not carded, combed or otherwise processed for spinning, of polyesters measuring 3.3 decitex (3 denier, inclusive) or more in diameter. This merchandise is cut to lengths varying from one inch (25 mm) to five inches (127 mm). The merchandise subject to the order may be coated, usually with a silicon or other finish, or not coated. PSF is generally used as stuffing in sleeping bags, mattresses, ski jackets, comforters, cushions, pillows, and furniture. Merchandise of less than 3.3 decitex (less than 3 denier) currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 5503.20.00.20 is specifically excluded from the order. Also specifically excluded from the order are polyester staple fibers of 10 to 18 denier that are cut to lengths of 6 to 8 inches (fibers used in the manufacture of carpeting). In addition, low-melt PSF is excluded from the order. Low-melt PSF is defined as a bi-component fiber with an outer sheath that melts at a significantly lower temperature than its inner core.

The merchandise subject to the order is currently classifiable in the HTSUS at subheadings 5503.20.00.45 and 5503.20.00.65. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Analysis of Comments Received

All issues raised in the case briefs by parties to this review are addressed in the "Issues and Decision Memorandum" from Edward C. Yang, Acting Deputy Assistant Secretary, to Ronald K. Lorentzen, Deputy Assistant Secretary, dated July 19, 2010 (Decision Memorandum), and hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded is in the Decision Memorandum and attached to this notice as an Appendix. The Decision Memorandum, which is a public document, is on file in the Department's Central Records Unit of the main Commerce building, Room 1117, and is accessible on the Web at *http://trade.gov/ia.* The paper copy and electronic version of the Decision Memorandum are identical in content.

Ministerial Errors

In the *Preliminary Results,* we indicated that we had matched products sold in the United States with identical products sold in the home market. In fact, in our calculation for the *Preliminary Results,* one product sold in the United States did not match to an above-cost, contemporaneous, physically identical product sold in the home market in the ordinary course of trade. Instead, from the pool of home-market sales that passed the cost-of-production test, we had selected for comparison purposes the product sold in the home market with the most similar physical characteristics to the product sold in the United States. For this comparison, we made a differences-in-merchandise adjustment to normal value.

In the *Preliminary Results* we stated erroneously that the preliminary margin we had found for the respondent was 2.11 percent; the correct margin resulting from our preliminary calculations was 2.43 percent. See "Certain Polyester Staple Fiber from Taiwan: Far Eastern Textile Limited Analysis Memorandum for the Preliminary Results of the Administrative Review of the Antidumping Duty Order (5/1/08–4/30/09)" dated February 1, 2010.

We received no comments from parties concerning these inadvertent errors in the *Preliminary Results.*

Final Results of the Review

We have made no changes to our calculations and, as announced in the *Preliminary Results,* we disregarded sales made at prices below the cost of production in the home market when determining normal value in this

administrative review. As a result of our review, we determine that a weighted-average dumping margin of 2.43 percent exists for Far Eastern Textile Limited for the period May 1, 2008, through April 30, 2009.

Assessment Rates

The Department shall determine and U.S. Customs and Border Protection (CBP) shall assess antidumping duties on all appropriate entries. Although Far Eastern Textile Limited indicated that it was not the importer of record for any of its sales to the United States during the period of review, it reported the names of the importers of record for all of its U.S. sales. Because Far Eastern Textile Limited also reported the entered value for all of its U.S. sales, we have calculated importer-specific assessment rates for the merchandise in question by aggregating the dumping margins we calculated for all U.S. sales to each importer and dividing this amount by the total entered value of those sales.

The Department clarified its "automatic assessment" regulation on May 6, 2003. This clarification will apply to entries of subject merchandise during the period of review produced by Far Eastern Textile Limited for which it did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

The Department intends to issue assessment instructions directly to CBP 15 days after publication of these final results of review.

Cash-Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of PSF from Taiwan entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash-deposit rate for Far Eastern Textile Limited will be 2.43 percent; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less-than-fair-value investigation or previous reviews, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) the cash-deposit rate for all other manufacturers or exporters will continue to be 7.31 percent, the all-others rate established in *Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber From the Republic of Korea and Antidumping Duty Orders: Certain Polyester Staple Fiber From the Republic of Korea and Taiwan,* 65 FR 33807 (May 25, 2000). These cash-deposit requirements shall remain in effect until further notice.

Notifications

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to the administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of the destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results and this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 19, 2010.

Ronald K. Lorentzen.

Deputy Assistant Secretary for Import Administration.

Appendix

1. Exchange Rates.
2. Selection of Normal Value.

[FR Doc. 2010–18391 Filed 7–26–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No. PTO–P–2010–0067]

Interim Guidance for Determining Subject Matter Eligibility for Process Claims in View of Bilski v. Kappos

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice; Request for comments.

SUMMARY: The United States Patent and Trademark Office (USPTO or Office) has prepared *Interim Guidance for Determining Subject Matter Eligibility for Process Claims in view of Bilski* v. *Kappos* (*Interim Bilski Guidance*) for its personnel to use when determining subject matter eligibility under 35 U.S.C. 101 in view of the recent decision by the United States Supreme Court (Supreme Court) in *Bilski* v. *Kappos,* No. 08–964 (June 28, 2010). It is intended to be used by Office personnel as a supplement to the previously issued *Interim Examination Instructions for Evaluating Subject Matter Eligibility Under 35 U.S.C. 101* dated August 24, 2009 (*Interim Instructions*) and the memorandum to the Patent Examining Corps on the Supreme Court Decision in *Bilski* v. *Kappos* dated June 28, 2010. This guidance supersedes previous guidance on subject matter eligibility that conflicts with the *Interim Bilski Guidance.* Any member of the public may submit written comments on the *Interim Bilski Guidance.* The Office is especially interested in receiving comments regarding the scope and extent of the holding in *Bilski.*

DATES: The *Interim Bilski Guidance* is effective July 27, 2010. This guidance applies to all applications filed before, on or after the effective date of July 27, 2010.

Comment Deadline Date: To be ensured of consideration, written comments must be received on or before September 27, 2010. No public hearing will be held.

ADDRESSES: Comments concerning this *Interim Bilski Guidance* should be sent by electronic mail message over the Internet addressed to *Bilski_Guidance@uspto.gov* or facsimile transmitted to (571) 273–0125. Comments may also be submitted by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450. Although comments may be submitted by facsimile or mail, the Office prefers to receive comments via the Internet.

The comments will be available for public inspection at the Office of the Commissioner for Patents, located in Madison East, Tenth Floor, 600 Dulany Street, Alexandria, Virginia, and will be available via the USPTO Internet Web site, (*address: http://www.uspto.gov*). Because comments will be available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Caroline D. Dennison, Legal Advisor, Office of Patent Legal Administration, Office of the Associate Commissioner for Patent Examination Policy, by telephone at (571) 272–7729, or by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of Caroline D. Dennison.

SUPPLEMENTARY INFORMATION: The USPTO has prepared interim guidance (*Interim Bilski Guidance*) for its personnel to use when determining subject matter eligibility under 35 U.S.C. 101 in view of the recent decision by the United States Supreme Court (Supreme Court) in *Bilski.* It is intended to be used by Office personnel as a supplement to the previously issued *Interim Examination Instructions for Evaluating Subject Matter Eligibility Under 35 U.S.C. 101* dated August 24, 2009 (*Interim Instructions*) and the memorandum to the Patent Examining Corps on the Supreme Court Decision in *Bilski* v. *Kappos* dated June 28, 2010. The *Interim Bilski Guidance* is based on the USPTO's current understanding of the law and is believed to be fully consistent with the decision in *Bilski,* the binding precedent of the Supreme Court, the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) and the Federal Circuit's predecessor courts. The USPTO has also posted the *Interim Bilski Guidance* on its Internet Web site (*http://www.uspto.gov*).

Request for Comments

The Office has received and considered the comments regarding the *Interim Instructions* submitted in response to the *Request for Comments on Interim Examination Instructions for Evaluating Patent Subject Matter Eligibility,* 74 FR 47780 (Sept. 11, 2009), 1347 Off. Gaz. Pat. Office 110 (Oct. 13, 2009). *See also Additional Period for Comments on Interim Examination Instructions for Evaluating Patent Subject Matter Eligibility,* 74 FR 52184 (Oct. 9, 2009), 1348 Off. Gaz. Pat. Office 42 (Nov. 3, 2009) (extending the comment period until November 9, 2009).

Members of the public are invited to review the *Interim Bilski Guidance* (below) and provide comments. The Office is particularly interested in receiving comments in response to the following questions:

1. What are examples of claims that do not meet the machine-or-transformation test but nevertheless remain patent-eligible because they do not recite an abstract idea?

2. What are examples of claims that meet the machine-or-transformation test but nevertheless are not patent-eligible because they recite an abstract idea?

3. The decision in *Bilski* suggested that it might be possible to "defin[e] a narrower category or class of patent applications that claim to instruct how business should be conducted," such that the category itself would be unpatentable as "an attempt to patent abstract ideas." *Bilski* slip op. at 12. Do any such "categories" exist? If so, how does the category itself represent an "attempt to patent abstract ideas?"

Interim Guidance for Determining Subject Matter Eligibility for Process Claims in view of *Bilski* v. *Kappos (Interim Bilski Guidance)*

I. *Overview:* This *Interim Bilski Guidance* is for determining patent-eligibility of process claims under 35 U.S.C. 101 in view of the opinion by the Supreme Court in *Bilski* v. *Kappos,* 561 U.S. ___ (2010), which refined the abstract idea exception to subject matter that is eligible for patenting. A claim to an abstract idea is not a patent-eligible process.

This *Interim Bilski Guidance* provides factors to consider in determining subject matter eligibility of method claims in view of the abstract idea exception. Although this guidance presents a change in existing examination practice, it is anticipated that subject matter eligibility determinations will not increase in complexity for the large majority of examiners, who do not routinely encounter claims that implicate the abstract idea exception.

Under the principles of compact prosecution, each claim should be reviewed for compliance with every statutory requirement for patentability in the initial review of the application, even if one or more claims are found to be deficient with respect to the patent-eligibility requirement of 35 U.S.C. 101. Thus, Office personnel should state all non-cumulative reasons and bases for rejecting claims in the first Office action.

Section III of this *Interim Bilski Guidance* provides guidance on the abstract idea exception to subject matter eligibility as set forth in *Bilski,* and section IV of this *Interim Bilski Guidance* provides guidance on factors relevant to reviewing method claims for subject matter eligibility in view of *Bilski.* To aid examiners in implementing this guidance, a summary sheet of factors which may be useful for determining subject matter eligibility of a method claim is provided at the end of this *Interim Bilski Guidance.*

Section V of this *Interim Bilski Guidance* discusses how to make the determination of eligibility. To summarize, in order for the examiner to make a proper *prima facie* case of ineligibility, the examiner will evaluate the claim as a whole and weigh the relevant factors set forth in *Bilski* and previous Supreme Court precedent and make a determination of compliance with the subject matter eligibility prong of § 101. The Office will then consider rebuttal arguments and evidence supporting subject matter eligibility.

II. *Summary:* The *Bilski* Court underscored that the text of § 101 is expansive, specifying four independent categories of inventions eligible for protection, including processes, machines, manufactures, and compositions of matter. *See* slip op. at 4 ("In choosing such expansive terms * * * modified by the comprehensive 'any', Congress plainly contemplated that the patent laws would be given wide scope.") (quoting *Diamond* v. *Chakrabarty,* 447 U.S. 303, 308 (1980)). The Court also made clear that business methods are not "categorically outside of § 101's scope," stating that "a business method is simply one kind of 'method' that is, at least in some circumstances, eligible for patenting under § 101." *Id.* at 10–11. Examiners are reminded that § 101 is not the sole tool for determining patentability; where a claim encompasses an abstract idea, sections 102, 103, and 112 will provide additional tools for ensuring that the claim meets the conditions for patentability. As the Court made clear in *Bilski:*

> The § 101 patent-eligibility inquiry is only a threshold test. Even if an invention qualifies as a process, machine, manufacture, or composition of matter, in order to receive the Patent Act's protection the claimed invention must also satisfy "the conditions and requirements of this title." § 101. Those requirements include that the invention be novel, see § 102, nonobvious, *see* § 103, and fully and particularly described, see § 112.

Id. at 5.

Therefore, examiners should avoid focusing on issues of patent-eligibility

under § 101 to the detriment of considering an application for compliance with the requirements of §§ 102, 103, and 112, and should avoid treating an application solely on the basis of patent-eligibility under § 101 except in the most extreme cases.

III. *The Abstract Idea Exception to Subject Matter Eligibility:* There are limits on the scope of patent-eligibility. In particular, the Supreme Court has identified three specific exceptions to § 101's broad patent-eligibility principles: Laws of nature, physical phenomena, and abstract ideas. *See id.*

The Office has been using the so-called "machine-or-transformation" test used by the Federal Circuit to evaluate whether a method claim qualifies as a statutory patent-eligible process. *See Interim Examination Instructions For Evaluating Subject Matter Eligibility Under 35 U.S.C. 101* dated August 24, 2009 ("*2009 Interim Instructions*"). The Supreme Court stated in *Bilski* that the machine-or-transformation test is a "useful and important clue" and "investigative tool" for determining whether some claimed methods are statutory processes, but it "is not the sole test for deciding whether an invention is a patent-eligible 'process.'" Slip op. at 8. Its primary objection was to the elevation of the machine-or-transformation test—which it considered to be "atextual"—as the "sole test" for patent-eligibility. Slip op. at 6–8, 16. To date, no court, presented with a subject matter eligibility issue, has ever ruled that a method claim that lacked a machine or a transformation was patent-eligible. However, *Bilski* held open the possibility that some claims that do not meet the machine-or-transformation test might nevertheless be patent-eligible.

Prior to adoption of the machine-or-transformation test, the Office had used the "abstract idea" exception in cases where a claimed "method" did not sufficiently recite a physical instantiation. *See, e.g., Ex parte Bilski,* No. 2002–2257, slip op. at 46–49 (B.P.A.I. Sept. 26, 2006) (informative), *http://www.uspto.gov/ip/boards/bpai/decisions/inform/fd022257.pdf.* Following *Bilski,* such an approach remains proper. A claim that attempts to patent an abstract idea is ineligible subject matter under 35 U.S.C. 101. *See* slip op. at 13 ("[A]ll members of the Court agree that the patent application at issue here falls outside of § 101 because it claims an abstract idea."). The abstract idea exception has deep roots in the Supreme Court's jurisprudence. *See id.* at 5 (citing *Le Roy* v. *Tatham,* 55 U.S. (14 How.) 156, 174–175 (1853)).

Bilski reaffirmed *Diehr's* holding that "while an abstract idea, law of nature, or mathematical formula could not be patented, 'an *application* of a law of nature or mathematical formula to a known structure or process may well be deserving of patent protection.'" *Id.* at 14 (quoting *Diamond* v. *Diehr,* 450 U.S. 175, 187 (1981)) (emphasis in original). The recitation of some structure, such as a machine, or the recitation of some transformative component will in most cases limit the claim to such an application. However, not all such recitations necessarily save the claim: "*Flook* established that limiting an abstract idea to one field of use or adding token postsolution components did not make the concept patentable." *Id.* at 15. Moreover, the fact that the steps of a claim might occur in the "real world" does not necessarily save it from a section 101 rejection. Thus, the *Bilski* claims were said to be drawn to an "abstract idea" despite the fact that they included steps drawn to initiating transactions. The "abstractness" is in the sense that there are no limitations as to the mechanism for entering into the transactions.

Consistent with the foregoing, *Bilski* holds that the following claim is abstract:

1. A method for managing the consumption risk costs of a commodity sold by a commodity provider at a fixed price comprising the steps of:

(a) Initiating a series of transactions between said commodity provider and consumers of said commodity wherein said consumers purchase said commodity at a fixed rate based upon historical averages, said fixed rate corresponding to a risk position of said consumer;

(b) Identifying market participants for said commodity having a counter-risk position to said consumers; and

(c) Initiating a series of transactions between said commodity provider and said market participants at a second fixed rate such that said series of market participant transactions balances the risk position of said series of consumer transactions.

Specifically, the Court explains:

> The concept of hedging, described in claim 1 and reduced to a mathematical formula in claim 4, is an unpatentable abstract idea, just like the algorithms at issue in *Benson* and *Flook.* Allowing petitioners to patent risk hedging would preempt use of this approach in all fields, and would effectively grant a monopoly over an abstract idea.

Slip op. at 15.

Bilski also held that the additional, narrowing, limitations in the dependent claims were mere field of use limitations or insignificant postsolution components, and that adding these limitations did not make the claims patent-eligible. *See id.* Claims 1–9 in *Bilski* are attached as examples of claims that run afoul of the abstract idea exception.

The day after deciding *Bilski,* the Supreme Court denied certiorari in *Ferguson* v. *Kappos,* U.S. Supreme Court No. 09–1501, while granting, vacating, and remanding two other Federal Circuit section 101 cases. The denial of certiorari left intact the rejection of all of Ferguson's claims. Although the Federal Circuit had applied the machine-or-transformation test to reject Ferguson's process claims, the Supreme Court's disposition of *Ferguson* makes it likely that the *Ferguson* claims also run afoul of the abstract idea exception. A representative *Ferguson* claim is:

1. A method of marketing a product, comprising:

> Developing a shared marketing force, said shared marketing force including at least marketing channels, which enable marketing a number of related products;
>
> Using said shared marketing force to market a plurality of different products that are made by a plurality of different autonomous producing company [sic], so that different autonomous companies, having different ownerships, respectively produce said related products;
>
> Obtaining a share of total profits from each of said plurality of different autonomous producing companies in return for said using; and
>
> Obtaining an exclusive right to market each of said plurality of products in return for said using.

The following guidance presents factors that are to be considered when evaluating patent-eligibility of method claims. The factors include inquiries from the machine-or-transformation test, which remains a useful investigative tool, and inquiries gleaned from Supreme Court precedent. While the Supreme Court in *Bilski* did not set forth detailed guidance, there are many factors to be considered when determining whether there is sufficient evidence to support a determination that a method claim is directed to an abstract idea. The following factors are intended to be useful examples and are not intended to be exclusive or limiting. It is recognized that new factors may be developed, particularly for emerging technologies. It is anticipated that the factors will be modified and changed to take into account developments in precedential case law and to accommodate prosecution issues that may arise in implementing this new practice.

Additional guidance in the form of expanded explanation and specific examples will follow in due course.

IV. *Evaluating Method Claims for Eligibility:* Where the claim is written in the form of a method and is potentially a patentable process, as defined in 35 U.S.C. 100(b), the claim is patent-eligible so long as it is not disqualified as one of the exceptions to § 101's broad patent-eligibility principles; *i.e.,* laws of nature, physical phenomena, and abstract ideas.

Taking into account the following factors, the examiner should determine whether the claimed invention, viewed as a whole, is disqualified as being a claim to an abstract idea. Relevant factors—both those in favor of patent-eligibility and those against such a finding—should be weighed in making the determination. Factors that weigh in favor of patent-eligibility satisfy the criteria of the machine-or-transformation test or provide evidence that the abstract idea has been practically applied. Factors that weigh against patent-eligibility neither satisfy the criteria of the machine-or-transformation test nor provide evidence that the abstract idea has been practically applied. Each case will present different factors, and it is likely that only some of the factors will be present in each application. It would be improper to make a conclusion based on one factor while ignoring other factors.

This additional guidance, which builds upon the *2009 Interim Instructions,* is a factor-based inquiry. Although the following approach is a change, it is anticipated that subject matter eligibility determinations will not increase in complexity, particularly for examiners who do not routinely encounter claims that implicate the abstract idea exception. Examiners will recognize that the machine-or-transformation test set forth in Section II(B) of the *2009 Interim Instructions,* although not the sole test for evaluating the subject matter eligibility of a method claim, is still pertinent in making determinations pursuant to the factors listed below. Examiners are referred to the summary sheet of factors provided at the end of this *Interim Bilski Guidance* which may be useful in determining subject matter eligibility of a method claim.

Factors To Be Considered in an Abstract Idea Determination of a Method Claim

A. Whether the method involves or is executed by a particular machine or apparatus. If so, the claims are less likely to be drawn to an abstract idea; if not, they are more likely to be so drawn. Where a machine or apparatus is recited or inherent in a patent claim, the following factors are relevant:

(1) The particularity or generality of the elements of the machine or apparatus; *i.e.,* the degree to which the machine in the claim can be specifically identified (not any and all machines). Incorporation of a particular machine or apparatus into the claimed method steps weighs toward eligibility.

(2) Whether the machine or apparatus implements the steps of the method. Integral use of a machine or apparatus to achieve performance of the method weighs toward eligibility, as compared to where the machine or apparatus is merely an object on which the method operates, which weighs against eligibility.

(3) Whether its involvement is extrasolution activity or a field-of-use, *i.e.,* the extent to which (or how) the machine or apparatus imposes meaningful limits on the execution of the claimed method steps. Use of a machine or apparatus that contributes only nominally or insignificantly to the execution of the claimed method (*e.g.,* in a data gathering step or in a field-of-use limitation) would weigh against eligibility.

B. Whether performance of the claimed method results in or otherwise involves a transformation of a particular article. If such a transformation exists, the claims are less likely to be drawn to an abstract idea; if not, they are more likely to be so drawn. Where a transformation occurs, the following factors are relevant:

(1) The particularity or generality of the transformation. A more particular transformation would weigh in favor of eligibility.

(2) The degree to which the recited article is particular; *i.e.,* can be specifically identified (not any and all articles). A transformation applied to a generically recited article would weigh against eligibility.

(3) The nature of the transformation in terms of the type or extent of change in state or thing, for instance by having a different function or use, which would weigh toward eligibility, compared to merely having a different location, which would weigh against eligibility.

(4) The nature of the article transformed, *i.e.,* whether it is an object or substance, weighing toward eligibility, compared to a concept such as a contractual obligation or mental judgment, which would weigh against eligibility.

(5) Whether its involvement is extrasolution activity or a field-of-use, *i.e.,* the extent to which (or how) the transformation imposes meaningful limits on the execution of the claimed method steps. A transformation that contributes only nominally or insignificantly to the execution of the claimed method (*e.g.,* in a data gathering step or in a field-of-use limitation) would weigh against eligibility.

C. Whether performance of the claimed method involves an application of a law of nature, even in the absence of a particular machine, apparatus, or transformation. If such an application exists, the claims are less likely to be drawn to an abstract idea; if not, they are more likely to be so drawn. Where such an application is present, the following factors are relevant:

(1) The particularity or generality of the application. Application of a law of nature having broad applicability across many fields of endeavor weighs against eligibility, such as where the claim generically recites an effect of the law of nature or claims every mode of accomplishing that effect, such that the claim would monopolize a natural force or patent a scientific fact. (As an example, claiming "the use of electromagnetism for transmitting signals at a distance.")

(2) Whether the claimed method recites an application of a law of nature solely involving subjective determinations; *e.g.,* ways to think about the law of nature. Application of a law of nature to a particular way of thinking about, or reacting to, a law of nature would weigh against eligibility.

(3) Whether its involvement is extrasolution activity or a field-of-use, *i.e.,* the extent to which (or how) the application imposes meaningful limits on the execution of the claimed method steps. An application of the law of nature that contributes only nominally or insignificantly to the execution of the claimed method (*e.g.,* in a data gathering step or in a field-of-use limitation) would weigh against eligibility.

D. Whether a general concept (which could also be recognized in such terms as a principle, theory, plan or scheme) is involved in executing the steps of the method. The presence of such a general concept can be a clue that the claim is drawn to an abstract idea. Where a general concept is present, the following factors are relevant:

(1) The extent to which use of the concept, as expressed in the method, would preempt its use in other fields; *i.e.,* that the claim would effectively grant a monopoly over the concept.

(2) The extent to which the claim is so abstract and sweeping as to cover both known and unknown uses of the concept, and be performed through any existing or future-devised machinery, or even without any apparatus.

(3) The extent to which the claim would effectively cover all possible solutions to a particular problem; *i.e.,* that the claim is a statement of the problem versus a description of a particular solution to the problem.

(4) Whether the concept is disembodied or whether it is instantiated; *i.e.,* implemented, in some tangible way. Note, however, that limiting an abstract idea to one field of use or adding token postsolution components does not make the concept patentable. A concept that is well-instantiated weighs in favor of eligibility.

(5) The mechanism(s) by which the steps are implemented; *e.g.,* whether the performance of the process is observable and verifiable rather than subjective or imperceptible. Steps that are observable and verifiable weigh in favor of eligibility.

(6) Examples of general concepts include, but are not limited to:

- Basic economic practices or theories (*e.g.,* hedging, insurance, financial transactions, marketing);
- Basic legal theories (*e.g.,* contracts, dispute resolution, rules of law);
- Mathematical concepts (*e.g.,* algorithms, spatial relationships, geometry);
- Mental activity (*e.g.,* forming a judgment, observation, evaluation, or opinion);
- Interpersonal interactions or relationships (*e.g.,* conversing, dating);
- Teaching concepts (*e.g.,* memorization, repetition);
- Human behavior (*e.g.,* exercising, wearing clothing, following rules or instructions);
- Instructing "how business should be conducted," *Bilski,* slip op. at 12.

V. *Making the Determination of Eligibility:* Each of the factors relevant to the particular patent application should be weighed to determine whether the method is claiming an abstract idea by covering a general concept, or combination of concepts, or whether the method is limited to a particular practical application of the concept. The presence or absence of a single factor will not be determinative as the relevant factors need to be considered and weighed to make a proper determination as to whether the claim *as a whole* is drawn to an abstract idea such that the claim would effectively grant a monopoly over an abstract idea and be ineligible for patent protection.

If the factors indicate that the method claim is not merely covering an abstract idea, the claim is eligible for patent protection under § 101 and must be further evaluated for patentability under all of the statutory requirements, including utility and double patenting (§ 101); novelty (§ 102); non-obviousness (§ 103); and definiteness and adequate description, enablement, and best mode (§ 112). Section 101 is merely a coarse filter and thus a determination of eligibility under § 101 is only a threshold question for patentability. Sections 102, 103, and 112 are typically the primary tools for evaluating patentability unless the claim is truly abstract, *see, e.g., Bilski,* slip op. at 12 ("[S]ome business method patents raise special problems in terms of vagueness and suspect validity.").

If the factors indicate that the method claim is attempting to cover an abstract idea, the examiner will reject the claim under § 101, providing clear rationale supporting the determination that an abstract idea has been claimed, such that the examiner establishes a *prima facie* case of patent-ineligibility. The conclusion made by the examiner must be based on the evidence as a whole. In making a rejection or if presenting reasons for allowance when appropriate, the examiner should specifically point out the factors that are relied upon in making the determination. If a claim is rejected under § 101 on the basis that it is drawn to an abstract idea, the applicant then has the opportunity to explain why the claimed method is not drawn to an abstract idea. Specifically identifying the factors used in the analysis will allow the applicant to make specific arguments in response to the rejection if the applicant believes that the conclusion that the claim is directed to an abstract idea is in error.

The *Interim Bilski Guidance* is for examination guidance in light of the recent decision in *Bilski.* This guidance does not constitute substantive rule making and hence does not have the force and effect of law. Rejections will continue to be based upon the substantive law, and it is these rejections that are appealable. Consequently, any perceived failure by Office personnel to follow this guidance is neither appealable nor petitionable.

The *Interim Bilski Guidance* merely updates USPTO examination practice for consistency with the USPTO's current understanding of the case law regarding patent subject matter eligibility under 35 U.S.C. 101 in light of *Bilski.* Therefore, the *Interim Bilski Guidance* relates only to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice. The USPTO is providing this opportunity for public comment because the USPTO desires the benefit of public comment on the *Interim Bilski Guidance;* however, notice and an opportunity for public comment are not required under 5 U.S.C. 553(b) or any other law. *See Cooper Techs. Co.* v. *Dudas,* 536 F.3d 1330, 1336–37, 87 U.S.P.Q.2d 1705, 1710 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), does not require notice and comment rule making for "'interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice.'" (quoting 5 U.S.C. 553(b)(A))). Persons submitting written comments should note that the USPTO may not provide a "comment and response" analysis of such comments as notice and an opportunity for public comment are not required under 5 U.S.C. 553(b) or any other law.

Dated: July 4, 2010.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

Bilski Claims

1. A method for managing the consumption risk costs of a commodity sold by a commodity provider at a fixed price comprising the steps of:

(a) Initiating a series of transactions between said commodity provider and consumers of said commodity wherein said consumers purchase said commodity at a fixed rate based upon historical averages, said fixed rate corresponding to a risk position of said consumers;

(b) Identifying market participants for said commodity having a counter-risk position to said consumers; and

(c) Initiating a series of transactions between said commodity provider and said market participants at a second fixed rate such that said series of market participant transactions balances the risk position of said series of consumer transactions.

2. The method of claim 1 wherein said commodity is energy and said market participants are transmission distributors.

3. The method of claim 2 wherein said consumption risk is a weather-related price risk.

4. The method of claim 3 wherein the fixed price for the consumer transaction is determined by the relationship:

$$\text{Fixed Bill Price} = F_i + [(C_i + T_i + LD_i) \times (\alpha + ßE(W_i)]$$

wherein,

F_i = fixed costs in period i;
C_i = variable costs in period i;
T_i = variable long distance transportation costs in period i;
LD_i = variable local delivery costs in period i;
$E(W_i)$ = estimated location-specific weather indicator in period i; and α and β are constants.

5. The method of claim 4 wherein said location-specific weather indicator is at least one of heating degree days and cooling degree days.

6. The method of claim 4 wherein said energy provider seeks a swap receipt to cover the marginal weather-driven cost.

7. The method of claim 4 wherein the energy price is determined by the steps of:

(a) Evaluating the usage and all costs for a prospective transaction;

(b) Performing a Monte Carlo simulation across all transactions at all locations for a predetermined plurality of years of weather patterns and establishing the payoffs from each transaction under each historical weather pattern;

(c) Assuming that the summed payoffs are normally distributed;

(d) Performing one-tail tests to determine the marginal likelihood of losing money on the deal and the marginal likelihood of retaining at least the design margin included in the initial evaluation of the fixed bill price; and

(e) Adjusting the margin of the fixed bill price if the transaction as initially priced leads to a reduced expected margin or increases the likelihood of a loss until the expected portfolio margin and the likelihood of portfolio loss is acceptable.

8. The method of claim 4 wherein a cap on the weather-influenced pricing is established by the steps of:

(a) Evaluating the usage equation and all costs for a prospective transaction;

(b) Performing a Monte Carlo simulation across all transactions at all locations for a predetermined plurality of years of weather patterns and establishing the payoffs from each transaction under each historical weather pattern assuming that the price in the transaction being priced floats down when the weather is below normal;

(c) Assuming that the summed payoffs are normally distributed;

(d) Performing one-tail tests to determine the marginal likelihood of losing money on the transaction and the marginal likelihood of retaining at least the design margin included in the initial evaluation of the fixed price bill;

(e) Continuing to reprice the margin in the transaction until the expected portfolio margin and likelihood of portfolio loss is acceptable; and

(f) Establishing the margin as a call option on weather at a predetermined location.

9. The method of claim 1 wherein said commodity provider seeks a swap receipt to cover the price risk of the consumer transaction.

101 Method Eligibility Quick Reference Sheet

The factors below should be considered when analyzing the claim *as a whole* to evaluate whether a method claim is directed to an abstract idea. However, not every factor will be relevant to every claim and, as such, need not be considered in every analysis. When it is determined that the claim is patent-eligible, the analysis may be concluded. In those instances where patent-eligibility cannot easily be identified, every relevant factor should be carefully weighed before making a conclusion. Additionally, no factor is conclusive by itself, and the weight accorded each factor will vary based upon the facts of the application. These factors are not intended to be exclusive or exhaustive as there may be more pertinent factors depending on the particular technology of the claim. For assistance in applying these factors, please consult the accompanying "Interim Guidance" memo and TC management.

Factors Weighing Toward Eligibility

- Recitation of a machine or transformation (either express or inherent).
  - ○ Machine or transformation is particular.
  - ○ Machine or transformation meaningfully limits the execution of the steps.
  - ○ Machine implements the claimed steps.
  - ○ The article being transformed is particular.
  - ○ The article undergoes a change in state or thing (*e.g.,* objectively different function or use).
  - ○ The article being transformed is an object or substance.
- The claim is directed toward applying a law of nature.
  - ○ Law of nature is practically applied.
  - ○ The application of the law of nature meaningfully limits the execution of the steps.
- The claim is more than a mere statement of a concept.
  - ○ The claim describes a particular solution to a problem to be solved.
  - ○ The claim implements a concept in some tangible way.
  - ○ The performance of the steps is observable and verifiable.

Factors Weighing Against Eligibility

- No recitation of a machine or transformation (either express or inherent).
- Insufficient recitation of a machine or transformation.
  - ○ Involvement of machine, or transformation, with the steps is merely nominally, insignificantly, or tangentially related to the performance of the steps, *e.g.,* data gathering, or merely recites a field in which the method is intended to be applied.
  - ○ Machine is generically recited such that it covers any machine capable of performing the claimed step(s).
  - ○ Machine is merely an object on which the method operates.
  - ○ Transformation involves only a change in position or location of article.
  - ○ "Article" is merely a general concept (see notes below).
- The claim is not directed to an application of a law of nature.
  - ○ The claim would monopolize a natural force or patent a scientific fact; *e.g.,* by claiming every mode of producing an effect of that law of nature.
  - ○ Law of nature is applied in a merely subjective determination.
  - ○ Law of nature is merely nominally, insignificantly, or tangentially related to the performance of the steps.
- The claim is a mere statement of a general concept (see notes below for examples).
  - ○ Use of the concept, as expressed in the method, would effectively grant a monopoly over the concept.
  - ○ Both known and unknown uses of the concept are covered, and can be performed through any existing or future-devised machinery, or even without any apparatus.
  - ○ The claim only states a problem to be solved.
  - ○ The general concept is disembodied.
  - ○ The mechanism(s) by which the steps are implemented is subjective or imperceptible.

Notes

(1) Examples of general concepts include, *but are not limited,* to:

- Basic economic practices or theories (*e.g.,* hedging, insurance, financial transactions, marketing);
- Basic legal theories (*e.g.,* contracts, dispute resolution, rules of law);
- Mathematical concepts (*e.g.,* algorithms, spatial relationships, geometry);
- Mental activity (*e.g.,* forming a judgment, observation, evaluation, or opinion);
- Interpersonal interactions or relationships (*e.g.,* conversing, dating);
- Teaching concepts (*e.g.,* memorization, repetition);
- Human behavior (*e.g.,* exercising, wearing clothing, following rules or instructions);
- Instructing "how business should be conducted."

(2) For a detailed explanation of the terms machine, transformation, article, particular, extrasolution activity, and field-of-use, please refer to the Interim Patent Subject Matter Eligibility Examination Instructions of August 24, 2009.

(3) When making a subject matter eligibility determination, the relevant factors should be weighed with respect to the claim as a whole to evaluate whether the claim is patent-eligible or whether the abstract idea exception renders the claim ineligible. When it is determined that the claim is patent-eligible, the analysis may be concluded. In those instances where patent-eligibility cannot be easily identified, every relevant factor should be carefully weighed before making a conclusion. Not every factor will be relevant to every claim. While no factor is conclusive by itself, the weight accorded each factor will vary based upon the facts of the application. These factors are not intended to be exclusive or exhaustive as there may be more pertinent factors depending on the particular technology of the claim.

(4) Sample Form Paragraphs:

a. Based upon consideration of all of the relevant factors with respect to the claim *as a whole,* claim(s) [1] held to claim an abstract idea, and is therefore rejected as ineligible subject matter under 35 U.S.C. 101. The rationale for this finding is explained below: [2] 1. In bracket 2, identify the decisive factors weighing against patent-eligibility, and explain the manner in which these factors support a conclusion of ineligibility. The explanation needs to be sufficient to establish a *prima facie* case of ineligibility under 35 U.S.C. 101.

b. Dependent claim(s) [1] when analyzed as a whole are held to be ineligible subject matter and are rejected under 35 U.S.C. 101 because the additional recited limitation(s) fail(s) to establish that the claim is not directed to an abstract idea, as detailed below: [2] 1. In bracket 2, provide an explanation as to why the claim is directed to an abstract idea; for instance, that the additional limitations are no more than a

field of use or merely involve insignificant extrasolution activity; *e.g.,* data gathering. The explanation needs to be sufficient to establish a *prima facie* case of ineligibility under 35 U.S.C. 101.

[FR Doc. 2010–18424 Filed 7–26–10; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XX81

Atlantic Highly Migratory Species; Meeting of the Atlantic Highly Migratory Species Advisory Panel

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

ACTION: Notice of public meeting.

SUMMARY: NMFS will hold a 3–day Atlantic Highly Migratory Species (HMS) Advisory Panel (AP) meeting in September 2010. The intent of the meeting is to consider options for the conservation and management of Atlantic HMS. The meeting is open to the public.

DATES: The AP meeting will be held on September 21, 2010 through September 23, 2010.

ADDRESSES: The meeting will be held in Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Brian Parker or Margo Schulze-Haugen at 301-713-2347.

SUPPLEMENTARY INFORMATION: The Magnuson Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*, as amended by the Sustainable Fisheries Act, Public Law 104 297, provided for the establishment of an AP to assist in the collection and evaluation of information relevant to the development of any Fishery Management Plan (FMP) or FMP amendment for HMS. NMFS consults with and considers the comments and views of AP members when preparing and implementing FMPs or FMP amendments for Atlantic tunas, swordfish, billfish, and sharks.

The AP has previously consulted with NMFS on: Amendment 1 to the Billfish FMP (April 1999), the HMS FMP (April 1999), Amendment 1 to the HMS FMP (December 2003), the Consolidated HMS FMP (October 2006), and Amendments 1, 2, and 3 to the Consolidated HMS FMP (April and October 2008, February and September 2009, and May 2010). At the September 2010 AP meeting, NMFS plans to discuss the current management issues related to the Atlantic bluefin tuna, shark, and swordfish fisheries, as well as options for vessel monitoring systems and recreational reporting.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Brian Parker at (301) 713 2347 at least 7 days prior to the meeting.

Dated: July 22, 2010.

Carrie Selberg,

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

[FR Doc. 2010–18393 Filed 7–26–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XX80

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Habitat/MPA/Ecosystem Advisory Panel in August, 2010 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Thursday, August 12, 2010 at 9:30 a.m.

ADDRESSES: This meeting will be held at the Four Points Sheraton, 407 Squire Road, Revere, MA 02151; telephone: (781) 284–7200; fax: (781) 289–3176.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Habitat Advisory Panel will meet to discuss management options to minimize the adverse effects of fishing on Essential Fish Habitat (EFH) across all Council FMPs. These management options are being developed as part of Phase 2 of Essential Fish Habitat Omnibus Amendment 2. Broadly speaking, the purpose of Phase 2 is to ensure that the Council's management plans are minimizing adverse impacts of various Council-managed fisheries on EFH to the extent practicable, and that EFH-related management measures are integrated and optimized across all FMPs. Recommendations from the Advisory Panel will be considered by the Habitat Committee at their meeting on August 26, 2010. As necessary, representatives from the Habitat Plan Development Team (PDT) will present recent PDT analyses and recommendations to inform the Advisory Panel's discussion. If time permits, the panel may discuss other issues.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: July 22, 2010.

Tracey L. Thompson,

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

[FR Doc. 2010–18328 Filed 7–26–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XX79

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Red Crab Committee in August, 2010 to consider actions affecting New England

fisheries in the exclusive economic zone (EEZ). Recommendations from this joint group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Thursday, August 12, 2010 at 9 a.m.

ADDRESSES: This meeting will be held at the Four Points Sheraton, 407 Squire Road, Revere, MA 02151; telephone: (781) 284–7200; fax: (781) 289–3176.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Committee will review the status of the red crab fishery and recent developments in processing, marketing, and cooperative research. The Committee will also review Draft Amendment 3 to the Red Crab Fishery Management Plan, which is intended to: bring the Red Crab Fishery Management Plan into compliance with Magnuson-Stevens Act requirements for annual catch limits and accountability measures; establish specifications for fishing years 2011–13; consider changes to the management system that respond to industry suggestions for increasing efficiency in the fishery: replace the Target total allowable catch (TAC) and Days-at-Sea management system with a hard TAC; eliminate trip limits; and replace the blanket prohibition on landing more than one tote of females per trip with a procedure that would allow the harvest of female crab contingent upon Scientific and Statistical Committee (SSC) and Council approval of specifications that include a female allowable biological catch (ABC) and annual catch limit (ACL).

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: July 22, 2010.

Tracey L. Thompson,

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

[FR Doc. 2010–18327 Filed 7–26–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No.: 100706289–0289–01]

National Weather Service (NWS) Strategic Plan, 2011–2020

AGENCY: National Weather Service, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice; request for comments.

SUMMARY: The National Weather Service's (NWS) Strategic Plan (the Plan) for 2011–2020 sets the course for the agency's mission, a vision of the future, the societal outcomes that NWS aims to realize, and the actions the agency must take. The Plan establishes the framework to better meet the needs of Americans and to respond to some of the Nation's most urgent challenges. The Plan derives from NOAA's Next Generation Strategic Plan and is the result of a collaborative endeavor among employees, NOAA and NWS management, and private sector, research and operations partners. NWS invites comments on the contents of Plan, including mission statement, vision of the future, goals, objectives, and strategies.

DATES: The public comment period is open from July 27, 2010 through September 6, 2010. All comments must be submitted by the close of business on September 7, 2010.

ADDRESSES: Submit comments via the following methods:

- *NWS Web site:* (*http://www.weather.gov/com/stratplan).*
- *Mail:* National Oceanic and Atmospheric Administration, National Weather Service, Strategic Planning and Policy (W/SP), 1325 East-West Highway, Room 18234, Silver Spring, Maryland 20910.
- E-mail comments to *nws.great.ideas@noaa.gov.*

NWS prefers that reviewers submit comments online via the NWS Web site, *http://www.weather.gov/com/stratplan,* where reviewers may post general comments on the plan, comment on a particular section, as well as vote on the comments posted by others. This method will help NWS understand which aspects of the plan deserve the most attention in developing a final version.

FOR FURTHER INFORMATION CONTACT: Marie Lovern, NWS Office of the Assistant Administrator, at *marie.lovern@noaa.gov* or (301) 713–0611 x170.

SUPPLEMENTARY INFORMATION: You may view the Plan in its entirety at: *http://www.weather.gov/com/stratplan.*

Summary of the Plan:

The NWS has played a key role in protecting American lives and properties for over a century. The timely provision of reliable weather, water, climate, and environmental information has supported the Nation's social and economic development. NWS offices in communities across the U.S. and its territories, supported by regional and national centers, provide the authoritative information needed by Americans, including national, regional, state, tribal and local authorities, to plan, prepare, mitigate, and respond to natural and human-caused events. NWS views a diverse and growing environmental information services industry–the companies, media outlets, and others that create weather programming, provide consulting services, and deliver information to American society–as a strategic partner.

The NWS is part of the Department of Commerce's National Oceanic and Atmospheric Administration (NOAA), an agency with a diverse mission to understand and communicate changing conditions in the weather, climate, oceans, and coasts, and use that understanding to manage natural resources, including managing the Nation's fisheries and supporting healthy coastal habitats and species. NWS expertise in weather, water, and climate prediction, contributes to NOAA-wide initiatives such as air and water quality forecasts and ecological prediction and monitoring. NOAA's commitment to science, service, and stewardship informs society to respond and adapt to environmental conditions within a changing and uncertain world. New and evolving needs from society call for a shift in the way NWS forecasts and warns to provide impact-based decision support services. This means NWS must place an increasing emphasis on weather-related events, which significantly affect people, their livelihoods and the economy. NWS must go beyond producing accurate

forecasts and timely warnings to better understand and anticipate the likely human and economic impacts of such events. NWS must enable users to better exploit NWS information to plan and take preventive actions so people remain safe, reduce damage to their communities, businesses, and the environment, and maximize their economic productivity.

Scientific and technical advancements are essential enablers for providing impact-based decision support. Most notably, NWS is planning a four-dimensional environmental database, or 4D Cube, and associated forecaster tools that will transform operations by integrating weather, water, climate, and environmental observations, forecasts, and decision-making into a network-enabled, continuously updated "virtual" repository. The result will be a common, nationally-consistent, real-time weather picture, allowing forecasters to easily analyze forecast challenges, monitor uncertainty, and make prognoses. The forecast team will be at the center of the information system producing and delivering information to enable decisions that affect societal outcomes. Linking social and physical sciences to produce and communicate information will be critical to NWS success. Next generation observations, Earth system models at all possible spatial and temporal scales, and advanced technologies will be enablers, extending capabilities to increasingly warn-on-forecast and to quantify forecast uncertainty. These measures will extend the window America has to prepare for weather-related events that impact society.

The NWS and NOAA employees and partners across the public, private, and academic communities are vital to the success of impact-based decision support. NWS will develop strategies and commit resources to train the workforce beyond weather, water, and climate sciences to be better communicators and interpreters of NWS information, and to understand the risks and impacts of forecasts. NWS must recruit world-class physical scientists, meteorologists, and hydrologists who have communication, social science, and information technology skills, and also recruit and partner with experts in other disciplines: economists, behavioral scientists, ecologists, oceanographers, engineers, health experts, and the like. NWS intends to better leverage expertise and resources of partners in the public and private sectors.

The NWS Strategic Plan for 2011–2010 describes the following long-term, mutually supportive goals which contribute to outcomes for society:

○ Improve weather decision services for events that threaten safety, health, the environment, economic productivity, or homeland security;

○ Deliver a broader suite of improved water services to support management of the Nation's water supply;

○ Enhance climate services to help communities, businesses, and governments understand and adapt to climate-related risks;

○ Improve sector-relevant information in support of economic productivity;

○ Enable integrated environmental services supporting healthy communities and ecosystems; and

○ Sustain a highly-skilled, professional workforce equipped with the training, tools, and infrastructure to meet the mission.

In order to help NWS develop its Strategic Plan, the NWS invites comments from the public on the contents of Plan, including mission statement, vision of the future, goals, objectives, and strategies.

Dated: July 22, 2010.

David Murray,

Director, Management and Organization Division, Office of the Chief Financial Officer, NWS.

[FR Doc. 2010–18383 Filed 7–26–10; 8:45 am]

BILLING CODE 3510–KE–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and Opportunity for Public Comment.

Pursuant to Section 251 of the Trade Act of 1974 (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 6/25/2010 THROUGH 7/16/2010

Firm	Address	Date accepted	Products for filing
Cadillac Tank & Fabricators, Inc.	225 W. Gerri Lane, Addison, IL 60101.	6/25/2010	The company is a manufacturer of metal parts for the locomotive and industrial manufacturing industries. The firm manufactures brackets, pads and custom weldments.
Express Scale Parts, Inc	6873 Martindale Rd., Shawnee, KS.	6/29/2010	Weighing, bagging and conveying equipment systems
Strive Development Corp. d/b/a Custom Production.	3100 Adora Teal Way, Crestview, FL 32539.	6/29/2010	The firm produces machined aluminum components for the bicycle industry.
Sun Mountain Lumber, Inc	P.O. Box 389, Deer Lodge, MT 59722.	6/29/2010	Sun Mountain Lumber manufacturers 2x4's and 2x6's in 6′, 7′, 8′ and 9′ lengths.
Metal Products Co.	300 Garfield Street, McMinnville, TN 37110.	6/30/2010	The firm produces manufactured components for OEMs using sheet metal processing equipment primarily made out of steel and aluminum.
RSI Global, Inc	2063 Paxton St., Harvey, LA 70058.	6/30/2010	Electronic control systems.
Vita Needle Company, Inc	919 Great Plain Avenue, Needham, MA 02492.	6/30/2010	Needles, tubes and fabricated tubes and wires, machined components and adaptors.
National Magnetics Group, Inc	1210 Win Drive, Bethehem, PA 18017.	7/7/2010	The company manufactures technical ceramics and powdered iron cores.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT 6/25/2010 THROUGH 7/16/2010—Continued

Firm	Address	Date accepted	Products for filing
Manor Tool and Manufacturing Company.	9200 Ivanhoe Street, Schiller Park, IL 60179.	7/8/2010	The company is a manufacturer of custom metal components for the automotive, construction, consumer goods, commercial goods, medical, and defense industries.
Pivot Punch Corporation	6550 Campbell Blvd., Lockport, NY 14094.	7/9/2010	Pivot Punch Corporation makes tooling for many industries including metal stamping, injection molders, metal extruders and several types of precision component parts.
Polymer Enterprises, Inc	4731 Route 30, Greensburg, PA 15601.	7/12/2010	Polymer Enterprises, Inc., is a holding company with wholly owned subsidiaries that manufacture pneumatic tires and rubber parts for the tire manufacturing industry.
Prime Synthesis, Inc	2 New Road, Aston, PA 19014.	7/12/2010	Prime Synthesis manufactures synthetic DNA and related chemicals used in research, development, and clinical testing.
SAE Circuits of Colorado, Inc,	4820 63rd Street, Suite Boulder, CO 80301.	7/12/2010	SAE Circuits produces printed circuit boards, which are produced using epoxy resin insulating layers and copper, and other conductive material, conducting layers.
Ex-Cell Kaiser, LLC	11240 Melrose Ave., Franklin Park, IL 60131.	7/13/2010	Company is a contract manufacturer of over 200 sheet metal products. The firm manufactures cigarette sand and wall urns, small waste receptacles, dust pans and table top ashtrays.
Superior Battery Manufacturing Co., Inc.	P.O. Box 1010, Russell Springs, KY 42642.	7/16/2010	The firm produces lead acid batteries; primary manufacturing materials include lead, plastic and sulfuric acid.
United CoolAir Corporation	491 East Princess Drive, York, PA 17403.	7/16/2010	The company manufactures air conditioning equipment for a number of applications.

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 D100, 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: July 21, 2010.

Miriam J. Kearse,

Eligibility Certifier, Trade Adjustment Assistance for Firms Division.

[FR Doc. 2010–18333 Filed 7–26–10; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–351–829]

Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil: Preliminary Results of Full Sunset Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On April 1, 2010, the Department of Commerce ("the Department") initiated a sunset review of the countervailing duty ("CVD") order on certain hot-rolled flat-rolled carbon-quality steel products from Brazil, pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and an adequate substantive response filed on behalf of the domestic interested parties and adequate responses from respondents and the Government of Brazil ("GOB"), the Department determined to conduct a full sunset review of this CVD order pursuant to section 751(c) of the Act and 19 CFR 351.218(e)(2). As a result of our analysis, the Department preliminarily finds that revocation of the CVD order would likely lead to continuance or recurrence of a countervailable subsidy.

DATES: *Effective Date:* July 27, 2010.

FOR FURTHER INFORMATION CONTACT: Jacqueline Arrowsmith or Milton Koch, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5255 or (202) 482–2584, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 1, 2010 the Department initiated the second sunset review of the countervailing duty order on hot-rolled carbon-quality steel flat products from Brazil in accordance with section 751(c) of the Act. *See Initiation of Five-Year ("Sunset") Review,* 75 FR 16437 (April 1, 2010).

Within the deadline specified in 19 CFR 351.218(d)(1)(i), the Department received notices of intent to participate on behalf of United States Steel Corporation, Nucor Corporation, Gallatin Steel, SSAB N.A.D., Steel Dynamics, Inc., ArcelorMittal USA Inc. (collectively "domestic interested parties"). The domestic interested parties claimed interested-party status as producers of subject merchandise in the United States as defined by section 771(9)(C) of the Act. The Department received substantive responses from the domestic interested parties within the deadline specified in 19 CFR 351.218(d)(3)(i). The Department also received substantive responses in a timely manner from the following respondent interested parties: the GOB, Usinas Siderugicas de Minas Gerais and Companhia Siderugica Paulista ("USIMINAS/COSIPA") and Companhia Siderugica Nacional ("CSN"). On May 21, 2010, after analyzing the submissions and rebuttals from interested parties and finding the substantive response adequate, the Department determined to conduct a full sunset review. *See* Memorandum from Jacqueline Arrowsmith, Trade Compliance Analyst, to Barbara Tillman, Office 6 Director re: Adequacy Determination in Countervailing Duty Sunset Review Of Hot-Rolled Carbon, Steel Flat Products from Brazil—Second

Countervailing Duty Review (2005 through 2009) (May 21, 2010).

Scope of the Order

The products covered by the CVD order are certain hot-rolled flat-rolled carbon-quality steel products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers) regardless of thickness, and in straight lengths, of a thickness less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.,* flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1,250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of the order.

Specifically included in the scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free ("IF")) steels, high strength low alloy ("HSLA") steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of the order, regardless of Harmonized Tariff Schedule of the United States ("HTSUS") definitions, are products in which: 1) iron predominates, by weight, over each of the other contained elements; 2) the carbon content is 2 percent or less, by weight; and 3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
1.50 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.012 percent of boron, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.41 percent of titanium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of the order unless otherwise excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of the order:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including *e.g.,* ASTM specifications A543, A387, A514, A517, and A506).
- SAE/AISI grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 1.50 percent.
- ASTM specifications A710 and A736.
- USS Abrasion-resistant steels (USS AR 400, USS AR 500).
- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni
0.10–0.14%	0.90% Max	0.025% Max	0.005% Max	0.30–0.50%	0.50–0.70%	0.20–0.40%	0.20% Max

Width = 44.80 inches maximum; Thickness = 0.063–0.198 inches; Yield Strength = 50,000 ksi minimum; Tensile Strength = 70,000–88,000 psi.

- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	Mo
0.10–0.16% ..	0.70–0.90% ..	0.025% Max	0.006% Max	0.30–0.50% ..	0.50–0.70% ..	0.25% Max ...	0.20% Max ...	0.21% Max

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum; Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	V(wt.)	Cb
0.10–0.14%	1.30–1.80%	0.025% Max.	0.005% Max.	0.30–0.50%.	0.50–0.70%.	0.20–0.40%.	0.20% Max	0.10 Max ..	0.08% Max

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum; Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	Nb	Ca	Al
0.15% Max	1.40% Max.	0.025% Max.	0.010% Max.	0.50% Max.	1.00% Max.	0.50% Max.	0.20% Max.	0.005% Min.	Treated	0.01–0.07%

Width = 39.37 inches; Thickness = 0.181 inches maximum; Yield Strength = 70,000 psi minimum for thicknesses ≤ 0.148 inches and 65,000 psi minimum for thicknesses >0.148 inches; Tensile Strength = 80,000 psi minimum.

• Hot-rolled dual phase steel, phase-hardened, primarily with a ferritic-martensitic microstructure, contains 0.9 percent up to and including 1.5 percent silicon by weight, further characterized by either (i) tensile strength between 540 N/mm^2; and 640 N/mm^2 and an elongation percentage ≥ 26 percent for thicknesses of 2 mm and above, or (ii) a tensile strength between 590 N/mm^2 and 690 N/mm^2 and an elongation percentage ≥ 25 percent for thicknesses of 2mm and above.

• Hot-rolled bearing quality steel, SAE grade 1050, in coils, with an inclusion rating of 1.0 maximum per ASTM E 45, Method A, with excellent surface quality and chemistry restrictions as follows: 0.012 percent maximum phosphorus, 0.015 percent maximum sulfur, and 0.20 percent maximum residuals including 0.15 percent maximum chromium.

• Grade ASTM A570–50 hot-rolled steel sheet in coils or cut lengths, width of 74 inches (nominal, within ASTM tolerances), thickness of 11 gauge (0.119 inch nominal), mill edge and skin passed, with a minimum copper content of 0.20%.

The merchandise subject to the order is classified in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, 7211.19.75.90, 7212.40.10.00, 7212.40.50.00, 7212.50.00.00.

Certain hot-rolled flat-rolled carbon-quality steel covered by the order, including: vacuum degassed, fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise covered by the order is dispositive.

Analysis of Comments Received

All issues raised in this review are addressed in the Issues and Decision Memorandum ("Decision Memorandum") from Edward C. Yang, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, dated concurrently with this notice, which is hereby adopted by this notice. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendation in this public memorandum which is on file in the Central Records Unit, Room B–099 of the main Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at *http://ia.ita.doc.gov/frn*. The paper copy and electronic version of the Decision Memorandum are identical in content.

Preliminary Results of Review

The Department preliminarily determines that revocation of the CVD order would likely lead to continuation or recurrence of a countervailable subsidy. The net countervailable subsidy likely to prevail if the order were revoked is zero percent for USIMINAS/COSIPA, CSN, and all other companies. Interested parties may submit case briefs no later than 50 days after the date of publication of the preliminary results of the full sunset review, in accordance with 19 CFR 351.309(c)(1)(i). Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310(c). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than five days after the time limit for filing case briefs in accordance with 19 CFR 351.309(d). A hearing, if requested, will be held two days after the date the rebuttal briefs are due. The Department will issue a notice of final results of this sunset review, which will include the results of its analysis of issues raised in any such comments, no later than 240 days after the date of publication of the notice of initiation (*i.e.,* to November 27, 2010 in accordance with 19 CFR 351.218(f)(3)). However, November 27, 2010 falls on a Saturday and it is the Department's long-standing practice to issue a determination the next business day when the statutory deadline falls on a weekend, Federal holiday, or any other day when the Department is closed. *See Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005). Accordingly, the deadline for the completion of the final results is now November 29, 2010, the first business day after the 240th day from initiation.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: July 20, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–18392 Filed 7–26–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Request for nominations for members to serve on National Institute of Standards and Technology Federal Advisory Committees

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology (NIST) invites and requests nomination of individuals for appointment to its nine existing Federal Advisory Committees: Technology Innovation Program Advisory Board, Board of Overseers of the Malcolm Baldrige National Quality Award, Judges Panel of the Malcolm Baldrige National Quality Award, Information Security and Privacy Advisory Board, Manufacturing Extension Partnership Advisory Board, National Construction Safety Team Advisory Committee, Advisory Committee on Earthquake Hazards Reduction, NIST Smart Grid Advisory Committee, and Visiting Committee on Advanced Technology. NIST will consider nominations received in response to this notice for appointment to the Committees, in addition to nominations already received. Registered Federal lobbyists may not serve on the NIST Committees.

DATES: Nominations for all committees will be accepted on an ongoing basis and will be considered as and when vacancies arise.

ADDRESSES: *See* below.

SUPPLEMENTARY INFORMATION:

Technology Innovation Program (TIP) Advisory Board

ADDRESSES: Please submit nominations to Dr. Lorel Wisniewski, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 4700, Gaithersburg, MD 20899–4700. Nominations may also be submitted via FAX to 301–869–1150. Additional information regarding the Board, including its charter may be found on its electronic home page at: *http://www.nist.gov/tip/adv_brd/index.cfm.*

FOR FURTHER INFORMATION CONTACT: Dr. Lorel Wisniewski, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 4700, Gaithersburg, MD 20899–4700; telephone 301–975–2162, fax 301–869–1150; or via e-mail at lorel.wisniewski@nist.gov.

COMMITTEE INFORMATION: The Board will consist of ten members appointed by the Director of NIST, at least seven of whom shall be from United States industry, chosen to reflect the wide diversity of technical disciplines and industrial sectors represented in TIP projects. No member will be an employee of the Federal Government.

The Board will function solely as an advisory body, in compliance with the provisions of the Federal Advisory Committee Act.

Authority: 15 U.S.C 278n(k), as amended by the America COMPETES Act (Pub. L. 110–69), Federal Advisory Committee Act: 5 U.S.C. App. 2.

Board of Overseers of the Malcolm Baldrige National Quality Award

ADDRESSES: Please submit nominations to Harry Hertz, Director, Baldrige National Quality Program, NIST, 100 Bureau Drive, Mail Stop 1020, Gaithersburg, MD 20899–1020. Nominations may also be submitted via FAX to 301–975–4967. Additional information regarding the Committee, including its charter, current membership list, and executive summary may be found on its electronic home page at: *http://www.nist.gov/baldrige/.*

FOR FURTHER INFORMATION CONTACT: Harry Hertz, Director, Baldrige National Quality Program and Designated Federal Officer, NIST, 100 Bureau Drive, Mail Stop 1020, Gaithersburg, MD 20899–1020; telephone 301–975–2361; FAX 301–948–4967; or via e-mail at harry.hertz@nist.gov.

COMMITTEE INFORMATION: The Board was established in accordance with 15 U.S.C. 3711a(d)(2)(B), pursuant to the Federal Advisory Committee Act (5 U.S.C. App. 2).

Objectives and Duties

1. The Board shall review the work of the private sector contractor(s), which assists the Director of the National Institute of Standards and Technology (NIST) in administering the Award. The Board will make such suggestions for the improvement of the Award process as it deems necessary.

2. The Board shall provide a written annual report on the results of Award activities to the Director of NIST, along with its recommendations for the improvement of the Award process.

3. The Board will function solely as an advisory committee under the Federal Advisory Committee Act.

4. The Board will report to the Director of NIST.

Membership

1. The Board will consist of approximately eleven members selected on a clear, standardized basis, in accordance with applicable Department of Commerce guidance, and for their preeminence in the field of organizational performance management. There will be a balanced representation from U.S. service, manufacturing, education, health care industries, and the nonprofit sector.

2. The Board will be appointed by the Secretary of Commerce and will serve at the discretion of the Secretary. The term of office of each Board member shall be three years. All terms will commence on March1 and end on February 28 of the appropriate year.

Miscellaneous

1. Members of the Board shall serve without compensation, but may, upon request, be reimbursed travel expenses, including per diem, as authorized by 5 U.S.C. 5701 *et seq.*

2. The Board will meet twice annually, except that additional meetings may be called as deemed necessary by the NIST Director or by the Chairperson. Meetings are usually one day in duration.

3. Board meetings are open to the public. Board members do not have access to classified or proprietary information in connection with their Board duties.

NOMINATION INFORMATION:

1. Nominations are sought from the private and public sector as described above.

2. Nominees should have established records of distinguished service and shall be familiar with the quality improvement operations of manufacturing companies, service companies, small businesses, education, health care, and nonprofits. The category (field of eminence) for which the candidate is qualified should be specified in the nomination letter. Nominations for a particular category should come from organizations or individuals within that category. A summary of the candidate's qualifications should be included with the nomination, including (where applicable) current or former service on Federal advisory boards and Federal employment. In addition, each nomination letter should state that the person agrees to the nomination, acknowledges the responsibilities of serving on the Board, and will actively participate in good faith in the tasks of the Board. Besides participation at meetings, it is desired that members be able to devote the equivalent of seven days between meetings to either developing or researching topics of potential interest, and so forth, in furtherance of their Board duties.

3. The Department of Commerce is committed to equal opportunity in the workplace and seeks a broad-based and diverse Board membership.

Judges Panel of the Malcolm Baldrige National Quality Award

ADDRESSES: Please submit nominations to Harry Hertz, Director, Baldrige National Quality Program, NIST, 100 Bureau Drive, Mail Stop 1020, Gaithersburg, MD 20899–1020. Nominations may also be submitted via FAX to 301–975–4967. Additional information regarding the Committee, including its charter, current membership list, and executive summary may be found on its electronic home page at: *http://www.nist.gov/baldrige/.*

FOR FURTHER INFORMATION CONTACT: Harry Hertz, Director, Baldrige National Quality Program and Designated Federal Official, NIST, 100 Bureau Drive, Mail Stop 1020, Gaithersburg, MD 20899–1020; telephone 301–975–2361; FAX 301–975–4967; or via e-mail at *harry.hertz@nist.gov.*

COMMITTEE INFORMATION: The Judges Panel was established in accordance with 15 U.S.C. 3711a(d)(1) and the Federal Advisory Committee Act (5 U.S.C. App. 2).

Objectives and Duties

1. The Judges Panel will ensure the integrity of the Malcolm Baldrige National Quality Award selection process by reviewing the results of examiners' scoring of written applications, and then voting on which applicants merit site visits by examiners

to verify the accuracy of claims made by applicants.

2. The Judges Panel will ensure that individuals on site visit teams for the Award finalists have no conflict of interest with respect to the finalists. The Panel will also review recommendations from site visits and recommend Award recipients.

3. The Judges Panel will function solely as an advisory body, and will comply with the provisions of the Federal Advisory Committee Act.

4. The Panel will report to the Director of NIST.

Membership

1. The Judges Panel is composed of at least nine, and not more than twelve, members selected on a clear, standardized basis, in accordance with applicable Department of Commerce guidance. There will be a balanced representation from U.S. service and manufacturing industries, education, health care, and nonprofits and will include members familiar with performance improvement in their area of business.

2. The Judges Panel will be appointed by the Secretary of Commerce and will serve at the discretion of the Secretary. The term of office of each Panel member shall be three years. All terms will commence on March 1 and end on February 28 of the appropriate year.

Miscellaneous

1. Members of the Judges Panel shall serve without compensation, but may, upon request, be reimbursed travel expenses, including per diem, as authorized by 5 U.S.C. 5701 *et seq*.

2. The Judges Panel will meet three times per year. Additional meetings may be called as deemed necessary by the NIST Director or by the Chairperson. Meetings are usually one to four days in duration. In addition, each Judge must attend an annual three-day Examiner training course.

3. Committee meetings are closed to the public pursuant to Section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, as amended by Section 5(c) of the Government in the Sunshine Act, Public Law 94–409, and in accordance with Section 552b(c)(4) of Title 5, United States Code. Since the members of the Judges Panel examine records and discuss Award applicant data, the meetings are likely to disclose trade secrets and commercial or financial information obtained from a person that may be privileged or confidential.

NOMINATION INFORMATION:

1. Nominations are sought from all U.S. service and manufacturing industries, education, health care, and nonprofits as described above.

2. Nominees should have established records of distinguished service and shall be familiar with the performance improvement operations of manufacturing companies, service companies, small businesses, education, health care, and nonprofit organizations. The category (field of eminence) for which the candidate is qualified should be specified in the nomination letter. Nominations for a particular category should come from organizations or individuals within that category. A summary of the candidate's qualifications should be included with the nomination, including (where applicable) current or former service on federal advisory boards and federal employment. In addition, each nomination letter should state that the person agrees to the nomination, acknowledge the responsibilities of serving on the Judges Panel, and will actively participate in good faith in the tasks of the Judges Panel. Besides participation at meetings, it is desired that members be either developing or researching topics of potential interest, reading Baldrige applications, and so forth, in furtherance of their Committee duties.

3. The Department of Commerce is committed to equal opportunity in the workplace and seeks a broad-based and diverse Judges Panel membership.

Information Security and Privacy Advisory Board (ISPAB)

ADDRESSES: Please submit nominations to Pauline Bowen, NIST, 100 Bureau Drive, Mail Stop 8930, Gaithersburg, MD 20899–8930. Nominations may also be submitted via fax to 301–975–4007, Attn: ISPAB Nominations. Additional information regarding the Board, including its charter and current membership list, may be found on its electronic home page at: *http://csrc.nist.gov/ispab/*.

FOR FURTHER INFORMATION CONTACT: Pauline Bowen, ISPAB Designated Federal Official, NIST, 100 Bureau Drive, Mail Stop 8930, Gaithersburg, MD 20899–8930; telephone 301–975–2938; fax: 301–975–8670; or via e-mail at *pauline.bowen@nist.gov.*

COMMITTEE INFORMATION: The ISPAB was originally chartered as the Computer System Security and Privacy Advisory Board (CSSPAB) by the Department of Commerce pursuant to the Computer Security Act of 1987 (Pub. L. 100–235). As a result of the E–Government Act of 2002 (Pub. L. 107–347), Title III, the Federal Information Security Management Act of 2002, Section 21 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–4) the Board's charter was amended. This amendment included the name change of the Board.

Objectives and Duties

The objectives and duties of the ISPAB are:

1. To identify emerging managerial, technical, administrative, and physical safeguard issues relative to information security and privacy.

2. To advise the NIST, the Secretary of Commerce and the Director of the Office of Management and Budget on information security and privacy issues pertaining to Federal Government information systems, including thorough review of proposed standards and guidelines developed by NIST.

3. To annually report its findings to the Secretary of Commerce, the Director of the Office of Management and Budget, the Director of the National Security Agency, and the appropriate committees of the Congress.

4. To function solely as an advisory body, in accordance with the provisions of the Federal Advisory Committee Act.

Membership

The ISPAB is comprised of twelve members, in addition to the Chairperson. The membership of the Board includes:

1. Four members from outside the Federal Government eminent in the information technology industry, at least one of whom is representative of small or medium sized companies in such industries.

2. Four members from outside the Federal Government who are eminent in the field of information technology, or related disciplines, but who are not employed by or representative of a producer of information technology equipment; and

3. Four members from the Federal Government who have information system management experience, including experience in information security and privacy; at least one of these members shall be from the National Security Agency.

Miscellaneous

Members of the ISPAB who are not full-time employees of the Federal government are not paid for their service, but will, upon request, be allowed travel expenses in accordance with Subchapter I of Chapter 57 of Title 5, United States Code, while otherwise performing duties at the request of the Board Chairperson, while away from their homes or a regular place of business.

Meetings of the Board are usually two to three days in duration and are usually held quarterly. The meetings primarily take place in the Washington, DC metropolitan area but may be held at such locations and at such time and place as determined by the majority of the Board.

Board meetings are open to the public and members of the press usually attend. Members do not have access to classified or proprietary information in connection with their Board duties.

NOMINATION INFORMATION: Nominations are being accepted in all three categories described above. Nominees should have specific experience related to information security or electronic privacy issues, particularly as they pertain to Federal information technology. Letters of nomination should include the category of membership for which the candidate is applying and a summary of the candidate's qualifications for that specific category. Also include (where applicable) current or former service on Federal advisory boards and any Federal employment. Each nomination letter should state that the person agrees to the nomination, acknowledges the responsibilities of serving on the ISPAB, and that they will actively participate in good faith in the tasks of the ISPAB.

Besides participation at meetings, it is desired that members be able to devote a minimum of two days between meetings to developing draft issue papers, researching topics of potential interest, and so forth in furtherance of their Board duties.

Selection of ISPAB members will not be limited to individuals who are nominated. Nominations that are received and meet the requirements will be kept on file to be reviewed as Board vacancies occur.

Nominees must be U.S. citizens.

The Department of Commerce is committed to equal opportunity in the workplace and seeks a broad-based and diverse ISPAB membership.

Manufacturing Extension Partnership (MEP) Advisory Board

ADDRESSES: Please submit nominations to Ms. Karen Lellock, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 4800, Gaithersburg, MD 20899–4800. Nominations may also be submitted via Fax to 301–963–6556. Additional information regarding the Board, including its charter may be found on its electronic home page at: *http://www.mep.nist.gov/about-mep/mep-advisory-board.htm.*

FOR FURTHER INFORMATION CONTACT: Ms. Karen Lellock, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 4800, Gaithersburg, MD 20899–4800; telephone 301–975–4269, fax 301–963–6556; or via e-mail at *karen.lellock@nist.gov.*

COMMITTEE INFORMATION: The MEP Advisory Board was established in accordance with the requirements of Section 3003(d) of the America COMPETES Act (Pub. L. 110–69) and the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Objectives and Duties

1. The Board will provide advice on MEP programs, plans, and policies.
2. The Board will assess the soundness of MEP plans and strategies.
3. The Board will assess current performance against MEP program plans.
4. The Board will function solely in an advisory capacity, and in accordance with the provisions of the Federal Advisory Committee Act.
5. The Board shall submit an annual report through the NIST Director to the Secretary for transmittal to Congress within 30 days after the submission to Congress of the President's annual budget request each year. The report will address the status of the MEP and comment on programmatic planning and updates.

Membership

1. The MEP Board is composed of 10 members, broadly representative of stakeholders. At least 2 members shall be employed by or on an advisory board for the Centers, and at least 5 other members shall be from U.S. small businesses in the manufacturing sector. No member shall be an employee of the Federal Government.
2. The Director of the National Institute of Standards and Technology (NIST) shall appoint the members of the Board. Members shall be selected on a clear, standardized basis, in accordance with applicable Department of Commerce guidance. Members serve at the discretion of the NIST Director.
3. Committee members from the manufacturing industry and those representing specific stakeholder groups shall serve in a representative capacity. Committee members from the academic community shall serve as experts and will be considered Special Government Employees (SGEs) and will be subject to all ethical standards and rules applicable to SGEs.
4. The term of office of each member of the Board shall be three years, except that vacancy appointments shall be for the remainder of the unexpired term of the vacancy.

Miscellaneous

1. Members of the Board will not be compensated for their services but will, upon request, be allowed travel and per diem expenses as authorized by 5 U.S.C. 5701 *et seq.,* while attending meetings of the Board or subcommittees thereof, or while otherwise performing duties at the request of the Chair, while away from their homes or regular places of business.
2. The Board will meet at least two times a year. Additional meetings may be called by the NIST Director.
3. Committee meetings are open to the public.

NOMINATION INFORMATION: Nominations are being accepted in all categories described above.

Nominees should have specific experience related to industrial extension services. Letters of nomination should include the category of membership for which the candidate is applying and a summary of the candidate's qualifications for that specific category. Each nomination letter should state that the person agrees to the nomination and acknowledges the responsibilities of serving on the MEP Advisory Board.

Selection of MEP Advisory Board members will not be limited to individuals who are nominated. Nominations that are received and meet the requirements will be kept on file to be reviewed as Board vacancies occur.

The Department of Commerce is committed to equal opportunity in the workplace and seeks a broad-based and diverse MEP Advisory Board membership.

National Construction Safety Team Advisory Committee

ADDRESSES: Please submit nominations to Stephen Cauffman, National Construction Safety Team Advisory Committee, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 8611, Gaithersburg, MD 20899–8611. Nominations may also be submitted via FAX to 301–869–6275.

FOR FURTHER INFORMATION CONTACT: Stephen Cauffman, National Construction Safety Team Advisory Committee, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 8611, Gaithersburg, MD 20899–8611, telephone 301–975–6051, fax 301–869–6275; or via e-mail at *stephen.cauffman@nist.gov.*

COMMITTEE INFORMATION: The Committee was established in accordance with the National Construction Safety Team Act,

Public Law 107–231 and the Federal Advisory Committee Act (5 U.S.C. App. 2).

Objectives and Duties

1. The Committee shall advise the Director of the National Institute of Standards and Technology (NIST) on carrying out the National Construction Safety Team Act (Act), review and provide advice on the procedures developed under section 2(c)(1) of the Act, and review and provide advice on the reports issued under section 8 of the Act.

2. The Committee functions solely as an advisory body, in accordance with the provisions of the Federal Advisory Committee Act.

3. The Committee shall report to the Director of NIST.

4. The Committee shall provide a written annual report, through the Director of the NIST Building and Fire Research Laboratory (BFRL) and the Director of NIST, to the Secretary of Commerce for submission to the Congress, to be due at a date to be agreed upon by the Committee and the Director of NIST. Such report will provide an evaluation of National Construction Safety Team activities, along with recommendations to improve the operation and effectiveness of National Construction Safety Teams, and an assessment of the implementation of the recommendations of the National Construction Safety Teams and of the Committee. In addition, the Committee may provide reports at strategic stages of an investigation, at its discretion or at the request of the Director of NIST, through the Director of the BFRL and the Director of NIST, to the Secretary of Commerce.

Membership

1. The Committee will be composed of not fewer than five nor more than ten members that reflect a wide balance of the diversity of technical disciplines and competencies involved in the National Construction Safety Teams investigations. Members shall be selected on the basis of established records of distinguished service in their professional community and their knowledge of issues affecting the National Construction Safety Teams.

2. The Director of the NIST shall appoint the members of the Committee, and they will be selected on a clear, standardized basis, in accordance with applicable Department of Commerce guidance.

Miscellaneous

1. Members of the Committee will not be paid for their services, but will, upon request, be allowed travel and per diem expenses in accordance with 5 U.S.C. 5701 *et seq.,* while attending meetings of the Committee or of its subcommittees, or while otherwise performing duties at the request of the chairperson, while away from their homes or a regular place of business.

2. The Committee will meet at least once per year at the call of the Chair. Additional meetings may be called whenever one-third or more of the members so request it in writing or whenever the Chair or the Director of NIST requests a meeting.

NOMINATION INFORMATION:

1. Nominations are sought from all fields involved in issues affecting National Construction Safety Teams.

2. Nominees should have established records of distinguished service. The field of expertise that the candidate represents he/she is qualified should be specified in the nomination letter. Nominations for a particular field should come from organizations or individuals within that field. A summary of the candidate's qualifications should be included with the nomination, including (where applicable) current or former service on federal advisory boards and federal employment. In addition, each nomination letter should state that the candidate agrees to the nomination, acknowledges the responsibilities of serving on the Committee, and will actively participate in good faith in the tasks of the Committee.

3. The Department of Commerce is committed to equal opportunity in the workplace and seeks a broad-based and diverse Committee membership.

Advisory Committee on Earthquake Hazards Reduction (ACEHR)

ADDRESSES: Please submit nominations to Tina Faecke, Administrative Officer, National Earthquake Hazards Reduction Program, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 8630, Gaithersburg, MD 20899–8630. Nominations may also be submitted via FAX to 301–975–4032 or e-mail at *tina.faecke@nist.gov*. Additional information regarding the Committee, including its charter and executive summary may be found on its electronic home page at: *http://www.nehrp.gov*.

FOR FURTHER INFORMATION CONTACT: Dr. Jack Hayes, Director, National Earthquake Hazards Reduction Program, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 8604, Gaithersburg, MD 20899–8604, telephone 301–975–5640, fax 301–975–4032; or via e-mail at *jack.hayes@nist.gov*.

COMMITTEE INFORMATION: The Committee was established on June 27, 2006 in accordance with the National Earthquake Hazards Reduction Program Reauthorization Act, Public Law 108–360 and the Federal Advisory Committee Act (5 U.S.C. App. 2).

Objectives and Duties

1. The Committee will assess trends and developments in the science and engineering of earthquake hazards reduction, effectiveness of the Program in carrying out the activities under section 103(a)(2) of the Act, the need to revise the Program, the management, coordination, implementation, and activities of the Program.

2. The Committee functions solely as an advisory body, in accordance with the provisions of the Federal Advisory Committee Act.

3. The Committee shall report to the Director of NIST.

4. Not later than one year after the first meeting of the Committee, and at least once every two years thereafter, the Committee shall report to the Director of NIST, on its findings of the assessments and its recommendations for ways to improve the Program. In developing recommendations, the Committee shall consider the recommendations of the United States Geological Survey Scientific Earthquake Studies Advisory Committee.

Membership

1. The Committee will consist of not fewer than 11 nor more than 17 members, who reflect a wide diversity of technical disciplines, competencies, and communities involved in earthquake hazards reduction. Members shall be selected on the basis of established records of distinguished service in their professional community and their knowledge of issues affecting the National Earthquake Hazards Reduction Program.

2. The Director of NIST shall appoint the members of the Committee, and they will be selected on a clear, standardized basis, in accordance with applicable Department of Commerce guidance.

3. The term of office of each member of the Committee shall be three years, except that vacancy appointments shall be for the remainder of the unexpired term of the vacancy and that the initial members shall have staggered terms such that the committee will have approximately ⅓ new or reappointed members each year.

4. No committee member may be an "employee" as defined in subparagraphs (A) through (F) of section 7342(a)(1) of Title 5 of the United States Code.

Miscellaneous

1. Members of the Committee will not be compensated for their services, but will, upon request, be allowed travel and per diem expenses in accordance with 5 U.S.C. 5701 *et seq.,* while attending meetings of the Committee or of its subcommittees, or while otherwise performing duties at the request of the chairperson, while away from their homes or a regular place of business.

2. Members of the Committee shall serve as Special Government Employees and are required to file an annual Executive Branch Confidential Financial Disclosure Report.

3. The Committee shall meet at least once per year. Additional meetings may be called whenever the Director of NIST requests a meeting.

4. Committee meetings are open to the public.

NOMINATION INFORMATION:

1. Nominations are sought from industry and other communities having an interest in the National Earthquake Hazards Reduction Program, such as, but not limited to, research and academic institutions, industry standards development organizations, state and local government bodies, and financial communities, who are qualified to provide advice on earthquake hazards reduction and represent all related scientific, architectural, and engineering disciplines.

2. Nominees should have established records of distinguished service. The field of expertise that the candidate represents should be specified in the nomination letter. Nominations for a particular field should come from organizations or individuals within that field. A summary of the candidate's qualifications should be included with the nomination, including (where applicable) current or former service on federal advisory boards and federal employment. In addition, each nomination letter should state that the person agrees to the nomination, acknowledges the responsibilities of serving on the Committee, and will actively participate in good faith in the tasks of the Committee.

3. The Department of Commerce is committed to equal opportunity in the workplace and seeks a broad-based and diverse Committee membership.

NIST Smart Grid Advisory Committee

ADDRESSES: Please submit nominations to Dr. George W. Arnold, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 8100, Gaithersburg, MD 20899–8100. Nominations may also be submitted via e-mail to *nistsgfac@nist.gov.* Information about the committee may be found at: *http://www.nist.gov/smartgrid/.*

FOR FURTHER INFORMATION CONTACT: Dr. George W. Arnold, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 8100, Gaithersburg, MD 20899–8100; telephone 301–975–2232, fax 301–975–4091; or via e-mail at *nistsgfac@nist.gov.*

COMMITTEE INFORMATION: The Committee was established in accordance with the Federal Advisory Committee Act (5 U.S.C. App.).

Objectives and Duties

1. The Committee shall advise the Director of the National Institute of Standards and Technology (NIST) on carrying out duties authorized by section 1305 of the Energy Independence and Security Act of 2007 (Pub. L. 110–140).

2. The Committee functions solely as an advisory body in accordance with the provisions of the Federal Advisory Committee Act.

3. The Committee shall report to the Director of NIST.

4. The Committee shall provide input to NIST on the Smart Grid Standards, Priority, and Gaps. The Committee shall provide input on the overall direction, status and health of the Smart Grid implementation by the Smart Grid industry, including identification of issues and needs. Input to NIST will be used to help guide the Smart Grid Interoperability Panel activities and also assist NIST in directing research and standards activities.

5. Upon request of the Director of NIST, the Committee will prepare reports on issues affecting Smart Grid activities.

Membership

1. The Committee will be composed of not fewer than nine nor more than fifteen members that reflect the wide diversity of technical disciplines and competencies involved in the Smart Grid deployment and operations and will come from a cross section of organizations. Members shall be selected on the basis of established records of distinguished service in their professional community and their knowledge of issues affecting Smart Grid deployment.

2. The Director of NIST shall appoint the members of the Committee, and they will be selected on a clear, standardized basis, in accordance with applicable Department of Commerce guidance.

Miscellaneous

1. Members of the Committee will not be paid for their services but will, upon request, be allowed travel and per diem expenses in accordance with 5 U.S.C. 5701 *et seq.* while attending meetings of the Committee or of its subcommittees, or while otherwise performing duties at the request of the chairperson, while away from their homes or a regular place of business.

2. The Committee will meet at least twice per year. Additional meetings may be called whenever one-third or more of the members so request in writing or whenever the Director of NIST requests a meeting.

NOMINATION INFORMATION:

1. Nominations are sought from all fields involved in issues affecting the Smart Grid.

2. Nominees should have established records of distinguished service. The field of expertise that the candidate represents should be specified in the nomination letter. Nominations for a particular field should come from organizations or individuals within that field. A summary of the candidate's qualifications should be included with the nomination, including (where applicable) current or former service on federal advisory boards and federal employment. In addition, each nomination letter should state that the person agrees to the nomination, acknowledges the responsibilities of serving on the Committee, and will actively participate in good faith in the tasks of the Committee. The Department of Commerce is committed to equal opportunity in the workplace and seeks a broad-based and diverse Committee membership.

Authority: Federal Advisory Committee Act: 5 U.S.C. App.

Visiting Committee on Advanced Technology (VCAT)

ADDRESSES: Please submit nominations to Gail Ehrlich, Executive Director, Visiting Committee on Advanced Technology, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 1060, Gaithersburg, MD 20899–1060. Nominations may also be submitted via FAX to 301–216–0529 or via e-mail at *gail.ehrlich@nist.gov.* Additional information regarding the Committee, including its charter, current membership list, and executive summary may be found on its electronic homepage at: *http://www.nist.gov/director/vcat/vcat.htm.*

FOR FURTHER INFORMATION CONTACT: Gail Ehrlich, Executive Director, Visiting Committee on Advanced Technology, National Institute of Standards and

Technology, 100 Bureau Drive, Mail Stop 1060, Gaithersburg, MD 20899–1060, telephone 301–975–2149, fax 301–216–0529; or via e-mail at *gail.ehrlich@nist.gov.*

COMMITTEE INFORMATION: The VCAT was established in accordance with 15 U.S.C. 278 and the Federal Advisory Committee Act (5 U.S.C. App.).

Objectives and Duties

1. The Committee shall review and make recommendations regarding general policy for NIST, its organization, its budget, and its programs, within the framework of applicable national policies as set forth by the President and the Congress.

2. The Committee functions solely as an advisory body, in accordance with the provisions of the Federal Advisory Committee Act.

3. The Committee shall report to the Director of NIST.

4. The Committee shall provide an annual report, through the Director of NIST, to the Secretary of Commerce for submission to the Congress not later than 30 days after the submittal to Congress of the President's annual budget request in each year. Such report shall deal essentially, though not necessarily exclusively, with policy issues or matters which affect the Institute, or with which the Committee in its official role as the private sector policy advisor of the Institute is concerned. Each such report shall identify areas of program emphasis for the Institute of potential importance to the long-term competitiveness of the United States industry. Such report also shall comment on the programmatic planning document and updates thereto submitted to Congress by the Director under subsections (c) and (d) of section 23 of the NIST Act (15 U.S.C. 278i). The Committee shall submit to the Secretary and Congress such additional reports on specific policy matters as it deems appropriate.

Membership

1. The Committee is composed of 15 members that provide representation of a cross-section of traditional and emerging United States industries. Members shall be selected solely on the basis of established records of distinguished service and shall be eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. No employee of the Federal Government shall serve as a member of the Committee.

2. The Director of the NIST shall appoint the members of the Committee, and they will be selected on a clear, standardized basis, in accordance with applicable Department of Commerce guidance.

3. The term of the office of each member of the Committee shall be three years, except that vacancy appointments shall be for the remainder of the unexpired term of the vacancy.

Miscellaneous

1. Members of the VCAT will not be compensated for their services, but will, upon request, be allowed travel expenses in accordance with 5 U.S.C. 5701 *et seq.,* while attending meetings of the Committee or of its subcommittees, or while otherwise performing duties at the request of the chairperson, while away from their homes or a regular place of business.

2. Members of the Committee shall serve as Special Government Employees (SGEs) and will be subject to the ethics standards applicable to SGEs. As SGEs, the members are required to file an annual Executive Branch Confidential Financial Disclosure Report.

3. Meetings of the VCAT take place at the NIST headquarters in Gaithersburg, Maryland, and may be held periodically at the NIST site in Boulder, Colorado. Meetings are usually two days in duration and are held at least twice each year.

4. Generally, Committee meetings are open to the public.

NOMINATION INFORMATION:

1. Nominations are sought from all fields described above.

2. Nominees should have established records of distinguished service and shall be eminent in fields such as business, research, new product development, engineering, labor, education, management consulting, environment and international relations. The category (field of eminence) for which the candidate is qualified should be specified in the nomination letter. Nominations for a particular category should come from organizations or individuals within that category. A summary of the candidate's qualifications should be included with the nomination, including (where applicable) current or former service on federal advisory boards and federal employment. In addition, each nomination letter should state that the candidate agrees to the nomination, acknowledges the responsibilities of serving on the VCAT, and will actively participate in good faith in the tasks of the VCAT. Besides participation in two-day meetings held at least twice each year, it is desired that members be able to devote the equivalent of two days between meetings to either developing or researching topics of potential interest, and so forth in furtherance of the Committee duties.

3. The Department of Commerce is committed to equal opportunity in the workplace and seeks a broad-based and diverse VCAT membership.

Dated: July 21, 2010.

Katharine B. Gebbie,

Director, Physics Laboratory.

[FR Doc. 2010–18378 Filed 7–26–10; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

International Trade Administration

The Americas Business Trade Mission to Mexico

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

Mission Description

The U.S. Commercial Service of the International Trade Administration, U.S. Department of Commerce will recruit and organize a multiple industry trade mission to Mexico City with an optional second stop in Monterrey, October 25–28, 2010. This mission will be led by a senior Department of Commerce official.

In each city, participating companies will have one day of pre-scheduled, pre-screened one-on-one appointments with potential distributors, and/or business partners, as well as counseling from Commercial Service trade specialists. In both locations, there will be an in-depth commercial briefing on the local business climate. In Mexico City, there will also be a networking reception for the delegation with local private and public sector officials.

The mission to Mexico is intended to include representatives from best-prospect sectors which include among others airport and aviation, automotive, building and construction, education and training, energy, environmental technologies, financial and insurance services, franchising, information technologies and telecommunications, safety and security, transportation and ports, and travel and tourism and to introduce participants to distributors and prospective partners.

The Americas Business Trade Mission will build on the momentum gained from the 2009 and 2010 The Americas Business Forum held in Los Angeles, CA. The U.S. Commercial Service

worked closely with the Los Angeles Area Chamber of Commerce and the UCLA Anderson School of Business to recruit small-to-medium sized companies from across the country to attend the conference. During the conferences the Senior Commercial Officer from Mexico met with more than 50 companies interested in doing business in Mexico. This trade mission will build upon the interest shown during these meetings but participation in this mission is not limited to past participants of The Americas Business Forum.

Commercial Setting

- Mexico is the second largest market in the world for U.S. exports. Given the magnitude of trade between the United States and Mexico, there are abundant opportunities for U.S. firms in Mexico. The North American Free Trade Agreement (NAFTA), enacted in 1994, created a free trade zone for Mexico, Canada and the United States, and has resulted in approximately $367 billion of annual trade between the two countries, more than $1 billion of trade per day.
- Although Mexico's GDP contracted due to the global economic downturn, strong U.S.-Mexico trade continues. GDP is expected to grow by 4.2 percent in 2010. In addition, due to recent economic reforms Mexico's macro-economic picture is a healthier one than in early years of this decade.
- Mexico's size and diversity are often under appreciated by U.S. exporters. It can often be difficult to find a single distributor or agent to cover this vast market.
- The National Infrastructure Plan announced by President Calderon in July 2007 includes over 300 projects in the power, oil and gas, airport, ports, environmental, road transport and other sectors. Projects are open for U.S. company participation, and provide solid opportunities for the supply of goods, services, and technology.

Mission Goals

This trade mission is designed to help U.S. firms initiate or expand their exports to Mexico by providing business-to-business introductions and market access information. This mission by connecting U.S. companies with potential Mexican trading partners also supports the President's initiative to double exports during the next five years to support 2 million American jobs.

Mission Scenario

U.S. firms will take part in formal matchmaking sessions with Mexico City- and Monterrey-based companies. The participating U.S. firms will also be given opportunities to interact with local company representatives at networking events. For the one-on-one sessions, all U.S. companies, together with a Commercial Specialist and/or trade aide will visit their Mexican counterparts at their facilities. The precise schedule will depend on the availability of local business representatives and the specific goals and objectives of the mission participants.

U.S. participants will be counseled before and after the mission by the mission coordinators. Participation in the mission will include the following:

- Pre-travel briefings/webinar on subjects ranging from business practices in Mexico to security;
- Pre-scheduled meetings with potential partners, distributors, end users, or local industry contacts in Mexico City and Monterrey (optional stop);
- Transportation to airports in Mexico City and Monterrey;
- Participation in networking reception in Mexico City, and
- Meetings with respective industry commercial specialists in CS Mexico City and Monterrey.

Proposed Timetable

October 25	Mexico City: "Doing Business in Mexico" Commercial Briefing by U.S. Commercial Service Mexico. City and Economic section of the U.S. Embassy. Review of mission schedule. Networking reception.
October 26	Mexico City: One-on-one business matchmaking appointments.
October 27	Mexico City/Monterrey (optional): *Morning:* 2–3 sessions on topics related to doing business in Mexico City. Debrief of Mexico City portion of trade mission. For those participating in Monterrey portion of trade mission, afternoon flight to Monterrey. Welcome to Monterrey dinner.
October 28	Monterrey: Breakfast briefing on doing business in Monterrey. One-on-one business matchmaking appointments. Debrief of trade mission. End of mission.

Participation Requirements

All parties interested in participating in The Americas Business Trade Mission to Mexico must complete and submit an application for consideration by the U.S. Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. This mission is designed for a minimum of 12 and a maximum of 15 companies that will be selected to participate in the mission from the applicant pool. U.S. companies already doing business in Mexico City as well as U.S. companies seeking to enter the market for the first time are encouraged to apply. For the optional stop in Monterrey, post can accommodate a maximum of 8 companies due to staffing constraints.

Fee and Expenses

After a company has been selected to participate on the mission, a payment to the U.S. Department of Commerce in the form of a participation fee is required. The participation fee will be $3,700 for large firms that participate in both cities ($2,000 if only participating in Mexico City) and $2,350 for a small or medium-

sized enterprise (SME)[1] or small organization that participates in both cities ($1,300 if only participating in Mexico City), which will cover up to two representatives. The fee for each additional firm representative (large firm or SME) is $500. Expenses for travel, lodging, most meals, and incidentals will be the responsibility of each mission participant.

Conditions for Participation

- An applicant must submit a completed and signed mission application and supplemental application materials, including adequate information on the company's products and/or services, primary market objectives, and goals for participation. If the U.S. Department of Commerce receives an incomplete application, the Department may reject the application, request additional information, or take the lack of information into account when evaluating the applications.
- Each applicant must also certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, marketed under the name of a U.S. firm and have at least fifty-one percent U.S. content.

Selection Criteria for Participation

Selection will be based on the following criteria:

- Suitability of a company's products or services to the mission's goals;
- Applicant's potential for business in Mexico, including likelihood of exports resulting from the trade mission, and
- Consistency of the applicant's goals and objectives with the stated scope of the trade mission. Referrals from political organizations and any documents containing references to partisan political activities (including political contributions) will be removed from an applicant's submission and not considered during the selection process.

Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (*http://www.ita.doc.gov/doctm/tmcal.html*), Pacific South Network U.S. Export Assistance Center Web sites, e-mail notification to registrants of TABF, clients and prospects of the Pacific South Network and local trade and corporate partners and publicity at local trade events and trade shows.

Recruitment for the mission will begin immediately and conclude no later than September 3, 2010. The U.S. Commercial Service will review all applications immediately after the deadline. We will inform applicants of selection decisions as soon as possible after September 3, 2010. Applications received after that date will be considered only if space and scheduling constraints permit.

Contacts

U.S. Commercial Service, Pacific South Network

Julie Anne Hennessy, Los Angeles (West) U.S. Export Assistance Center, 11150 W. Olympic Blvd., Suite 975, Los Angeles, CA 90064. *T:* (310) 235–7203. *F:* (310) 235–7220. *E: julieanne.hennessy@trade.gov.*

U.S. Commercial Service, Mexico City

Jeff Hamilton, U.S. Commercial Service, Liverpool No. 31, Col. Juarez, 06600 Mexico, DF. *Tel:* (52) (55) 5140–2612. *Fax:* (52) (55) 5566–1111. *E: jeff.hamilton@trade.gov.*

Ryan Kane,

Global Trade Programs, Commercial Service Trade Missions Program.

[FR Doc. 2010–18273 Filed 7–26–10; 8:45 am]

BILLING CODE 3510–FP–P

[1] An SME is defined as a firm with 500 or fewer employees or that otherwise qualifies as a small business under SBA regulations (*see http://www.sba.gov/services/contracting opportunities/sizestandardstopics/index.html*). Parent companies, affiliates, and subsidiaries will be considered when determining business size. The dual pricing reflects the Commercial Service's user fee schedule that became effective May 1, 2008 (*see http://www.export.gov/newsletter/march2008/initiatives.html* for additional information).

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, August 28, 2010.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance and Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2010–18488 Filed 7–23–10; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, August 21, 2010.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance and Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2010–18491 Filed 7–23–10; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, August 14, 2010.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance and Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2010–18493 Filed 7–23–10; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, August 7, 2010.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance and Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2010–18494 Filed 7–23–10; 4:15 pm]

BILLING CODE 6351–01–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2010–0080]

Children's Products Containing Lead; Technological Feasibility of 100 ppm for Lead Content; Request for Comments and Information

AGENCY: Consumer Product Safety Commission.

ACTION: Notice

SUMMARY: Section 101(a) of the Consumer Product Safety Improvement Act ("CPSIA") provides that, as of August 11, 2011, children's products may not contain more than 100 parts per million ("ppm") of lead, unless the Consumer Product Safety Commission ("CPSC" or "Commission"), determines that it is not technologically feasible, after notice and a hearing and after analyzing the public health protections associated with substantially reducing lead in children's products. The reduction can be for a product or product category. This notice requests comment and information on the technological feasibility of meeting the 100 ppm lead content limit for children's products.

DATES: Written comments and submissions in response to this notice must be received by September 27, 2010.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2010–0080, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way: *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (e-mail) except through *http://www.regulations.gov.*

Written Submissions

Submit written submissions in the following way: *Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to:* Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to *http://www.regulations.gov.* Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Kristina Hatlelid, PhD, M.P.H., Directorate for Health Sciences, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814; e-mail *khatlelid@cpsc.gov;* telephone (301) 504–7254.

SUPPLEMENTARY INFORMATION:

Section 101(a) of the CPSIA (15 U.S.C. 1278a(a)) provides that, for products designed or intended primarily for children 12 years old and younger, the total lead content limit by weight in any part of a children's product is limited to 300 ppm as of August 14, 2009, and 100 ppm of lead as of August 14, 2011, unless the Commission determines that it is not technologically feasible to have this lower limit for a product or product category. The Commission may make such a determination only after notice and a hearing and after analyzing the public health protections associated with substantially reducing lead in children's products. If the Commission determines that the 100 ppm lead content limit is not technologically feasible for a product or product category, the Commission shall, by regulation, establish the lowest amount below 300 ppm that it determines is technologically feasible.

Unless granted a specific exclusion or determination under the Commission's regulations at 16 CFR 1500.87 through 1500.91, children's products, including the components parts of children's products, are subject to the lead limits and also to the testing and certification requirements of section 14(a)(2) of the Consumer Product Safety Act ("CPSA"). (15 U.S.C. 2063(a)(2)).

Through this notice, the Commission invites comment and seeks information concerning the technological feasibility of meeting the 100 ppm lead content limit for children's products that are not otherwise excluded from the lead limits. Section 101(d) of the CPSIA (15 U.S.C 1278a(d)) provides that a lead limit shall be deemed technologically feasible with regard to a product or product category if:

(1) a product that complies with the limit is commercially available in the product category;

(2) technology to comply with the limit is commercially available to manufacturers or is otherwise available within the common meaning of the term;

(3) industrial strategies or devices have been developed that are capable or will be capable of achieving such a limit by the effective date of the limit and that companies, acting in good faith, are generally capable of adopting; or

(4) alternative practices, best practices, or other operational changes would allow the manufacturer to comply with the limit.

Request for Comments and Information

The Commission requests information on the technological feasibility for manufacturers to meet the 100 ppm lead content limit for specific children's products or product categories. The comments should address products or materials that currently comply with 300 ppm lead content limit which are required to meet the 100 ppm lead content limit effective August 14, 2011. Specifically, information is requested on the following:

1. For products and materials that currently meet the 100 ppm lead content limit, provide:

(i) information and test data regarding products or materials, including metals, plastics, glass, or recycled materials that are at or below the 100 ppm lead content limit (specify which materials were tested, the number of tests conducted for each material and, for each material, the percentage of tests that exceed 100 ppm, if any);

(ii) information and data on industrial strategies or devices, if any, that have enabled the manufacturer to comply with the 100 ppm lead content limit (specify the methodologies used for each material);

(iii) information and data on the impact, if any, the use of materials that are compliant with the 100 ppm lead content limit, has on the functional or safety requirements specified for the product or product category (specify which materials were used); and

2. For products and materials that currently do not meet the 100 ppm lead content limit, but do meet the 300 ppm lead content limit, provide:

(i) information and test data showing the lead content of such products or materials, including metals, plastics, glass, or recycled materials (specify which materials were tested, the number of tests conducted for each material and, for each material, the lead content of the material, and the percentage of tests that are at or below 100 ppm, if any);

(ii) information and data on whether such products or materials could be made compliant with the 100 ppm lead content limit through the use of different products or materials;

(iii) information and data on the strategies or devices, alternative practices, best practices, or other operational changes that may be used to enable the manufacturer to comply with the 100 ppm lead content limit;

(iv) information and data on the lowest lead content limit under 300 ppm that is technologically feasible for such products or materials; and

(v) the date(s) by which such products and materials could be expected to meet the 100 ppm lead content limits.

The Commission also seeks comment on any other factors that could affect compliance with this requirement.

Dated: July 21, 2010.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2010–18361 Filed 7–26–10; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board; Task Force on Nuclear Treaty Monitoring and Verification

AGENCY: Department of Defense (DoD).

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Nuclear Treaty Monitoring and Verification will meet in closed session September 13–14, and 25–26, 2010, in Arlington, VA.

DATES: The meetings will be held September 13–14, and 25–26, 2010.

ADDRESSES: The meetings will be held at Science Applications International Corporation, 4001 North Fairfax Drive, Suite 300, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Maj. Michael Warner, USAF Military Assistant, Defense Science Board, 3140 Defense Pentagon, Room 3B888A, Washington, DC 20301–3140, via e-mail at *michael.warner@osd.mil,* or via phone at (703) 571–0081.

SUPPLEMENTARY INFORMATION: The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. These meetings will research and summarize anticipated directions in nonproliferation and arms control agreements and the environments in which they might be implemented.

The task force's findings and recommendations, pursuant to 41 CFR 102–3.140 through 102–3.165, will be presented and discussed by the membership of the Defense Science Board prior to being presented to the Government's decision maker.

Pursuant to 41 CFR 102–3.120 and 102–3.150, the Designated Federal Officer for the Defense Science Board will determine and announce in the **Federal Register** when the findings and recommendations of the September 13–14 and 25 and 26 meetings are deliberated by the Defense Science Board.

Interested persons may submit a written statement for consideration by the Defense Science Board. Individuals submitting a written statement must submit their statement to the Designated Federal Official (*see* **FOR FURTHER INFORMATION CONTACT**), at any point, however, if a written statement is not received at least 10 calendar days prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the Defense Science Board. The Designated Federal Official will review all timely submissions with the Defense Science Board Chairperson, and ensure they are provided to members of the Defense Science Board before the meeting that is the subject of this notice.

Dated: July 22, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–18315 Filed 7–26–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board; Task Force on Counter Insurgency (COIN) Intelligence, Surveillance and Reconnaissance (ISR) Operations

AGENCY: Department of Defense (DoD).

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Counter Insurgency (COIN) Intelligence, Surveillance and Reconnaissance (ISR) Operations will meet in closed session on August 24–26, and September 21–23, 2010, in Arlington, VA.

DATES: The meetings will be held August 24–26, and September 21–23, 2010.

ADDRESSES: The meetings will be held at Science Applications International Corporation, 4001 North Fairfax Drive, Suite 300, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Maj Michael Warner, USAF Military Assistant, Defense Science Board, 3140 Defense Pentagon, Room 3B888A, Washington, DC 20301–3140, via e-mail at *michael.warner@osd.mil,* or via phone at (703) 571–0081.

SUPPLEMENTARY INFORMATION: The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. These meetings will identify how DoD intelligence can most effectively support COIN operations and what emerging science and technology would have the greatest intelligence potential in this type of warfare.

The task force's findings and recommendations, pursuant to 41 CFR 102–3.140 through 102–3.165, will be presented and discussed by the membership of the Defense Science Board prior to being presented to the Government's decision maker.

Pursuant to 41 CFR 102–3.120 and 102–3.150, the Designated Federal Officer for the Defense Science Board will determine and announce in the **Federal Register** when the findings and recommendations of the August 24–26 and September 21–23 meetings are deliberated by the Defense Science Board.

Interested persons may submit a written statement for consideration by the Defense Science Board. Individuals submitting a written statement must submit their statement to the Designated Federal Official (*see* **FOR FURTHER INFORMATION CONTACT**), at any point, however, if a written statement is not received at least 10 calendar days prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the Defense Science Board. The Designated Federal Official will review all timely submissions with the Defense Science Board Chairperson, and ensure they are provided to members of the Defense Science Board before the meeting that is the subject of this notice.

Dated: July 22, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–18316 Filed 7–26–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board; Task Force on Trends and Implications of Climate Change for National and International Security

AGENCY: Department of Defense (DoD).

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Trends and Implications of Climate Change for National and International Security will meet in closed session August 18–19, and September 20–21, 2010, in Arlington, VA.

DATES: The meetings will be held August 18–19, and September 20–21, 2010.

ADDRESSES: The meetings will be held at Strategic Analysis, Inc., 4075 Wilson Boulevard, Suite 350, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Maj Michael Warner, USAF Military Assistant, Defense Science Board, 3140 Defense Pentagon, Room 3B888A, Washington, DC 20301–3140, via e-mail at *michael.warner@osd.mil,* or via phone at (703) 571–0081.

SUPPLEMENTARY INFORMATION: The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. These meetings will bring together the information and views from multiple government and other organizations to provide a comprehensive picture of the current situation, known unknowns and emerging trends.

The task force's findings and recommendations, pursuant to 41 CFR 102–3.140 through 102–3.165, will be presented and discussed by the membership of the Defense Science Board prior to being presented to the Government's decision maker.

Pursuant to 41 CFR 102–3.120 and 102–3.150, the Designated Federal Officer for the Defense Science Board will determine and announce in the **Federal Register** when the findings and recommendations of the August 18–19 and September 20–21 meetings are deliberated by the Defense Science Board.

Interested persons may submit a written statement for consideration by the Defense Science Board. Individuals submitting a written statement must submit their statement to the Designated Federal Official (*see* **FOR FURTHER INFORMATION CONTACT**), at any point, however, if a written statement is not received at least 10 calendar days prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the Defense Science Board. The Designated Federal Official will review all timely submissions with the Defense Science Board Chairperson, and ensure they are provided to members of the Defense Science Board before the meeting that is the subject of this notice.

Dated: July 22, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–18317 Filed 7–26–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Membership of the Defense Logistics Agency (DLA) Senior Executive Service (SES) Performance Review Board (PRB)

AGENCY: DLA.

ACTION: Notice of membership—2010 DLA PRB.

SUMMARY: This notice announces the appointment of members to the DLA SES Performance Review Board (PRB). The publication of PRB composition is required by 5 U.S.C. 4314(c)(4). The PRB provides fair and impartial review of SES performance appraisals and makes recommendations to the Director, DLA, with respect to pay level adjustments and performance awards and other actions related to management of the SES cadre.

DATES: *Effective Date:* September 16, 2010.

ADDRESSES: Defense Logistics Agency, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, Virginia 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Lisa Novajosky, SES Program Manager, DLA Human Resources (J–14), Defense Logistics Agency, (703) 767–6447.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are the names and titles of DLA career executives appointed to serve as members of the SES PRB. Members will serve a 12-month term, which begins on September 16, 2010.

PRB Chair: Mr. J. Anthony Poleo, Director, DLA Finance.

Members:

Mr. Brad Bunn, Director, DLA Human Resources (Non-Voting Member);
Ms. Mae DeVincenis, Acting Director, DLA Logistics Operations;
Ms. Nancy Heimbaugh, Director, DLA Acquisitions.

A.S. Thompson,

Vice Admiral, Director.

[FR Doc. 2010–18200 Filed 7–26–10; 8:45 am]

BILLING CODE M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before August 26, 2010.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, *Attention:* Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated,

electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: July 22, 2010.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title of Collection: Protection and Advocacy for Assistive Technology (PAAT) Program Assurances.

OMB #: 1820–0658.

Agency Form Number(s): N/A.

Frequency of Responses: Annually.

Affected Public: Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Estimated Number of Annual Responses: 57.

Estimated Annual Burden Hours: 9.

Abstract: This information collection instrument will be used by grantees to request funds to carry out the PAAT program. PAAT is mandated by the Assistive Technology Act of 1998, as amended in 2004 (AT Act), to provide protection and advocacy services to individuals with disabilities for the purposes of assisting in the acquisition, utilization, or maintenance of assistive technology or assistive technology services.

Requests for copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4306. 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, D.C. 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title and OMB Control Number of the information collection when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–18374 Filed 7–26–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Convention on Supplementary Compensation for Nuclear Damage Contingent Cost Allocation

AGENCY: Department of Energy.

ACTION: Notice of inquiry and request for comment.

SUMMARY: The Department of Energy ("Department" or "DOE") is seeking comment and information from the public to assist in its development of regulations pertaining to section 934 of the Energy Independence and Security Act of 2007 ("Act"). Section 934 addresses how the United States will meet its obligations under the Convention on Supplementary Compensation for Nuclear Damage ("Convention" or "CSC") and, in particular, its obligation to contribute to an international supplementary fund in the event of certain nuclear incidents. Section 934 authorizes the Secretary of Energy ("Secretary") to issue regulations establishing a retrospective risk pooling program by which nuclear suppliers will reimburse the United States government for its contribution to the international supplementary fund. The Department's regulations to implement the retrospective risk pooling program are the subject of this notice.

DATES: Interested persons must submit written comments by September 27, 2010.

ADDRESSES: Comments may be submitted electronically by e-mailing them to: *Section934Rulemaking@Hq.Doe.Gov.* We note that e-mail submissions will avoid delay associated with security screening of U.S. Postal Service mail.

Also, written comments should be addressed to Sophia Angelini, Attorney-Advisor, Office of the General Counsel for Civilian Nuclear Programs, GC–52, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. The Department requires, in hard copy, a signed original and three copies of all comments. Copies of the written comments received and any other docket material may be reviewed on the Web site specifically established for this proceeding. The Internet Web site is: *http://gc.doe.gov/civilian_nuclear_programs.htm.*

FOR FURTHER INFORMATION CONTACT: Sophia Angelini, Attorney-Advisor, Office of the General Counsel for Civilian Nuclear Programs, GC–52, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; Telephone (202) 586–0319.

SUPPLEMENTARY INFORMATION:

I. Background

On September 12, 1997, the Convention on Supplementary Compensation for Nuclear Damage was adopted by a diplomatic conference convened by the International Atomic Energy Agency ("IAEA").[1] The CSC provides the basis for a global nuclear liability regime. Such a regime is an essential element of the infrastructure necessary to support the expanded use of nuclear power around the world to meet the challenges of climate change, energy security, and economic growth. The CSC provides consistent rules for dealing with legal liability resulting from a nuclear incident and ensures prompt availability of meaningful compensation for the nuclear damage resulting from any such incident. A major feature of the CSC is the creation of an "international supplementary fund," which provides an additional tier of compensation not otherwise available under a State's national law and to which each Party to the Convention ("Contracting Party") contributes in the event of certain nuclear incidents.

In the event of a nuclear incident, the CSC provides a two-tiered compensation system based on: (1) A Contracting Party's national law; and (2) the international supplementary fund. The first tier is provided by funds available under the laws of the State where the nuclear installation involved is located, or under whose authority the installation is operated ("Installation State"). The first tier amount is set at a minimum of 300 million Special Drawing Rights ("SDRs").[2] In the event that the first tier is inadequate to compensate all nuclear damage, a second tier would be provided via the international supplementary fund to which all Contracting Parties would contribute, including the Installation

[1] The full text of the Convention on Supplementary Compensation for Nuclear Damage is available at *http://www.iaea.org/Publication/Documents/Infircs/1998/infcirc567.shtml.* A detailed interpretation of the CSC and its provisions is contained in "The 1997 Vienna Convention on Civil Liability for Nuclear Damage and the 1997 Convention on Supplementary Compensation for Nuclear Damage—Explanatory Texts," International Atomic Energy Agency (IAEA) ("Explanatory Texts"). International Law Series No. 3 (2007). The Explanatory Texts is available at *http://www-pub.iaea.org/MTCD/publications/PDF/Pub1279_web.pdf* .

[2] SDR is the unit of account defined by the International Monetary Fund ("IMF") and used by the IMF for its own operations and transactions. As of May 2010, 1 SDR equaled about $1.50 dollars; therefore, 300 million SDRs would equal roughly $450 million dollars.

State that provided the first tier. This obligation arises when, and to the extent that, second tier funds are actually required, with no obligation to contribute if claims can be satisfied from the first tier. The second tier amount is not preset, but instead is calculated based on a formula that takes into account the installed capacity of all Contracting Parties and their United Nations ("UN") rate of assessment at the time of the incident. If countries with most of the current installed capacity join the Convention, the second tier will amount to approximately 300 million SDRs, which, in conjunction with the first tier, would guarantee a total of approximately 600 million SDRs for compensation.

In 2007, Congress passed the Energy Independence and Security Act of 2007 (Pub. L. 110–140), which includes section 934 ("Convention on Supplementary Compensation for Nuclear Damage Contingent Cost Allocation") (42 U.S.C. 17373). Section 934 implements the Convention in the United States. Congress found that the Convention benefits United States nuclear suppliers by replacing their potentially open-ended liability with a predictable liability regime, and, in effect, insurance for nuclear damage arising from incidents not covered by the Price-Anderson Act ("PAA").[3] The Department and the Nuclear Regulatory Commission ("NRC") are authorized to issue implementing regulations, as necessary and appropriate. 934(l). The combined operation of the CSC, PAA, and section 934 assures funding for victims in a wider variety of nuclear incidents, while reducing potential liability of United States nuclear suppliers and without increasing potential costs to United States nuclear reactor operators. 934(a)(1).

Section 934 sets forth the means by which the United States will contribute to the second tier of compensation required under the Convention, that is, the international supplementary fund. (The first tier of compensation would be funded pursuant to the governing United States law for nuclear incidents, the PAA.) Funds available under the PAA would be used to pay the United States contribution to the international supplementary fund for nuclear incidents that are covered by the PAA. 934(c) and (d). For nuclear incidents that are not covered by the PAA, section 934 establishes a new risk pooling program for nuclear suppliers to pay the United States contribution to the international supplementary fund. The risk pooling program involves a premium to be assessed retrospectively (*i.e.,* a deferred payment) based on a risk-informed formula taking into account specified risk factors in conjunction with exclusionary criteria. 934(e). This notice of inquiry ("NOI") is focused only on regulations to be promulgated by the Department to implement the new retrospective risk pooling program for nuclear suppliers. A section by section explanation of section 934 is provided in the Appendix to this notice.

II. Discussion of Section 934 and Request for Public Comment

A. Overview

The Department is issuing this NOI to provide an opportunity for public input as the Department develops a rule to implement a retrospective risk pooling program for nuclear suppliers to fund the United States contribution to the international supplementary fund required by the Convention.

This NOI discusses the major topics related to the implementation of section 934 by the Department, including: (1) Operation of the PAA system; (2) pertinent definitions in section 934(b); (3) the retrospective risk pooling program and deferred payment in subsection 934(e)(2); (4) the risk-informed assessment formula in subsection 934(e)(2)(C)(i) and factors for consideration in subsection 934(e)(2)(C)(ii); (5) reporting requirements in subsection 934(f); and (6) payments to and by the United States in subsection 934(h).

B. Operation of the Price-Anderson System

Section 934 is clear in its findings and purpose that the existing legal and operational framework of the PAA is not affected by the compensation system established by the Convention. Subsection 934(a) specifies that contributions under the Convention cannot "(i) upset settled expectations based on the liability regime established under the Price-Anderson Act; or (ii) shift to Federal taxpayers liability risks for nuclear incidents at foreign installations." 934(a)(1)(H)(i) and (ii). With respect to a nuclear incident covered by the PAA ("Price-Anderson incident"), "funds already available under the [PAA] should be used" for contributions due under the Convention. 934(a)(1)(I). With respect to a nuclear incident outside the United States not covered by the PAA, "a retrospective premium should be prorated among nuclear suppliers" with contingent costs allocated equitably, on the basis of risk. 934(a)(1)(J) and 934(a)(2)(B). In sum, the United States contribution under the Convention will be funded either from existing PAA funds or the new retrospective risk pooling program for nuclear suppliers. In no case would a nuclear reactor operator that contributes to the PAA pooling program be required also to contribute to the new retrospective pooling program. Because section 934 is clear on this point, and imposes no requirements on nuclear reactor operators covered by the PAA, the statute preserves the existing compensation system under the PAA. Accordingly, it is not necessary for either the Department or the NRC to issue implementing regulations to effectuate how and when PAA funds will be used to cover a contribution under the Convention.

The Department believes that, on this point, the operation of the PAA under the Convention is clear and self-executing; however, the Department invites comments if there is any question in this regard.

C. Definitions

Subsection 934(b) provides definitions for certain terms used in the Act. In its regulation, the Department intends to include the terms defined in the statute, as well as other key terms necessary to implement the statute. The Department views some of the terms defined in subsection 934(b) as being clear and to not require additional clarification. Those terms include: "Commission" at subsection 934(b)(1); "Convention" at subsection 934(b)(3); and "Secretary" at subsection 934(b)(9). Other terms in section 934, although defined, are less clear in their application or interpretation such that clarification may be necessary. For example, while the term "nuclear supplier" is defined at subsection 934(b)(7),[4] that term is potentially very

[3] The Price-Anderson Act ("Price-Anderson" or "PAA"), section 170 of the Atomic Energy Act of 1954, as amended ("AEA"), 42 U.S.C. 2210, is the national law governing compensation for victims of nuclear incidents occurring within the United States. The PAA provides that owners of commercial reactors must assume all liability for nuclear damages awarded to the public; each licensed reactor must carry primary financial protection in the amount of the maximum liability insurance available, currently $375 million U.S. dollars, and damages exceeding that amount would be assessed equally against all commercial reactors (currently 104 reactors) covered by the PAA under a retrospective premium requirement pooling program. The PAA also provides indemnification for public liability in the event of a nuclear incident resulting from activities conducted for or on behalf of DOE, including a nuclear incident outside the United States involving U.S.-owned nuclear material.

[4] The term "nuclear supplier" means a covered person (or a successor in interest of a covered person) that—

broad in scope, complex, and subject to interpretation. As to this definition and others below, the Department requests comments on how implementation of section 934 would be facilitated by further clarification and consideration in the regulation. If a commenter believes that clarifications should be provided in the Secretary's regulation as to the terms below, or any other terms, the commenter is requested to explain why and, if possible, provide suggested language.

The term "contingent cost," defined at subsection 934(b)(2),[5] means the cost to the United States in the event of a covered incident, which is equal to the amount the United States is obligated to make available under paragraph 1(b) of Article III of the Convention (*i.e.,* the international supplementary fund) pursuant to Article VII. As the definition implies, the cost to the United States in the event of a covered incident (a nuclear incident within the scope of the Convention) is contingent, and thus only paid under specified circumstances. Those circumstances and the amount of the payment are governed by the Convention, primarily Articles IV, VI and VII.

The formula for calculating the amount of the international supplementary fund is contained in Article IV, and is based upon:
(1) Nuclear generating capacity (thermal power shown at the date of the nuclear incident in a list of nuclear installations established under Article VIII); and
(2) UN assessment rate. Article IV.1(c) establishes a cap on contributions by any Contracting Party, other than the Installation State, per nuclear incident equal to the Contracting Party's UN rate of assessment plus 8 percentage points of the fund as a whole. For the United States, the contribution is capped initially at 28% (UN rate of assessment of 20%, plus 8%) or less than one-third of the international supplementary fund. As more generating States become Contracting Parties, the cap will increase, while the United States contribution percentage will decrease.

The Department believes that the definition of "contingent cost" is exact both as to when the cost is triggered and as to the required methodology for calculation of such costs. Therefore, the current approach is to define this term consistent with the Act and the Convention. Nonetheless, the Department invites comments as to related clarifications that should be incorporated in its regulation.

The term "covered incident," defined at subsection 934(b)(4), means a nuclear incident "the occurrence of which results in a request for funds pursuant to Article VII." Funds may be requested under Article VII when a nuclear incident results in nuclear damage that exceeds the first-tier contribution amount. Generally, a covered incident is a nuclear incident occurring in the territory of a Contracting Party or during transportation to or from a Contracting Party.

Because section 934 defines neither "nuclear incident" nor "nuclear damage," terms which are essential to an understanding of what constitutes a covered incident, DOE believes that it is necessary to look to the Convention and existing law to determine the proper interpretation and meaning of a covered incident under the Act. The Convention defines both nuclear incident and nuclear damage; the AEA defines nuclear incident.

The Convention, Article I.(i), defines "nuclear incident" as "any occurrence or series of occurrences having the same origin which causes nuclear damage or, but only with respect to preventive measures, creates a grave and imminent threat of causing such damage." This definition of nuclear incident includes incidents of actual nuclear damage, and, in the absence of an actual release of radiation, damages incident to preventive measures taken only in response to a grave and imminent threat of a release of radiation that could cause other types of nuclear damage. Under the AEA, subsection 11q. (42 U.S.C. 2014q.), a "nuclear incident" is defined as, in pertinent part, "any occurrence, including an extraordinary nuclear occurrence, within the United States causing, within or outside the United States, bodily injury, sickness, disease, or death, or loss of or damage to property, or loss of use of property, arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material." Like the Convention, the PAA definition of nuclear incident centers on the occurrence of injury or damage to persons or property directly caused by the incident. Unlike the Convention, the definition of nuclear incident in the PAA does not expressly include damage incident to preventive measures. However, the PAA provides for indemnification in the case of "public liability," where public liability is defined as, in pertinent part, "any legal liability arising out of or resulting from a nuclear incident or precautionary evacuation * * * " (AEA subsection 11w. (42 U.S.C. 2014w.)), and "precautionary evacuation" is defined as, in pertinent part, a government ordered "evacuation of the public within a specific area near a nuclear facility, or the transportation route in the case of an accident involving transportation of source material, special nuclear material, byproduct material, high-level radioactive waste, spent nuclear fuel, or transuranic waste * * * if the evacuation is—(1) the result of any event that is not classified as a nuclear incident but poses imminent danger of bodily injury or property damage * * *." AEA subsection 11gg. (42 U.S.C. 2014gg.). The definitions of "preventive measures" under the Convention and "precautionary evacuation" under the PAA are similar in scope and effect. Thus, when the AEA definitions of nuclear incident, public liability, and precautionary evacuation are read together the net effect is that a nuclear incident under the Convention is comparable to a nuclear incident under the PAA. Notwithstanding this comparability, in accordance with Article 2.2 of the Annex to the Convention ("Annex"), which permits the United States to use its existing domestic framework for dealing with liability for nuclear damage, the United States expects to use the PAA definition of a nuclear incident in connection with Price-Anderson incidents and the CSC definition of nuclear incident in connection with incidents that are not Price-Anderson incidents when implementing the Act.

The Department requests comments on whether and how it may need to further clarify those terms in its regulation.

In a similar vein, although the term "nuclear damage" is defined in the Convention, the Annex provides a mechanism for the United States to apply a definition of nuclear damage consistent with both the Convention and the PAA. For incidents outside the United States not covered by the PAA, the United States expects to apply the definition of nuclear damage under the Convention, Article I.(f). For incidents inside the United States covered by the PAA, the United States expects to apply the definition of nuclear damage in Annex Article 2.2(a).

The Department requests comments on whether or how it may need to further clarify those terms in its regulation.

(A) Supplies facilities, equipment, fuel, services, or technology pertaining to the design, construction, operation, or decommissioning of a covered installation; or

(B) Transports nuclear materials that could result in a covered incident.

[5] The term "contingent cost" means the cost to the United States in the event of a covered incident the amount of which is equal to the amount of funds the United States is obligated to make available under paragraph 1(b) of Article III of the Convention.

Nuclear damage is defined in the Convention, Article I.(f), as loss of life or personal injury, loss of or damage to property and, to the extent determined by the law of a competent court, five categories of damages relating to impairment of the environment such as costs of measures of reinstatement, loss of income, costs of preventive measures, and other economic loss that must be treated as nuclear damage. The types of nuclear damage covered by the Convention are thus divided into two categories: Those which must be compensated (loss of life, personal injury, and property loss or damage) and those that are to be compensated "to the extent determined by the law of the competent court." Article I.(f)(ii). This provides the competent court flexibility in determining under national law how to compensate economic loss that does not fall into the category of "loss or damage to property."

Under Annex Article 2.2, the United States (the only country able to meet the conditions of Annex Article 2.2) may define nuclear damage as set forth in Article I.(f) of the Convention, or as set forth in Annex Article 2.2(a). Annex Article 2.2(a) defines nuclear damage as including, in addition to that identified in Article I.(f) of the Convention, "any other loss or damage to the extent that the loss or damage arises out of or results from the radioactive properties, or a combination of radioactive properties with toxic, explosive or other hazardous properties of nuclear fuel or radioactive products or waste in, or of nuclear material coming from, originating in, or sent to, a nuclear installation; or other ionizing radiation emitted by any source of radiation inside a nuclear installation, provided that such application does not affect the undertaking by that Contracting Party pursuant to Article III of this Convention." The latter definition of nuclear damage (*i.e.,* at Annex Article 2.2(a)) is consistent with the PAA approach of compensating victims for "bodily injury, sickness, disease or death, or loss of or damage to property, or loss of use of property, arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material." AEA subsection 11q. (42 U.S.C. 2014q.). Accordingly, the United States would use this broader definition for Price-Anderson incidents within the United States when implementing the Act.

The Department requests comments on whether or how it may need to further clarify those terms in its regulation.

The term "covered installation," defined at subsection 934(b)(5), means a nuclear installation at which the occurrence of a nuclear incident could result in a request for funds under Article VII of the Convention and thus trigger the obligation to contribute to the international supplementary fund. The Department views this definition as clear, except that it is dependent upon an understanding of the term "nuclear installation." The term "nuclear installation" is not defined in section 934 or the AEA. The CSC generally uses the definition set forth in the Paris Convention on Third Party Liability in the Field of Nuclear Energy of 29 July 1960 ("Paris Convention"), the Vienna Convention on Civil Liability for Nuclear Damage of 21 May 1963 ("Vienna Convention") or Article 1(b) of the Annex, depending on which instrument is applicable to a particular nuclear incident. Article 2.2(b) of the Annex, however, permits the United States to apply the definition of "nuclear installation" set forth at Article 2.3 of the Annex to the exclusion of the definition at Article 1.1(b) of the Annex. Thus, for covered incidents within the United States, "nuclear installation" is defined at Annex Article 2.3 to mean: a) Any civil nuclear reactor other than one with which a means of sea or air transport is equipped for use as a source of power, whether for propulsion thereof or any other purpose; and b) any civil facility for processing, reprocessing or storing: (i) Irradiated nuclear fuel; or (ii) radioactive products or waste that: (1) Result from the reprocessing of irradiated nuclear fuel and contain significant amounts of fission products; or (2) contain elements that have an atomic number greater than 92 in concentrations greater than 10 nano-curies per gram; or (c) any other civil facility for processing, reprocessing, or storing nuclear material unless the Contracting Party determines the small extent of the risks involved with such an installation warrants the exclusion of such facility from the definition. In the context of the CSC, the United States interprets this definition of "nuclear installation" to cover reactors and facilities for which the primary purpose is processing, reprocessing, or storing spent fuel, high-level radioactive waste, or highly radioactive TRU waste. The United States further interprets this definition of "nuclear installation" as excluding all non-DOE nuclear facilities to which the NRC has decided not to extend Price-Anderson indemnification. For covered incidents within the United States, the Department's current approach would be to define the term "covered installation" consistent with the PAA and the definition of nuclear installation found in the Annex Article 2. For covered incidents outside the United States not covered by the PAA, the Department's current approach would be to use the definition of nuclear installation applicable under the CSC to determine a covered installation. The Department requests comments on whether or how it may need to further clarify those terms in its regulation.

The term "covered person," is defined at subsection 934(b)(6) as: (i) A United States person; and (ii) an individual or entity (including an agency or instrumentality of a foreign country) that—(I) is located in the United States; or (II) carries out an activity in the United States. The term does not include—(i) the United States; or (ii) any agency or instrumentality of the United States. The definition of "covered person" incorporates another defined term, "United States person," which is defined at subsection 934(b)(11) as: (1) Any individual who is a United States resident, national or citizen (other than an individual residing outside the United States and not employed by a United States person); and (2) any entity that is organized under the laws of the United States.

Read together, these definitions provide a frame of reference for the type of individual or entity that would constitute a "covered person" under the Act and the DOE's regulation. The Department's current approach would be to interpret "covered person," to be either: (1) Any individual who is a United States resident, national, or citizen (other than the non-resident who is not employed by a United States person); or (2) any entity organized under the laws of the United States; or (3) any individual or entity—including an agency or instrumentality of a foreign country—to the extent that it is either located in or carries out an activity in the United States. The Department currently expects to define a covered person in the broadest manner as including, for example, any individual or entity, whether of foreign origin or domestic, that carries out any activity in the United States that is determined to provide an appropriate basis for allocating the contingent costs. However, a covered person would not be the United States itself or any agency or instrumentality of the United States. The Department believes these definitions, although broad in scope, are clear and that there is a common understanding of how they are to be interpreted and applied. Nevertheless,

the Department requests public comment on whether additional clarification may be necessary in its regulation.

The term "nuclear supplier," defined at subsection 934(b)(7), means a covered person (or its successor in interest) that (A) supplies facilities, equipment, fuel, services, or technology pertaining to the design, construction, operation, or decommissioning of a covered installation, or (B) transports nuclear materials that could result in a covered incident. The definition of "nuclear supplier" refers to a covered person or its successor that either: (1) Provides goods or services to a covered installation (where a nuclear incident could trigger an Article VII request for funds); or (2) engages in a shipment of nuclear materials that could result in a covered incident (which could trigger an Article VII request for funds). Under the Act, a nuclear supplier is the individual or entity responsible for a pro-rata share based on the risk-informed assessment formula at subsection 934(e)(2)(C) of any contingent costs the United States may bear in the event of a covered incident outside the United States that is not covered by the PAA. While the statutory definition of "nuclear supplier" is broad in scope and may require further clarification in the regulation, the criteria related to the risk-informed assessment formula at subsection 934(e)(2)(C)(i) and factors for consideration in determining the formula at subsection 934(e)(2)(C)(ii) (whereby certain nuclear suppliers could be excluded) are directly relevant to determining which nuclear suppliers are contemplated within the Act. In this regard, the Department is considering whether it may be appropriate to include in its regulation additional criteria and requirements which, if met, would exclude certain nuclear suppliers from participation in the retrospective risk pooling program. The Department requests comment on whether the definition of "nuclear supplier" requires further clarification, or whether clarification can be appropriately addressed in regulations pertaining to the retrospective risk pooling program and formula at subsection 934(e).

The term "Price-Anderson incident," defined at subsection 934(b)(8), means a covered incident for which section 170 of the AEA makes funds available to compensate for public liability, as defined in section 11w. of the AEA (42 U.S.C. 2014w.). This definition reflects the distinction between covered incidents *within* the scope of the PAA (where contingent costs would be covered by the PAA) and covered incidents *outside* the scope of the PAA (where contingent costs would be covered by United States nuclear suppliers). For covered incidents that are also PAA incidents (*e.g.,* either a nuclear incident in the United States, or a nuclear incident outside the United States involving a DOE contractor and U.S.-owned nuclear material), the PAA would be used to fund the United States contribution to the international supplementary fund. For a covered incident that does not constitute a PAA incident, such as a nuclear incident occurring in the territory of a Contracting Party that does not involve U.S.-owned nuclear material, the United States contribution would be provided by the United States nuclear suppliers that must participate in the retrospective risk pooling program described at subsection 934(e).

The Department requests comments on whether or how it may need to further clarify those terms in its regulation.

The term "United States," defined at subsection 934(b)(10), means the same geographic area as the definition of "United States" in section 11bb. of the AEA (42 U.S.C. 2014bb.). The AEA definition of United States provides that, when used in a geographical sense, the United States "includes all territories and possessions of the United States, the Canal Zone and Puerto Rico." (Although the AEA definition includes "the Canal Zone," DOE notes that, pursuant to the Panama Canal Treaty, the "Canal Zone" is no longer so included.) For purposes of the AEA definition and section 934, the geographic scope of the United States includes its territorial sea, but not its exclusive economic zone ("EEZ"),[6] even though the CSC grants a member country jurisdiction over nuclear incidents in or above the EEZ of a Contracting Party under specified circumstances, as well as in or above other maritime areas beyond the territorial sea and EEZ of a Contracting Party under specified circumstances. The broader geographic scope of the Convention from that of the AEA (and thus PAA) recognizes the right of a Contracting Party, including the United States, to exercise its jurisdiction in the case of a covered incident that occurs during transport of nuclear material within its EEZ or in maritime areas beyond the territorial seas under the conditions specified in Article V of the Convention. The Department believes this definition is clear; however, the Department requests public comment on whether additional clarification may be necessary.

In sum, the Department requests comment as to whether implementation of section 934 would be facilitated by the Department further clarifying any of the foregoing terms or any other terms in its regulations.

D. Retrospective Risk Pooling Program

Subsection 934(e) sets forth the requirements and risk-informed assessment formula to be used in establishing the retrospective risk pooling program that is central to United States participation in the Convention and supports its goal of ensuring prompt and equitable compensation in the event of a nuclear incident. PAA funding cannot be used for the United States contribution to the international supplementary fund in the event of a covered incident outside the United States that is not a Price-Anderson incident. 934(a)(1)(H)(i). Likewise, Federal taxpayers cannot be burdened with the liability risks associated with nuclear incidents at foreign installations. 934(a)(1)(H)(ii). Accordingly, subsection 934(e) provides for a retrospective risk pooling program, with participation by nuclear suppliers, as the funding mechanism to cover contingent costs resulting from a covered incident outside the United States that is not a Price-Anderson incident. This retrospective risk pooling program for nuclear suppliers (which provides nuclear suppliers with insurance for their potentially unlimited liability in the event of a nuclear incident) is similar in certain respects to the PAA retrospective pooling arrangement (which provides United States nuclear reactor operators with insurance for their potential liability in the event of a nuclear incident) wherein the premium is assessed retrospectively, *i.e., after* a nuclear incident, by allocating the aggregate legal liability (in excess of the required liability insurance constituting primary financial responsibility) that actually resulted from such incident among all operators without regard to fault or liability.

Subsection 934(e)(2) provides the basic structure of the retrospective risk pooling program and criteria for determining the prorated deferred payment. The program is "retrospective"

[6] The EEZ of the United States is "a zone contiguous to the territorial sea, including zones contiguous to the territorial sea of the United States, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands (to the extent consistent with the Covenant and the United Nations Trusteeship Agreement), and United States overseas territories and possessions. The EEZ extends to a distance 200 nautical miles from the baseline from which the breadth of the territorial sea is measured." Presidential Proclamation 5030, March 10, 1983, 3 CFR 1983 Comp., p. 22.

in the sense that a nuclear supplier's obligation to pay does not arise (*i.e.,* it is deferred) unless and until a covered incident that is not a Price-Anderson incident occurs and the United States is called on to provide its contribution to the international supplementary fund (*i.e.,* resulting in contingent costs). 934(e)(2)(A). This deferred payment will be allocated among the "pool" of nuclear suppliers on the basis of a risk-informed assessment formula. 943(e)(2)(B). The formula cannot be applied by the Secretary to any covered installation or transportation for which funds are available under the PAA. 943(e)(2)(iii). The amounts of the deferred payments will basically reflect the risk from which each nuclear supplier is relieved, relative to other nuclear suppliers, by reason of the United States participation in the international nuclear liability compensation system.

Subsection 934(e)(2)(C) requires that the Secretary determine by rulemaking the risk-informed assessment formula and specifies certain risk factors that the Secretary must take into account. These risk factors focus on the extent of the potential liability of each nuclear supplier resulting from its activities relative to other nuclear suppliers and are comparable to factors currently used by private insurers to allocate risk. While subsection 934(e)(2)(C) contains specific risk factors to be accounted for in arriving at the risk-informed assessment formula, the Secretary has broad discretion to interpret and implement this provision. The Department believes that the public, and in particular the nuclear insurance industry, can provide valuable information to DOE regarding how each of the following six (6) risk factors enumerated in subsection 934(e)(2)(C)(i) should be taken into account (particularly in light of other factors, such as the exclusionary criteria in subsection 934(e)(2)(C)(ii) and the period on which risk is assessed in subsection 934(e)(2)(C)(ii)(II)):

(I) The nature and intended purpose of the goods and services supplied by each nuclear supplier to each covered installation outside the United States;

(II) The quantity of the goods and services supplied by each nuclear supplier to each covered installation outside the United States;

(III) The hazards associated with the supplied goods and services if the goods and services fail to achieve the intended purposes;

(IV) The hazards associated with the covered installation outside the United States to which the goods and services are supplied;

(V) The legal, regulatory, and financial infrastructure associated with the covered installation outside the United States to which the goods and services are supplied; and

(VI) The hazards associated with particular forms of transportation.

Without the six risk factors at subsection 934(e)(2)(C)(i) above, the retrospective risk pooling program could conceivably require the participation of any nuclear supplier involved in activities such as supplying facilities, equipment, fuel, services, technology, or transport of nuclear materials related to any step within the nuclear fuel cycle—from activities such as mining, milling, enrichment, and fabrication through reprocessing—no matter its size or contribution relative to the nuclear installation. However, application of the risk formula provides a basis for the Department to assess a deferred premium according to the relative risk a nuclear supplier's goods or services contribute to a nuclear incident.

Further, subsection 934(e)(2)(C)(ii) lists factors for consideration whereby the Secretary may *exclude* certain nuclear suppliers. The Department believes that its interpretation of the risk factors enumerated above will be influenced significantly by the following factors in subsection 934(e)(C)(ii) that the Secretary may consider:

(ii) *Factors for Consideration.*—In determining the formula, the Secretary may—

(I) exclude

(aa) Goods and services with negligible risk;

(bb) Classes of goods and services not intended specifically for use in a nuclear installation;

(cc) A nuclear supplier with a de minimis share of the contingent cost; and

(dd) A nuclear supplier no longer in existence for which there is no identifiable successor; and

(II) Establish the period on which the risk assessment is based.

The Department believes the intent of this provision is to exclude from participation in the risk pooling program those nuclear suppliers that provide goods or services that are the least likely to result in a nuclear incident for which requests under the Convention for contributions to the international supplementary fund would be invoked. Stated otherwise, the contingent costs should be allocated among those suppliers that provide goods or services most likely to result in significant potential liability in the event of a covered incident. Accordingly, only nuclear suppliers of goods and services that are likely to cause a covered incident with significant damage should be contributors to the risk pooling program. The exclusionary considerations are indicative of the type of nuclear supplier unlikely to contribute to the risk of such an incident, that is, a nuclear supplier that does not provide goods or services specifically for nuclear facilities; that does not engage in activities likely to result in significant potential nuclear liability, or that engages in such activities to a minor extent; or is no longer in existence and therefore cannot be expected to contribute to the pooling program.

If the United States is called upon to contribute to the international supplementary fund, the risk-informed formula would be applied to calculate the amount that each "nuclear supplier" within the definition of the Act would be obligated to pay. The Department believes that, reading both subsections 934(e)(2)(C)(i) and (ii) together, the formula is expected to *include* nuclear suppliers based on the relative risk of their goods or services causing a covered incident resulting in a request for contributions under the international supplementary fund, and to *exclude* nuclear suppliers with little or no risk of being determined legally liable for a covered incident resulting in nuclear damage in excess of 300 million SDRs.

Because of the importance of each risk factor and the exclusionary considerations in establishing the formula, the Department seeks public comment on all of these criteria and how they should be interpreted and applied. Each risk factor, and the corresponding exclusionary considerations, will be discussed below.

1. The first risk factor to be used as a basis for the formula is the *nature and intended purpose* of the goods and services supplied by each nuclear supplier to each covered installation outside the United States. 934(e)(2)(C)(i)(I). The Department's current approach would be to interpret this risk factor, in light of the presence of other statutory criteria that could exclude nuclear suppliers providing goods and services with negligible risk and in classes not intended specifically for use in a nuclear installation (subsections 934(e)(2)(C)(ii)(I)(aa) and (bb)), to mean that, as a general matter, only nuclear suppliers that provide goods or services specifically intended for use in structures, systems, and components ("SSCs") that are important to safety at a nuclear installation should be included. This concept of SSCs important to safety is utilized in NRC

licensing of nuclear installations (*e.g.,* nuclear reactors, fuel storage facilities) as a means to evaluate items based on their relative risk and importance to the safe operation of the nuclear installation. As such, this concept can provide a useful tool to identify those goods and services that have a greater potential for causing a nuclear incident that might result in significant nuclear damage. Focusing on SSCs important to safety would eliminate many nuclear suppliers of goods or services that do not contribute significantly to the risk of a nuclear incident, as well as suppliers of goods or services not intended specifically for use in a nuclear installation. For example, the Department believes that, under this interpretation, suppliers of such items as laboratory equipment, cleaning services, routine operational and technical reporting services, and computers not intended for control of the installation would be excluded from the formula. In contrast, the Department believes that suppliers such as designers and builders of nuclear islands (involving nuclear steam supply systems, reactors, *etc.*), and designers, manufacturers, and sellers of nuclear fuel assemblies or on-line nuclear measurement devices would be included in the formula. The Department seeks public comment on this interpretation, and in particular as to whether it has too narrowly or broadly interpreted this risk factor.

2. The second risk factor to be used as a basis for the formula is the quantity of the goods and services supplied by each nuclear supplier to each covered installation outside the United States. 934(e)(2)(C)(i)(II). The Department's current approach would be to interpret this risk factor to mean that the formula should take into account the amount of goods and services provided by a nuclear supplier as an indicator of the extent to which a nuclear supplier contributes to overall risk. The Department seeks public comment on whether this factor should be assessed on the basis of the value of the goods or services supplied, the volume of the goods or services supplied, or some other criteria.

3. The third risk factor to be used as a basis for the formula is the hazards associated with the supplied goods and services if they fail to achieve the intended purposes. 934(e)(2)(C)(i)(III). The Department's current approach would be to interpret this risk factor, in light of the presence of other statutory criteria that could exclude nuclear suppliers providing goods and services with negligible risk or in classes not intended specifically for use in a nuclear installation (subsections 934(e)(2)(C)(ii)(aa) and (bb)), in a manner analogous to the first risk factor. That is, only nuclear suppliers of safety-related goods or services would be included in the formula. Among those goods and services, risk would then be determined based on the relative radiological hazard or harm that may be caused if a particular good or service failed to achieve its intended function. For example, the supplier of a reactor vessel would be weighted with greater risk than the supplier of the safety-related concrete forming the foundation of the reactor building. Both goods are safety-related, but the malfunction of the former presents a greater risk of radiological hazard than the latter. Further, the Department expects that the relative hazard of a good or service may be evaluated in terms of whether it is a likely contributor to a covered incident resulting in a request for contributions under the international supplementary fund (*i.e.,* is it so hazardous as to likely cause a covered incident of a magnitude that first-tier compensation is inadequate). The Department seeks public comment on these issues and as to how it should further define the term "hazard" in light of various factors, such as whether hazard should be differentiated on the basis of harm to persons or property, or on the basis of its hazard standing alone or as part of a redundant system of protection.

4. The fourth risk factor to be used as a basis for the formula is the *hazards associated with the covered installation* outside the United States to which the goods and services are supplied. 934(e)(2)(C)(i)(IV). The Department's current approach would be to interpret this risk factor to mean that risk should be determined based on the hazard associated with the nuclear installation itself, because some nuclear installations bear more risk or hazard of a nuclear incident than others. These differences in risk stem from a variety of factors. For example, the risk of a nuclear incident causing significant nuclear damage may be greater at a nuclear reactor facility than at a spent fuel storage facility, or it may be greater for a facility located in a densely populated area as opposed to a facility in a remote area. Further, there may be distinctions within a class of nuclear installations that would make the risk posed by some classes more or less than others. For example, among nuclear reactors, research reactors having a thermal power rating of 20 Megawatts or less may have less hazard associated with them than power reactors having a thermal power rating of over 300 Megawatts. Also, nuclear facilities other than reactors may be distinguished based on common nuclear industry standards for hazard categorization and accident analysis techniques. Category 1 facilities pose the most hazardous risk as they have postulated accidents that could result in significant offsite consequences. Category 2 facilities have postulated accidents that could result in significant on-site consequences. Category 3 facilities have postulated accidents that could result in only localized consequences. Accordingly, the risk formula would include consideration of not only the type of good or service provided by the nuclear supplier, but also the type of nuclear installation that will utilize such good or service. DOE seeks public comment on this approach.

5. The fifth risk factor to be used as a basis for the formula is *the legal, regulatory, and financial infrastructure* associated with the covered installation outside the United States to which the goods and services are supplied. 934(e)(2)(C)(i)(V). The Department's current approach would be to interpret this risk factor to refer to the relative risk of a nuclear incident arising from a nuclear installation based upon the legal, regulatory, or financial environment in which the installation operates. For example, a nuclear installation situated in a country with little regulatory oversight of public health and safety, or inadequate financial requirements for the nuclear operator, or without the availability of judicial recourse, may lead to a relative risk factor greater than the supply of goods or services to a nuclear installation in a country with rigorous regulatory oversight, robust financial requirements, and an efficient judicial system. Thus, for example, the presence of independent regulatory inspectors onsite at a nuclear installation of a more hazardous classification (such as a Category 1 facility) could constitute a favorable risk factor. The Department recognizes that this type of risk factor may be difficult to assess in a quantitative fashion, nevertheless, the statutory language must be given a good-faith reading, and the Department seeks public comment on how to interpret and implement this factor in its risk-based formula.

6. The sixth risk factor to be used as a basis for the formula concerns the hazards associated with particular forms of *transportation.* 934(e)(2)(C)(i)(VI). The Department's current approach would be to interpret this risk factor to require consideration of how contingent costs should be allocated between suppliers of goods and services to

nuclear installations and suppliers of transportation services, as well as an assessment of the various forms of transportation and the relative risks of that transportation. The Department seeks public comment on the extent, if any, to which the assessment of transportation services should be different than the assessment of other goods and services, especially with respect to the application of the first risk factor on nature and intended purpose. The Department also seeks public comment on the means to differentiate the hazards between particular forms of transportation, and the nuclear suppliers involved in such transportation. For example, how should the Department assess the relative risks among the various forms of radiological transportation such as truck, ship or rail and the contribution of a nuclear supplier to that risk? Should the hazard be assessed solely on the safety record within each type of transportation, or other factors such as the risks associated with the transportation routes used for a particular form of transportation? For example, transportation by truck may entail greater potential exposure to population centers than transportation by ship.

Further, should certain nuclear suppliers be excluded regardless of the form of transportation in which the good or services is utilized? For example, suppliers that provide navigational systems might be excluded from the formula, as the purpose of the navigational system is not specific to nuclear transport or any one form of transport, and would constitute a negligible risk for causing a nuclear incident. On the other hand, suppliers of transportation casks designed for nuclear material would be included and risk assessed based on the relative contribution of the cask to a nuclear incident while in transport. The Department seeks public comment on these questions or other means to differentiate the hazards associated with particular forms of transportation as well as identifying mitigating factors to appropriately rank risk in its formula.

Subsection 934(e)(2)(ii)(I)(cc) states that the Secretary may exclude "a nuclear supplier with a de minimis share of the contingent cost." As commonly used, the term "de minimis" means lacking significance or importance, or so minor in importance as to be disregarded.[7] The Department's current approach would be to interpret this "de minimis" criteria to mean that nuclear suppliers likely to contribute only a small percentage of the overall contingent costs should be excluded from the formula because they (1) Do not contribute in any meaningful manner to the risks intended to be covered by the Convention, (2) are unlikely to be sued in the event of a nuclear incident, and (3) are even more unlikely to be determined legally liable for significant amounts of nuclear damages. The Department believes this provision is intended to keep the risk pooling program from becoming unmanageable because of the number of potential contributors and to focus operation of the program on the major beneficiaries of the Convention. The Department could incorporate these criteria into its regulations by excluding those suppliers that would contribute less than a specified percentage (*e.g.,* .5%) of the contingent costs.

This approach, however, would result in uncertainty as to which suppliers would be included in the program prior to the actual implementation of the formula. Accordingly, the Department is considering alternative approaches that would implement the "de minimis" criteria in a manner that provides upfront certainty as to which suppliers would be included in the program. For example, the Department might exclude suppliers on the basis of the dollar value of the goods or services (*e.g.,* nuclear suppliers that provide less than $50,000 per year in goods or services may be excluded from the formula), the volume of goods or services (*e.g.,* nuclear suppliers of less than 10 cooling pumps), or the percentage of annual business attributable to nuclear goods or services (*e.g.,* nuclear suppliers for which the nuclear equipment or services provided per year are less than 10% of such entities' overall annual sales). The Department seeks comments on these alternatives, as well as other fair and equitable approaches for excluding "de minimis" suppliers.

Finally, subsection 934(e)(2)(C)(ii)(II) permits the Secretary to "establish the period on which the risk assessment is based." By so doing, the Department could exclude certain nuclear suppliers by virtue of the time period established. The Department interprets this provision to give the Department discretion to determine the time period to use in the risk-informed formula. That time period may be set based on several relevant factors, including when the majority of domestic nuclear suppliers provided supplies in the global market and how many of those suppliers continue in existence today, or based on what suppliers are currently in existence for which the goods or services they supplied are likely to contribute to a future nuclear incident. The Department invites comments on how and what an appropriate and equitable time period should be used in order to determine the risk-informed formula.

E. Reporting

In addition to the information obtained through this NOI and the subsequent rulemaking process, subsection 934(f)(1) expressly authorizes the Secretary to collect information and data from nuclear suppliers "necessary for developing and implementing the formula for calculating the deferred payment of a nuclear supplier under subsection (e)(2)." The Department requests comment on whether it should include in its regulations provision for collection of such information and, if so, what form of information collection requirements should be imposed. For example, what type of information and data should be collected, at what level of specificity, and how often (*e.g.,* one-time or periodic updates)?

While the Department may require that certain information be provided by nuclear suppliers and other appropriate persons (including insurers) as necessary or appropriate to assist in formulating and implementing the risk formula, the Department is required to provide certain information to nuclear suppliers and insurers of nuclear suppliers. Thus, subsection 934(f)(2) directs that the Secretary make available to "nuclear suppliers, and insurers of nuclear suppliers, information to support the voluntary establishment and maintenance of private insurance against any risk for which nuclear suppliers may be required to pay deferred payments under this section." Such information would facilitate the creation of a voluntary private insurance system to cover potential payments by nuclear suppliers under the retrospective risk pooling program. The Department anticipates its regulations will include a provision to address this requirement; however, the Department requests comment on what type of information would be necessary to assist the nuclear suppliers and insurers of nuclear suppliers in the establishment of private insurance for the deferred payment. The Department is especially interested in obtaining specific and detailed comments on the type of information necessary to develop and implement such a private insurance system from nuclear suppliers and insurers of nuclear suppliers as such commentary would be most relevant to an appropriate formulation and implementation of this requirement. In

[7] Webster's Third New Dictionary (2002)

this regard, the Department is especially interested in descriptions of prior and existing insurance systems that allocate risks among nuclear suppliers, as well as systems that allocate risks among participants in comparable situations.

F. Payments to and by the United States

Subsection 934(h) sets forth the procedure for the Secretary and nuclear suppliers to follow in the event of a call for funds under the Convention so that the deferred payments are made to the Treasury of the United States and conveyed from the Treasury to the appropriate entity in fulfillment of the obligation of the United States to contribute to the international supplementary fund. Subsection 934(h)(1) prescribes the method by which the Secretary will collect the deferred payment from nuclear suppliers in the event the United States is called upon under Article VII to contribute to the international supplementary fund for a covered incident that is not a Price-Anderson incident. The nuclear suppliers are only required to make a deferred payment when and if the United States is required to make a payment under the Convention upon the occurrence of a covered incident. When notified by the Secretary of the amount of the deferred payment that is due, each nuclear supplier must either deposit the required payment into the general fund of the Treasury within 60 days after receipt of notification (subsection 934(h)(1)(B)(i)), or elect to prorate payment in that amount in 5 equal annual payments (including interest on the unpaid balance at the prime rate prevailing at the time the first payment is due) (subsection 934(h)(1)(B)(ii)). In making the payment, each nuclear supplier must submit a payment certification voucher to the Secretary of the Treasury in accordance with 31 U.S.C. 3325. 934(h)(1)(C).

The Department believes the statutory scheme for making the deferred payment is clear and in effect self-executing. Therefore, it does not anticipate significant commentary on the meaning or interpretation of this statutory provision. The Department's implementing regulations will specify when and how a nuclear supplier will make the lump-sum deferred payment, as well as the method of calculating and depositing the prorated annual payments with interest. The Department requests comments on how its regulations may provide clear direction to nuclear suppliers on how, when, and where to make the required deferred payments.

Subsection 934(h)(3) addresses the consequences of a nuclear supplier's failure to pay the deferred payment. In the event a nuclear supplier defaults on its obligation to make the required deferred payment, subsection 934(h)(3) authorizes the Secretary to take appropriate action to recover from the nuclear supplier "(A) the amount of the payment due from the nuclear supplier; (B) any applicable interest on the payment; and (C) a penalty of not more than twice the amount of the deferred payment due from the nuclear supplier." The Department is authorized to take appropriate action to ensure each nuclear supplier makes the deferred payment and to impose a penalty for noncompliance; however, the means by which the Department exercises this authority is not prescribed in the Act. The Department's implementing regulations will clarify what actions it deems appropriate to take to ensure the payment is made, how it will calculate the interest due on the payment, and the method and criteria for determining the penalty amount. The Department solicits comment from the public on how this statutory provision should be implemented and, in particular, what criteria may be appropriate for calculating the penalty amount.

G. General Questions

In addition to comment on the particular matters discussed in the preceding paragraphs, DOE solicits general comments on how best to implement section 934, including comments that are based on existing systems or prior experience in regard to insurance programs, regulatory controls, reporting requirements, or other mechanisms pertaining to the supply of goods and services for nuclear projects. For example, DOE would be interested in whether there are any existing systems that control or collect information on the export of goods and services for nuclear projects that could be useful in implementing section 934. Likewise, DOE would be interested in prior experience with how risk is allocated when there are multiple participants in a nuclear project.

III. Public Participation

A. Submission of Comments

The Department requests written comments from interested persons on all aspects of implementing the Convention on Supplementary Compensation for Nuclear Damage. All information provided by commenters will be available for public inspection at the Department of Energy, Freedom of Information Reading Room, Room 1G–033, 1000 Independence Avenue, SW., Washington, DC 20585 between the hours of 9 a.m. and 4 p.m. Monday through Friday, except for Federal holidays.

The Department also intends to enter all written comments on a Web site specifically established for this proceeding. The Internet Web site is: *http://gc.doe.gov/*. To assist the Department in making public comments available on a Web site, interested persons are encouraged to submit an electronic version of their written comments in accordance with the instructions in the **ADDRESSES** section of this notice.

Issued in Washington, DC, on July 21, 2010.

Scott Blake Harris,

General Counsel.

Appendix—Overview of Section 934

The Energy Independence and Security Act of 2007, Section 934

The Energy Independence and Security Act of 2007 (Pub. L. 110–140) was enacted in 2007. Section 934 of the Act ("Convention on Supplementary Compensation for Nuclear Damage Contingent Cost Allocation") (42 U.S.C. 17373) implements the Convention in the United States. Congress found that the Convention establishes a global system to: provide a predictable legal framework necessary for nuclear energy projects; ensure prompt and equitable compensation in the event of a nuclear incident; provide benefits to United States nuclear suppliers from a predictable liability regime and, in effect, insurance for nuclear damage arising from incidents not covered by the Price-Anderson Act (PAA); and assure funding is available for victims of a wider variety of nuclear incidents, without increasing potential liability of United States nuclear suppliers or costs to United States nuclear operators or Federal taxpayers. 934(a)(1).

Section 934 implements the Convention by enacting into law provisions that enable the United States to carry out its obligations as a Contracting Party. Specifically, section 934 provides for the allocation of costs associated with the United States' participation in the Convention's compensation system and affirms the right to seek relief in United States courts for covered nuclear incidents. The purpose of section 934 is to ensure that the allocation of costs is fair and equitable and does not burden Federal taxpayers with liability risks for nuclear incidents at foreign installations or adversely impact obligations under the existing system of indemnification under the PAA for nuclear incidents in the United States.

The Secretary and the Nuclear Regulatory Commission are both authorized to issue rules to implement section 934, as appropriate. 934(l). The Department's implementing regulations will be focused on allocating contingent costs equitably, on the basis of risk, among nuclear suppliers for a covered incident outside the United States that is not a Price-Anderson incident. This

cost allocation system will be structured consistent with provisions of the Act that mandate the use of existing PAA funding for a Price-Anderson incident.

For an incident covered by the Convention ("covered incident") that is also covered by the PAA ("Price-Anderson incident"), the Act would use existing PAA funding mechanisms to cover the United States contribution to the international supplementary fund. 934(b) and (c). For a covered incident outside the United States that is not a Price-Anderson incident, the Act would allocate contingent costs owed by the United States among United States nuclear suppliers on the basis of risk. 934(a)(2). In this regard, the Act establishes a retrospective risk pooling program involving a premium assessed retrospectively (*i.e.,* a deferred payment) on nuclear suppliers based on a risk-informed formula taking into account specified risk factors in conjunction with exclusionary criteria. 934(e).

In developing the formula, the Secretary is authorized to collect information necessary for calculating the deferred payment. Each nuclear supplier and other-appropriate persons are required to make available information, reports, records, documents, and other data that the Secretary determines, by regulation, to be necessary or appropriate. 934(f)(1). In turn, the Secretary must make available to nuclear suppliers and their insurers information to support the voluntary establishment and maintenance of private insurance to cover any deferred payments nuclear suppliers may be subject to pay under the retrospective risk pooling program. 934(f)(2).

When the United States is called upon to contribute, the Secretary must notify the nuclear suppliers of the amount of their deferred payment. The nuclear suppliers may either: (1) Pay within 60 days of notification to the general fund of the Treasury; or (2) elect to prorate payment in five equal annual payments (including interest). 934(h)(1). Amounts paid must be available, without further appropriation or fiscal year limitation, for contribution by the Secretary of the Treasury to the international supplementary fund. 934(h)(2)(A). Such contribution will be to the court of competent jurisdiction under Article XIII of the Convention. 934(h)(2)(B). If a nuclear supplier fails to pay, the Secretary of Energy may take appropriate action to recover the amount due with any applicable interest and penalty. 934(h)(3).

Section 934(i) addresses where and what type of actions may be brought in United States courts arising from participation in the Convention. All causes of action arising from a nuclear incident that is not a Price-Anderson incident and for which the United States has been granted jurisdiction under the Convention will be adjudicated on appeal or review in the United States Court of Appeals for the District of Columbia Circuit. 934(i)(1)(A). In addition to any existing cause of action, section 934(i)(2)(A) creates a Federal cause of action for an individual or entity against an operator to recover for nuclear damage suffered in connection with a nuclear incident covered by the Convention. This provision ensures that a cause of action will be available in all situations where United States courts have jurisdiction over a nuclear incident covered by the Convention, such as a nuclear incident during transportation beyond State boundaries in the territorial sea, or the exclusive economic zone (EEZ), or the high seas, for which Federal or State law may not currently provide a cause of action. This provision does not apply to causes of action arising from a nuclear incident covered by the Convention that is a Price-Anderson incident, as the PAA already provides for a cause of action and assignment of jurisdiction in such cases. While subsection 934(i) creates a cause of action for individuals or entities suffering nuclear damage against an operator of a covered installation under certain circumstances, subsection 934(j) makes clear that the Act does not provide to the operator of a covered installation a right of recourse against a nuclear supplier or any other person for any liability it may incur as a result of the nuclear incident. Also, participation in the Convention does not require disclosure of sensitive United States information. 934(k).

The following provides additional information regarding the allocation of contingent costs under section 934 between the PAA and nuclear suppliers.

Costs Allocated to PAA. One of the purposes of the statute, to ensure that contingent costs associated with a Price-Anderson incident are paid with PAA funds, is met primarily through the requirements of subsections 934(c) ("Use of Price-Anderson Funds") and (d) ("Effect on Amount of Public Liability"). These provisions are self-implementing and establish how funding under the PAA is to be used to cover contingent costs resulting from a Price-Anderson incident. As defined in subsection 934(b)(8), a Price-Anderson incident is a covered incident within the scope of the PAA for which PAA funding would be available to compensate for "public liability" defined in section 11w. of the AEA (42 U.S.C. 2014w.). Under subsection 934(b)(2), contingent costs represent the funds that the United States is obligated to make available to the international supplementary fund.

Subsection 934(c)(1) states the requirement that PAA funds be used to cover contingent costs resulting from any Price-Anderson incident. Subsection 934(c)(2) directs that any PAA funds used to pay contingent costs shall not reduce the public liability limitation set by the PAA. These funding requirements serve to maintain the status quo of the PAA liability regime such that payment of contingent costs neither increases the burden on reactor operators nor decreases the benefits of the PAA since any contingent costs resulting from the United States contribution would come from funding otherwise required under the PAA. Using PAA funds to pay the contingent costs will not decrease funds available under the PAA because the contribution by the United States to the international supplementary fund and the distribution from the international supplementary fund of a corresponding amount will offset each other and result in a wash for accounting purposes. As described in the following paragraph, the remaining distribution amount will be used to compensate damage in lieu of using PAA funds. Thus, the benefits of the PAA indemnification system will be increased slightly with no additional burden imposed on reactor operators.

Subsection 934(d) addresses the situation involving a Price-Anderson incident, where funds are made available to the United States under Article VII of the Convention and sets out the effect thereof on the amount of public liability allowable under the PAA. Subsection 934(d)(1) provides that, for an incident covered by the PAA, funds made available to the United States from the international supplementary fund will be used to pay persons indemnified under the PAA. In addition, subsection 934(d)(2) provides that the PAA limitation on public liability will be increased by the net amount of funds that the United States receives from the international supplementary fund (*i.e.,* the increase is equal to the difference between the amount the United States receives from the international supplementary fund and the amount which it contributed to the international supplementary fund). Thus, the United States must use any funds made available to it under the Convention to satisfy any public liability resulting from a Price-Anderson incident and will increase the amount payable under the PAA based upon the net increased amount of funding available pursuant to the Convention.[8]

[8] The following illustrates the combined operation of the Convention, the PAA, and section 934 in the case of a Price-Anderson incident. For this example, assume: (1) The limitation on public liability under the PAA is $10 billion[8]; (2) there are 100 reactors covered by the PAA system; (3) the operator of each reactor must contribute a maximum of $100 million to the PAA system if legal liability reaches $10 billion dollars; (4) 1 SDR equals $1.50 dollars; (5) the United States contribution to the international supplementary fund is $100 million dollars; (6) the payment to the United States from the international supplementary fund is $300 million; and (7) there is an a nuclear incident at a domestic reactor resulting in damage that exceeds $10 billion dollars. Within these parameters, the PAA would use funds from operators to indemnify legal liability resulting from the nuclear incident until legal liability reached $450 million dollars (Article III. 1(a)(i) first tier compensation minimum of 300 million SDRs multiplied by $1.50 dollars). At this point, the United States would use the next $100 million dollars from operators under the PAA to cover the United States contribution to the international supplementary fund. At the same time the United States would receive a payment of $300 million dollars from the international supplementary fund. This payment from the international supplementary fund would be used to indemnify legal liability between $450 million dollars and $750 million dollars. In addition, the limitations on the PAA public liability would be increased by the net $200 million dollars from Contracting Parties other than the United States ($300 million from the international supplementary fund minus the $100 million dollars provided by the United States to that fund). When legal liability reached $750 million dollars, operators would resume making funds available through the PAA system to cover legal liability and continue to do so until such liability reached the $10.2 billion dollar limit. In this scenario, the additional $200 million dollars from the international supplementary fund is available to indemnify legal liability resulting from

Costs Allocated to Nuclear Suppliers. Another purpose of the statute, to ensure that nuclear suppliers pay the contingent costs for a covered incident outside the United States that is not a Price-Anderson incident, is met primarily by subsections 934(e) ("Retrospective Risk Pooling Program") and (f) ("Reporting"). These provisions: (1) Require participation in a retrospective risk pooling program to cover contingent costs for which nuclear suppliers would be responsible; and (2) authorize the Secretary to collect information necessary for developing and implementing the formula to calculate the deferred payments. For such an incident outside the United States, subsection 934(e) requires that nuclear suppliers that supply certain nuclear equipment and technology and transport of nuclear materials contribute to a pool of money used to reimburse the United States for its contribution to the international supplementary fund. In an arrangement known as retrospective pooling, the obligation to pay into the pool will be deferred until the United States' is called upon to contribute with respect to an actual nuclear incident that has occurred. Article VII.1; 934(e)(1).

The following illustrates the combined operation of the Convention and section 934 in the case of a covered incident that is not a Price-Anderson incident. For a covered incident that takes place in the territory of another Contracting Party, the responsible operator (alone or in combination with available public funds) would provide the first tier of compensation pursuant to the national law of the Installation State. If nuclear damage exceeds the first tier, all Contracting Parties, including the Installation State, would contribute to the international supplementary fund according to the Article IV formula.

As a Contracting Party, the United States would contribute an amount determined by application of the formula in Article IV. Under section 934, the amount of the contribution required of the United States would be funded through payments of United States nuclear suppliers under the retrospective risk pooling program. As previously noted, the formula depends upon the installed capacity of the Contracting Parties at the time of the incident and the UN assessment rate assigned to each State. The exact amount owed by the United States would depend upon the number and generating capacity of the States that participate in the Convention at the time of a nuclear incident. For additional information, the IAEA Web site for the Office of Legal Affairs contains a calculator that can be used to run scenarios and estimate the contribution amount from various States. (*http://ola.iaea.org/CSCND/calculate.asp*).

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a nuclear incident covered by the PAA, at no additional cost to reactor operators. (The numbers used in this example were selected to facilitate understanding of how the mechanism operates, and do not reflect the actual numbers that would result from application of the PAA.)

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U.S. Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency Information Collection Activities: Submission For OMB Review; Comment Request.

SUMMARY: The EIA has submitted the "Voluntary Reporting of Greenhouse Gases," form EIA–1605 to the Office of Management and Budget (OMB) for review and a three-year extension under section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13)(44 U.S.C. 3501 *et seq.*).

DATES: Comments must be filed by August 26, 2010. If you anticipate that you will be submitting comments but find it difficult to do so within that period, you should contact the OMB Desk Officer for DOE listed below as soon as possible.

ADDRESSES: Send comments to OMB Desk Officer for DOE, Office of Information and Regulatory Affairs, Office of Management and Budget. To ensure receipt of the comments by the due date, submission by FAX (202–395–7285) or e-mail to *Christine_J._Kymn@omb.eop.gov.* is recommended. The mailing address is 725 17th St., NW., Washington, DC, 20503. The OMB Desk Officer may be telephoned at (202) 395–4638. (A copy of your comments should also be provided to EIA's Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Alethea Jennings. To ensure receipt of the comments by the due date, submission by FAX (202–586–5271) or e-mail (*alethea.jennings@eia.doe.gov*) is also recommended. The mailing address is Statistics and Methods Group (EI–70), Forrestal Building, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC, 20585–0670. Ms. Jennings may be contacted by telephone at (202) 586–5879.

SUPPLEMENTARY INFORMATION: This section contains the following information about the energy information collection submitted to OMB for review: (1) The collection numbers and title; (2) the sponsor (*i.e.,* the Department of Energy component); (3) the current OMB docket number (if applicable); (4) the type of request (i.e., new, revision, extension or reinstatement); (5) response obligation (i.e., mandatory, voluntary, or required to obtain or retain benefits); (6) a description of the need for and proposed use of the information; (7) a categorical description of the likely respondents; (8) estimate number of respondents and (9) an estimate of the total annual reporting burden (i.e., the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

1. Forms EIA–1605, "Voluntary Reporting of Greenhouse Gases".

2. Energy Information Administration.

3. OMB Number 1905–0194.

4. Three-year extension to an existing approved request.

5. Voluntary.

6. EIA–1605 form is designed to collect voluntarily reported data on greenhouse gas emissions, achieved reductions of these emissions, and carbon fixation. Data are used to establish a publicly available database. Respondents are participants in a domestic or foreign activity that either reduces greenhouse gas emissions or increases sequestration.

7. Individuals or households; business or other for-profit institutions; farms; Federal government; State, local or tribal government.

8. Estimate number of respondents.

9. 6000 hours.

Please refer to the supporting statement as well as the proposed forms and instructions for more information about the purpose, who must report, when to report, where to submit, the elements to be reported, detailed instructions, provisions for confidentiality, and uses (including possible nonstatistical uses) of the information. For instructions on obtaining materials, *see* the **FOR FURTHER INFORMATION CONTACT** section.

Statutory Authority: Section 13(b) of the Federal Energy Administration Act of 1974, Public Law 93–275, codified at 15 U.S.C. 772(b).

Issued in Washington, D.C., July 20, 2010.

Stephanie Brown,

Director, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 2010–18353 Filed 7–26–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Change of Disclosure Information From Protected to Public

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency Information Collection Activities: Proposed Public Release of Past Responses; Comment Request.

SUMMARY: The EIA proposes to change the data confidentiality protection provisions for data collected from the "Annual Nonutility Power Producer Report" Form EIA–867.

DATES: Comments must be filed by September 27, 2010. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Send comments to Christopher Cassar. To ensure receipt of the comments by the due date, submission by FAX (202–287–1938) or e-mail (*EIA–867@eia.doe.gov*) is recommended. The mailing address is Christopher Cassar, EI–53, Forrestal Building, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585. Alternatively, Christopher Cassar may be contacted by telephone at 202–586–5448.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Christopher Cassar at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

The Form EIA–867, "Annual Nonutility Power Producer Report" was used to collect data from the nonutility electricity generator sector from 1989 through 1997. The data collected on the survey form included plant-level electric power production and consumption data. The survey also collected ownership statistics such as, company name, number of electric generating facilities owned, and contact person name, title, and telephone number. From 1989 through 1997, EIA collected some information as public and non-confidential and other data such as fuels consumed, generation, purchases of electricity, sales, electricity used at the facility, number and type of customers, maximum contract amount by customer, deliveries by customer, environmental information, and electric generator information as confidential. EIA stated in its survey instructions that it would protect the information to the extent that it satisfied the criteria for exemption under the Freedom of Information Act (FOIA), 5 U.S.C. 552, the Department of Energy (DOE) regulations, 10 CFR 1004.11 implementing the FOIA, and the Trade Secrets Act, 18 U.S.C. 1905.

After 1997, the industry became deregulated and many plants previously categorized as "utility plants" were divested by utilities, and moved into the "nonutility" sector as independent power producers. Those facilities were accustomed to EIA's publicly disclosing information that was collected on Form EIA–867. On January 13, 1998, EIA published a **Federal Register** Notice (Volume 63, Number 8) to solicit comments on what electric power data should be treated as non-confidential and be available for dissemination in company-specific form and what electric power data should be treated as confidential by EIA and not disclosed in identifiable form. Based on the comments received from the electric power producers and data users, EIA made the decision to treat the information collected on Form EIA–867 as public information and began releasing plant-level electric power production and consumption data from its Web site beginning with data collected from January 1, 1998.

II. Current Actions

The Form EIA–867 survey was discontinued December 31, 1998, and the data elements were merged into Form EIA–860. Beginning with the collection of 1998 data on January 1, 1999, these data elements are treated as public information. EIA now proposes to treat all data submitted on Form EIA–867 from 1989 through 1997 data as public information and release it on EIA's Web site.

III. Request for Comments

Past respondents to Form EIA–867 and other interested parties should comment on the actions discussed in item II. Comments submitted in response to this notice will be considered before EIA changes the disclosure status.

Statutory Authority: Section 13(b) of the Federal Energy Administration Act of 1974, Public Law 93–275, codified at 15 U.S.C. 772(b).

Issued in Washington, DC, July 21, 2010.

Stephanie Brown,

Director, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 2010–18356 Filed 7–26–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13806–000]

5440 Hydro Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

July 19, 2010.

On July 9, 2010, 5440 Hydro Inc. filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Brooklyn Dam Hydroelectric Project (Brooklyn Dam), to be located on the Ammonoosuc River near the Town of Groveton, Coos County, New Hampshire.

The proposed project would consist of: (1) An existing approximately 15-foot-high, 90-foot-long crib dam with a 30-foot-long spillway; (2) an existing 18-acre reservoir; (3) an existing 50-foot × 50-foot concrete powerhouse and outlet structure; (4) two new turbine generator units with a total installed capacity of 600 kilowatts (kW); (5) a 50-foot-long transmission line connecting to an existing Public Service of New Hampshire distribution line located adjacent to the powerhouse; and (6) appurtenant facilities. The project would produce an estimated average annual generation of about 3,000 megawatt-hours, which would be sold directly to a local utility.

Applicant Contact: Mr. Luz Loegters, 717 Atlantic Avenue, Suite 1A, Boston, MA 02111, (416) 643–6610.

FERC Contact: John Ramer, (202) 502–8969.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the "eFiling" link. For a simpler method of submitting text only comments, click on "Quick Comment." For assistance, please

contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and eight copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13806) in the docket number field to access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–18281 Filed 7–26–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13635–000]

City of Gloversville; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, Protests, Recommendations, and Terms and Conditions

July 20, 2010.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Conduit Exemption.

b. *Project No.:* 13635–000.

c. *Date filed:* November 30, 2009 and supplemented March 18 and July 6, 2010.

d. *Applicant:* City of Gloversville.

e. *Name of Project:* Rice Reservoir Project.

f. *Location:* The project is located near the town of Gloversville in Fulton County, New York.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Steven Doret, Mill Road Engineering, 23 Mill Road, Westborough, MA 01581–2901, (508) 366–5833.

i. *FERC Contact:* Anthony DeLuca, (202) 502–663262, *Anthony.deluca@ferc.gov.*

j. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

k. *Deadline for filing responsive documents:* Due to the small size and location of the proposed project in a closed system, as well as the resource agency consultation letters filed with the application, the 60-day timeframe specified in 18 CFR 4.43(b) for filing all comments, motions to intervene, protests, recommendations, terms and conditions, and prescriptions is shortened to 30 days from the issuance date of this notice. All reply comments filed in response to comments submitted by any resource agency, Indian tribe, or person, must be filed with the Commission within 45 days from the issuance date of this notice.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

l. *Description of Project:* The City of Gloversville (Gloversville) requests Commission approval for exemption for small conduit hydroelectric facility. This proposal consists of adding a Turgo style 25 kilowatt hydraulic turbine/generator at the discharge end of the Rice Reservoir discharge block. The primary purpose of the conduit is supply of processed water to the Gloversville Potable Water Treatment Plant. The hydraulic capacity of the generator will be 2.79 cubic feet per second and the generator will have an estimated average annual generation of 192,000 kWh.

m. This filing is available for review and reproduction at the Commission in the Public Reference Room, Room 2A, 888 First Street, NE., Washington, DC 20426. The filing may also be viewed on the Web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number, here P–13635, in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for review and reproduction at the address in item h. above.

n. *Development Application*—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit a competing development application. A notice of intent must be served on the applicant(s) named in this public notice.

p. *Protests or Motions To Intervene*—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

q. All filings must: (1) Bear in all capital letters the title "PROTEST," "MOTION TO INTERVENE," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS"; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and eight copies to: The Secretary,

Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Office of Energy Projects, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–18286 Filed 7–26–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12548–006]

Hydrodynamics, Inc.; Notice of Application for Surrender of License and Soliciting Comments, Motions To Intervene, and Protests

July 20, 2010.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application:* Type: Surrender of License.

b. *Project No.:* 12548–006.

c. *Date Filed:* June 25, 2010.

d. *Applicant:* Hydrodynamics, Inc.

e. *Name of Project:* Greenfield Hydroelectric Project.

f. *Location:* The unconstructed project was to be located on the Greenfields Main Canal, which is a feature of the U.S. Bureau of Reclamation's Sun River Project, in Teton County, Montana.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Roger Kirk, Hydrodynamics, Inc., P.O. Box 1136, Bozeman, MT 59771, (406) 587–5086.

i. *FERC Contact:* Patricia W. Gillis, Telephone (202) 502–8735.

j. *Deadline for filing comments, motions to intervene, and protests:* August 19, 2010. Comments, motions to intervene, and protests may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "eFiling" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings, please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.*

k. *Description of Request:* The licensee filed an application to surrender its license for the unconstructed Greenfield Hydroelectric Project. The Licensee has not commenced construction of the project. No ground disturbing activities have occurred.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number (P–12548) excluding the last three digits in the docket number field to access the document. You may also register Online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions To Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—All filings must: (1) Bear in all capital letters the title "COMMENTS," "PROTEST," OR "MOTION TO INTERVENE," as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–18284 Filed 7–26–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2299–074]

Turlock Irrigation District and Modesto Irrigation District; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

July 19, 2010.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License.

b. *Project No.:* 2299–074.

c. *Date Filed:* May 24, 2010.

d. *Applicant:* Turlock Irrigation District and Modesto Irrigation District.

e. *Name of Project:* Don Pedro Hydroelectric Project.

f. *Location:* On the Tuolumne River, Tuolumne County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791a–825r.

h. *Applicant Contact:* Turlock Irrigation District, Robert M. Nees, Director of Water Resources and Regulatory Affairs, P.O. Box 949, Turlock, CA 95381, telephone: (209) 883–8300; and Modesto Irrigation District, Greg Salyer, Resource Planning and Development Manager, P.O. Box 4060, Modesto, CA 95352, telephone: (209) 526–7373.

i. *FERC Contact:* Mrs. Anumzziatta Purchiaroni, telephone (202) 502–6191, and e-mail address: *anumzziatta.purchiaroni@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protest:* August 20, 2010.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Request:* The licensees are proposing to delete from the license the following transmission lines: 28.5-mile long, 69-kV Don Pedro-Tuolumne Lines 1 and 2 extending from the Don Pedro switchyard to the Turlock Irrigation District's Tuolumne Substation; (2) 23-mile-long, 69-kV Don Pedro-Hawkins Line extending from the Don Pedro switchyard to the Turlock Irrigation District's Hawkins Substation; and (3) 22.4-mile-long, 69-kV Don Pedro-Reinway North and South lines extending from the Don Pedro Switchyard to the Modesto Irrigation District's Reinway Substation. The licensees state that the lines have become part of the interconnected transmission system in California, and thus are no longer "primary lines."

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. Information about this filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register Online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title "COMMENTS," "PROTEST," or "MOTION TO INTERVENE," as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–18280 Filed 7–26–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11563–057]

Northern California Power Agency; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

July 19, 2010.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Request for temporary license amendment.

b. *Project No.:* 11563–057.

c. *Date Filed:* May 26, 2010, and supplemented on July 12, 2010.

d. *Applicant:* Northern California Power Agency.

e. *Name of Project:* Upper Utica Project.

f. *Location of Project:* On Silver Creek and the North Fork Stanislaus River, in Tuolumne and Alpine Counties, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Randy Bowersox, Manager, Hydroelectric Operations, Northern California Power Agency, 477 Bret Harte Drive, Murphys, CA 95247; (209) 728–1387.

i. *FERC Contact:* Mr. John Aedo, (415) 369–3335, *john.aedo@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protest:* August 20, 2010.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link. The Commission strongly encourages electronic filings.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Request:* The Northern California Power Agency (licensee) is requesting approval for a temporary deviation from minimum surface elevation and minimum water volume limits at Lake Alpine. Article 403 of the project license requires that the licensee maintain Lake Alpine at full pool (elevation 7,302 feet) from June 1 to November 1st or October 15th if early drawdown occurs, to meet minimum flow releases to Silver Creek, downstream of the lake. Article 403 also requires that the licensee maintain a minimum water volume of 2,500 acre feet at Lake Alpine from November 1st or October 15th to June 1st for the protection of overwintering brook and rainbow trout. The licensee requests that it be allowed to partially drawdown Lake Alpine to facilitate repairs to the low level outlet works at the project. The licensee states that the absolute minimum surface pool elevation could

reach 7272.6 feet, and would remain partially drawn down throughout the winter, until the reservoir completely refills by June 1, 2011.

l. *Locations of the Application:* The filing is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number (P–11563–057) in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–18275 Filed 7–26–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

July 16, 2010.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC87–10–000.

Applicants: Public Service Company of New Mexico.

Description: Public Service Company of New Mexico submits their report under oath concerning matter relating to securities of other public utilities.

Filed Date: 07/15/2010.

Accession Number: 20100715–0013.

Comment Date: 5 p.m. e.t. on Thursday, August 5, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER07–876–002.

Applicants: Chevron Coalinga Energy Company.

Description: Chevron Coalinga Energy Co submits the Order No. 697 Compliance Filing.

Filed Date: 07/12/2010.

Accession Number: 20100712–0007.

Comment Date: 5 p.m. e.t. on Monday, August 2, 2010.

Docket Numbers: ER08–416–006; ER06–1552–008.

Applicants: Midwest Independent Transmission System.

Description: Midwest Independent Transmission Operator, Inc submits revised tariff sheets as directed by the Commission.

Filed Date: 07/14/2010.

Accession Number: 20100714–0203.

Comment Date: 5 p.m. e.t. on Wednesday, August 4, 2010.

Docket Numbers: ER10–1089–002.

Applicants: EquiPower Resources Management, LLC.

Description: EquiPower Resources Management, LLC submits additional information to its 4/23/10 filing.

Filed Date: 07/15/2010.

Accession Number: 20100715–0214.

Comment Date: 5 p.m. e.t. on Thursday, August 5, 2010.

Docket Numbers: ER10–1443–001.

Applicants: Criterion Power Partners, LLC.

Description: Criterion Power Partners, LLC submits amendment to its Application for Order Authorizing Market-Based Rates, Certain Waivers, and Blanket Authorization which was filed on 6/15/10.

Filed Date: 07/15/2010.

Accession Number: 20100715–0213.

Comment Date: 5 p.m. e.t. on Monday, July 26, 2010.

Docket Numbers: ER10–1773–000.

Applicants: Allegheny Energy Supply Company LLC.

Description: Allegheny Energy Supply Company, LLC submits request for authorization to make wholesale power sales to its affiliate.

Filed Date: 07/14/2010.

Accession Number: 20100714–0206.

Comment Date: 5 p.m. e.t. on Wednesday, August 4, 2010.

Docket Numbers: ER10–1779–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, Inc submits an executed interconnection construction service agreement with Blackstone Wind Farm II, LLC et al.

Filed Date: 07/14/2010.

Accession Number: 20100715–0201.

Comment Date: 5 p.m. e.t. on Wednesday, August 4, 2010.

Docket Numbers: ER10–1780–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, Inc submits an executed Wholesale Market Participation Agreement with Sustainable Energy Holdings, LLC *et al.*

Filed Date: 07/14/2010.

Accession Number: 20100715–0202.

Comment Date: 5 p.m. e.t. on Wednesday, August 4, 2010.

Docket Numbers: ER10–1783–000.

Applicants: REP Energy.

Description: REP Energy LLC submits the Petition for Acceptance of Initial Rate Schedule, Waivers and Blanket Authority.

Filed Date: 07/15/2010.

Accession Number: 20100715–0208.

Comment Date: 5 p.m. e.t. on Thursday, August 5, 2010.

Docket Numbers: ER10–1784–000.

Applicants: PacifiCorp.

Description: PacifiCorp submits jurisdictional agreement re the Second Revised Network Integration Transmission Service Agreement.

Filed Date: 07/15/2010.

Accession Number: 20100715–0235.

Comment Date: 5 p.m. e.t. on Thursday, August 5, 2010.

Docket Numbers: ER10–895–004.

Applicants: The Detroit Edison Company.

Description: Detroit Edison Company submits a request for an effective date of the delayed Notice of Cancellation.

Filed Date: 07/14/2010.
Accession Number: 20100714–0204.
Comment Date: 5 p.m. e.t. on Wednesday, August 4, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. e.t. on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–18311 Filed 7–26–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

July 19, 2010.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG10–52–000.
Applicants: RRI Energy West, Inc.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of RRI Energy West, Inc.
Filed Date: 07/19/2010.
Accession Number: 20100719–5047.
Comment Date: 5 p.m. Eastern Time on Monday, August 09, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER96–1361–017; ER07–903–006; ER00–1770–023; ER99–2781–015; ER04–472–012; ER08–1336–004; ER01–202–012; ER98–3096–019; ER98–4138–013; ER04–472–013.
Applicants: Atlantic City Electric Company; Bethlehem Renewable Energy, LLC; Conectiv Energy Supply, Inc.; Delmarva Power & Light Company; Eastern Landfill Gas, LLC; Energy Systems North East LLC; Potomac Power Resources, Inc.; Pepco Energy Services, Inc.; Potomac Electric Power Company; Fauquier Landfull Gas, LLC.
Description: Notification of Change in Status of Pepco Holdings Inc.
Filed Date: 07/19/2010.
Accession Number: 20100719–5040.
Comment Date: 5 p.m. Eastern Time on Monday, August 09, 2010.

Docket Numbers: ER01–390–009; ER99–3450–011; ER99–2769–012; ER00–2706–009; ER01–2760–008; ER10–566–003; ER08–1255–005; ER98–4515–011; ER09–1364–003; ER01–138–008; ER06–744–006; ER01–1418–012; ER02–1238–012; ER03–28–006; ER03–398–013; ER09–1488–002; ER02–1884–011.
Applicants: Chandler Wind Partners, LLC, Foote Creek II, LLC, Foote Creek IV, LLC, Ridge Crest Wind Partners, LLC, Oak Creek Wind Power, LLC, Delta Person Limited Partnership, Waterside Power LLC, Michigan Power Limited Partnership, Sabine Cogen LP, Foote Creek III, LLC, Effingham County Power, LLC, MPC Generating, LLC, Walton County Power, LLC, Washington County Power, LLC, Black Bear Hydro Partners, LLC, Coso Geothermal Power Holdings, LLC, Cadillac Renewable Energy LLC.
Description: Notice of Non-Material Change in Status of Chandler Wind Partners, LLC, et. al. under ER01–390, *et al.*
Filed Date: 07/12/2010.
Accession Number: 20100712–5166.
Comment Date: 5 p.m. Eastern Time on Monday, August 02, 2010.

Docket Numbers: ER10–941–003.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits certain revisions to the protocols attached to the Seams Agreement with Entergy Services, Inc.
Filed Date: 07/15/2010.
Accession Number: 20100716–0202.
Comment Date: 5 p.m. Eastern Time on Thursday, August 05, 2010.

Docket Numbers: ER10–1339–001.
Applicants: Southern Indiana Gas and Electric Company.
Description: Southern Indiana Gas and Electric Company, Inc. submits tariff filing per 35: Southern Indiana Gas & Electric Company Ancillary Services Tariff to be effective 7/16/2010.
Filed Date: 07/16/2010.
Accession Number: 20100716–5041.
Comment Date: 5 p.m. Eastern Time on Friday, August 06, 2010.

Docket Numbers: ER10–1472–001.
Applicants: Choice Energy, LLC.
Description: Choice Energy, LLC submits their Application for Order Accepting Rates for Filing and Granting Waivers and Blanket Approvals.
Filed Date: 07/16/2010.
Accession Number: 20100716–0181.
Comment Date: 5 p.m. Eastern Time on Friday, August 06, 2010.

Docket Numbers: ER10–1785–000.
Applicants: UBS AG.
Description: UBS AG submits tariff filing per 35.12: UBS AG Electric Rate Schedule Baseline to be effective 7/15/2010.
Filed Date: 07/15/2010.
Accession Number: 20100715–5074.
Comment Date: 5 p.m. Eastern Time on Thursday, August 05, 2010.

Docket Numbers: ER10–1786–000.
Applicants: Credit Suisse Energy, LLC.
Description: Credit Suisse Energy, LLC submits tariff filing per 35.12: Credit Suisse Energy LLC Electric Rate Schedule to be effective 7/15/2010.
Filed Date: 07/15/2010.
Accession Number: 20100715–5075.
Comment Date: 5 p.m. Eastern Time on Thursday, August 05, 2010.

Docket Numbers: ER10–1787–000.
Applicants: PSEG Energy Resources & Trade LLC.
Description: PSEG Energy Resources & Trade LLC submits tariff filing per 35: Compliance filing of PSEG ER&T Reactive Supply & Voltage Control Service Tariff to be effective 7/15/2010.
Filed Date: 07/15/2010.
Accession Number: 20100715–5108.
Comment Date: 5 p.m. Eastern Time on Thursday, August 05, 2010.

Docket Numbers: ER10–1788–000.
Applicants: Pacific Gas and Electric Company.
Description: Pacific Gas and Electric Company submits tariff filing per 35.13(a)(2)(iii): Revision to Trinity Public Utilities District Interconnection Agreement to be effective 9/14/2010.
Filed Date: 07/16/2010.
Accession Number: 20100716–5000.
Comment Date: 5 p.m. Eastern Time on Friday, August 06, 2010.

Docket Numbers: ER10–1789–000.
Applicants: PSEG Energy Resources & Trade LLC.
Description: PSEG Energy Resources & Trade LLC submits tariff filing per 35: PSEG Energy Resources & Trade LLC Market-Based Rate Tariff Volume No. 1 to be effective 7/16/2010.
Filed Date: 07/16/2010.
Accession Number: 20100716–5036.
Comment Date: 5 p.m. Eastern Time on Friday, August 06, 2010.

Docket Numbers: ER10–1790–000.
Applicants: BP Energy Company.
Description: BP Energy Company submits tariff filing per 35.12: Baseline MBR Tariff Filing of BP Energy Company to be effective 8/1/2010.
Filed Date: 07/16/2010.
Accession Number: 20100716–5051.
Comment Date: 5 p.m. Eastern Time on Friday, August 06, 2010.

Docket Numbers: ER10–1791–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. *et al* submits the proposed revisions to their ISO Open Access Transmission, Energy and Operating Reserve Markets Tariff.
Filed Date: 07/15/2010.
Accession Number: 20100716–0206.
Comment Date: 5 p.m. Eastern Time on Thursday, August 05, 2010.

Docket Numbers: ER10–1792–000.
Applicants: PJM Interconnection, LLC.
Description: PJM Interconnection, LLC submits an executed interim interconnection service agreement with Blackstone Wind Farm III LLC *et al.*
Filed Date: 07/15/2010.
Accession Number: 20100716–0203.
Comment Date: 5 p.m. Eastern Time on Thursday, August 05, 2010.

Docket Numbers: ER10–1793–000.
Applicants: PSEG Power Connecticut LLC.
Description: PSEG Power Connecticut LLC submits tariff filing per 35: Compliance Filing re PSEG Power Connecticut LLC Market-Based Rate Tariff to be effective 7/16/2010.
Filed Date: 07/16/2010.
Accession Number: 20100716–5091.
Comment Date: 5 p.m. Eastern Time on Friday, August 06, 2010.

Docket Numbers: ER10–1794–000.
Applicants: Public Service Company of Colorado.
Description: Public Service Company of Colorado submits tariff filing per 35.12: 2010_7_16_WestConnect_Baseline to be effective 7/16/2010.
Filed Date: 07/16/2010.
Accession Number: 20100716–5095.
Comment Date: 5 p.m. Eastern Time on Friday, August 06, 2010.

Docket Numbers: ER10–1795–000.
Applicants: Golden Spread Electric Cooperative, Inc.
Description: Golden Spread Electric Cooperative, Inc. submits tariff filing per 35: 2010 Annual Update to be effective 7/16/2010.
Filed Date: 07/16/2010.
Accession Number: 20100716–5101.
Comment Date: 5 p.m. Eastern Time on Friday, August 06, 2010.

Docket Numbers: ER10–1796–000.
Applicants: Southwestern Public Service Company.
Description: Southwestern Public Service Company submits tariff filing per 35.12: 20100716_Baseline Filing to be effective 7/16/2010.
Filed Date: 07/16/2010.
Accession Number: 20100716–5120.
Comment Date: 5 p.m. Eastern Time on Friday, August 06, 2010.

Docket Numbers: ER10–1797–000.
Applicants: Northern States Power Company, a Minnesota Corporation.
Description: Northern States Power Company, a Minnesota corporation submits tariff filing per 35.12: 20100716_Baseline Filing to be effective 7/16/2010.
Filed Date: 07/16/2010.
Accession Number: 20100716–5137.
Comment Date: 5 p.m. Eastern Time on Friday, August 06, 2010.

Docket Numbers: ER10–1798–000.
Applicants: Northern States Power Company, a Wisconsin Corporation.
Description: Northern States Power Company, a Wisconsin corporation submits tariff filing per 35.12: 20100716_Baseline Filing to be effective 7/16/2010.
Filed Date: 07/19/2010.
Accession Number: 20100719–5000.
Comment Date: 5 p.m. Eastern Time on Monday, August 09, 2010.

Docket Numbers: ER10–1799–000.
Applicants: Public Service Company of Colorado.
Description: Public Service Company of Colorado submits tariff filing per 35.12: 20100719_Baseline Filing to be effective 7/16/2010.
Filed Date: 07/19/2010.
Accession Number: 20100719–5039.
Comment Date: 5 p.m. Eastern Time on Monday, August 09, 2010.

Docket Numbers: ER10–1800–000.
Applicants: Indianapolis Power & Light Company.
Description: Indianapolis Power & Light Company submits tariff filing per 35.12: IPL Market Based Rate Tariff to be effective 7/20/2010.
Filed Date: 07/19/2010.
Accession Number: 20100719–5042.
Comment Date: 5 p.m. Eastern Time on Monday, August 09, 2010.

Docket Numbers: ER10–1801–000.
Applicants: The Connecticut Light and Power Company.
Description: The Connecticut Light and Power Company submits tariff filing per 35.12: CL&P Baseline Filing of Market-Based Tariff Under Order No. 714 to be effective 7/19/2010.
Filed Date: 07/19/2010.
Accession Number: 20100719–5069.
Comment Date: 5 p.m. Eastern Time on Monday, August 09, 2010.

Docket Numbers: ER10–1802–000.
Applicants: Dominion Energy Manchester Street, Inc.
Description: Dominion Energy Manchester Street, Inc. submits tariff filing per 35.12: Baseline to be effective 7/19/2010.
Filed Date: 07/19/2010.
Accession Number: 20100719–5070.
Comment Date: 5 p.m. Eastern Time on Monday, August 09, 2010.

Docket Numbers: ER10–1805–000.
Applicants: Public Service Company of New Hampshire.
Description: Public Service Company of New Hampshire submits tariff filing per 35.12: PSNH Baseline Filing of

Market-Based Tariff Under Order No. 714 to be effective 7/19/2010.

Filed Date: 07/19/2010.

Accession Number: 20100719–5083.

Comment Date: 5 p.m. Eastern Time on Monday, August 09, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St, NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–18310 Filed 7–26–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commissioner and Staff Attendance at National Association of Regulatory Utility Commissioners Summer Committee Meetings

July 20, 2010.

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission and/or Commission staff may attend the following meeting:

Committee on Electricity: Sacramento Convention Center, 1400 J Street, Sacramento, CA 95814.

July 20, 2010 (10:45 a.m.—5 p.m.)

Further information may be found at *http://summer.narucmeetings.org/program.cfm.*

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–18285 Filed 7–26–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR10–20–001]

Regency Intrastate Gas LP; Notice of Compliance Filing

July 19, 2010.

Take notice that on July 14, 2010, Regency Intrastate Gas LP filed pursuant to the Letter Order approving the Stipulation and Agreement (Settlement) in Docket Nos. PR10–7–000 and 001, a revised Operating Statement effective August 1, 2010. The updated Operating Statement includes a revised Statement of Rate page and minor changes throughout the document to reference transportation service "charges" rather than "fees."

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. e.t. 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 online at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. e.t. on Monday, August 2, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–18282 Filed 7–26–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR05–17–007]

DCP Guadalupe Pipeline, LLC; Notice of Compliance Filing

July 19, 2010.

Take notice that on July 15, 2010, DCP Guadalupe Pipeline, LLC (Guadalupe) filed a refund report pursuant to a June 10, 2010, Letter Order which required Guadalupe to file a refund report or a declaration that no refunds are required within 60 days of the issuance of the June 10 order.

Any person desiring to participate in this rate filing 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). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. e.t. on Monday, August 2, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–18279 Filed 7–26–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR10–21–001]

Enterprise Alabama Intrastate, LLC; Notice of Compliance Filing

July 20, 2010.

Take notice that on July 19, 2010, Enterprise Alabama Intrastate, LLC (Enterprise Alabama) pursuant to a July 8, 2010, Letter Order which required Enterprise Alabama to file within 30 days of the issuance of the July 8 order a stand alone statement of rates that includes all currently effective maximum and minimum rates and fuel charges.

Any person desiring to participate in this rate filing 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). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern time on August 2, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–18287 Filed 7–26–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 516–459]

South Carolina Electric and Gas Company, South Carolina; Notice of Availability of Environmental Assessment

July 20, 2010.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission or FERC's) regulations, 18 Code of Federal Regulations (CFR) part 380 (Order No. 486, 52 **Federal Register** [FR] 47897), the Office of Energy Projects has reviewed South Carolina Electric and Gas Company's application for license for the Saluda Hydroelectric Project (FERC Project No. 516), located on the Saluda River in Richland, Lexington, Saluda, and Newberry counties, near Columbia, South Carolina. The project does not occupy any Federal lands.

This environmental assessment (EA) contains staff's analysis of the potential environmental effects of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* toll-free at 1–866–208–3676, or for TTY, 202–502–8659.

For further information, contact Lee Emery by telephone at (202) 502–8379, or by e-mail at *lee.emery@ferc.gov.*

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–18283 Filed 7–26–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF10–17–000]

Texas Eastern Transmission, LP; Algonquin Gas Transmission, LLC; Notice of Intent To Prepare an Environmental Impact Statement for the Planned New Jersey–New York Expansion Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings

July 16, 2010.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will address the environmental impacts of the New Jersey–New York Expansion Project (NJ–NY Expansion Project or Project) involving construction and operation of facilities by Spectra Energy Corporation (Spectra Energy) natural gas pipeline companies; Texas Eastern Transmission, LP (Texas Eastern) and Algonquin Gas Transmission, LLC (Algonquin) (collectively, the Applicants); in the Boroughs of Staten Island and Manhattan, New York; Hudson, Union, Bergen, and Morris Counties, New Jersey; and Middlesex County, Connecticut. This EIS will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process that the Commission will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine what issues need to be evaluated in the EIS. Please note that the scoping period will close on August 20, 2010.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives are asked to notify their constituents of this planned project and encourage them to comment on their areas of concern.

Comments may be submitted in written form or verbally. Further details on how to submit written comments are provided in the Public Participation section of this notice. In lieu of or in addition to sending written comments, we [1] invite you to attend the public scoping meetings scheduled as follows:

Date and time	Location
August 2, 2010, 7 p.m. EDT	Knights of Columbus Hall, 669 Avenue C, Bayonne, New Jersey 07002.
August 3, 2010, 7 p.m. EDT	PS 44—Thomas C. Brown School Auditorium, 80 Maple Parkway, Staten Island, New York 10303.
August 4, 2010, 7 p.m. EDT	James J. Ferris High School Auditorium, 35 Colgate Street, Jersey City, New Jersey 07302.
August 5, 2010, 7 p.m. EDT	Westbeth Artists Housing Community Room, 55 Bethune Street, New York, New York 10014.

The public meetings are designed to provide you with more detailed information and another opportunity to offer your comments on the proposed project. Texas Eastern and Algonquin representatives will be present one hour before each meeting to describe their proposal, present maps, and answer questions. Interested groups and individuals are encouraged to attend the meetings and to present comments on the issues they believe should be addressed in the EIS. A transcript of each meeting will be made so that your comments will be accurately recorded.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the planned facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the Project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility on My Land? What Do I Need To Know?" is available for viewing on the FERC Web site (*http://www.ferc.gov*). This fact sheet addresses a number of typically-asked questions, including the use of eminent domain and how to participate in the Commission's proceedings.

Summary of the Proposed Project

Texas Eastern and Algonquin have announced their plans to construct and operate approximately 20.0 miles of new 42-inch-diameter and 30-inch-diameter pipeline and associated pipeline facilities, and abandon 2.2 miles of 12-inch-diameter pipeline in New Jersey, New York, and Connecticut. The NJ–NY Expansion Project would provide about 800 thousand dekatherms per day (Mdt/d) of natural gas from multiple receipt points on the Texas Eastern and Algonquin pipeline systems to new delivery points in New Jersey and New York. The Applicants have indicated that the project would eliminate capacity constraints in the region, increase competition, and reduce gas price volatility.

The NJ–NY Expansion Project would consist of the following:

- Replacement of approximately 4.5 miles of existing 12-inch-diameter and 20-inch-diameter pipelines with a single 42-inch-diameter pipeline between Texas Eastern's existing Linden Compressor Station in Linden, New Jersey and an existing metering and regulating (M&R) station in the Borough of Staten Island, New York;
- Construction of approximately 15.5 miles of new 30-inch-diameter pipeline from Texas Eastern's existing metering and regulating station in the Borough of Staten Island, New York, through Bayonne and Jersey City, New Jersey, to the Borough of Manhattan, New York;
- Abandon in-place approximately 1.3 miles of 12-inch-diameter pipeline in Linden, New Jersey and 0.9 miles of 12-inch-diameter pipeline in the Borough of Staten Island, New York;
- Installation of six new M&R stations including:
  - *Hanover M&R Stations*—two new M&R stations, including pressure regulation, at the existing Hanover Compressor Station in Morris County, New Jersey;
  - *Bayonne M&R Station*—a new M&R station, including a heater and pressure regulation, in Hudson County, New Jersey;
  - *Jersey City M&R Station*—a new M&R station, including heaters and pressure regulation, in Hudson County, New Jersey;
  - *Mahwah M&R Station*—a new M&R station, including a heater and pressure regulation, within the property lines of an existing M&R station in Bergen County, New Jersey; and

[1] "We", "us", and "our" refer to the environmental staff of the Office of Energy Projects (OEP).

■ *Ramapo M&R Station*—a new M&R station, including a heater and pressure regulation, adjacent to an existing M&R station in Rockland County, New York.

• Modifications to three existing compressor stations and two existing M&R stations including:

■ *Hanover Compressor Station*—installation of reverse suction and discharge lines and modification of the existing Solar Taurus 60 compressor unit in Morris County, New Jersey;

■ *Cromwell and Hanover Compressor Stations*—modification of piping to accommodate bi-directional flows in Middlesex County, Connecticut and Morris County, New Jersey, respectively; and

■ *Texas Eastern M&R Stations*—installation of tap valves and over-pressure protection at existing M&R stations in Union County, New Jersey and the Borough of Staten Island, New York.

• Installation of pig [2] launcher and receiver facilities at the existing Linden Compressor Station in Linden, New Jersey and an existing M&R station in the Borough of Staten Island, New York; installation of a pig launcher in Jersey City, New Jersey; mainline valves in Bayonne and Jersey City, New Jersey; and a block valve and flange in an underground vault in the Borough of Manhattan, New York to accommodate a receiver.

The general location of the project facilities is shown in Appendix 1.[3]

Land Requirements for Construction

The Applicants are still in the planning phase for the NJ–NY Expansion Project, and workspace requirements have not been finalized. However, construction would disturb approximately 268 acres of land for the aboveground facilities and the pipeline. Following construction, about 108 acres would be used for permanent operation of the project's facilities. The remaining acreage would be restored and allowed to revert to former uses. Approximately 63.5% of the planned route is located within or adjacent to Texas Eastern's existing rights-of-way and/or existing roadway, railway, or other utility rights-of-way.

[2] A pig is a tool that can be used to clean and dry a pipeline and/or to inspect it for damage or corrosion.

[3] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *http://www.ferc.gov* using the link called "eLibrary" or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

The EIS Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as scoping. The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EIS. All comments received will be considered during the preparation of the EIS.

In the EIS we will discuss impacts that could occur as a result of the construction and operation of the planned project under these general headings:

• Geology and soils;
• Land use;
• Water resources, fisheries, and wetlands;
• Vegetation and wildlife
• Endangered and threatened species;
• Cultural resources;
• Air quality and noise;
• Socioeconomics; and
• Public safety.

We will also evaluate reasonable alternatives to the planned project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Although no formal application has been filed, we have already initiated our NEPA review under the Commission's Pre-filing process. The purpose of the Pre-filing process is to encourage early involvement of interested stakeholders and to identify and resolve issues before an application is filed with the FERC. As part of our Pre-filing review, we have begun to contact some federal and state agencies to discuss their involvement in the scoping process and the preparation of the EIS. In addition, representatives from the FERC participated in public Open House meetings sponsored by the Applicants in the project area in June 2010, to explain the environmental review process to interested stakeholders.

Our independent analysis of the issues will be presented in the EIS. The EIS will be published and distributed for public comment. We will consider all timely comments and revise the document, as necessary, before issuing a final EIS. To ensure your comments are considered, please carefully follow the instructions in the Public Participation section of this notice.

With this notice, we are asking agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EIS. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice. Currently, the Environmental Protection Agency and the New York City Mayor's Office have expressed their intention to participate as cooperating agencies in the preparation of the EIS to satisfy their NEPA responsibilities related to this project.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations, we are using this notice to solicit the views of the public on the project's potential effects on historic properties.[4] We will document our findings on the impacts on cultural resources and summarize the status of consultations under section 106 of the National Historic Preservation Act in our EIS.

Currently Identified Environmental Issues

We have already identified several issues and alternatives that we think deserve attention based on a preliminary review of the proposed facilities, comments made to us at the Applicant's open houses, preliminary consultations with other agencies, and the environmental information provided by the Applicants. This preliminary list of issues and alternatives may be changed based on your comments and our analysis:

• Contaminated soils and sediments;
• Evaluation of temporary and permanent impacts on wetlands, restoration of wetlands, and development of appropriate wetland mitigation options;
• Assessment of locations for HDD crossings of major waterbodies, including the Arthur Kill, Kill Van Kull, and the Hudson River;
• Effect on tidal systems and essential fish habitat;

[4] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Historic properties are defined in those regulations as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register for Historic Places.

• Potential effect on federal and state-listed sensitive species;
• Impacts on residential areas;
• Impacts on publically-owned lands and compatibility of uses;
• Visual impacts;
• Effects on transportation and traffic;
• Environmental Justice concerns;
• Effects on the local air quality and noise environment from construction and operation of the proposed facilities;
• Potential impacts of multiple large projects on-going during the same construction timeframe;
• Assessment of hazards associated with natural gas pipelines located in heavily populated areas; and
• Assessment of the no action alternative, existing systems and alternative system configurations, and alternative routes or aboveground facility sites to reduce or avoid environmental impacts.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that they will be received in Washington, DC on or before August 20, 2010.

For your convenience, there are three methods you can use to submit your comments to the Commission. In all instances, please reference the project docket number (PF10–17–000) with your submission. The Commission encourages electronic filing of comments and has expert eFiling staff available to assist you at (202) 502–8258 or *efiling@ferc.gov*.

(1) You may file your comments electronically by using the Quick Comment feature, which is located at *http://www.ferc.gov* under the link called "*Documents and Filings.*" A Quick Comment is an easy method for interested persons to submit text-only comments on a project;

(2) You may file your comments electronically by using the "eFiling" feature, that is listed under the "*Documents and Filings*" link. eFiling involves preparing your submission in the same manner as you would if filing on paper, and then saving the file on your computer's hard drive. You will attach that file to your submission. New eFiling users must first create an account by clicking on the link called "*Sign up*" or "*eRegister.*" You will be asked to select the type of filing you are making. A comment on a particular project is considered a "Comment on a Filing"; or

(3) You may file a paper copy of your comments at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the planned project.

Copies of the completed draft EIS will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Mailing List Form (Appendix 2).

Becoming an Intervenor

Once the Applicants formally file their application with the Commission, you may want to become an "intervenor," which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in a Commission proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the "e-filing" link on the Commission's website. Please note that the Commission will not accept requests for intervenor status at this time. You must wait until a formal application for the project is filed with the Commission.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs at 1–866–208–FERC or on the FERC Web site (*http://www.ferc.gov*) using the "eLibrary" link. Click on the eLibrary link, click on "General Search," and enter the docket number, excluding the last three digits in the Docket Number field (i.e., PF10–17). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link on the FERC Internet website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Kimberly D. Bose,
Secretary.

[FR Doc. 2010–18276 Filed 7–26–10; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER10–192–002, ER10–192–003, ER10–192–004]

Public Service Company of Colorado; Notice of Filing

July 19, 2010.

Take notice that on June 18, 2010, in Docket No. ER10–192–004, Public Service Company of Colorado (PSCo) filed an Offer of Settlement and Settlement Agreement resolving all issues between PSCo and Holy Cross Electric Association, Inc.; Grand Valley Rural Power Lines, Inc.; and Yampa Valley Electric Association, Inc., regarding PSCo's October 30, 2009 filing in Docket No. ER10–192–000 and PSCo's November 6, 2009 filing in Docket No. ER10–192–001 (collectively, PSCo Rate Application).

On July 13, 2010, in Docket No. ER10–192–002, PSCo filed an Offer of Settlement and Settlement Agreement resolving all issues between PSCo and Black Hills/Colorado Electric Utility Company regarding the PSCo Rate Application. On July 14, 2010, in Docket No. ER10–192–003, PSCo filed an Offer of Settlement and Settlement Agreement resolving all issues between PSCo and the City of Burlington, Colorado, and the Town of Center, Colorado, regarding the PSCo Rate Application.

Any person desiring to intervene or to protest these filings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible Online at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. e.t on Wednesday, August 4, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–18278 Filed 7–26–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–6363–000]

Notice of Filing: Yazdi, Mahvash

July 19, 2010.

Take notice that on July 9, 2010, Mahvash Yazdi filed an Application for Authorization to Hold Interlocking Positions of Senior Vice President and Chief Information Officer of Southern California Edison Company and Director of Zhone Technologies, Inc., pursuant to section 305(b) of the Federal Power Act.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on July 30, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–18277 Filed 7–26–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–1783–000]

REP Energy LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

July 19, 2010.

This is a supplemental notice in the above-referenced proceeding of REP Energy LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 9, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any

FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–18309 Filed 7–26–10; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2003–0152; FRL–9180–7]

Agency Information Collection Activities: Submission to OMB for Review and Approval; Comment Request; Compliance Assurance Monitoring Program (Renewal); EPA ICR No. 1663.07, OMB Control No. 2060–0376

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Comments must be submitted on or before August 26, 2010.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2003–0152, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *a-and-r-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket, Mailcode 22821T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Peter Westlin, Office of Air Quality Planning and Standards, Sector Policies and Programs Division (D243–05), Environmental Protection Agency, Research Triangle Park, NC 27711; *telephone number:* 919–541–1058; *fax number:* 919–541–1039; *e-mail address: westlin.peter@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On February 24, 2010 (75 FR 8333), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2003–0152, which is available for online viewing at *http://www.regulations.gov,* or person viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air and Radiation Docket is 202–566–1742.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. **Please note** that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov,* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: Compliance Assurance Monitoring Program (Renewal).

ICR Numbers: EPA ICR No. 1663.07, OMB Control No. 2060–0376.

ICR Status: This ICR is scheduled to expire on July 31, 2010. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The Clean Air Act (the Act) contains several provisions directing EPA to require source owners to conduct monitoring to support certification as to their status of compliance with applicable requirements. These provisions are set forth in Section 504 (operating permits provisions) and Section 114 (enforcement provisions) of the Act. Section 504(b) directs EPA to implement monitoring and certification requirements through the operating permits program. This section allows EPA to prescribe by rule, methods and procedures for determining compliance recognizing that continuous emissions monitoring systems need not be required if other procedures or methods provide sufficiently reliable and timely information for determining compliance. Under section 504(c), each operating permit must "set forth inspection, entry, monitoring, compliance, certification, and reporting requirements to assure compliance with the permit terms and conditions." Section 114(a)(3) requires EPA to promulgate rules for enhanced monitoring and compliance certifications. Section 114(a)(1) of the Act provides additional authority concerning monitoring, reporting, and recordkeeping requirements. This section provides the Administrator with the authority to require any owner or operator of a source to install and operate monitoring systems and to record the resulting monitoring data. EPA promulgated the Compliance Assurance Monitoring (CAM) rule, 40 CFR part 64, on October 22, 1997 (62 FR 54900) to implement these authorities.

In accordance with these provisions, the monitoring information source owners must submit must also be available to the public, except as entitled to protection from disclosure as allowed in section 114(c) of the Act.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 134 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing

and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners and operators of title V sources with controlled pollutant specific emissions units that have a pre-control potential to emit major amounts of regulated air pollutants and permitting authorities

Estimated Number of Respondents: 3,174 owner/operators and 112 permitting authorities.

Frequency of Response: Incremental semi-annual and annual reports, plus every 5 years at permit renewal.

Estimated Total Annual Hour Burden: 7,453,581.

Estimated Total Annual Cost: $263,729,972, which includes annual labor costs for sources and permitting authorities and no capital or O&M costs.

Changes in the Estimate: There is an increase of 4,331,838 hours in the total estimated respondent annual burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase reflects the significant increase in number of respondents resulting from the implementation of the rule through operating permit renewals.

Dated: July 21, 2010.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2010–18366 Filed 7–26–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2009–0422; FRL–9181–2]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks (Renewal), EPA ICR Number 1611.07, OMB Control Number 2060–0327

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before August 26, 2010.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2009–0422, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: John Schaefer, Office of Air Quality Planning and Standards, Sector Policies and Programs Division (D243–05), Measurement Policy Group, Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–0296; fax number: (919) 541–3207; e-mail address: *schaefer.john@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On July 8, 2009 (74 *FR* 32581), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2009–0422, which is available for public viewing online at *http://www.regulations.gov*, in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov*, as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: NESHAP for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks (Renewal).

ICR Numbers: EPA ICR Number 1611.07, OMB Control Number 2060–0327.

ICR Status: This ICR is scheduled to expire on September 30, 2010. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the Provisions specified at 40 CFR part 63, subpart N. Owners or operators of the affected facilities must submit a one-time-only report of any physical or operational changes, initial performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is

estimated to average 75.08 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Hard chromium electroplating, decorative chromium electroplating, and chromium anodizing operations.

Estimated Number of Respondents: 1,770.

Frequency of Response: Initially, occasionally, quarterly, semiannually, and annually.

Estimated Total Annual Hour Burden: 171,118.

Estimated Total Annual Cost: $31,933,586, which includes $5,383,586 in labor costs, $0 in capital/startup costs, and $26,550,000 in operation and maintenance (O&M) costs.

Changes in the Estimates: There was a decrease in burden hours, costs, and number of responses currently identified in the OMB Inventory of Approved Burdens. This is due to a change in the number of estimated chromium electroplating and anodizing operations affected by the ICR since the last renewal which decreased from 5,020 to 1,770 sources.

Dated: July 19, 2010.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2010–18382 Filed 7–26–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2009–0423; FRL–9181–1]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Gasoline Distribution Facilities (Renewal), EPA ICR Number 1659.07, OMB Control Number 2060–0325

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before August 26, 2010.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2009–0423, to (1) EPA online using www.regulations.gov (our preferred method), or by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: John Schaefer, Office of Air Quality Planning and Standards, Sector Policies and Programs Division (D243–05), Measurement Policy Group, Environmental Protection Agency, Research Triangle Park, North Carolina, 27711; telephone number: (919) 541–0296; fax number: (919) 541–3207; e-mail address: *schaefer.john@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On July 8, 2009 (74 *FR* 32581), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2009–0423, which is available for public viewing online at http://www.regulations.gov, in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov,* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: NESHAP for Gasoline Distribution Facilities (Renewal).

ICR Numbers: EPA ICR Number 1659.07, OMB Control Number 2060–0325.

ICR Status: This ICR is scheduled to expire on August 31, 2010. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A,

and any changes, or additions to the Provisions specified at 40 CFR part 63, subpart R. Owners or operators of the affected facilities must submit a one-time-only report of any physical or operational changes, initial performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 31 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners or operators of gasoline distribution facilities that transfer and store gasoline, including pipeline breakout stations and bulk terminals.

Estimated Number of Respondents: 447 .

Frequency of Response: Initially, occasionally, semiannually and annually.

Estimated Total Annual Hour Burden: 15,759 .

Estimated Total Annual Cost: $1,847,584, which includes $1,490,584 in labor costs, no capital/startup costs, and $357,000 in operation and maintenance (O&M) costs.

Changes in the Estimates: There are no changes in the regulatory requirements and there is no significant industry growth, however there is an adjustment in the number of responses and labor hours from the previous ICR. The number of responses decreased from 549 to 508. The previous ICR assumed all 102 major sources must submit responses, but it was assumed that 60 percent of the sources (*i.e.,* 61.2) would be required to submit semiannual reports under the NESHAP subpart R since the remaining 40 percent are already complying with similar reporting requirements under another applicable NSPS rule. The overall Respondent hour burden increased from 15,756 hours to 15,759 hours and the Agency hours decreased from 1,429.6 to 1,407.6 hours, both due to calculation errors in the previous ICR.

Dated: July 19, 2010.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2010–18379 Filed 7–26–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2009–0413; FRL–9180–9]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for Sewage Sludge Treatment Plant Incineration (Renewal), EPA ICR Number 1063.11, OMB Control Number 2060–0035

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before August 26, 2010.

ADDRESSES: Submit your comments, referencing docket ID number EPA–OECA–2009–0413, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: John Schaefer, Office of Air Quality Planning and Standards, Sector Policies and Programs Division (D243–05), Measurement Policy Group, Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–0296; fax number: (919) 541–3207; e-mail address: *schaefer.john@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On July 8, 2009 (74 FR 32581), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2009–0413, which is available for public viewing online at *http://www.regulations.gov,* in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov,* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: NSPS for Sewage Sludge Treatment Plant Incineration (Renewal).

ICR Numbers: EPA ICR Number 1063.11, OMB Control Number 2060–0035.

ICR Status: This ICR is scheduled to expire on August 31, 2010. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not

required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A and any changes, or additions to the Provisions specified at 40 CFR part 60, subpart O. Owners or operators of the affected facilities must make an initial notification, performance tests, periodic reports, and maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 55 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Sewage sludge treatment plant incinerators.

Estimated Number of Respondents: 112.

Frequency of Response: Initially, occasionally, and semiannually.

Estimated Total Annual Hour Burden: 12,464.

Estimated Total Annual Cost: $5,138,948, which includes $1,178,948 in labor costs, $40,000 in capital/startup costs, and $3,920,000 in operation and maintenance (O&M) costs.

Changes in the Estimates: There is an increase in the total estimated burden as currently identified in the OMB Inventory of Approved Burdens, which is due to more accurate estimates of existing sources. The number of existing facilities changed from 54 to 112 and increased the number of responses, burden hours, labor costs, and O&M costs. A reduction in capital/start-up costs occurred due to the decrease of anticipated new sources which declined from 1 to 0.4 new sources per year.

Dated: July 19, 2010.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2010–18376 Filed 7–26–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2003–0079: FRL–9180–8]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; 8-Hour Ozone National Ambient Air Quality Standard Implementation Rule (Renewal), EPA ICR No. 2236.03, OMB Control No. 2060–0594

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before August 26, 2010.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2003–0079, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *a-and-r-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket, Mailcode 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. H. Lynn Dail, Air Quality Policy Division, Office of Air Quality Planning and Standards, Mail Code C539–01, Environmental Protection Agency, T.W. Alexander Drive, Research Triangle Park, NC 27711; telephone number: (919) 541–2363; fax number: (919) 541–0824; e-mail address: *dail.lynn@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On April 8, 2010 (75 FR 17915), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments during the comment period. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2003–0079, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air Docket is 202–566–1742.

Use EPA's electronic docket and comment system at *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov*.

Title: 8-Hour Ozone National Ambient Air Quality Standard Implementation Rule (Renewal).

ICR numbers: EPA ICR No. 2236.03, OMB Control No. 2060–0594.

ICR status: This ICR is scheduled to expire on July 31, 2010. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is

pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9 and are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The PRA requires the information found in this ICR to assess the burden (in hours and dollars) of the 8-hour Ozone National Ambient Air Quality Standard (NAAQS) Implementation Rule as well as the periodic reporting and recordkeeping necessary to maintain the rule. The rule was proposed June 2, 2003 (68 FR 32802) and promulgated in two Phases: Phase 1 published April 30, 2004 (69 FR 23951) and Phase 2 published November 29, 2005 (70 FR 71612). The rule includes requirements that involve collecting information from states with areas that have been designated nonattainment for the 8-hour ozone NAAQS. These information collection milestones include state submission of an attainment demonstration State Implementation Plan (SIP), a Reasonable Further Progress (RFP) SIP, and a Reasonable Available Control Technology (RACT) SIP. However, not all of the milestones and associated burden and administrative costs estimates apply to every designated nonattainment area. Areas with cleaner air quality have fewer requirements.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 171 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Respondents/Affected Entities: State and local governments.

Estimated total number of respondents: 21.

Frequency of response: Annual.

Estimated total annual burden hours: 6,667 hours.

Estimated total annual costs: $434,000 in labor costs. There are no capital investment or maintenance and operational costs.

Changes in the Estimates: There is a decrease of 278,666 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease results from the number of non-attainment areas decreasing as areas have come into compliance with the standards and the burden associated with the remaining non-attainment areas decreasing because of the work they have done previously to comply with the standards.

Dated: July 21, 2010.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2010–18369 Filed 7–26–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2005–0062; FRL–9180–6]

Agency Information Collection Activities; Proposed Collection; Comment Request; Procedures for Implementing the National Environmental Policy Act and Assessing the Environmental Effects Abroad of EPA Actions (Renewal); EPA ICR No. 2243.06, OMB Control No. 2020–0033

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA)(44 U.S.C. 3501 et seq.), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before August 26, 2010.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OECA–2005–0062, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by email to *trice.jessica@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jessica Trice, Office of Federal Activities, Mail Code 2252A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–6646; fax number: (202) 564–0072; e-mail address: *trice.jessica@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 7, 2010 (75 FR 25237), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OECA–2005–0062, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Enforcement and Compliance Docket is 202–566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential

business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: Procedures for Implementing the National Environmental Policy Act and Assessing the Environmental Effects Abroad of EPA Actions (Renewal).

ICR numbers: EPA ICR No. 2243.06, OMB Control No. 2020–0033.

ICR Status: This ICR is scheduled to expire on August 31, 2010. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321–4347 establishes the federal government's national policy for protection of the environment. The Council on Environmental Quality Regulations (CEQ Regulations) at 40 CFR parts 1500 through 1508 establish procedures implementing the national policy. The CEQ Regulations (40 CFR 1505.1) require federal agencies to adopt and, as needed, revise their own implementing procedures to supplement the CEQ Regulations and to ensure their decision-making processes are consistent with NEPA. EPA accordingly laid out its "Procedures for Implementing the National Environmental Policy Act and Assessing the Environmental Effects Abroad of EPA Actions" at 40 CFR part 6.

Those subject to the final NEPA rule include certain grant or permit applicants who must submit environmental information documentation to EPA for their proposed projects. The final NEPA regulations consolidate and standardize the environmental review process applicable to all EPA actions subject to NEPA, including those actions now specifically addressed in the regulations and other actions subject to NEPA but not specifically addressed in the regulations (e.g., certain grants awarded for special projects authorized by Congress through the Agency's annual Appropriations Act).

EPA is collecting information from certain applicants as part of the process of complying with either NEPA or Executive Order 12114 ("Environmental Effects Abroad of Major Federal Actions"). EPA's NEPA regulations apply to the actions of EPA that are subject to NEPA in order to ensure that environmental information is available to the Agency's decision-makers and the public before decisions are made and before actions are taken.

When EPA conducts an environmental assessment pursuant to its Executive Order 12114 procedures, the Agency generally follows its NEPA procedures. Compliance with the procedures is the responsibility of EPA's Responsible Officials, and for applicant-proposed actions applicants may be required to provide environmental information to EPA as part of the environmental review process. For this Information Collection Request (ICR), applicant-proposed projects subject to either NEPA or Executive Order 12114 (and that are not addressed in other EPA programs' ICRs) are addressed through the NEPA process.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 123 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Entities potentially affected by this action are certain grant or permit applicants who must submit environmental information documentation to EPA for their projects to comply with NEPA or Executive Order 12114, including Wastewater Treatment Construction Grants Program facilities, State and Tribal Assistance Grant recipients and new source National Pollutant Discharge Elimination System permittees.

Estimated Number of Respondents: 312.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 38,472 hours.

Estimated Total Annual Cost: $3,503,245, includes $7,638 annualized capital or O&M costs.

Changes in the Estimates: There is a decrease of 9,675 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease reflects the increasing the number of projects that are documented with a categorical exclusion (CE) rather than an environmental assessment (EA). Under the current ICR, approximately 60% of the annual 300 grant projects were documented with a CE, and 40% with an EA. However, we estimate that out of the 300 annual grant projects, 75% will be documented with a CE and 25% will be documented with an EA.

Dated: July 21, 2010.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2010–18367 Filed 7–26–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9180–4]

California State Motor Vehicle and Nonroad Engine Pollution Control Standards; Truck Idling Requirements; Opportunity for Public Hearing and Request for Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of opportunity for public hearing and comment.

SUMMARY: The California Air Resources Board (CARB) has notified EPA that it has adopted requirements to reduce idling emissions from new and in-use trucks beginning in 2008. CARB's 2008 Truck Idling Requirements apply to new California certified 2008 and subsequent model year heavy-duty diesel engines in heavy-duty diesel vehicles with a gross vehicle weight rating over 14,000 pounds, and to in-use diesel-fueled commercial vehicles with gross vehicle weight ratings over 10,000 pounds that are equipped with sleeper berths. This notice announces that EPA has tentatively scheduled a public hearing to consider California's 2008 Truck Idling Requirements request and that EPA is accepting written comment on the request.

DATES: EPA has tentatively scheduled a public hearing concerning CARB's

request on August 31, 2010 at 10 a.m. EPA will hold a hearing only if any party notifies EPA by August 17, 2010, expressing its interest in presenting oral testimony. By August 24, 2010, any person who plans to attend the hearing may call Kristien Knapp at (202) 343–9949 to learn if a hearing will be held or may check the following Web page for an update: *http://www.epa.gov/otaq/cafr.htm.*

Parties wishing to present oral testimony at the public hearing should provide written notice to Kristien Knapp at the e-mail address noted below. If EPA receives a request for a public hearing, that hearing will be held at 1310 L Street, NW., Washington, DC 20005.

If EPA does not receive a request for a public hearing, then EPA will not hold a hearing, and instead consider CARB's request based on written submissions to the docket. Any party may submit written comments until October 1, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2010–0317, by one of the following methods:

- *On-Line at http://www.regulations.gov:* Follow the On-Line Instructions for Submitting Comments.
- *E-mail: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–1741.
- *Mail:* Air and Radiation Docket, Docket ID No. EPA–HQ–OAR–2010–0317, U.S. Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

On-Line Instructions for Submitting Comments: Direct your comments to Docket ID No. EPA–HQ–OAR–2010–0317. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will automatically be captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

EPA will make available for public inspection materials submitted by CARB, written comments received from any interested parties, and any testimony given at the public hearing. Materials relevant to this proceeding are contained in the Air and Radiation Docket and Information Center, maintained in Docket ID No. EPA–HQ–OAR–2010–0317. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket in the EPA Headquarters Library, EPA West Building, Room 3334, located at 1301 Constitution Avenue, NW., Washington, DC. The Public Reading Room is open to the public on all Federal government work days from 8:30 a.m. to 4:30 p.m.; generally, it is open Monday through Friday, excluding holidays. The telephone number for the Reading Room is (202) 566–1744. The Air and Radiation Docket and Information Center's Web site is *http://www.epa.gov/oar/docket.html.* The electronic mail (e-mail) address for the Air and Radiation Docket is: *a-and-r-Docket@epa.gov,* the telephone number is (202) 566–1742, and the fax number is (202) 566–9744. An electronic version of the public docket is available through the Federal government's electronic public docket and comment system. You may access EPA dockets at *http://www.regulations.gov.* After opening the *http://www.regulations.gov* Web site, enter EPA–HQ–OAR–2010–0317 in the "Enter Keyword or ID" fill-in box to view documents in the record. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

EPA's Office of Transportation and Air Quality also maintains a Web page that contains general information on its review of California waiver requests. Included on that page are links to several of the prior waiver **Federal Register** notices which are cited throughout today's notice; the page can be accessed at *http://www.epa.gov/otaq/cafr.htm.*

FOR FURTHER INFORMATION CONTACT: Kristien Knapp, Compliance and Innovative Strategies Division, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue (6405J), NW., Washington, DC 20460. Telephone: (202) 343–9949. Fax: (202) 343–2800. E-mail: *knapp.kristien@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. California's 2008 Truck Idling Requirements

By letter dated May 9, 2008, CARB informed EPA that it had adopted its 2008 Truck Idling Requirements, and requested that EPA confirm that certain provisions of the requirements are not preempted by sections 209(a) of the Clean Air Act (Act); certain provisions are conditions precedent pursuant to section 209(a) of the Act; [1] certain provisions are within-the-scope of previous waivers and authorizations issued pursuant to sections 209(b) and 209(e) of the Act, respectively; and at least one provision requires and merits a full authorization pursuant to section 209(e) of the Act.[2] CARB's 2008 Truck Idling Requirements became effective California State law on November 15, 2006, amending title 13, California Code of Regulations (CCR) sections 1956.8, 2404, 2424, 2425, and 2485.[3]

CARB's 2008 Truck Idling Requirements consist of three elements:

[1] EPA can confirm that a California requirement is a condition precedent to sale, titling, or registration, if: (1) The requirements do not constitute new or different standards or accompanying enforcement procedures, and (2) the requirements do not affect the basis for the previous waiver decision.

[2] California Air Resources Board (CARB) Letter to EPA regarding, "Requirements to Reduce Idling Emissions From New and In-Use Trucks, Beginning in 2008; Request for Confirmation That Certain Requirements are not Subject to Preemption Under Clean Air Act Section 209(a) or Fall Within the Scope of Previously Granted Waivers and Authorizations, and Request for New Authorization Under Section 209(e)(2)," EPA–HQ–OAR–2010–0317–0001.

[3] *See* California Air Resources Board (CARB), "Final Regulation Order," EPA–HQ–OAR–2010–0317–0011.

(1) "New engine requirements" that require new California-certified 2008 and subsequent model year on-road diesel engines in vehicles with a gross vehicle weight rating (GVWR) greater than 14,000 pounds (*i.e.,* heavy-duty diesel vehicles or "HDDV"s) be equipped with a system that automatically shuts down the engine after five minutes of continuous idling; (2) "Sleeper truck requirements" that require the operator of a sleeper truck to manually shut down the engine after five minutes of continuous idling; and (3) "Alternative technology requirements" that establish in-use performance standards for HDDV operators who use alternative technologies to supply power for truck cab or sleeper berth climate control and/or other on-board accessories that otherwise would have been generated by the continuous idling of the truck's main engine.[4] CARB requests, first, that EPA confirm that its new engine requirements are not preempted by section 209(a) of the Act, or that they are other conditions precedent required prior to the initial sale of new heavy-duty diesel engines. Alternatively, CARB requests that if EPA concludes that the new engine requirements are preempted by section 209(a) of the Act, then EPA confirm that the requirements are within-the-scope of EPA's previously-issued waiver for 2007 and later model year heavy-duty diesel engines. Second, CARB requests that EPA confirm that its sleeper truck requirements are purely operational controls, which are not preempted by section 209(a) of the Act. Third, CARB requests the following determinations from EPA with respect to its alternative technology requirements: (1) A within-the-scope confirmation for its requirement that an alternative power supply (APS) may only be operated if that engine has been certified to meet either applicable California off-road or Federal nonroad emission standards and test procedures for its fuel type and power category;[5] (2) a full authorization for its requirement that a driver may not operate a diesel-fueled APS engine on a vehicle with a primary engine certified to the 2007 and subsequent model year standards unless the APS is certified to meet the applicable California or Federal standard and meets one of three additional requirements;[6] and (3) a determination that its requirements pertaining to fuel-fired heaters, batteries, fuel cells, and power inverter/chargers for on-shore power are not preempted by section 209.

II. Clean Air Act New Motor Vehicle and Engine Waivers of Preemption

Section 209(a) of the Clean Air Act preempts States and local governments from setting emission standards for new motor vehicles and engines; it provides:

> No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part. No state shall require certification, inspection or any other approval relating to the control of emissions from any new motor vehicle or new motor vehicle engine as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment.

Through operation of section 209(b) of the Act, California is able to seek and receive a waiver of section 209(a)'s preemption. If certain criteria are met, section 209(b)(1) of the Act requires the Administrator, after notice and opportunity for public hearing, to waive application of the prohibitions of section 209(a). Section 209(b)(1) only allows a waiver to be granted for any State that had adopted standards (other than crankcase emission standards) for the control of emissions from new motor vehicles or new motor vehicle engines prior to March 30, 1966, if the State determines that its standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards (*i.e.,* if such State makes a "protectiveness determination"). Because California was the only State to have adopted standards prior to 1966, it is the only State that is qualified to seek and receive a waiver.[7] The Administrator must grant a waiver unless she finds that: (A) California's above-noted "protectiveness determination" is arbitrary and capricious;[8] (B) California does not need such State standards to meet compelling and extraordinary conditions;[9] or (C) California's standards and accompanying enforcement procedures are not consistent with section 202(a) of the Act.[10] EPA has previously stated that consistency with section 202(a) requires that California's standards must be technologically feasible within the lead time provided, giving due consideration of costs, and that California and applicable Federal test procedures be consistent.[11]

The second sentence of section 209(a) of the Act prevents States from requiring, "certification, inspection or any other approval relating to the control of emissions from any new motor vehicle or new motor vehicle engine as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment." However, once EPA has granted California a waiver of section 209(a)'s preemption for emission standards and/or accompanying enforcement procedures, California may then require other such conditions precedent.[12] EPA can confirm that a California requirement is a condition precedent to sale, titling, or registration, if: (1) The requirements do not constitute new or different standards or accompanying enforcement procedures, and (2) the requirements do not affect the basis for the previous waiver decision.

III. Clean Air Act Nonroad Engine and Vehicle Authorizations

Section 209(e)(1) of the Act permanently preempts any State, or political subdivision thereof, from adopting or attempting to enforce any standard or other requirement relating to the control of emissions for certain new nonroad engines or vehicles. Section 209(e)(2) of the Act requires the Administrator to grant California authorization to enforce its own standards for new nonroad engines or vehicles which are not listed under section 209(e)(1), subject to certain restrictions. On July 20, 1994, EPA promulgated a rule that sets forth, among other things, the criteria, as found in section 209(e)(2), which EPA must consider before granting any

[4] *See* California Air Resources Board (CARB), "Waiver and Authorization Action Support Document," pp. 1–13, EPA–HQ–OAR–2010–0317–0002.

[5] CARB believes this requirement is within-the-scope of the previous authorization for new nonroad engine standards because that authorization already allows enforcement of California's requirement that any new APS engine acquired since the 2000 model year is required to meet the California or Federal nonroad engine emission standards. (*See* 75 FR 8056 (February 23, 2010).)

[6] The additional requirements are one of the following: (a) Exhaust routed into the truck's exhaust system and PM trap; (b) a level 3 verified PM control strategy; or (c) use of other procedures to demonstrate an equivalent level of emissions compliance.

[7] *See* S.Rep. No. 90–403 at 632 (1967).

[8] CAA section 209(b)(1)(A).

[9] CAA section 209(b)(1)(B).

[10] CAA section 209(b)(1)(C).

[11] *See, e.g.,* 74 FR 32767 (July 8, 2009); *see also Motor and Equipment Manufacturers Association* v. *EPA* (MEMA I), 627 F.2d 1095, 1126 (DC Cir. 1979).

[12] "Once California receives a waiver for standards for a certain class of motor vehicles, it need only meet the waiver criteria of section 209(b) for regulations pertaining to those vehicles when it adopts new or different standards or accompanying enforcement procedures. Otherwise, California may adopt any other condition precedent to the initial retail sale, titling, or registration of those vehicles without the necessity of receiving a further waiver of Federal preemption." 43 FR 36680 (August 18, 1978).

California authorization request for new nonroad engine or vehicle emission standards. On October 8, 2008, the regulations promulgated in that rule were moved to 40 CFR Part 1074, and modified slightly.[13] As stated in the preamble to the section 209(e) rule, EPA has historically interpreted the section 209(e)(2)(iii) "consistency" inquiry to require, at minimum, that California standards and enforcement procedures be consistent with section 209(a), section 209(e)(1), and section 209(b)(1)(C) (as EPA has interpreted that subsection in the context of section 209(b) motor vehicle waivers).[14]

In order to be consistent with section 209(a), California's nonroad standards and enforcement procedures must not apply to new motor vehicles or new motor vehicle engines. To be consistent with section 209(e)(1), California's nonroad standards and enforcement procedures must not attempt to regulate engine categories that are permanently preempted from State regulation. To determine consistency with section 209(b)(1)(C), EPA typically reviews nonroad authorization requests under the same "consistency" criteria that are applied to motor vehicle waiver requests. Pursuant to section 209(b)(1)(C), the Administrator shall not grant California a motor vehicle waiver if she finds that California "standards and accompanying enforcement procedures are not consistent with section 202(a)" of the Act. Previous decisions granting waivers and authorizations have noted that State standards and enforcement procedures are inconsistent with section 202(a) if: (1) There is inadequate lead time to permit the development of the necessary technology giving appropriate consideration to the cost of compliance within that time, or (2) the Federal and State testing procedures impose inconsistent certification requirements.

IV. Within-the-Scope Determinations

If California amends regulations that were previously granted a waiver of preemption, EPA can confirm that the amended regulations are within-the-scope of the previously granted waiver. Such within-the-scope amendments are permissible without a full waiver review if three conditions are met. First, the amended regulations must not undermine California's determination that its standards, in the aggregate, are as protective of public health and welfare as applicable Federal standards. Second, the amended regulations must not affect consistency with section 202(a) of the Act. Third, the amended regulations must not raise any "new issues" affecting EPA's prior waivers.

V. EPA's Request for Public Comment

When EPA receives a new waiver or authorization request from CARB, EPA traditionally publishes a notice of opportunity for public hearing and comment in the **Federal Register**. Then, after the comment period has closed and EPA has evaluated CARB's request in light of the administrative record, EPA publishes a notice of decision in the **Federal Register**. In contrast, when EPA receives a request from CARB that EPA confirm that CARB amendments are within-the-scope of previous waivers and/or authorizations, EPA typically publishes a notice of its decision in the **Federal Register** and concurrently invites public comment if an interested party is opposed to EPA's decision. Because CARB's request for its 2008 Truck Idling Requirements includes at least one requirement that CARB believes require a new full authorization, EPA invites public comment on the entire request, including but not limited to the following issues.

First, should EPA consider CARB's new engine requirements as non-preempted operational controls, or as conditions precedent? In the alternative, if CARB's new engine requirements should be treated as standards relating to the control of emissions or accompanying enforcement procedures, should they be subject to and do they meet the criteria for EPA to confirm that they are within-the-scope of EPA's waiver for new heavy-duty diesel engines for 2007 and subsequent model years? To the extent the new engine requirements should be treated as standards relating to the control of emissions or accompanying enforcement procedures and require a full waiver from EPA, do the requirements meet the full waiver criteria?

Second, are CARB's sleeper truck requirements properly considered an operational control and thus not preempted by section 209 of the Act? To the extent that CARB's sleeper truck requirements should be treated as standards relating to the control of emissions from new motor vehicles or engines or accompanying enforcement procedures and require a full waiver from EPA, do the requirements meet the criteria for a full waiver?

Third, with respect to CARB's alternative technology requirements, EPA presents the following specific questions: (1) Does CARB's requirement that an APS using an internal combustion engine be certified to meet either California off-road or Federal nonroad emission standards and test procedures meet the requirements for finding that it is within-the-scope of the authorization EPA issued for new nonroad engine standards, thus not requiring a full authorization?;[15] (2) If not, does CARB's requirement that an APS using an internal combustion engine be certified to meet either California off-road or Federal nonroad emission standards and test procedures meet the requirements for a full authorization?; (3) Does CARB's requirement that a diesel-fueled APS engine be certified to the California or Federal 2007 and subsequent model year standards and meet one of three other listed requirements[16] meet the criteria for a full authorization?; and (4) Are CARB's requirements pertaining to fuel-fired heaters, batteries, fuel cells, power inverter/chargers for on-shore power, and truck electrification preempted under section 209 of the Clean Air Act, and if so, do they meet the requirements for waiver under section 209(b) or authorization under section 209(e)?

As called out by these specific questions, EPA is seeking threshold input on whether to treat various elements of CARB's 2008 Truck Idling Requirements as conditions precedent, within-the-scope of previous waivers and authorizations, not preempted by section 209, or in need of a full waiver or authorization. After determining which analysis to conduct, EPA will likely review the requirements

[13] The applicable regulations, now in 40 CFR part 1074, subpart B, § 1074.105, provide:

(a) The Administrator will grant the authorization if California determines that its standards will be, in the aggregate, at least as protective of public health and welfare as otherwise applicable Federal standards.

(b) The authorization will not be granted if the Administrator finds that any of the following are true:

(1) California's determination is arbitrary and capricious.

(2) California does not need such standards to meet compelling and extraordinary conditions.

(3) The California standards and accompanying enforcement procedures are not consistent with section 209 of the Act.

(c) In considering any request from California to authorize the State to adopt or enforce standards or other requirements relating to the control of emissions from new nonroad spark-ignition engines smaller than 50 horsepower, the Administrator will give appropriate consideration to safety factors (including the potential increased risk of burn or fire) associated with compliance with the California standard.

[14] *See* 59 FR 36969 (July 20, 1994).

[15] 75 FR 8056 (February 23, 2010).

[16] The additional requirements are one of the following: (a) Exhaust routed into the truck's exhaust system and PM trap; (b) a level 3 verified PM control strategy; or (c) use of other procedures to demonstrate an equivalent level of emissions compliance.

according to its traditional criteria, and therefore, seeks substantive comment on whether the various elements of CARB's 2008 Truck Idling Requirements meet the applicable criteria for confirmation as conditions precedent,[17] within-the-scope,[18] non-preemption,[19] and full waiver[20] or authorization.[21]

VI. Procedures for Public Participation

In recognition that public hearings are designed to give interested parties an opportunity to participate in this proceeding, there are no adverse parties as such. Statements by participants will not be subject to cross-examination by other participants without special approval by the presiding officer. The presiding officer is authorized to strike from the record statements that he or she deems irrelevant or repetitious and to impose reasonable time limits on the duration of the statement of any participant.

If a hearing is held, the Agency will make a verbatim record of the proceedings. Interested parties may arrange with the reporter at the hearing to obtain a copy of the transcript at their own expense. Regardless of whether a public hearing is held, EPA will keep the record open until October 1, 2010. Upon expiration of the comment period, the Administrator will render a decision on CARB's request based on the record from the public hearing, if any, all relevant written submissions, and other information that she deems pertinent. All information will be available for inspection at the EPA Air Docket No. EPA–HQ–OAR–2010–0317.

Persons with comments containing proprietary information must distinguish such information from other comments to the greatest extent possible and label it as "Confidential Business Information" (CBI). If a person making comments wants EPA to base its decision on a submission labeled as CBI, then a non-confidential version of the document that summarizes the key data or information should be submitted to the public docket. To ensure that proprietary information is not inadvertently placed in the public docket, submissions containing such information should be sent directly to the contact person listed above and not to the public docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed, and according to the procedures set forth in 40 CFR Part 2. If no claim of confidentiality accompanies the submission when EPA receives it, EPA will make it available to the public without further notice to the person making comments.

Dated: July 20, 2010.

Margo Tsirigotis Oge,

Director, Office of Transportation and Air Quality, Office of Air and Radiation.

[FR Doc. 2010–18362 Filed 7–26–10; 8:45 am]

BILLING CODE 6560–50–P

[17] EPA has previously stated that, "Once California receives a waiver for standards for a certain class of motor vehicles, it need only meet the waiver criteria of section 209(b) for regulations pertaining to those vehicles when it adopts new or different standards or accompanying enforcement procedures. Otherwise, California may adopt any other condition precedent to the initial retail sale, titling, or registration of those vehicles without the necessity of receiving a further waiver of Federal preemption." 43 FR 36680 (August 18, 1978).

[18] As stated in **Section IV** above, EPA's inquiry for within-the-scope confirmations requires that: (1) The amended regulations must not undermine California's determination that its standards, in the aggregate, are as protective of public health and welfare as applicable Federal standards; (2) the amended regulations must not affect consistency with section 202(a) of the Act; and (3) the amended regulations must not raise any "new issues" affecting EPA's prior waivers.

[19] A requirement is not preempted if it is not a "standard relating to the control of emissions from new motor vehicles or any new motor vehicle engines subject to [Title II of the Clean Air Act]," or "certification, inspection or any other approval relating to the control of emissions from any new motor vehicle or new motor vehicle engine as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment." CAA § 209(a).

[20] As stated in **Section II** above, the Administrator must grant a waiver unless she finds that: (A) California's "protectiveness determination" is arbitrary and capricious; (B) California does not need such State standards to meet compelling and extraordinary conditions; or (C) California's standards and accompanying enforcement procedures are not consistent with section 202(a) of the Act. EPA has previously stated that "consistency with section 202(a) requires that California's standards must be technologically feasible within the lead time provided, given due consideration of costs, and that California and applicable Federal test procedures be consistent.

[21] As stated in **Section III** above, the Administrator must grant an authorization unless she finds that: (A) California's "protectiveness determination" is arbitrary and capricious; (B) California does not need such standards to meet compelling and extraordinary conditions; or (C) California's standards and accompanying enforcement procedures are not consistent with section 209 of the Act. EPA has clarified through rulemaking that consistency with section 209 requires, at minimum, that California standards and enforcement procedures be consistent with section 209(a), section 209(e)(1), and section 209(b)(1)(C) (as EPA has interpreted that subsection in the context of section 209(b) motor vehicle waivers). *See* 40 CFR 1074.105.

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R01–OW–2010–0318, FRL–9180–3]

Massachusetts Marine Sanitation Device Standard—Notice of Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Determination.

SUMMARY: The Regional Administrator of the Environmental Protection Agency—New England Region, has determined that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the coastal waters of Gloucester, Rockport, Essex, Ipswich, Rowley, Newbury, Newburyport, Salisbury, Amesbury, West Newbury, Merrimac, Groveland, North Andover, Haverhill, Methuen, and Lawrence, collectively termed the Upper North Shore for the purpose of this notice.

ADDRESSES: *Docket:* All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically in *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Ann Rodney, U. S. Environmental Protection Agency—New England Region, Office of Ecosystem Protection, Oceans and Coastal Protection Unit, Five Post Office Square, Suite 100, OEP06–1, Boston, MA 02109–3912. *Telephone:* (617) 918–1538. *Fax number:* (617) 918–0538. *E-mail address: rodney.ann@epa.gov*.

SUPPLEMENTARY INFORMATION: On May 20, 2010, EPA published a notice that the Commonwealth of Massachusetts had petitioned the Regional Administrator, Environmental Protection Agency, to determine that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the waters of the Upper North Shore. Four comments were received on this petition. The response to comments can be obtained utilizing the above contact information.

The petition was filed pursuant to Section 312(f)(3) of Public Law 92–500, as amended by Public Laws 95–217 and 100–4, for the purpose of declaring these waters a No Discharge Area (NDA).

Section 312(f)(3) states: After the effective date of the initial standards and regulations promulgated under this section, if any State determines that the protection and enhancement of the quality of some or all of the waters within such State require greater environmental protection, such State may completely prohibit the discharge from all vessels of any sewage, whether

treated or not, into such waters, except that no such prohibition shall apply until the Administrator determines that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for such water to which such prohibition would apply.

This Notice of Determination is for the waters of the Upper North Shore. The NDA boundaries are as follows:

Waterbody/General area	From longitude	From latitude	To longitude	To latitude
The southern edge of the Upper North Shore NDA boundary is the Manchester/Gloucester municipal line at	70°42′50″ W	42°34′21″ N	70°35′59″ W	42°33′02″ N
The northern edge of the Upper North Shore NDA boundary is MA/Seabrook, NH border at	70°48′47″ W	42°52′19″ N	70°43′57″ W	42°52′35″ N
On the Merrimack River, the inland edge of the NDA boundary is at the Essex Dam in Lawrence at	71°09′58″ W	42°42′02″ N		
On the Parker River, the inland edge of the NDA boundary is at the MBTA bridge in Newbury at	70° 52′00″ W	42° 45′20″ N		
On the Rowley River, the inland edge of the NDA boundary is at the MBTA bridge on the Rowley/Ipswich town line at	70° 51′28″ W	42° 43′19″ N		
On the Ipswich River, the inland edge of the NDA boundary is at County Street in Ipswich at	70° 50′07″ W	42° 40′44″ N		
On the Essex River, the inland edge of the NDA boundary is at Main Street in Essex at	70° 46′43″ W	42° 37′55″ N		

The eastern edge of the boundary is contiguous with the state/federal line also known as the Submerged Lands Act boundary line and Territorial Sea boundary. The area includes the municipal waters of Gloucester, Rockport, Essex, Ipswich, Rowley, Newbury, Newburyport, Salisbury, Amesbury, West Newbury, Merrimac, Groveland, North Andover, Haverhill, Methuen, and Lawrence.

The information submitted to EPA by the Commonwealth of Massachusetts certifies that there are 13 pumpout facilities located within this area. A list of the facilities, with locations, phone numbers, and hours of operation is appended at the end of this determination.

Based on the examination of the petition and its supporting documentation, and information from site visits conducted by EPA New England staff, EPA has determined that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the area covered under this determination.

This determination is made pursuant to Section 312(f)(3) of Public Law 92–500, as amended by Public Laws 95–217 and 100–4.

PUMPOUT FACILITIES WITHIN THE NO DISCHARGE AREA

[Upper North Shore]

Name	Location	Contact Info.	Hours	Mean low water depth (ft)
Gloucester Cape Ann Marina	75 Essex Ave., Annisquam River.	978–283–3293; VHF 10	8am–4pm	6
Gloucester Harbormaster	19 Harbor Loop	978–282–3012; VHF 16	On call	N/A
Rockport Harbormaster	34 Broadway	978–546–9589; VHF 9, 16	On call	N/A
Ipswich Harbormaster	15 Elm Street, Plum Island Sound.	978–356–4343; VHF 9, 16	On call	N/A
Rowley Harbormaster	497 Main Street	VHF 9	Thur–Tue; 10am–6pm	N/A
Rowley, Perley's Marina	109 Warehouse Lane	978–948–2812; VHF 9, 16	Mon–Fri 8am–6pm; Sat–Sun 8am–5pm.	4
Newbury Riverfront Marina	292 High Road	978–465–6090; VHF 9	8am–5pm (6pm weekend)	4
Newburyport Cashman Park	Merrimack River	978–462–3746; VHF 12, 16	Self Service Memorial Day/End of October.	6
Newburyport Harbormaster	60 Pleasant Street	978–462–3746; VHF 12, 16	Fri 1pm–5pm; Sat, Sun & Holidays 9am–5pm.	N/A
Amesbury Marina at Hatter's Point.	60 Merrimac Street	978–388–7333; VHF 9	8am–9pm	4
West Newbury Harbormaster	Merrimack River Town Dock	978–363–1213; VHF 9, 16	On call; 9am–5pm	N/A
Salisbury Harbormaster	Town Wharf	978–499–0740; VHF 12	On call	N/A

Dated: June 28, 2010.

H. Curtis Spalding,

Regional Administrator, New England Region.

[FR Doc. 2010–18363 Filed 7–26–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9179–9]

Science Advisory Board Staff Office; Notification of Rescheduling of Teleconference of the SAB Trichloroethylene Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces a rescheduling of a public teleconference of the SAB Trichloroethylene Review Panel. The teleconference, previously scheduled for August 5, 2010, will be held on September 13, 2010. The SAB Panel will discuss its draft review report on EPA's *Toxicological Review of Trichloroethylene in Support of Summary Information on the Integrated Risk Information System (IRIS),* External Review Draft (October 2009).

DATES: There will be a public teleconference on September 13, 2010 from 12 p.m. to 4 p.m. (Eastern Daylight Time). The teleconference previously scheduled for August 5, 2010 is cancelled.

ADDRESSES: The teleconference will be conducted by phone only.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing to obtain information concerning the public teleconference may contact Dr. Holly Stallworth, Designated Federal Officer (DFO), EPA Science Advisory Board Staff Office (1400R), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; by telephone/voice mail at (202) 564–2073 or via e-mail at *stallworth.holly@epa.gov.* General information about the SAB, as well as any updates concerning the meeting announced in this notice, may be found on the SAB Web site at *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2, notice is hereby given that the SAB Trichloroethylene Review Panel (Panel) will hold a public teleconference to discuss its peer review report to EPA. The SAB was established pursuant to 42 U.S.C. 4365 to provide independent scientific and technical advice to the Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal Advisory Committee chartered under FACA. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

The SAB Panel held a teleconference on April 20, 2010, a face-to-face meeting on May 10–12, 2010 and a teleconference on June 24, 2010. These meetings were announced in the **Federal Register** Notices dated March 31, 2010 (75 FR 16108–16109) and June 2, 2010 (75 FR 30827–30828), respectively. The **Federal Register** Notice of June 2, 2010 also announced a teleconference on August 5, 2010. This teleconference is now rescheduled for September 13, 2010. The SAB Panel will discuss its draft advisory on EPA's *Toxicological Review of Trichloroethylene in Support of Summary Information on the Integrated Risk Information System (IRIS),* External Review Draft (October 2009).

Availability of Meeting Materials: The SAB meeting agenda and materials in support of this teleconference will be placed on the SAB Web site at *http://www.epa.gov/sab* in advance of the teleconference. For technical questions and information concerning EPA's draft IRIS document, please contact Dr. Weihsueh Chiu at (703) 347–8607, or chiu.weihsueh@epa.gov.

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office. Federal advisory committees and panels, including scientific advisory committees, provide independent advice to EPA. Members of the public can submit comments for a Federal advisory committee to consider as it develops advice for EPA. They should send their comments directly to the Designated Federal Officer for the relevant advisory committee. *Oral Statements:* In general, individuals or groups requesting an oral presentation at a public teleconference will be limited to three minutes per speaker, with no more than a total of 30 minutes for all speakers. Each person making an oral statement should consider providing written comments as well as their oral statement so that the points presented orally can be expanded upon in writing. Interested parties should contact Dr. Holly Stallworth, DFO, in writing (preferably via e-mail) at the contact information noted above, by September 8, 2010 for the September 13, 2010 teleconference to be placed on the list of public speakers. *Written Statements:* Written statements should be supplied to the DFO via email at the contact information noted above no later than September 8, 2010. Written statements should be supplied in one of the following electronic formats: Adobe Acrobat PDF, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format. Submitters are requested to provide versions of signed documents, submitted with and without signatures, because the SAB Staff Office does not publish documents with signatures on its Web sites.

Accessibility: For information on access or services for individuals with disabilities, please contact Dr. Holly Stallworth at (202) 564–2073 or *stallworth.holly@epa.gov.* To request accommodation of a disability, please contact Dr. Stallworth preferably at least ten days prior to each teleconference to give EPA as much time as possible to process your request.

Dated: July 22, 2010.

Vanessa Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2010–18364 Filed 7–26–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0332; FRL–8838–6]

Methyl Parathion; Rescision of Previously Issued Order and Issuance of Revised Cancellation Order for Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's rescision of a previously issued cancellation order and provides a revised cancellation order, voluntarily requested by the registrants and accepted by the Agency, of products containing methyl parathion, pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This revised cancellation order rescinds a July 16, 2010 **Federal Register** Notice which incorrectly stated the effective date of the cancellations of the product registrations listed in Table 1 of Unit II. This order correctly identifies the effective dates of cancellation for the affected product registrations. In addition, this order clarifies the existing

stocks provisions. These are the last products containing this pesticide registered for use in the United States. In the April 28, 2010 **Federal Register** Notice of Receipt of Requests from the registrants listed in Table 2 of Unit II. to voluntarily cancel all these product registrations, EPA indicated that it would issue an order implementing the cancellations, unless the Agency received substantive comments within the 30 day comment period that would merit its further review of these requests, or unless the registrants withdrew their requests. The Agency received two comments on the notice but none merited the denial or the further review of the requests. Further, the registrants did not withdraw their requests. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested cancellations. Any distribution, sale, or use of the products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

DATES: The cancellations are effective December 31, 2012.

FOR FURTHER INFORMATION CONTACT: Kelly Ballard, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305-8126; fax number: (703) 305-5290; e-mail address: *ballard.kelly@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0332. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

II. What Action is the Agency Taking?

This revised cancellation order rescinds a July 16, 2010 **Federal Register** Notice (75 FR 41482) which incorrectly stated the effective date of the cancellations of the product registrations listed in Table 1 of Unit II and issues a revised order for the cancellation of methyl parathion products. This order correctly identifies the effective dates of cancellation for the affected product registrations. In addition, this order clarifies the existing stocks provisions.

The cancellation order for methyl parathion products, issued in the **Federal Register** on July 16, 2010 is rescinded. This notice announces the cancellations as requested by registrants, of methyl parathion products registered under section 3 of FIFRA. These registrations are listed in sequence by registration number in Table 1 of this unit.

TABLE 1.—METHYL PARATHION PRODUCT CANCELLATIONS

EPA Registration Number	Product Name
4787–33	Cheminova Methyl Parathion Technical
67760–43	Cheminova Methyl Parathion 4 EC
70506–193	PENNCAP-M Micro-encapsulated Insecticide

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed above.

TABLE 2.—REGISTRANTS OF CANCELLED PRODUCTS

EPA Company Number	Company Name and Address
4787	Cheminova A/S 1600 Wilson Boulevard, Suite 700 Arlington, VA 22209

TABLE 2.—REGISTRANTS OF CANCELLED PRODUCTS—Continued

EPA Company Number	Company Name and Address
67760	Cheminova, Inc. 1600 Wilson Boulevard, Suite 700 Arlington, VA 22209
70506	United Phosphorus 630 Freedom Business Center, Suite 402 King of Prussia, PA 19406

III. Summary of Public Comments Received and Agency Response to Comments

EPA received two comments from the general public. The first comment was from the Independent Scientific Research Advocates, and refers to the toxicity issues of organophosphates as a class of chemicals, and does not specifically refer to this cancellation action for methyl parathion. The second comment was from the USA Rice Federation, and notes the concern over the loss of methyl parathion. USA Rice would like EPA to expedite a replacement chemical for methyl parathion, and would support the expedition. The Agency does not believe that the comments submitted during the comment period merit further review for the purpose of this order or for a denial of the requests for voluntary cancellation.

IV. Cancellation Order

Pursuant to FIFRA section 6(f), EPA hereby approves the requested cancellations of methyl parathion registrations identified in Table 1 of Unit II. Accordingly, the Agency hereby orders that the product registrations identified in Table 1 of Unit II. are canceled. The effective date of the cancellations that are subject of this notice is December 31, 2012. Any distribution, sale, or use of existing stocks of the products identified in Table 1 of Unit II. in a manner inconsistent with any of the provisions for disposition of existing stocks set forth in Unit VI. will be a violation of FIFRA.

V. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish

a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the EPA Administrator may approve such a request. The notice of receipt for this action was published for comment on April 28, 2010 (75 FR 22402-22404) (FRL–8822–6). The comment period closed on May 28, 2010.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the action. The existing stocks provision for the products subject to this order is specified in the Memorandum of Agreement between the EPA and registrants listed in Table 2 (*www.regulations.gov*—EPA–HQ–OPP–2009–0010). The existing stocks provision is as follows: All sale, distribution and use of existing stocks of manufacturing-use products imported into the United States shall be prohibited as of December 31, 2012. In addition, as of December 31, 2012, all sale, distribution, and use of existing stocks of manufacturing-use products shall be prohibited unless the sale, distribution, or use is for purposes of export consistent with section 17 of FIFRA or for proper disposal. Registrants are prohibited from selling or distributing end-use products as of December 31, 2012, except for end-use products intended for export consistent with the requirements of section 17 of FIFRA, or for proper disposal. Persons other than the registrants are permitted to sell or distribute end-use products prior to August 31, 2013. All sale and distribution of end-use products shall be prohibited as of August 31, 2013, except for export consistent with section 17 of FIFRA or for proper disposal. Additionally, all use of existing stocks of the end-use products shall be prohibited as of December 31, 2013, except for products intended for export consistent with the requirements of section 17 of FIFRA or proper disposal. Finally, as of the effective date of this cancellation order, any permitted use of existing stocks is expressly conditioned upon such use being consistent with the terms of the previously approved labeling on or that accompanied the cancelled product.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: July 20, 2010.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2010–18380 Filed 7–26–10; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

AGENCY: Federal Election Commission.

DATE AND TIME: Wednesday, July 21, 2010, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Draft Advisory Opinion 2010–09: Club for Growth, by its counsel, Carol A. Laham, Esq., and D. Mark Renaud, Esq., of Wiley Rein LLP.

Draft Advisory Opinion 2010–11: Commonsense Ten, by its counsel, Marc E. Elias, Esq., and Ezra Reese, Esq., of Perkins Coie LLP.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Darlene Harris, Deputy Commission Secretary, at (202) 694–1040, at least 72 hours prior to the hearing date.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, *Telephone:* (202) 694–1220.

Shawn Woodhead Werth,

Secretary and Clerk of the Commission.

[FR Doc. 2010–18150 Filed 7–26–10; 8:45 am]

BILLING CODE 6715–01–M

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 August 11, 2010.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Jeffrey T. Valcourt, JNV Limited Partnership, II, and JNV Limited Partnership, III, all of Arlington, Virginia; acting in concert to acquire voting shares of United Financial Banking Companies, Inc., and thereby indirectly acquire voting shares of The Business Bank, both of Vienna, Virginia.

Board of Governors of the Federal Reserve System, July 22, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–18342 Filed 7–26–10; 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 August 20, 2010.

A. Federal Reserve Bank of Atlanta (Clifford Stanford, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. North American Financial Holdings, Inc., Charlotte, North Carolina; to acquire up to 100 percent of the voting shares of TIB Financial Corp., and thereby indirectly acqquire voting shares of TIB Bank, both of Naples, Florida.

In connection with this application, Applicant also has applied to acquire 100 percent of the voting shares of Naples Capital Advisors, Inc., Naples, Florida, and thereby engage in investment and financial advisory activities, pursuant to section 225.28(b)(6)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, July 22, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–18341 Filed 7–26–10; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day–10–0728]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Maryam I. Daneshvar, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

National Electronic Disease Surveillance System (NEDSS)—(OMB Number 0920–0728 exp. 2/28/2011)—Extension—Office of the Director (OD), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC is responsible for the dissemination of nationally notifiable disease information and for monitoring and reporting the impact of epidemic influenza on mortality, Public Health Services Act (42 U.S.C. 241). In April 1984, CDC Epidemiology Program Office (EPO) in cooperation with the Council of State and Territorial Epidemiologists (CSTE) and epidemiologists in six states began a pilot project, the Epidemiologic Surveillance Project (ESP). The ESP was designed to demonstrate the efficiency and effectiveness of the computer transmission of surveillance data between CDC and the state health departments. Each state health department used its existing computerized disease surveillance system to transmit specific data concerning each case of a notifiable disease. CDC technicians developed computer software to automate the transfer of data from the state to CDC.

In June 1985, CSTE passed a resolution supporting ESP as a workable system for electronic transmission of notifiable disease case reports from the states/territories to CDC. As the program was extended beyond the original group of states, EPO began to provide software, training and technical support to state health department staff overseeing the transition from hard-copy to *fully* automated transmission of surveillance data.

By 1989, all 50 states were using this computerized disease surveillance system, which was then renamed the National Electronic Telecommunications System for Surveillance (NETSS) to reflect its national scope. Core surveillance data are transmitted to CDC by the states and territories through NETSS. NETSS has a standard record format for data transmitted and does not require the use of a specific software program. The ability of NETSS to accept records generated by different software programs makes it useful for the efficient integration of surveillance systems nationwide.

Since 1999, the CDC, Epidemiology Program Office (EPO) has worked with CSTE, state and local public health system staff, and other CDC disease prevention and control program staff to identify information and information technology standards to support integrated disease surveillance. That effort is now focused on development of the National Electronic Disease Surveillance System (NEDSS), coordinated by CDC's Deputy Director for Integrated Health Information Systems.

NEDSS will electronically integrate and link together a wide variety of surveillance activities and will facilitate more accurate and timely reporting of disease information to CDC and the state and local health departments. Consistent with recommendations from our state and local surveillance partners as described in the 1995 report, *Integrating Public Health Information and Surveillance Systems,* NEDSS includes data standards, an internet based communications infrastructure built on industry standards. It also includes policy-level agreements on data access, sharing, burden reduction, and protection of confidentiality. To support NEDSS, CDC is supporting the development of an information system, the NEDSS Base System (NBS), which will use NEDSS technical and information standards, (*http://www.cdc.gov/od/hissb/doc/NEDSSBaseSysDescriptioin.pdf*). CDC will receive reports from the 57 respondents (50 state, 2 cities, and 5 territorial health departments) using the NEDSS (NETSS replacement) umbrella of systems, that includes the National Electronic Telecommunications System for Surveillance (NETSS).

There are no costs to the respondents other than their time to participate in the survey.

The table below outlines the annualized burden which consists of two components. The first component is "weekly reporting" (52 weeks annually). The second component is an end of year report titled "annual reporting". The two components collectively represent the estimated annualized hours for the submitting jurisdictions.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Weekly Reporting				
States	50	52	3	7,800
Territories	5	52	1.5	390
Cities	2	52	3	312
Annual Reporting				
States	50	1	16	800
Territories	5	1	12	60
Cities	2	1	16	32
Total				9,394

Dated: July 20, 2010.

Maryam I. Daneshvar,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–18397 Filed 7–26–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30-Day–0920–09AU]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Preventing HIV Risk Behaviors among Hispanic Adolescents—New—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

This project involves the development and evaluation of a streamlined version of Familias Unidas, a family-based intervention designed to prevent drug use and unsafe sex among Hispanic adolescents. Compared to non-Hispanic whites, Hispanic adolescents are highly vulnerable to acquiring HIV. Hispanic adolescents between the ages of 13 and 19 are five times more likely to be infected with HIV than are same-aged non-Hispanic whites (CDC–P, 2006). Hispanic adolescents report higher rates of unprotected sex at last intercourse than both non-Hispanic whites and African Americans. Compared to non-Hispanic whites and to African Americans, Hispanic 8th and 10th graders report the highest lifetime, annual, and 30-day prevalence rates of alcohol, cigarette, and licit or illicit drug use. Drug use and unsafe sexual behavior are risks for acquiring HIV.

Despite the urgent public health need to stop the progress of the HIV epidemic and to reduce health disparities in HIV infection, especially with regard to Hispanics, the largest and fastest growing minority group in the nation, Familias Unidas is the only published intervention found to be efficacious in preventing both drug use and unsafe sexual behavior. Familias Unidas has demonstrated efficacy in an intensive, 9 to 12 month version in two previous studies in preventing drug use and unsafe sexual behavior relative to two attention control conditions. Labor-intensive interventions are difficult to disseminate to the larger community. Consequently, there is an urgent need to develop and test a streamlined version that can be more easily disseminated to the population. Therefore, the specific aim of the proposed study is to evaluate a streamlined version of Familias Unidas. Findings from this study will strengthen CDC's HIV/AIDS behavioral intervention portfolio by creation of an effective behavioral intervention designed specifically for Hispanic adolescents which it currently lacks.

Approximately 400 dyads of Hispanic adolescents and their primary caregivers (a total of 800 people), recruited through two high schools in Miami-Dade County, will be screened for study eligibility in a short interview lasting approximately three minutes. Based on the investigators' prior research, approximately 240 dyads of Hispanic adolescents and their primary caregivers (a total of 480 people) will be deemed eligible for the study. Each of the eligible dyads will be placed into one of two groups: (1) The streamlined 5-session intervention and (2) a control group which receives standard HIV/AIDS prevention information from the high schools. Adolescents and caregivers from both groups will respond to computerized questionnaires (ACASI) containing questions about family functioning, HIV/AIDS risk behaviors and substance abuse, etc. Adolescents will spend approximately 60 minutes completing the questionnaires, while their primary caregivers will complete the questionnaires in approximately 45 minutes. They will complete these questionnaires twice annually during the two-year period. There is no cost to the respondents other than their time. The average annual burden is estimated to be 940 hours.

Estimate of Annualized Burden Hours

Respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per respondent (in hours)
Hispanic Adolescents Primary Caregivers	Recruitment Phone Script	400	1	9/60
Hispanic Adolescents and Primary Caregivers	Caregiver and Adolescent Screening Form	800	1	3/60
Primary Caregivers of Hispanic Adolescents	Parent Assessment Battery	240	2	45/60
Hispanic Adolescents	Adolescent Assessment Battery	240	2	1

Dated: July 20, 2010.

Maryam I. Daneshvar,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–18274 Filed 7–26–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day-10–0457]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Aggregate Reports for Tuberculosis Program Evaluation (OMB No. 0920–0457 exp. 5/30/2010) — Reinstatement with change —National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC, NCHHSTP, Division of Tuberculosis Elimination (DTBE) proposes to reinstate with change the Aggregate Reports for Tuberculosis Program Evaluation, previously approved under OMB No. 0920–0457. This request is for a 3-year clearance. There are no revisions to the report forms, data definitions, or reporting instructions. Changes within this information collection request (ICR) reflect an increase in the annual cost to the government. The increased cost is due to increases in salaries of personnel conducting data collection and analysis since the last ICR approval.

DTBE is the lead agency for tuberculosis elimination in the United States. To ensure the elimination of tuberculosis in the United States, CDC monitors indicators for key program activities, such as finding tuberculosis infections in recent contacts of cases and in other persons likely to be infected and providing therapy for latent tuberculosis infection. In 2000, CDC implemented two program evaluation reports for annual submission: Aggregate report of follow-up for contacts of tuberculosis, and Aggregate report of screening and preventive therapy for tuberculosis infection (OMB No. 0920–0457). The respondents for these reports are the 68 State and local tuberculosis control programs receiving Federal cooperative agreement funding through DTBE. These reports emphasize treatment outcomes, high-priority target populations vulnerable to tuberculosis, and programmed electronic report entry, which will be transitioned to the National Tuberculosis Indicators Project (NTIP), a secure Web-based system for program evaluation data, in 2010. No other Federal agency collects this type of national tuberculosis data, and the Aggregate report of follow-up for contacts of tuberculosis, and Aggregate report of screening and preventive therapy for tuberculosis infection are the only data source about latent tuberculosis infection for monitoring national progress toward tuberculosis elimination with these activities. CDC provides ongoing assistance in the preparation and utilization of these reports at the local and State levels of public health jurisdiction. CDC also provides respondents with technical support for NTIP access (Electronic—100%, Use of Electronic Signatures—No). The annual burden to respondents is estimated to be 226 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Data clerks	Follow-up and Treatment of Contacts to Tuberculosis Cases.	50	1 (electronic)	30/60
		18	1 (manual)	3
Program Managers	Follow-up and Treatment of Contacts to Tuberculosis Cases.	50	1 (electronic)	30/60
		18	1 (manual)	30/60
Data clerks	Targeted Testing and Treatment for Latent Tuberculosis Infection.	50	1 (electronic)	30/60
		18	1 (manual)	3
Program Managers	Targeted Testing and Treatment for Latent Tuberculosis Infection.	50	1 (electronic)	30/60
		18	1 (manual)	30/60
Total				226

Dated: July 20, 2010.

Maryam I. Daneshvar,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–18290 Filed 7–26–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day-10–10CM]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

HIV/AIDS Risk Reduction Interventions for African American Heterosexual Men—New—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

African Americans continue to be disproportionately affected by HIV/AIDS. Although they account for approximately 13 percent of the U.S. population, surveillance data indicate that in 2007, African Americans accounted for the majority (51 percent) of HIV/AIDS diagnoses in 34 states (CDC, 2009). When compared to other racial and ethnic groups, rates of heterosexually transmitted HIV are substantially higher among African Americans.

Presently, there is insufficient knowledge regarding African American heterosexual men's sexual risk behaviors and the context in which they occur. Increasing the number of evidence-based prevention interventions is a necessary requisite to decreasing HIV/AIDS among this target population. Thorough examinations of sexual risk behaviors and the context in which they occur is essential for developing effective HIV/AIDS prevention interventions and for informing policies and programs that will more effectively protect African American men and their partners from infection.

This research is being conducted by three sites to pilot test three unique HIV risk reduction interventions for feasibility, acceptability, and to provide preliminary evidence of intervention efficacy in reducing HIV risk behaviors. Findings from this research will also contribute knowledge on how to design culturally appropriate interventions for this target population.

The intervention evaluations are a pre-post test design (*i.e.* baseline assessment and 3-month follow-up assessment) with three convenience samples of African American heterosexual men, ages 18 to 45 living in New York and North Carolina.

Three sites will participate in this project. Each site will use a screener form to determine participant eligibility for inclusion in the study. Additionally, each site will use a locator form to collect contact information from participants so that staff can follow up to schedule future appointments. A baseline and three-month follow-up assessment will also be administered to participants enrolled at each site. The baseline and follow-up assessments will contain questions about the participants' socio-demographic background, sexual health, substance use, history of incarceration, HIV testing history, self-efficacy, perceptions of sex roles, HIV communication, access to healthcare, and intervention acceptability and feasibility. The pilot intervention evaluation will be conducted with 50 to 80 African American heterosexual men at each site. There is no cost to respondents other than their time. The total estimated burden hours are 335.

Estimated Annualized Burden Hours:

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Potential Participants—Site A	Screener	200	1	10/60
	Locator Form	80	1	5/60
Enrolled Participants—Site A	Baseline Assessment	80	1	20/60
	Follow-up Assessment	80	1	20/60
Potential Participants—Site B	Screener	214	1	10/60
Enrolled Participants—Site B	Locator Form	80	1	5/60
	Baseline Assessment	80	1	45/60
	Follow-up Assessment	80	1	45/60
Potential Participants—Site C	Screener	200	1	5/60
Enrolled Participants—Site C	Locator (Keep in Touch) Form	80	1	5/60
	Baseline Assessment	80	1	20/60
	Follow-up Assessment	80	1	20/60

Dated: July 20, 2010.

Maryam I. Daneshvar,

Reports Clearance Officer,

Centers for Disease Control and Prevention.

[FR Doc. 2010–18288 Filed 7–26–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–10–09BC]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Exploring HIV Prevention Communication Among Black Men Who Have Sex With Men in New York City: Project BROTHA—New. National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC is requesting OMB approval to administer a survey, conduct interviews and offer HIV rapid testing in black men who have sex with men (BMSM) and other men who have sex with men (MSM) in New York City. The purpose of the proposed study is to assess how interpersonal communication within BMSM social networks may be related to risk for HIV infection and attitudes towards HIV testing.

After screening for eligibility, a total of 300 BMSM and other MSM in their social networks will be enrolled in 2 phases: (1) 350 BMSM will be recruited and screened to find 100 eligible BMSM participants, and (2) the 100 first phase participants will then recruit 200 other MSM within their social networks to participate in the second phase. Quantitative surveys will be administered by computers and personal interviews will be conducted to collect qualitative data (at baseline and 3-month follow-up). Participants in both phases will be offered rapid HIV testing, and declining an HIV test will not negatively impact their study participation. The research questions being explored are relevant for understanding how interpersonal communication with members of one's social networks are related to risk for contracting HIV infection and attitudes towards HIV testing.

This study will provide important epidemiologic information useful for the development of HIV prevention interventions for BMSM. Men will complete a 5-minute eligibility screening interview. The baseline computer-based survey will take 45 minutes. The qualitative interview will take approximately 75 minutes. The number of respondents who will accept HIV testing is estimated to be 200 (accounting for those who did not test at baseline and those who do not consent to test at follow-up). HIV counseling and rapid testing will take 45 minutes. The 3-month follow-up survey will take approximately 30 minutes; the follow-up qualitative interview will take approximately 45 minutes. There is no cost to the respondents other than their time. The estimated annualized burden hours are 1338.

ESTIMATE OF ANNUALIZED BURDEN HOURS

Respondents	Types of data collection	Number of respondents	Number of responses per respondent	Burden per response (in hours)
BMSM/MSM volunteers	Screening	750	1	5/60
	A–CASI Baseline	300	1	45/60
	Interview Baseline	300	1	1.25
	HIV Testing & Counseling Baseline	200	1	45/60
	A–CASI 3 month Follow-up	300	1	30/60
	Interview 3 month Follow-up	300	1	45/60
	HIV Testing & Counseling 3 month Follow-up	200	1	45/60

Dated: July 21, 2010.

Maryam I. Daneshvar

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–18396 Filed 7–26–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: ADP & Services Conditions for FFP for ACF.

OMB No.: 0992–0005.

Description: The Advance Planning Document (APD) process, established in the rules at 45 CFR Part 95, Subpart F, is the procedure by which States request and obtain approval for Federal financial participation in their cost of acquiring Automatic Data Processing (ADP) equipment and services. State agencies that submit APD requests provide the Department of Health and Human Services (HHS) with the following information necessary to determine the States' needs to acquire the requested ADP equipment and/or services:

(1) A statement of need;

(2) A requirements analysis and feasibility study;

(3) A cost benefit analysis;

(4) A proposed activity schedule; and,

(5) A proposed budget.

HHS' determination of a State Agency's need to acquire requested ADP equipment or services is authorized at sections 402(a)(5), 452(a)(1), 1902(a)(4) and 1102 of the Social Security Act.

Respondents: States.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
RFP and Contract	50	1.54	1.50	115.50
Emergency Funding Request	27	1	1	27
Service Agreements	14	1	1	14
Biennial Reports	50	1	1.50	75
Advance Planning Document	50	1.84	60	5,520
Estimated Total Annual Burden Hours:				5,751.50

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following:

Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–7285, E-mail: *OIRA_SUBMISSION@OMB.EOP.GOV.* Attn: Desk Officer for the Administration for Children and Families.

Dated: July 22, 2010.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2010–18343 Filed 7–26–10; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0358]

Agency Information Collection Activities; Proposed Collection; Comment Request; Sample Collection Plan for Dogs Treated With SLENTROL

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on the sample collection plan for dogs treated with the drug SLENTROL.

DATES: Submit either electronic or written comments on the collection of information by September 27, 2010.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley Jr., Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–396–3793.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, 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.

Sample Collection Plan for Dogs Treated With SLENTROL—21 CFR 514.80 (OMB Control Number 0910–NEW)

FDA's Center for Veterinary Medicine (CVM) is planning a pharmacogenomic study to examine whether adverse drug events (ADEs) experienced with SLENTROL, an anti-obesity drug approved for dogs, are associated with genetic variations in the dogs treated. Pharmacogenomics involves the use of genome-wide analyses to identify genes with altered expression or activation as a result exposure to a drug. Preliminary analysis by CVM has indicated potential correlations between dog breeds and some ADEs. The study would collect a blood sample and buccal swab from animals that have been treated with SLENTROL and experienced specific ADEs (i.e., reactors), and animals that have been treated with SLENTROL and that have not experienced ADEs (i.e., controls). The samples would be analyzed by FDA using microarray analysis and single nucleotide polymorphism analysis to determine possible genetic variations associated with the ADEs reported. If this project identifies definite genotype mutations

associated with drug response, CVM would potentially have a scientific basis for modifying recommendations with regard to SLENTROL use.

To conduct the study, FDA would seek the voluntary participation of veterinarians in the private sector. FDA would contact veterinarians who have reported adverse events with SLENTROL to FDA using a Form FDA 1932a, or veterinarians who have posted adverse experiences with SLENTROL on Internet Web sites or other public forums with their contact information, to ask them if they are willing to participate in the study. If the veterinarians are willing to participate, and the owners of the animals consent, FDA would provide the veterinarians with a package that includes instructions and materials for taking a blood sample and buccal swab from the animal, a postage paid envelope to return the samples, and a brief "Sample Collection" form to be filled out by the veterinarian. The "Sample Collection" form collects information that includes the date and type of sample taken, information about the treated dog (breed, age, gender and neuter status, type of food), and information about past SLENTROL use and adverse events experienced. FDA anticipates that participating veterinarians will take the samples during routine office visits from pet owners for their pets, and that pet owners will not make a special trip to the veterinarian for the purpose of participation in the study. FDA's goal is to obtain at about 100 samples.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 U.S.C. 512/ Form FDA	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
3754	100	1	100	0.5	50

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 U.S.C. 512/ Form No.	No. of Record-keepers	Annual Frequency per per Record-keeping	Total Annual Records	Hours per Record	Total Hours
3754	100	1	100	0.5	50

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA's estimates that it will take a veterinarian approximately 30 minutes to obtain the owner's consent, take the blood and buccal samples, and fill out the "Sample Collection" form. This includes the time necessary for a veterinarian to read instructions for taking samples, to search the animal's medical records to obtain information necessary to complete the form, such as the adverse events that occurred after initiating SLENTROL treatment, and to mail the samples and form to FDA. As noted previously, FDA anticipates that participating veterinarians will obtain the samples during routine office visits from the pet owner for their pet, and therefore no reporting burden is contained in this collection of information with respect to the owners of the animals involved in the study.

Regarding recordkeeping, it is the customary and usual practice of veterinarians to keep medical records for their patients, and the agency believes that the proposed collection of information would not contain any additional recordkeeping burdens. However, FDA has estimated that an additional 30 minutes of recordkeeping will be necessary to maintain records necessary to participate in the study.

Dated: July 21, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–18304 Filed 7–26–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2010–N–0368]

Agency Information Collection Activities; Proposed Collection; Comment Request; Pet Event Tracking Network—State, Federal Cooperation to Prevent Spread of Pet Food Related Diseases

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on the paperwork requirements for the proposed Pet Event Tracking Network (PETNet) cooperative Federal and State initiative.

DATES: Submit either electronic or written comments on the collection of information by September 27, 2010.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3793, *Denver.presley@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section

3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, 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.

Pet Event Tracking Network—State, Federal Cooperation to Prevent Spread of Pet Food Related Diseases—21 U.S.C. 342 and 343, Section 1002(b) of the FDA Amendments Act of 2007. Stat. 823 (2007) (OMB Control No. 0910–NEW)

In August, 2008, FDA sponsored the "Gateway to Food Protection" meeting, also known as the "50–State" meeting. The meeting included representatives from other Federal agencies, the States, localities, territories, and tribal partners, and was held to address the challenges necessary to ensure the safety of the U.S. food supply. Work groups were formed during the meeting which met and produced recommendations in specific topic areas. One of the workgroups, the Outbreaks/Food-Borne and Feed-Borne Investigations Workgroup, created a subgroup consisting of veterinarians, animal feed regulators, and others involved with animal health issues. This subgroup developed an ambitious proposal for an early warning system to identify, track and report disease outbreaks in companion animals or contamination incidents concerning pet food or animals feed, which they named PETNet. The PETNet proposal was developed in response to the 2007 outbreak that occurred in companion animals that was associated with the deliberate adulteration of pet food components, such as wheat gluten, with melamine. As envisioned by the subgroup at that time, PETNet would include a system for reporting outbreaks and would be supported by adequate diagnostic laboratory facilities and an established mechanism for conducting national epidemiological investigations.

The PETNet subgroup subsequently met twice in face-to-face meetings, in May and November, 2009, during which time the proposed scope of PETNet was streamlined to focus the program on information sharing, rather than epidemiology or other aspects. One of the main concerns of FDA's State regulatory partners regarding FDA's handling of the melamine incident was that many States provided information to FDA, but the information reported by the States to FDA and other information in the possession of FDA was not shared by FDA with the States. States believed that if they had received more information about what was going on in a timely manner, they could perhaps have taken appropriate action to safeguard animal and the public health by using their own regulatory authorities and resources. The agency agreed with the States, and thus decided to focus PETNet on being a system for sharing information between FDA, other Federal agencies, and the States about food-borne illness outbreaks in companion animals. By the end of the November, 2009, meeting, this revised vision of PETNet was firmly established with many of the details about the system in place.

FDA is planning to implement an initiative called "The Pet Event Tracking Network" (PETNet) that will allow FDA and its State partners to quickly and effectively exchange information about outbreaks of illness in companion animals associated with pet food. FDA has worked closely with its Federal and State partners to develop the PETNet, and believes that it will serve an important function in protecting the public and animal health.

PETNet will be a secure, internet-based network comprised of the FDA, other Federal agencies, and State regulatory agencies/officials that have authority over pet food. The Network will provide timely and relevant information about pet food-related incidents to FDA, the States, and other Federal Government agencies charged with protecting animal and public health. FDA intends to identify and invite State participants from all 50 States to participate in PETNet. Members of the network will be able to both receive alerts about pet food incidents, as well as create alerts when they are aware of a pet food incident within their jurisdiction. The information will be used to help State and Federal regulators determine how best to use inspectional and other resources to either prevent or quickly limit the adverse events caused by adulterated pet food. Many states have regulatory authority beyond that of the FDA and often can be in a position to act independently of FDA with the information they will receive from the Pet Event Tracking Network.

Use of the system, including the reporting of incidents by States to the FDA, will be entirely voluntary. The PETNet system will be housed in Food Shield, a proprietary software system, and will be accessible only to members via password. The system will make use of a standardized electronic form housed on FoodShield to collect and distribute basic information about pet food-related incidents. The form contains the following data elements, almost all of which are drop down menu choices: The species involved, clinical signs, number of animals exposed, number of animals affected, animal ages, date of onset, name and type of pet food involved, the manufacturer and distributor of the pet food (if known), the State where the incident occurred, the origin of the information, whether there are supporting laboratory results, and contact information for the reporting PETNet member (i.e. name, telephone number). The form would be filled out and submitted by a PETNet member on FoodShield, at which time it will be available to other PETNet members. Thus, the information will be entered and received by PETNet members in as close to real time as possible. FDA has designed the form itself to contain only the essential information necessary to alert PETNet members about pet food-related incidents. For further information, such as laboratory results, PETNet members can contact the reporting PETNet member.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED REPORTING BURDEN

21 U.S.C. Section 342 & 343/Section 1002(b) 2007 Amendments / Form FDA	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Form FDA 3756	50	10	500	20/60	167

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA estimates that each State will report (i.e., fill out the PETNet form to alert other PETNet members about a pet food-related incident) approximately 10 times per year. This estimate represents the maximum number of reports that FDA expects a State to submit in a year, and in many cases the number of reports submitted by a State will probably be far less. FDA believes that, given the form only has 11 items and most are drop down fields, 20 minutes is a sufficient amount of time to complete the form. State regulatory officials responsible for pet food already possess computer systems and have the internet access necessary to participate in PETNet, and thus there are no capital expenditures associated with the reporting.

Regarding recordkeeping, State regulatory officials who report on PETNet receive the reportable information from consumers in their States in the course of their customary and regular duties. Further, these individuals already maintain records of such consumer complaints in the course of their duties which are sufficient for the purposes of reporting on PETNet. Therefore, FDA believes that the proposed collection of information does not have additional recordkeeping requirements.

Dated: July 21, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–18303 Filed 7–26–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of Federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Therapeutics for the Treatment and Prevention of Atherosclerosis and Cardiovascular Disease

Description of Invention: This technology consists of peptides and peptide-analogues that enhance clearance of excess cholesterol in cells and do not exhibit the cytotoxicity that has hampered development of similar potential therapeutics.

Briefly, apolipoprotein A–1 (ApoA–1) promotes cholesterol efflux from cells and its concentration is inversely correlated with atherosclerotic events. The isolated peptidic component of ApoA–1 that acts within the cholesterol secretion pathway is therapeutic towards atherosclerosis but exhibits cytotoxic effects. In contrast, our inventors have derivatized that ApoA–1 peptide which is both less cytotoxic and more active than the underivatized component in initial studies. This potential therapeutic is similar to high density lipoprotein (HDL) therapy and may complement statin-mediated reduction of pro-atherogenic lipoproteins.

Potential Applications

- Treatment and prevention of atherosclerosis.
- Treatment and prevention of cardiovascular disease, coronary artery disease, heart attack, stroke and inflammation.
- Therapeutic or preventative coating for a heart or vascular implant.
- Alternative to HDL therapy.

Potential Advantages

- Enhanced cytotoxicity profile.
- Enhanced hydrophilicity profile.
- Complements statin-based therapies.
- Oral delivery approaches in development.

Development Status: Early stage with in vitro proof of concept data.

Market: The CDC indicates that heart attacks account for 26% of deaths in the United States of which atherosclerosis is a significant contributing factor or cause. Global sales for cardiovascular therapeutics are expected to exceed $50b in 2010.

Inventors: Amar A. Sethi (NHLBI) *et al.*

Patent Status: U.S. Provisional Application No. 61/265,291 filed 30 Nov 2009 (HHS Reference No. E–047–2009/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Fatima Sayyid. M.H.P.M.; 301–435–4521; *Fatima.Sayyid@nih.hhs.gov.*

Use of Immunosuppressive Agents for Treatment of Age-related Macular Degeneration (AMD) and Diabetic Retinopathy

Description of Invention: AMD belongs to a group of disorders in which the immune system may play an important role. This invention discloses that patients with AMD gain additional therapeutic benefit from combination treatment of immunosuppressive agents and standard-of-care in comparison to standard-of-care alone. This invention slows the progression of choroidal neovascularization (CNV) and may have implications for related pathologies, including diabetic retinopathy. Clinical data from a small, randomized pilot clinical trial are available.

Applications

- A method of treatment for AMD.
- A method of treatment for diabetic retinopathy.
- A method of treatment for diseases associated with CNV.

Advantages

- Likely to be synergistic with existing therapeutics.
- May enable repurposing of some exiting immunosuppressive agents.

Development Status: In clinical trials.

Market: An estimated three million individuals in the United States will have an advanced form of AMD by 2020 (Klein R *et al.* The epidemiology of age-related macular degeneration. Am J Ophthalmol. 2004;137(3):486–95).

Inventors: Robert B. Nussenblatt and Frederick L. Ferris (NEI).

Publication: In preparation.

Patent Status: U.S. Provisional Application No. 61/254,439 filed 23 Oct 2009 (HHS Reference No. E–198–2008/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Norbert Pontzer, J.D., PhD; 301–435–5502; *pontzern@mail.nih.gov.*

Collaborative Research Opportunity: The National Eye Institute, Laboratory of Immunology, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize the use of immunosuppressive agents in the treatment of age related macular degeneration. This is in light of new findings that immune mechanisms appear to be central to the expression of the clinical disease we know as AMD. Please contact Alan Hubbs, PhD at 301–594–4263 or *hubbsa@mail.nih.gov* for more information.

Dated: July 12, 2010.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2010–17446 Filed 7–26–10; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Patient Protection and Affordable Care Act (PPACA), Emerging Infections Program (EIP), Enhancing Epidemiology and Laboratory Capacity, Funding Opportunity Announcement CI10–003; Initial Review; Correction

Correction: This notice was published in the **Federal Register** on July 7, 2010, Volume 75, Number 129, page 39033. The time and date should read as follows:

Time and Date: 8 a.m.–5 p.m., September 8, 2010 (Closed).

CONTACT PERSON FOR MORE INFORMATION: Gregory Anderson, M.S., M.P.H., Scientific Review Officer, CDC, 1600 Clifton Road, NE., Mailstop E60, Atlanta, GA 30333, *Telephone:* (404) 498–2293.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: July 20, 2010.

Michael J. Lanzilotta,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–18401 Filed 7–26–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; 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 Advisory Council for Biomedical Imaging and Bioengineering.

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/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Biomedical Imaging and Bioengineering, NACBIB September 2010.

Date: September 13, 2010.

Open: 9 a.m. to 1 p.m.

Agenda: Report from the Institute Director, other Institute Staff and presentations of working group reports.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Independence Room (2nd Level), Bethesda, MD 20817.

Closed: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Independence Room (2nd Level), Bethesda, MD 20817.

Contact Person: Anthony Demsey, PhD, Director, National Institute of Biomedical Imaging and Bioengineering, 6707 Democracy Boulevard, Room 241, Bethesda, MD 20892.

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.

Information is also available on the Institute's/Center's home page: *http://www.nibib1.nih.gov/about/NACBIB/NACBIB.htm,* where an agenda and any additional information for the meeting will be posted when available.

Dated: July 21, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–18385 Filed 7–26–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Service Administration

Advisory Committee on Interdisciplinary, Community-Based Linkages; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: Advisory Committee on Interdisciplinary, Community-Based Linkages (ACICBL).

Dates and Times:

August 19, 2010, 8:30 a.m. to 5 p.m., EST.

August 20, 2010, 8:30 a.m. to 3 p.m., EST.

Place: Hilton Washington DC/Rockville Hotel & Executive Meeting Ctr, 1750 Rockville Pike, Rockville, Maryland 20852.

Status: The meeting will be open to the public.

Purpose: The Committee members will advance their efforts in the development of the Tenth Annual Report to the Secretary of the Department of Health and Human Services (the Secretary) and the Congress, focusing on the topic, *Preparing the Interprofessional Workforce to Manage Health Behaviors.* The Committee proposes to review concepts behind the initiation of a new degree program in Health Care Delivery Science established at Dartmouth University as it relates to managing health behaviors and ensuring a workforce that is prepared to address health behaviors in its education and

treatment programs and practice. Additional agenda items include a perspective from the Veterans Health Administration and an opportunity to discuss the implications of Healthy People 2020. The meeting will afford Committee members with the opportunity to discuss the current healthcare workforce issues in an effort to formulate recommendations for the Secretary and the Congress.

Agenda: The ACICBL agenda includes an overview of the Committee's general business activities, along with a number of presentations that will include Healthy People 2020, chronic illness management, integrating programs to manage health behaviors, and financing issues. Recommendations will be formulated for inclusion in the Tenth Annual Report of the ACICBL. Agenda items are subject to change as dictated by the priorities of the Committee.

Supplementary Information: Requests to make oral comments or to provide written comments to the ACICBL should be sent to Dr. Joan Weiss, Designated Federal Official at the contact information below. Individuals who plan to attend the meeting and need special assistance should notify Dr. Weiss at least 10 days prior to the meeting, using the address and phone number below. Members of the public will have the opportunity to provide comments at the meeting.

For Further Information Contact: Anyone requesting information regarding the ACICBL should contact Dr. Joan Weiss, Designated Federal Official with the Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 9–36, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–6950 or *jweiss@hrsa.gov.* In the absence of Dr. Weiss, CAPT Norma J. Hatot, Senior Nurse Consultant, can be contacted via telephone at (301) 443–2681 or e-mail at *nhatot@hrsa.gov.*

Dated: July 20, 2010.

Sahira Rafiullah,

Director, Division of Policy and Information Coordination.

[FR Doc. 2010–18258 Filed 7–26–10; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Cancer Therapeutics.

Date: August 4, 2010.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Syed M. Quadri, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6210, MSC 7804, Bethesda, MD 20892, 301–435–1211, *quadris@csr.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. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 20, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–18387 Filed 7–26–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary and Alternative Medicine; 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 the National Advisory Council for Complementary and Alternative Medicine (NACCAM) meeting.

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 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 Advisory Council for Complementary and Alternative Medicine.

Date: September 3, 2010.

Closed: September 3, 2010, 8:30 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Neuroscience Building, 6001 Executive Boulevard, Conference Rooms C & D, Bethesda, MD 20892.

Open: September 3, 2010, 11 a.m. to 4 p.m.

Agenda: Opening remarks by the Director of the National Center for Complementary and Alternative Medicine, presentation of a new research initiative, and other business of the Council.

Place: National Institutes of Health, Neuroscience Building, 6001 Executive Boulevard, Conference Rooms C & D, Bethesda, MD 20892.

Contact Person: Martin H. Goldrosen, PhD, Executive Secretary, Director, Division of Extramural Activities, National Center for Complementary and Alternative Medicine, National Institutes of Health, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, (301) 594–2014.

The public comments session is scheduled from 3:30 to 4 p.m. on September 3, 2010, but could change depending on the actual time spent on each agenda item. Each speaker will be permitted 5 minutes for their presentation. Interested individuals and representatives of organizations are requested to notify Dr. Martin H. Goldrosen, National Center for Complementary and Alternative Medicine, NIH, 6707 Democracy Boulevard, Suite 401, Bethesda, Maryland 20892, 301–594–2014, Fax: 301–480–9970. Letters of intent to present comments, along with a brief description of the organization represented, should be received no later than 5 p.m. on August 26, 2010. Only one representative of an organization may present oral comments. Any person attending the meeting who does not request an opportunity to speak in advance of the meeting may be considered for oral presentation, if time permits, and at the discretion of the Chairperson. In addition, written comments may be submitted to Dr. Martin H. Goldrosen at the address listed above up to ten calendar days (September 13, 2010) following the meeting.

Copies of the meeting agenda and the roster of members will be furnished upon request by contacting Dr. Martin H. Goldrosen, Executive Secretary, NACCAM, National Center for Complementary and Alternative Medicine, National Institutes of Health, 6707 Democracy Boulevard, Suite 401, Bethesda, Maryland 20892, 301–594–2014, Fax 301–480–9970, or via e-mail at *naccames@mail.nih.gov.*

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-

in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program Nos. 93.701, ARRA Related Biomedical Research and Research Support Awards; 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: July 21, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–18386 Filed 7–26–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Healthy Aging; Search for Mechanisms.

Date: August 6, 2010.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Ramesh Vemuri, PhD, Chief, Scientific Review Branch, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C–212, Bethesda, MD 20892, 301–402–7700, *rv23r@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. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: July 21, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–18384 Filed 7–26–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Immunization Practices (ACIP)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting of the aforementioned committee:

Time and Date: 10 a.m.–12 p.m., August 5, 2010.

Place: The conference call will originate at the National Center for Immunization and Respiratory Diseases in Atlanta, Georgia. Please see **SUPPLEMENTARY INFORMATION** for details on accessing the conference call.

Status: Open to the public, limited only by the availability of telephone ports.

Purpose: The Committee is charged with advising the Director, CDC, on the appropriate use of immunizing agents. In addition, under 42 U.S.C. 1396s, the Committee is mandated to establish and periodically review and, as appropriate, revise the list of vaccines for administration to vaccine-eligible children through the Vaccines for Children (VFC) program, along with schedules regarding appropriate dosing intervals, dose, and contraindications to use of vaccines.

Matters To Be Discussed: To discuss recommendations for use of CSL trivalent inactivated influenza vaccine (TIV) for use in the United States during 2010–2011.

Supplementary Information: This conference call is scheduled to begin at 10 a.m., Eastern Daylight Time, United States. To participate in the conference call, please dial 1–800–857–9629 and reference passcode 3908107.

As provided under 41 CFR 102–3.150(b), the public health urgency of this agency business requires that the meeting be held prior to the first available date for publication of this notice in the **Federal Register**.

CONTACT PERSON FOR MORE INFORMATION: Leola Mitchell, National Center for Immunization and Respiratory Diseases, CDC, 1600 Clifton Road, NE., Mailstop E05, Atlanta, Georgia 30333, telephone 404/639–8836, fax 404/639–8905, e-mail *acip@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the CDC and ATSDR.

Dated: July 21, 2010.

Michael J. Lanzilotta,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–18403 Filed 7–26–10; 8:45 am]

BILLING CODE 4160–18–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2010–0026]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, OMB No. 1660–0046; FEMA/EMI Independent Study Course Enrollment and Test Answer Sheet

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 30-day notice and request for comments; revision of a currently approved information collection; OMB No. 1660–0046; FEMA Form 064–0–9 (formerly 95–23), FEMA/EMI Independent Study Course Enrollment and Test Answer Sheet (paper and electronic).

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit 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 will describe 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 August 26, 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-Management@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Collection of Information

Title: FEMA/EMI Independent Study Course Enrollment and Test Answer Sheet.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0046.

Form Titles and Numbers: FEMA Form 064–0–9 (formerly 95–23), FEMA/EMI Independent Study Course Enrollment and Test Answer Sheet (paper and electronic).

Abstract: The Independent Study (IS) program offers self-paced courses designed for people who have emergency management responsibilities and the general public. All are offered free-of-charge to those who qualify for enrollment. Those who wish to participate select the course(s) they want to take, review the material and then complete an examination covering coursework. Successful completion results in a certificate that can be used to obtain continuing learning credit or even college credit.

Affected Public: Individuals and households, business or other for-profit, not for profit institutions, farms, Federal government, State, local or Tribal government.

Estimated Number of Respondents: 1,869,145.

Frequency of Response: On Occasion.

Estimated Average Hour Burden per Respondent: 2.1 Hours.

Estimated Total Annual Burden Hours: 3,925,204 Hours.

Estimated Cost: There are no annual capital, start-up, operation or maintenance costs associated with this collection.

Dated: July 7, 2010.

Tammi Hines,

Acting Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2010–18323 Filed 7–26–10; 8:45 am]

BILLING CODE 9111–72–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2010–0043]

Agency Information Collection Activities: Proposed Collection; Comment Request, OMB No. 1660–0029; Approval and Coordination of Requirements To Use the NETC Extracurricular for Training Activities

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 60-day notice and request for comments; revision of a currently approved information collection; OMB No. 1660–0029; FEMA Form 119–17–1, Request for Housing Accommodations; FEMA Form 119–17–2, Request for Use of NETC Facilities.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed revision of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this Notice seeks comments concerning the collection of information required to request training space and/or housing for emergency preparedness training conducted at the Federal Emergency Management Agency's National Emergency Training Center.

DATES: Comments must be submitted on or before September 27, 2010.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *http://www.regulations.gov* under Docket ID FEMA–2010–0043. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Office of Chief Counsel, Regulation and Policy Team, DHS/FEMA, 500 C Street, SW., Room 835, Washington, DC 20472–3100.

(3) *Facsimile.* Submit comments to (703) 483–2999.

(4) *E-mail.* Submit comments to *FEMA-POLICY@dhs.gov.* Include Docket ID FEMA–2010–0043 in the subject line.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Merril Sollenberger, Events and Visitors Coordinator, FEMA, 301–447–1179 for additional information. You may contact the Records Management Division for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA-Information-Collections-Management@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5121–5207, authorizes the President to establish a program of disaster preparedness that utilizes services of all appropriate agencies and includes training and exercises. Section 611 of the Stafford Act (42 U.S.C. 5196) directs that the Federal Emergency Management Agency (FEMA) may conduct training for the purpose of emergency preparedness. In response, FEMA established the National Emergency Training Center (NETC), located in Emmitsburg, Maryland. The NETC site has facilities and housing available for those participating in emergency preparedness training and a request for use of these areas must be made in advance of the need for such.

Collection of Information

Title: Approval and Coordination of Requirements to Use the NETC Extracurricular for Training Activities.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0029.

Form Titles and Numbers: FEMA Form 119–17–1, Request for Housing Accommodations; FEMA Form 119–17–2, Request for Use of NETC Facilities.

Abstract: FEMA established the National Emergency Training Center (NETC), located in Emmitsburg, Maryland to offer training for the purpose of emergency preparedness. The NETC site has facilities and housing available for those participating in emergency preparedness. When training space and/or housing is required for those attending the training, a request for use of these areas must be made in advance and this collection provides the mechanism for such requests to be made.

Affected Public: Not-for-profit institutions; Federal Government; State,

Local or Tribal Government; individuals or households; and business or other for-profit.

Estimated Total Annual Burden Hours: 12 Hours.

ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS

Type of respondent	Form name/ Form number	Number of respondents	Number of responses per respondent	Total number of responses	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate	Total annual respondent cost
Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms; State, local or Tribal Government.	Request for Housing Accommodations/ FEMA Form 119–17–1.	60	1	60	.1 (6 minutes)	6	$29.26	$175.56
Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms; State, local or Tribal Government.	Request for Use of NETC Facilities/ FEMA Form 119–17–2.	60	1	60	.1 (6 minutes)	6	29.26	175.56
Total	.....	60	.....	120	.....	12	.....	351.12

Estimated Cost: There is no annual capital, start-up, operations or maintenance cost associated with this collection.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Dated: July 16, 2010.

Tammi Hines,

Acting Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2010–18326 Filed 7–26–10; 8:45 am]

BILLING CODE 9111–45–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Transportation Entry and Manifest of Goods Subject to CBP Inspection and Permit

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; Extension of an existing collection of information: 1651–0003.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the: Transportation Entry and Manifest of Goods Subject to CBP Inspection and Permit. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before September 27, 2010, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Office of Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Transportation Entry and Manifest of Goods Subject to CBP Inspection and Permit.

OMB Number: 1651–0003.

Form Numbers: CBP Forms 7512 and 7512–A.

Current Actions: This submission is being submitted to extend the expiration date with no change to the burden hours.

Type of Review: Extension.

Abstract: Forms 7512, "Transportation Entry and Manifest of Goods Subject to CBP Inspection and Permit", and 7512A, "Continuation Sheet", allow CBP to exercise proper control over merchandise moving in-bond (merchandise that has not entered the commerce of the United States). These forms provide documentation that CBP uses for enforcement, targeting and protection of the revenue. Forms 7512 and 7512A collect information such as the names of the importer and consignee; a description of the merchandise moving in-bond; and the ports of lading and unlading. These forms are provided for in 19 CFR 18.11, 19 CFR 18.20, 19 CFR 18.25, and 19 CFR 122.92 and can be found at *http://www.cbp.gov/xp/cgov/toolbox/forms/.*

Affected Public: Businesses.

Estimated Number of Respondents: 50,000.

Estimated Number of Average Responses per Respondent: 140.

Estimated Number of Total Annual Responses: 7,000,000.

Estimated Total Annual Burden Hours: 1,162,000 hours.

Dated: July 22, 2010.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2010–18388 Filed 7–26–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2010–0012]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, OMB No. 1660–0022; Community Rating System (CRS) Program—Application Worksheets and Commentary

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 30-day notice and request for comments; revision of a currently approved information collection; OMB No. 1660–0022; FEMA Form FEMA Form 086–0–23, Community Rating System Application Form and Manual; 086–0–23A, Community Rating System Annual Recertification.

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 August 26, 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-Management@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Collection of Information

Title: Community Rating System (CRS) Program—Application Worksheets and Commentary.

Type of information collection: Revision of a currently approved information collection.

OMB Number: 1660–0022.

Form Titles and Numbers: FEMA Form FEMA Form 086–0–23, Community Rating System Application Form and Manual; 086–0–23A, Community Rating System Annual Recertification.

Abstract: The CRS Application Worksheet and Commentary are used by communities that participate in the National Flood Insurance Program's (NFIP) Community Rating System (CRS) to document the activities that communities have undertaken to mitigate against future flood losses. The CRS application and activity worksheets provide a step-by-step process for communities to follow in their effort to achieve the maximum amount of discount on flood insurance premiums. CRS is a voluntary program where flood insurance costs are reduced in communities that implement practices, such as building codes and public education activities, which are considered to reduce risks of flooding and promote purchase of flood insurance.

Affected Public: State, local, or Tribal Government.

Estimated Number of Respondents: 1,100.

Frequency of Response: Annually.

Estimated Average Hour Burden per Respondent: 7.6818 Hours.

Estimated Total Annual Burden Hours: 8,450 Hours.

Estimated Cost: There are no estimated operational, maintenance, capital or start-up costs associated with this collection.

Dated: July 16, 2010.

Tammi Hines,

Acting Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2010–18335 Filed 7–26–10; 8:45 am]

BILLING CODE 9110–11–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2010–0044; OMB No. 1660–0016]

Agency Information Collection Activities: Proposed Collection; Comment Request; Revision to National Flood Insurance Program Maps: Application Forms for LOMRs and CLOMRs

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 60-day notice and request for comments; revision of a currently approved information collection; OMB No. 1660–0016; FEMA Form 086–0–27, Overview and Concurrence Form; FEMA Form 086–0–27A, Riverine Hydrology and Hydraulics Form; 086–0–27B, Riverine Structures Form; 086–0–27C, Coastal Analysis Form; 086–0–27D, Coastal Structures Form; 086–0–27E, Alluvial Fan Flooding Form.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed revision of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this Notice seeks comments concerning the collection of information necessary to gather the data necessary to allow the Federal Emergency Management Agency

to make a determination if a revision to a flood map is warranted.

DATES: Comments must be submitted on or before September 27, 2010.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *http://www.regulations.gov* under Docket ID FEMA–2010–0044. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Office of Chief Counsel, Regulation and Policy Team, DHS/FEMA, 500 C Street, SW., Room 835, Washington, DC 20472–3100.

(3) *Facsimile.* Submit comments to (703) 483–2999.

(4) *E-mail.* Submit comments to *FEMA-POLICY@dhs.gov.* Include Docket ID FEMA–2010–0044 in the subject line.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Ava Hammond, FEMA Mitigation Division and (202) 646–3276 for additional information. You may contact the Records Management Division for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA-Information-Collections-Management@dhs.gov.*

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP) is authorized by 42 U.S.C. 4001 *et seq.* (Pub. L. 90–448 (1968) and expanded by Pub. L. 93–234 (1973)). The Department of Homeland Security's Federal Emergency Management Agency (FEMA) administers the National Flood Insurance Program (NFIP) and maintains the maps that depict flood hazard information. In 44 CFR Part 65.3, communities are required to submit technical information concerning flood hazards and plans to avoid potential flood hazards when physical changes occur. In 44 CFR Part 65.4, communities are provided the right to submit technical information when inconsistencies on maps are identified. In order to revise the Base (1-percent annual chance) Flood Elevations (BFEs), Special Flood Hazard Areas (SFHAs), and floodways presented on the NFIP maps, a community must submit scientific or technical data demonstrating the need for a revision. The NFIP regulations cited in 44 CFR Part 65 outline the data that must be submitted for these requests.

Collection of Information

Title: Revision to National Flood Insurance Program Maps: Application Forms for LOMRs and CLOMRs.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0016.

Form Titles and Numbers: FEMA Form 086–0–27, Overview and Concurrence Form; FEMA Form 086–0–27A, Riverine Hydrology and Hydraulics Form; 086–0–27B, Riverine Structures Form; 086–0–27C, Coastal Analysis Form; 086–0–27D, Coastal Structures Form; 086–0–27E, Alluvial Fan Flooding Form.

Abstract: The certification forms are designed to assist requesters in gathering information that FEMA needs to revise a National Flood Insurance Program (NFIP) map. This data is required to ensure that requested revisions are in compliance with NFIP regulations. These revisions are granted if the technical information submitted demonstrates that the prior determination of a Special Flood Hazard Area, floodway or Base Flood Elevation on a flood map is no longer valid.

Affected Public: Business or other for-profit; State, local or Tribal Government.

Estimated Total Annual Burden Hours: 17,700 Hours.

ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS

Type of respondent	Form name/ Form number	Number of respondents	Number of responses per respondent	Total number of responses	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate	Total annual respondent cost
Business or other for-Profit.	Form 086–0–27, Overview and Concurrence Form.	1,500	1	1,500	0.25	375	44.39	$16,646
State, local, or Tribal Government.	Form 086–0–27, Overview and Concurrence Form.	1,500	1	1,500	0.25	375	53.97	20,239
Business or other for-profit.	Form 086–0–27, Overview and Concurrence Form.	1,500	1	1,500	0.5	750	46.65	34,988
Total for FEMA Form 086–0–27.		1,500	.....	1,500	1	1,500	.....	71,873
State, Local or Tribal Government.	Form 086–0–27A, Riverine Hydrology and Hydraulics Form.	1,500	1	1,500	0.75	1,125	53.97	60,716
Business or other for-profit.	Form 086–0–27A, Riverine Hydrology and Hydraulics Form.	1,500	1	1,500	2.75	4,125	46.65	192,431
Total for FEMA Form 086–0–27A.		1,500	.....	1,500	3.5	5,250	.....	253,147
Business or other for-profit.	Form 086–0–27B, Riverine Structures Form.	1,500	1	1,500	7	10,500	46.65	489,825

ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS—Continued

Type of respondent	Form name/ Form number	Number of respondents	Number of responses per respondent	Total number of responses	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate	Total annual respondent cost
Business or other for-profit.	Form 086–0–27C, Coastal Analysis Form.	150	1	150	1	150	46.65	6,998
Business or other for-profit.	Form 086–0–27D, Coastal Structures Form.	150	1	150	1	150	46.65	6,998
Business or other for-profit.	Form 086–0–27E, Alluvial Fan Flooding Form.	150	1	150	1	150	46.65	6,998
Total	.....	1,500	.....	4,950	.....	17,700	.....	835,839

Estimated Cost: The estimated annual operations and maintenance cost is $26,250,000. There is no annual capital start-up cost.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Dated: July 16, 2010.

Tammi Hines,

Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2010–18330 Filed 7–26–10; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2010–0042]

Agency Information Collection Activities: Proposed Collection; Comment Request, OMB No. 1660–0089; FEMA Mitigation Best Practices Portfolio

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 60-day notice and request for comments; revision of a currently approved information collection; OMB No. 1660–0089; FEMA Form 086–0–25, Mitigation Best Practice Submission Worksheet.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a revision of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this Notice seeks comments concerning the documenting of the experiences of those persons affected by mitigation efforts. The information describes successful mitigation and flood insurance practices occurring in communities nationwide and provides a method to promote the Federal programs available that make available funding for mitigation activities.

DATES: Comments must be submitted on or before September 27, 2010.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *http://www.regulations.gov* under Docket ID FEMA–2010–0042. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Office of Chief Counsel, Regulation and Policy Team, DHS/FEMA, 500 C Street, SW., Room 835, Washington, DC 20472–3100.

(3) *Facsimile.* Submit comments to (703) 483–2999.

(4) *E-mail.* Submit comments to *FEMA-POLICY@dhs.gov.* Include Docket ID FEMA–2010–0042 in the subject line.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Eugene Luke, Emergency Management Specialist, FEMA Mitigation, (202) 646–7902 for additional information. You may contact the Office of Records Management for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA-Information-Collections-Management@dhs.gov.*

SUPPLEMENTARY INFORMATION: Consistent with performance-based management practices mandated by the Government Performance Results Act (GPRA) (Pub. L. 103.62 Section 2) FEMA has established the FEMA Mitigation Best Practices success story process to collect and disseminate information describing successful mitigation and flood insurance practices occurring in communities nationwide. Title 44 CFR part 2 institutes the process whereby FEMA will promote mitigation activities through the availability of information regarding such. By making this type of detail available, FEMA can translate hazard data into useable information for community risk management. The stories incorporate mitigation strategies that have been successfully implemented and provide real-world evidence of the ability to protect against all hazards.

Collection of Information

Title: FEMA Mitigation Best Practices Portfolio (formerly known as FEMA Mitigation Success Story Database).

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0089.

Form Titles and Numbers: FEMA Form 086–0–25, Mitigation Best Practice Submission Worksheet.

Abstract: FEMA uses the information provided through success stories to document and disseminate first-hand experiences of mitigation activities that result in benefits to individuals. By sharing information, communities and individuals can learn about available Federal programs to support the implementation of noteworthy local activities that lead to less chance of a catastrophic event causing damage or possibly loss of life.

Affected Public: Individuals or households; State, local or Tribal Government.

Estimated Total Annual Burden Hours: 87.5 Hours.

ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS

Type of respondent	Form name/form number	Number of respondents	Number of responses per respondent	Total number of responses	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate	Total annual respondent cost
Individual or households ..	Informal Interviews/No Form.	5	1	5	4	20	$28.45	$569
Individual or households ..	FEMA Mitigation Success Story Database/086–0–25.	45	1	45	1.5	67.5	28.45	1,920
Total	.....	50	.....	50	.....	87.5	.....	2,489

Estimated Cost: There are no operation, maintenance, capital or start-up costs associated with this collection.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Dated: July 16, 2010.

Tammi Hines,

Acting Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2010–18329 Filed 7–26–10; 8:45 am]

BILLING CODE 9110–11–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2010–0027]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, OMB No. 1660–0037; Application Form for Single Residential Lot or Structure Amendments to National Flood Insurance Program Maps

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 30-day notice and request for comments; revision of a currently approved information collection; OMB No. 1660–0037; FEMA Form 086–0–22, Application Form for Single Residential Lot or Structure Amendments to National Flood Insurance Program Maps; FEMA Form 086–0–22A, Application Form for Single Residential Lot or Structure Amendments to National Flood Insurance Program Maps (Spanish).

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit 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 will describe 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 August 26, 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-Management@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Collection of Information

Title: Application Form for Single Residential Lot or Structure Amendments to National Flood Insurance Program Maps.

Type of information collection: Revision of a currently approved information collection.

OMB Number: 1660–0037.

Form Titles and Numbers: FEMA Form 086–0–22, Application Form for Single Residential Lot or Structure Amendments to National Flood Insurance Program Maps; FEMA Form 086–0–22A, Application Form for Single Residential Lot or Structure Amendments to National Flood Insurance Program Maps (Spanish).

Abstract: FEMA Forms 086–0–22 and 086–0–22A are designed to assist respondents in gathering information

that FEMA needs to determine whether a certain single-lot property or structure is likely to be flooded during a flood event that has a 1-percent annual chance of being equaled or exceeded in any given year (base flood).

Affected Public: Individuals or households; Business or other for profit institutions.

Estimated Number of Respondents: 18,775.

Frequency of Response: Once.

Estimated Average Hour Burden per Respondent: 2.4 Hours.

Estimated Total Annual Burden Hours: 45,060 Hours.

Estimated Cost: There are no start-up, capital, operational, or maintenance costs for this collection.

Dated: July 7, 2010.

Tammi Hines,

Acting Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2010–18325 Filed 7–26–10; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2010–0016]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, OMB No. 1660–0005; National Flood Insurance Program—Claim Forms

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 30-day notice and request for comments; revision of a currently approved information collection; OMB No. 1660–0005; FEMA Form 086–0–6 (formerly 81–40) National Flood Insurance Program Worksheet-Contents-Personal Property; 086–0–7 (formerly 81–41) Worksheet—Building; 086–0–8 (formerly 81–41A) Worksheet—Building (Continued); 086–0–9 (formerly 81–42) Proof of Loss; 086–0–10 (formerly 81–42A) Increased Cost of Compliance Proof of Loss; 086–0–11 (formerly 81–43) Notice of Loss; 086–0–12 (formerly 81–44) Statement as to Full Cost of Repair or Replacement under the Replacement Cost Coverage, Subject to the Terms and Conditions of this Policy; 086–0–13 (formerly 81–57) National Flood Insurance Program Preliminary Report; 086–0–14 (formerly 81–58) National Flood Insurance Program Final Report; 086–0–15 (formerly 81–59) National Flood Insurance Program Narrative Report; 086–0–16 (formerly 81–63) Cause of Loss and Subrogation Report; 086–0–17 (formerly 81–96) Manufactured (Mobile) Home/Travel Trailer Worksheet; 086–0–18 (formerly 81–96A) Manufactured (Mobile) Home/Travel Trailer Worksheet (Continued); 086–0–19 (formerly 81–98) Increased Cost of Compliance (ICC) Adjuster Report; 086–0–20 (formerly 81–109) Adjuster Preliminary Damage Assessment; 086–0–21 (formerly 81–110) Adjuster Certification Application.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit 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 will describe 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 August 26, 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-Management@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Collection of Information

Title: National Flood Insurance Program—Claim Forms.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0005.

Form Titles and Numbers: FEMA Form 086–0–6 (formerly 81–40) National Flood Insurance Program Worksheet-Contents-Personal Property; 086–0–7 (formerly 81–41) Worksheet—Building; 086–0–8 (formerly 81–41A) Worksheet—Building (Continued); 086–0–9 (formerly 81–42) Proof of Loss; 086–0–10 (formerly 81–42A) Increased Cost of Compliance Proof of Loss; 086–0–11 (formerly 81–43) Notice of Loss; 086–0–12 (formerly 81–44) Statement as to Full Cost of Repair or Replacement under the Replacement Cost Coverage, Subject to the Terms and Conditions of this Policy; 086–0–13 (formerly 81–57) National Flood Insurance Program Preliminary Report; 086–0–14 (formerly 81–58) National Flood Insurance Program Final Report; 086–0–15 (formerly 81–59) National Flood Insurance Program Narrative Report; 086–0–16 (formerly 81–63) Cause of Loss and Subrogation Report; 086–0–17 (formerly 81–96) Manufactured (Mobile) Home/Travel Trailer Worksheet; 086–0–18 (formerly 81–96A) Manufactured (Mobile) Home/Travel Trailer Worksheet (Continued); 086–0–19 (formerly 81–98) Increased Cost of Compliance (ICC) Adjuster Report; 086–0–20 (formerly 81–109) Adjuster Preliminary Damage Assessment; 086–0–21 (formerly 81–110) Adjuster Certification Application.

Abstract: The claims forms used for the National Flood Insurance Program are used by policyholders and adjusters to collect the information needed to investigate, document, evaluate, and settle claims against National Flood Insurance Program policies for flood damage to their insured property or qualification for benefits under Increased Cost of Compliance coverage.

Affected Public: Individuals or households; Business or other for-profit; Not for-profit institutions; farms; Federal Government; State, local or Tribal government.

Estimated Number of Respondents: 3,640.

Frequency of Response: On Occasion.

Estimated Average Hour Burden per Respondent: 5.73 Hours.

Estimated Total Annual Burden Hours: 20,841.6 Hours.

Estimated Cost: There are no operation and maintenance, or capital and start-up costs associated with this the collection of information.

Dated: July 16, 2010.

Tammi Hines,

Acting Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2010–18324 Filed 7–26–10; 8:45 am]

BILLING CODE 9110–11–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5383–N–15]

Financial Standards for Housing Agency-Owned Insurance Entities

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 27, 2010.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Leroy McKinney, Jr., Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Room 4178, Washington, DC 20410–5000; telephone 202.402.5564, (this is not a toll-free number) or email Mr. McKinney at *Leroy.McKinneyJr@hud.gov.* Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339. (Other than the HUD USER information line and TTY numbers, telephone numbers are not toll-free.)

FOR FURTHER INFORMATION CONTACT: Dacia Rogers, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street, SW., Room 4116, Washington, DC 20410; telephone 202–402–3374, (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Financial Standards for Housing Agency-Owned Insurance Entities.

OMB Control Number: 2577–0186.

Description of the need for the information and proposed use: Collection of this information is required by the HUD Appropriations Act for FY 1992, Public Law 102.139, 105 Stat. 736 (approved October 28, 1991). The Act provided that public housing agencies (PHAs) could purchase insurance coverage without regard to competitive selection procedures, if the insurance was purchased from a nonprofit insurance entity owned and controlled by PHAs approved by HUD, in accordance with standards established by regulation. A PHA-owned insurance entity selected by a PHA to provide coverage must submit a certification to HUD, stating that the entity management and underwriting staff have certain levels of experience. For initial approvals, the entity must also submit proper organizational documentation. The nonprofit entity must submit copies of audits every year, actuarial reviews every year, and management reviews every three years.

Agency form number: N/A.

Members of affected public: Public Housing Agencies.

Estimation of the total number of hours needed to prepare the information collection including number of respondents: The estimated number of respondents is 29 annually with one response per respondent. The average number for each response is 6.55 hours, for a total reporting burden of 190 hours.

Status of the proposed information collection: Extension of currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: July 20, 2010.

Merrie Nichols-Dixon,

Acting Deputy Assistant Secretary for Policy, Programs, and Legislative Initiatives.

[FR Doc. 2010–18400 Filed 7–26–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5380–N–28]

Notice of Proposed Information Collection: Comment Request; Mortgagee's Application for Partial Settlement, Multifamily Mortgage

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments Due Date: *September 27, 2010.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Leroy McKinney, Jr., Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; e-mail *leroy.mckinneyjr@hud.gov* or telephone (202) 402–5564 or the number for the Federal Information Relay Service (1–800–877–8339).

FOR FURTHER INFORMATION CONTACT: Rebecca Lovelace, Accountant, Multifamily Claims Branch, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, e-mail telephone (202) 402–3987 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including

the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Multifamily Mortgagee's Application for Partial Settlement.

OMB Control Number, if applicable: 2502–0427.

Description of the need for the information and proposed use:

1. When a FHA-insured Multifamily mortgage goes into default, the Mortgagee may file a claim with the Secretary to receive the insurance benefits. Statute 12 USC 1713(g)–(r) provides that, * * * "the Mortgagee shall be entitled to receive the benefits of the insurance as hereinafter provided, upon assignment, transfer, and delivery to the Secretary, within a period and in accordance with rules and regulations to be prescribed by the Secretary of all rights and interest arising under the mortgage so in default * * * at its option and in accordance with regulation, and in a period to be determined by the Secretary, proceed to foreclosure on and obtain possession of or otherwise acquired such property after default and receive the benefits of the insurance as herein provided upon prompt conveyance to the Secretary the title of the property * * * " The Mortgagee may receive a portion of the benefits immediately after the assignment or conveyance.

2. The respondents are only those mortgagees that elect to assign property to HUD. There are approximately 115 such mortgagees annually. When the mortgagee notifies HUD of an election to assign a property to HUD, HUD sends the mortgagee an e-mail with instructions for submitting its claim (*see* Attachment 1). This request addresses only the Application for Partial Settlement. Within 24 to 48 hours after an assignment or conveyance, the Secretary may pay the Mortgagee a partial amount of insurance benefits. This payment is made prior to the examination of the Mortgagee's claim. The information collected on the subject form, HUD–2537 (Mortgagee's Application for Partial Settlement-Multifamily Mortgage), provides the required information to determine the partial amount. This amount is computed in accordance with the foregoing statutory provisions and regulations promulgated there under in 24 CFR 207(B), Contract Rights and Obligations.

Agency form numbers, if applicable: HUD–2537.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of annual burden hours is 29. The number of respondents is 115 per year, the number of responses is 115, the frequency of response is on occasion, and the burden hour per response is .25.

Status of the proposed information collection: This is a request for renewal of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: July 22, 2010.

Ronald Y. Spraker,

Associate General Deputy Assistant Secretary for Housing.

[FR Doc. 2010–18402 Filed 7–26–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5376–N–71]

Notice of Submission of Proposed Information Collection to OMB Emergency Comment Request; Notice of Proposed Information Collection for Public Comment on Assessment of Consumer Protection Gaps for Home Equity Conversion Mortgage Borrowers

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date: August 3, 2010.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within seven (7) days from the date of this Notice. Comments should refer to the proposal by name/or OMB approval number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; *e-mail: OIRA_Submission @omb.eop.gov;* fax: (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Leroy McKinney, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; *e-mail: Leroy.MkinneyJR@hud.gov;* telephone (202) 402–5564. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. McKinney.

SUPPLEMENTARY INFORMATION: This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Notice of Proposed Information Collection for Public Comment On Assessment of Consumer Protection Gaps for Home Equity Conversion Mortgage Borrowers.

OMB Control Number: 2502–New.

Agency Form Numbers: None.

Description of Information Collection: This is a new information collection. A twenty-minute phone survey will be conduced among 600 Home Equity Conversion Mortgage (HECM) borrowers. It will help FHA Assess Consumer Protection Gaps for HECM borrowers.

Members of Affected Public: Lenders, Borrowers, Counselors and Not-for-profit consumer advocacy organizations.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of responses, and hours of responses: An estimation of the total number of hours needed to conduct this one-time, 20 minute survey among 600 HECM borrowers is 200 hours.

Total Estimated Burden Hours: 200.

Status of the proposed information collection: New collection

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: July 22, 2010.

Leroy McKinney Jr.,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2010–18414 Filed 7–26–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5376–N–70]

Notice of Submission of Proposed Information Collection to OMB; Capital Advance Section 811 Grant Application for Supportive Housing for Persons With Disabilities (HUD Programs)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The collection of this information is necessary to the Department to assist HUD in determining applicant eligibility and ability to develop housing for person with disabilities within statutory and program criteria. A thorough evalution of an applicant's submission is necessary to protect the government's financial interst.

DATES: *Comments Due Date:* August 26, 2010.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0462) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Leroy McKinney Jr., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Leroy McKinney Jr. at *Leroy.McKinneyJr@hud.gov* or telephone (202) 402–5564. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. McKinney.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice Also Lists the Following Information

Title of Proposal: Capital Advance Section 811 Grant Application for Supportive Housing for Persons with Disabilities.

OMB Approval Number: 2502–0462.

Form Numbers: HUD–92016–CA, HUD–92041, HUD–92042, HUD–92043, HUD–2880, HUD–2991, HUD–2990, HUD–96010, HUD 96011, HUD 2994–A; Standard grant forms: SF–424, SF–424 Supplemental, SF LLL. HUD forms can be obtained at: *http://portal.hud.gov/portal/page/portal/HUD/program_offices/administration/hudclips/forms.*

Description of the Need for the Information and Its Proposed Use: The collection of this information is necessary to the Department to assist HUD in determining applicant eligibility and ability to develop housing for person with disabilities within statutory and program criteria. A thorough evalution of an applicant's submission is necessary to protect the government's financial interst.

Frequency of Submission: Semi-annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	136	1		87.007		11,833

Total Estimated Burden Hours: 11,833.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 22, 2010.

Leroy McKinney, Jr.,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2010–18415 Filed 7–26–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5376–N–69]

Notice of Submission of Proposed Information Collection to OMB Emergency Comment Request, Capital Fund Education and Training Community Facilities (CFCF)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* August 3, 2010.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within seven (7) days from the date of this Notice. Comments should refer to the proposal by name/or OMB approval number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; e-mail: *OIRA_Submission @omb.eop.gov;* fax: (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Leroy McKinney, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail: *Leroy.MkinneyJR@hud.gov;* telephone (202) 402–5564. This is not a toll-free number. Copies of available

documents submitted to OMB may be obtained from Mr. McKinney.

SUPPLEMENTARY INFORMATION: This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Capital Fund Education and Training Community Facilities (CFCF)

Description of Information Collection: This is a new information collection. The Department of Housing and Urban Development Appropriations Act, 2010 Public Law 111–117, enacted on December 16, 2009, permits the HUD Secretary to use up the $40,000,000 of the Capital Fund appropriations for grant funding to develop facilities to provide early childhood education, adult education, and/or job training programs for public housing residents based on an identified need. PHAs may use funds for construction of new facilities, rehabilitation of existing facilities, or rehabilitation of vacant space. These facilities will offer comprehensive, integrated supportive services to help public housing residents achieve better educational and economic outcomes resulting in long-term economic self-sufficiency. The actual Notice of Funding Availability (NOFA) will contain the selection criteria for awarding Capital Fund Education and Training community Facilities grants and specific requirements that will apply to selected grantees.

OMB Control Number: 2577–New.

Agency Form Numbers: HUD–2990, HUD–50075.1., SF–424, SF–LLL, HUD forms can be obtained at: *http://portal.hud.gov/portal/page/portal/HUD/program_offices/administration/hudclips/forms.*

Members of Affected Public: Business or other for-profit, State, Local Government.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of responses, and hours of responses: The estimated number of respondents is 300; the frequency of response is 1 per year; 47.75 hours per response, for burden hours of 14,325.

Total Estimated Burden Hours: 14,325.

Status of the proposed information collection: New collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: July 22, 2010.

Leroy McKinney Jr.,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2010–18417 Filed 7–26–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5376–N–72]

Notice of Submission of Proposed Information Collection to OMB, HUD-Owned Real Estate—Sales Contracts and Addenda (HUD Programs)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The respondents are real estate listing brokers for HUD-owned properties who submit sales contracts and addenda in conjunction with offers to purchase HUD-owned property. The sales contracts and addenda will be used in binding contracts between the purchasers and HUD, and to meet the requirements of the Lead Disclosure Rule relative to the disclosure of known lead-based paint and lead-based paint hazards in HUD sales of pre-1978 construction.

DATES: *Comments Due Date:* August 26, 2010.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Approval Number (2502–0306) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Leroy McKinney, Jr., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; e-mail Leroy McKinney, Jr. at *Leroy.McKinneyJr@hud.gov* or telephone (202) 402–5564. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. McKinney.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: HUD–Owned Real Estate—Sales Contract and Addendums.

OMB Approval Number: 2502–0306.

Form Numbers: HUD–9544, HUD–9548, HUD–9548–B, HUD–9548–C, HUD–9548–D, HUD–9548–E, HUD–9548–F, HUD–9548–G, HUD 9548–H, HUD 9545–Y, HUD 9545–Z; and SAMS–1100, SAMS–1101, SAMS–1103, SAMS–1106, SAMS–1106–C, SAMS–1108, SAMS–1110, SAMS–1111, SAMS–1111–A, SAMS–1117, SAMS–1120, SAMS–1204, SAMS–1205 HUD forms can be obtained at: *http://portal.hud.gov/portal/page/portal/HUD/program_offices/administration/hudclips/forms.*

Description of the Need for the Information and Its Proposed Use:

The respondents are real estate listing brokers for HUD-owned properties who submit sales contracts and addenda in conjunction with offers to purchase HUD-owned property. The sales contracts and addenda will be used in binding contracts between the purchasers and HUD, and to meet the

requirements of the Lead Disclosure Rule relative to the disclosure of known lead-based paint and lead-based paint hazards in HUD sales of pre-1978 construction.

Frequency of Submission: On-occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	13,155	785,748	×	254,626.00		6,590,715

Total Estimated Burden Hours: 6,590,715.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 22, 2010.

Leroy McKinney, Jr.,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2010–18412 Filed 7–26–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5403–N–01]

Notice of Availability: Notice of Fiscal Year (FY) 2009 Implementation of the Veterans Homelessness Prevention Demonstration Program

AGENCY: Office of Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: Through this notice, HUD announces the availability on its website of the funding criteria, policies and procedures for the administration of the statutorily authorized Preventing Homelessness Among the Nation's Veterans Demonstration Program, referred to as the Veterans Homelessness Prevention Demonstration Program (VHPD), in a limited number of U.S. communities. The Omnibus Appropriations Act for 2009 (Pub. L. 111–8, approved March 11, 2009), authorizes the VHPD and appropriates $10 million for HUD to conduct the demonstration. Consistent with this authority, HUD has coordinated with the Department of Veterans Affairs and the Department of Labor in selecting a limited number of urban and rural sites in which to carry out this demonstration. The purpose of the VHPD is to explore ways for the federal government to offer early intervention homelessness prevention, primarily to veterans returning from wars in Iraq and Afghanistan. It is anticipated that this demonstration program will provide an opportunity to understand the unique needs of this new cohort of veterans, and will support efforts to identify, reach and assist them to regain and maintain housing stability.

The notice providing information regarding the application process, funding criteria and eligibility requirements is available on the HUD Web site at *http://www.hud.gov/offices/adm/grants/fundsavail.cfm.* The Catalogue of Federal Domestic Assistance (CFDA) number for the VHPD program is 14.239.

FOR FURTHER INFORMATION CONTACT: Questions regarding the VHPD Notice should be submitted to the HUD e-snaps Virtual Help Desk at *http://www.hudhre.info/helpdesk.*

Dated: July 22, 2010.

Mercedes Márquez,

Assistant Secretary for Community Planning and Development.

[FR Doc. 2010–18420 Filed 7–26–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO310000 L13100000.PP0000]

Renewal and Revision of Approved Information Collection

AGENCY: Bureau of Land Management, Interior.

ACTION: 30-day Notice and Request for Comments.

SUMMARY: The Bureau of Land Management (BLM) has submitted an information collection request to the Office of Management and Budget (OMB) for a 3-year renewal of OMB Control Number 1004–0137 under the Paperwork Reduction Act. This control number includes paperwork requirements in 43 CFR part 3160, which cover onshore oil and gas operations.

DATES: The OMB is required to respond to this information collection request within 60 days but may respond after 30 days. Therefore, written comments should be received on or before August 26, 2010.

ADDRESSES: Submit comments directly to the Desk Officer for the Department of the Interior (OMB #1004–0137), Office of Management and Budget, Office of Information and Regulatory Affairs, fax 202–395–5806, or by electronic mail at *oira_docket@omb.eop.gov.* Please mail a copy of your comments to: Bureau Information Collection Clearance Officer (WO–630), Department of the Interior, 1849 C Street, NW., Mail Stop 401 LS, Washington, DC 20240; send them by electronic mail to *jean_sonneman@blm.gov;* or fax them to Jean Sonneman at 202–912–7102.

FOR FURTHER INFORMATION CONTACT: You may contact Barbara Gamble at 202–912–7148. Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8339, to contact Ms. Gamble. You may also contact Ms. Gamble to obtain a copy, at no cost, of the regulations and forms that require this collection of information.

SUPPLEMENTARY INFORMATION:

The following information is provided for the information collection:

Title: Onshore Oil and Gas Operations (43 CFR part 3160).

Forms:

- Form 3160–3, Application for Permit to Drill or Reenter;
- Form 3160–4, Well Completion or Recompletion Report and Log; and
- Form 3160–5, Sundry Notices and Reports on Wells.

OMB Control Number: 1004–0137.

Type of Review: Revision and renewal of a currently approved information collection.

Abstract: Various Federal and Indian mineral leasing statutes authorize the BLM to grant and manage onshore oil and gas leases on Federal and Indian (except Osage Tribe) lands. The BLM implements these statutory authorities in accordance with regulations at 43 CFR part 3160 and onshore oil and gas orders promulgated in accordance with 43 CFR 3164.1. Responses are required to obtain or maintain a benefit.

Frequency of Collection: On occasion.

Annual Burden Hours: 895,640 hours.

Annual Non-hour Burden Cost: $32,500,000 in processing fees for Form 3160–3, Application for Permit to Drill or Re-enter.

The following table details the individual components and respective hour burden estimates of this information collection request:

Type of response A	Number of responses B	Hours per response C	Total hours D
Application for Permit To Drill or Re-enter (43 CFR 3162.3–1) Form 3160–3	5,000	80	400,000
Well Completion or Recompletion Report and Log (43 CFR 3162.4–1) Form 3160–4	5,000	4	20,000
Sundry Notices and Reports on Wells (43 CFR 3162.3–2) Form 3160–5	34,000	8	272,000
Plan for Well Abandonment (43 CFR 3162.3–4)	1,500	8	12,000
Schematic/Facility Diagrams (43 CFR 3162.4–1(a) and 3162.7–5(d)(1))	1,000	8	8,000
Drilling Tests, Logs, and Surveys (43 CFR 3162.4–2(a))	100	8	800
Disposal of Produced Water (43 CFR 3164.1 and 3162.5–1(b)) Onshore Oil and Gas Order No. 7	1,500	8	12,000
Report of Spills, Discharges, or Other Undesirable Events (43 CFR 3162.5–1(c))	200	8	1,600
Contingency Plan (43 CFR 3162.5–1(d))	50	32	1,600
Direction Drilling (43 CFR 3162.5–2(b))	165	8	1,320
Well Markers (43 CFR 3162.6)	1,000	8	8,000
Gas Flaring (43 CFR 3164.2 and 43 CFR 3162.7–1(d)) Notice to Lessees—4A: Royalty or Compensation for Oil and Gas Lost	100	16	1,600
Records for Seals (43 CFR 3162.7–5(b))	90,000	0.75	67,500
Site Security (43 CFR 3162.7–5(c))	2,415	8	19,320
Prepare Run Tickets (43 CFR 3164.1) Onshore Oil and Gas Order No. 4	90,000	0.75	67,500
Application for Suspension or Other Relief (43 CFR 3165.1(a))	100	16	1,600
State Director Review (43 CFR 3165.3(b))	50	16	800
Totals	232,180		895,640

60-Day Notice: As required by 5 CFR 1320.8(d), the BLM published the 60-day notice in the **Federal Register** on February 3, 2010 (75 FR 5624) soliciting comments from the public and other interested parties. The comment period closed on April 5, 2010. The BLM did not receive any comments from the public in response to this notice, and did not receive any unsolicited comments.

The BLM requests comments on the following subjects:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;
2. The accuracy of the BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;
3. The quality, utility and clarity of the information to be collected; and
4. How to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Please send comments to the addresses listed under **ADDRESSES**. Please refer to OMB control number 1004–0137 in your correspondence. 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.

Jean Sonneman,

Acting Information Collection Clearance Officer.

[FR Doc. 2010–18395 Filed 7–26–10; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

DEPARTMENT OF AGRICULTURE

Forest Service

[LLORV00000.L51010000.ER0000. LVRWH09H0480; OR 065375; IDI 036029; HAG 10–0278]

Revised Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Boardman to Hemingway 500 Kilovolt Transmission Line Project in Idaho and Oregon and Possible Land Use Plan Amendments

AGENCY: Bureau of Land Management, Interior; and U.S. Forest Service, Agriculture.

ACTION: Notice.

SUMMARY: This notice is a revision of a September 12, 2008, Notice of Intent [73 FR 52944]. In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), the Bureau of Land Management (BLM) Vale District Office, Vale, Oregon, and the U.S. Forest Service (FS), Wallowa-Whitman National Forest, Baker City, Oregon, intend to prepare an Environmental Impact Statement (EIS) for the Boardman to Hemingway (B2H) Project, and by this notice are announcing the re-initiation of the NEPA scoping process to solicit public comments. This notice is in response to substantive changes in the proposed B2H Project route as submitted by Idaho Power Company (IPC) in its amended right-of-way (ROW) application to the BLM and special use application to the FS. The proposed B2H route is about 300 miles long and would cross Federal, State, and private lands in 6 counties in Oregon and Idaho. Approximately 93 miles (31 percent) of the lands the transmission line would cross are administered by Federal agencies, including the BLM, the FS, the Bureau of Reclamation, and the Department of Defense.

DATES: This notice re-initiates the comment period for scoping on the B2H Project EIS. The comment period will be open until September 27, 2010. Scoping meetings are being considered in the following locations: Baker City, John Day, Burns, Ontario, Boardman, La Grande, and Pendleton, Oregon; and Marsing, Idaho. The dates and locations of the scoping meetings will be announced at least 15 days in advance

through *local* media, newspapers, and the B2H Project Web site at: *http://www.boardmantohemingway.com.* Comments must be received prior to the close of the comment period or 15 days after the last scoping meeting, whichever is later, to be considered in the B2H Project EIS analysis. Relevant comments submitted during the previous B2H Project comment period will also be considered. Additional opportunities for public participation will be provided upon publication of the Draft EIS.

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

- *E-mail: comment@boardmantohemingway.com;*
- *Web site: http://www.boardmantohemingway.com/comment;*
- *Mail:* BLM, B2H Project, P.O. Box 655, Vale, Oregon 97918; or
- In person at a scoping meeting.

The amended B2H ROW and special-use application is available for inspection at the Web site listed above or may be examined at:

- BLM, Vale District Office, 100 Oregon Street, Vale, Oregon 97918;
- FS, Whitman Ranger District, 3285 11th Street, Baker City, Oregon 97814; and
- FS, La Grande Ranger District, 3502 Highway 30, La Grande, Oregon 97850.

FOR FURTHER INFORMATION CONTACT: For additional information or to have your name added to or removed from the B2H Project mailing list, visit the Web site or e-mail a request to the address identified in the **ADDRESSES** section above, or mail your request to the BLM, B2H Project, P.O. Box 655, Vale, Oregon 97918.

SUPPLEMENTARY INFORMATION: The B2H Project is a new single-circuit 500-kilovolt (kV) electric transmission line proposed for construction by IPC between the existing Hemingway substation, located near Melba in Owyhee County, Idaho, and the planned Grassland substation adjacent to the Boardman Generating Plant, located near Boardman in Morrow County, Oregon. The B2H Project will deliver up to 1,500 megawatts of additional energy capacity to meet load requirements in Oregon and Idaho, provide service to wholesale customers, maintain reliable electric service, and relieve existing congestion and capacity constraints.

On December 19, 2007, IPC submitted an application for a ROW grant to construct, operate, and maintain a single-circuit 500-kV transmission line across BLM-administered lands. On March 25, 2008, IPC also submitted an application for a special use authorization to the FS to cross FS-administered lands. In April 2010, IPC resubmitted these applications to the BLM and FS because of proposed route changes.

The proposed B2H route is approximately 300 miles long and will cross Federal, State, and private lands in 6 counties in Oregon and Idaho. The route generally parallels existing interstate and other existing overhead and underground utilities and roadways, and makes use of existing utility corridors on Federal lands. Approximately 31 percent (93 miles) of the route is located on public lands. The project is designed to utilize steel lattice-type structures, about 150 feet high, with average spans between towers of 1,200 feet. Access roads would be 14 to 20 feet wide. Additional temporary work space would also be required during construction. The requested ROW width is 250 feet. A map is available for review at the Web site identified above.

The purpose of the NEPA scoping process is to identify issues and alternatives that will influence the scope of the environmental analysis and guide the process for developing the project EIS. At this time, the proposed B2H route has been identified for analysis in the EIS. The BLM and FS have identified the following preliminary issues: Areas of Critical Environmental Concern, National Historic Oregon Trail Interpretive Center, Oregon National Historic Trail, visual resources, Threatened and Endangered Species, wildlife, impacts to critical wildlife habitat, use of existing utility corridors, exclusive farm use, and lands with wilderness characteristics. The Hemingway substation will not be analyzed in this EIS, since it is currently under construction and will operate regardless of the outcome of the B2H project. The proposed Grassland substation is part of the proposed B2H project and will be analyzed in this EIS.

Authorization of the B2H project by the BLM and FS may require an amendment to the BLM's Baker Resource Management Plan, the Southeastern Oregon Resource Management Plan, the Owyhee Resource Management Plan, and the Cascade Resource Management Plan, and the FS's Wallowa-Whitman National Forest Land and Resource Management Plan. Plan amendments currently under consideration include an amendment to the Wallowa-Whitman National Forest Land and Resource Management Plan (USDA–Forest Service 1990, Wallowa-Whitman National Forest Land and Resource Management Plan, Baker City, Oregon) that currently prevents the harvest and removal of all live trees greater than or equal to 21-inch diameter within the proposed ROW. Amendment of this standard would allow for the removal of these trees to provide for the safe, long-term operation of the B2H transmission line.

By this notice, the BLM and FS are complying with requirements in 43 CFR 1610.2(c) and 36 CFR 219.35(b)(2000) to notify the public of potential amendments to land use plans, subject to the analysis in the B2H EIS. The BLM and FS will integrate the land use planning process with the B2H Project EIS for any necessary land use plan amendments.

The BLM, as the lead Federal agency for the B2H Project EIS, will utilize and coordinate the NEPA comment process to satisfy the public involvement process of Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) as provided for in 36 CFR 800.2(d)(3). Native American Tribal consultations will be conducted in accordance with agency policies, and Tribal concerns, including impacts on Indian trust assets, will be given due consideration. The following is a list of current cooperating agencies that will assist with preparation of the EIS: United States Department of Agriculture, FS, Wallowa-Whitman National Forest; the State of Idaho; the State of Oregon Department of Energy; State of Oregon Department of Fish and Wildlife; Malheur, Baker, Umatilla, Morrow, and Union counties, Oregon; Payette, Washington, and Canyon counties, Idaho; the City of Parma, Idaho; the Ten Davis Recreation District, Idaho; the Black Canyon Irrigation District, Idaho; the Owyhee Irrigation District, Oregon; and the Joint Committee of the Owyhee Project, Oregon. Other Federal, State, and local agencies, along with stakeholders that may be interested in or affected by the Federal agencies' decision on this project, are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate as a cooperating agency.

Pursuant to Section 501 of the Federal Land Policy and Management Act of 1976 (Pub. L. 94–579), the Secretary of Agriculture is authorized to grant ROWs through National Forest System lands (except those designated as wilderness) and the Secretary of the Interior is authorized to grant ROWs through the National System of Public Lands for generation, transmission, and distribution of electric energy. In addition, Section 368 of the Energy Policy Act of 2005 (Pub. L. 109–58)

directs the Secretaries of Agriculture and Interior to expedite applications to construct or modify electricity transmission and distribution facilities within utility corridors.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1501.7, 43 CFR 1610.2, 36 CFR 219.35(b).

Donald N. Gonzalez,

Vale District Manager, BLM.

Steven A. Ellis,

Forest Supervisor, Wallowa-Whitman National Forest, FS.

[FR Doc. 2010–18220 Filed 7–26–10; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R7–FHC–2010–N108; 71490–1351–0000–L5]

Letters of Authorization To Take Marine Mammals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance.

SUMMARY: In accordance with the Marine Mammal Protection Act of 1972, as amended (MMPA), we, the Fish and Wildlife Service, have issued letters of authorization for the nonlethal take of polar bears and Pacific walrus incidental to oil and gas industry exploration, development, and production activities in the Beaufort Sea and the adjacent northern coast of Alaska and incidental to oil and gas industry exploration activities in the Chukchi Sea and the adjacent western coast of Alaska.

FOR FURTHER INFORMATION CONTACT: Craig Perham at the Fish and Wildlife Service, Marine Mammals Management Office, 1011 East Tudor Road, Anchorage, AK 99503; (800) 362–5148 or (907) 786–3810.

SUPPLEMENTARY INFORMATION: On August 2, 2006, we published in the **Federal Register** a final rule (71 FR 43926) establishing regulations that allow us to authorize the nonlethal, incidental, unintentional take of small numbers of polar bears and Pacific walrus during year-round oil and gas industry exploration, development, and production activities in the Beaufort Sea and adjacent northern coast of Alaska. The rule established subpart J in part 18 of title 50 of the Code of Federal Regulations (CFR) and is effective until August 2, 2011. The rule prescribed a process under which we issue letters of authorization (LOAs) to applicants conducting activities as described under the provisions of the regulations. In accordance with section 101(a)(5)(A) of the MMPA and our regulations at 50 CFR part 18, subpart J, we issued an LOA to each of the following companies in the Beaufort Sea and adjacent northern coast of Alaska:

Beaufort Sea, Letters of Authorization

Company	Activity	Project	Date issued
BP Exploration Alaska, Inc	Development	Liberty Development Project	04 January 2010.
Brooks Range Petroleum Corp.	Exploration	North Shore and Sak River Exploration Programs	05 January 2010.
Brooks Range Petroleum Corp.	Exploration	North Tarn Exploration Program	09 February 2010.
ConocoPhillips Alaska, Inc	Exploration	Seismic Exploration Program—Alpine 3D	20 January 2010.
ConocoPhillips Alaska, Inc	Development	West Mikkelsen State #1	20 January 2010.
Eni US Operating Co. Inc	Development	Nikaitchuq Development Program	25 February 2010.
ExxonMobil Production Company.	Development	Point Thomson	20 January 2010.
Marsh Creek, LLC	Development	Drew Point Test Well #1	03 February 2010.
Savant Alaska, LLC	Development	Badami Unit Redevelopment Project	29 January 2010.
Shell Offshore, Inc	Development	On-Ice Argos Data Buoy Deployment Program	04 January 2010.
Shell Offshore, Inc	Exploration	Beaufort Open Water Marine Survey Program	19 May 2010.

On June 11, 2008, we published in the **Federal Register** a final rule (73 FR 33212) establishing regulations that allow us to authorize the nonlethal, incidental, unintentional take of small numbers of polar bears and Pacific walrus during year-round oil and gas industry exploration activities in the Chukchi Sea and adjacent western coast of Alaska. The rule established subpart I of 50 CFR part 18 and is effective until June 11, 2013. The rule prescribed a process under which we issue LOAs to applicants conducting activities as described under the provisions of the regulations. In accordance with section 101(a)(5)(A) of the MMPA and our regulations at 50 CFR part 18, subpart I, we issued an LOA to the following company in the Chukchi Sea:

Chukchi Sea, Letters of Authorization

Company	Activity	Project	Date issued
Shell Offshore, Inc	Exploration	Chukchi Open Water Marine Survey Program	19 May 2010.

For information on other recent LOAs issued under 50 CFR part 18, subparts I and J, see our notices published in the **Federal Register** on December 8, 2009 (74 FR 64710), and October 15, 2008 (73 FR 61158 and 61159).

Dated: July 6, 2010.

Timothy R. Jennings,

Acting Regional Director.

[FR Doc. 2010–18394 Filed 7–26–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Liquor Ordinance of the Wichita and Affiliated Tribes

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the amended Liquor Ordinance of the Wichita and Affiliated Tribes (amended Ordinance). The amended Ordinance regulates and controls the possession, sale, and consumption of liquor within the Tribal lands. The Tribal lands are located in Indian country and this amended Ordinance allows for possession and sale of alcoholic beverages within their boundaries. This amended Ordinance will increase the ability of the Tribal government to control the community's liquor distribution and possession, and at the same time will provide an important source of revenue for the continued operation and strengthening of the Tribal government and the delivery of Tribal services.

DATES: *Effective Date:* This Amended Ordinance is effective on August 26, 2010.

FOR FURTHER INFORMATION CONTACT: Sherry Lovin, Tribal Government Services Officer, Southern Plains Regional Office, WCD Office Complex, P.O. Box 368, Anadarko, OK 73005, Telephone: (405) 247–1537, Fax (405) 247–9240; or Elizabeth Colliflower, Office of Indian Services, 1849 C Street, NW., Mail Stop 4513–MIB, Washington, DC 20240, Telephone: (202) 513–7641.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner,* 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Executive Committee of the Wichita and Affiliated Tribes adopted its amended Liquor Ordinance by Resolution No. WT–10–31 on May 14, 2010. The purpose of this amended Ordinance is to govern the sale, possession, and distribution of alcohol within Tribal lands of the Tribe.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs. I certify that the Executive Committee of the Wichita and Affiliated Tribes adopted its amended Liquor Ordinance by Resolution No. WT–10–31 on May 14, 2010.

Dated: July 18, 2010.

Paul Tsosie,

Chief of Staff, Office of the Assistant Secretary—Indian Affairs.

The amended Liquor Ordinance of the Prairie Band Potawatomi Nation reads as follows:

Liquor Ordinance of the Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie)

Findings

The Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie) ("Tribe") is a Federally recognized Indian Tribe, exercising jurisdiction over all Tribal Lands.

The Tribe's Governing Resolution, Article V, empowers the Executive Committee of the Tribe to promulgate ordinances and resolutions for the Tribe.

The sale of Liquor and Low-Point Beer, subject to the terms and provisions of this Liquor Ordinance and all applicable laws, will provide funds for the continued operation and strengthening of the Tribal government and the delivery of Tribal government services. It may also produce capital which the Tribe can use to further develop its economy.

The enactment of a Tribal Liquor Ordinance will also increase the ability of the Tribal government to control the distribution and possession of Liquor and Low-Point Beer within the Tribal Lands.

Now, Therefore, to permit the sale of Liquor subject to the necessary controls and to promote the health, safety and welfare of its members, the Executive Committee adopts this Liquor Ordinance

Introduction

101. Title. This Ordinance shall be known as the "Liquor Ordinance of the Wichita and Affiliated Tribes."

102. Authority. This Liquor Ordinance is enacted pursuant to the Act of August 15, 1953 (Pub. L. No. 83–277, 67 Stat. 588 (codified at 18 U.S.C. § 1161) and the Governing Resolution of the Wichita and Affiliated Tribes approved on Aug. 8, 1961, as amended, and applicable laws.

103. Purpose. The purpose of this Liquor Ordinance is to regulate and to control the possession and sale of Liquor and Low-Point Beer to and within the jurisdiction of the Wichita and Affiliated Tribes. The enactment of a Tribal ordinance governing Liquor possession and sale within the Tribal Lands will increase the ability of the Tribal government to control Liquor distribution and possession, and provide an important source of revenue for the continued operation and strengthening of the Tribal government and the delivery of Tribal government services.

104. Jurisdiction. This Ordinance applies on all Tribal Lands.

Definitions

201. As used in this Liquor Ordinance, the following words shall have the following meanings unless the context clearly requires otherwise.

202. "Alcohol" means that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit or wine which is commonly produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substances including all dilutions of this substance.

203. "Alcoholic Beverage" is synonymous with the term "Liquor" as defined in Section 208 of this Chapter.

204. "Bar" means any establishment with special space and accommodations for sale by the glass and for consumption on the premises of any Liquor or alcoholic beverage, as herein defined.

205. "Low-Point Beer" means and includes beverages containing more than one-half of one percent (½ of 1%) alcohol by volume, and not more than three and two-tenths percent (3.2%) alcohol by weight, including but not limited to beer or cereal malt beverages obtained by the alcoholic fermentation of an infusion of barley or other grain, malt or similar. For the purpose of this title, any such beverage, including ale, stout, and porter, containing more than 3.2% alcohol by weight shall be referred to as "Strong Beer."

206. "Executive Committee" as used herein means the body authorized by the Tribe's Governing Resolution to promulgate all Tribal ordinances and regulations.

207. "Council" means the Council of the Tribe, which comprises all individual members of the Tribe who are 18 years old or older.

208. "Liquor" includes the four varieties of Liquor herein defined (Alcohol, Spirits, Wine, and Strong Beer), but not including Low-Point Beer, and all fermented spirituous, vinous, or malt Liquor or combination thereof, and mixed Liquor, or otherwise intoxicating; and every liquid or solid or semisolid or other substance, patented or not, containing alcohol, spirits, wine or beer, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption and any liquid, semisolid, solid, or other substance, which contain more than one percent of alcohol by weight shall be conclusively deemed to be intoxicating.

209. "Liquor Store" means any store at which Liquor or Low-Point Beer is sold and, for the purposes of this Liquor Ordinance, includes stores only a portion of which are devoted to sale of Liquor or Low-Point Beer.

210. "Package" means any container or receptacle used for holding Liquor or Low-Point Beer.

211. "Public Place" includes State or county or Tribal or Federal highways or roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; soft drink establishment; public buildings; public meeting halls; lobbies, halls and dining rooms of hotels, restaurants, theaters, gaming facilities, entertainment centers, store garages, and filling stations which are open to and/or are generally used by the public and to which the public is permitted to have unrestricted access; public conveyances of all kinds of character; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public. For the purpose of this Liquor Ordinance, "Public Place" shall also include any establishment other than a single family home which is designed for or may be used by more than just the owner of the establishment.

212. " Sale" and "Sell" include exchange, barter, and traffic and also include the selling or supplying or distributing by any means whatsoever, of Liquor or Low-Point Beer, or of any liquid known or described as beer or by any name whatsoever commonly used to describe malt or brewed Liquor or wine by any person to any person.

213. "Spirits" means any beverage which contains alcohol obtained by distillation including wines exceeding 17% of alcohol by weight.

214. "Tribe" means the Wichita and Affiliated Tribes.

215. "Tribal Lands" means the 5.0574 acres of land held in trust by the United States for the benefit of the Wichita and Affiliated Tribes upon which a gaming facility of the Tribe known as Sugar Creek Casino exists, whose address is 4200 North Broadway, Hinton, Oklahoma 73047, described as:

All Interest in Surface and Surface Rights Only in and to a tract of land lying in the Southwest Quarter (SW/4) of Section Ten (10), Township Twelve (12) North, Range Eleven (11) West of the Indian Meridian, Caddo County, Oklahoma, being particularly described as follows:

COMMENCING at a Railroad Spike found for corner of the Southeast corner of said Southwest Quarter (SW/4);

THENCE North 00°15′47″ West, along the East line of said Southwest Quarter (SW/4), a distance of 227.41 feet;

THENCE South 89°44′13″ West, a distance of 70.03 feet to the POINT OF BEGINNING, said point being on the West Right of Way line of U.S. Highway 281 located 75.00 feet West of the centerline of said Highway as set forth by the Easement to the State of Oklahoma recorded at Book 79, Page 185;

THENCE South 89°40′46″ West, perpendicular to said Right of Way line, a distance of 208.00 feet;

THENCE South 00°19′14″ East, parallel to said Right of Way line, a distance of 143.29 feet;

THENCE South 89°44′13″ West, perpendicular to the East line of said Southwest Quarter (SW/4), a distance of 292.50 feet;

THENCE North 00°15′47″ West, parallel to said East line, a distance of 500.00 feet;

THENCE North 89°44′13″ East, a distance of 500.00 feet to a point on said West Right of Way line;

THENCE South 00°19′14″ East, along said West Right of Way line, a distance of 356.50 feet to the POINT OF BEGINNING.

Said tract of land containing 220,299 square feet or 5.0574 acres, more or less.

216. "Trust Agent" means the Tribal Tax Commission or his or her designee.

217. "Wine" means any alcoholic beverage obtained by fermentation of fruits (grapes, berries, apples, etc.) or other agricultural product containing sugar, to which any saccharine substances may have been added before, during or after fermentation, and containing not more than seventeen percent (17%) of alcohol by weight, including sweet wines fortified with wine spirits such as port, sherry, muscatel and angelica, not exceeding seventeen percent (17%) of alcohol by weight.

Powers of Enforcement

301. Powers. The Executive Committee, in furtherance of this Liquor Ordinance, shall have the following powers and duties:

a. To publish and enforce the rules and regulations governing the sale, manufacture, and distribution of Alcoholic Beverages and Low-Point Beer on Tribal Land;

b. To employ managers, accountants, security personnel, inspectors, and such other persons as shall be reasonably necessary to allow the Executive Committee to perform its functions; provided that all such employees shall be Tribal employees;

c. To issue licenses permitting the sale or manufacture or distribution of Liquor and Low-Point Beer within the Tribal Lands;

d. To hold hearings on violations of this Liquor Ordinance or for the issuance or revocation of licenses hereunder pursuant to Section VI;

e. To bring suit in the appropriate court to enforce this Liquor Ordinance as necessary;

f. To determine and seek damages for violation of this Liquor Ordinance;

g. To make reports to the Council;

h. To collect taxes and fees levied or set by the Executive Committee, and to keep accurate records, books, and accounts;

i. To exercise such other powers as authorized by Tribal law including the Governing Resolution; and

j. To delegate authorities under this Liquor Ordinance to Subcommittees, Commissions, or Boards.

302. Limitation on Powers. In the exercise of its powers and duties under this Liquor Ordinance, the Executive Committee and its individual members shall not accept any gratuity, compensation or other thing of value from any Liquor or Low-Point Beer wholesaler, retailer, or distributor or from any licensee.

303. Inspection Rights. The premises on which Liquor or Low-Point Beer is sold or distributed shall be open for inspection by the Executive Committee or its designee at all reasonable times, which includes the hours the business is open to the public, for the purposes of ascertaining whether this Liquor Ordinance and the rules and regulations implementing this Liquor Ordinance are being followed.

Sales of Liquor or Low-Point Beer

401. Tribal Liquor or Low-Point Beer License Required; Tribally Owned Businesses. No sales of Alcoholic Beverages or Low-Point Beer shall be made on Tribal Land, except at a Tribally licensed or Tribally owned business. Nothing in this section shall prohibit a Tribal licensee or the Tribe from purchasing Liquor or Low-Point

Beer from a source outside the Tribe's jurisdiction for resale on Tribal Lands or the delivery to the Tribe or a Tribal licensee of Liquor or Low-Point Beer purchased from sources outside Tribal Lands for resale within the Tribal Lands. Each location shall obtain and maintain a Tribal license from the Executive Committee, or its designee, for the sale of Liquor or Low-Point Beer. Such license may be for the sale of Liquor or Low-Point Beer for off-premises or on-premises consumption.

402. Sale only on Tribal Land. All Liquor and Low-Point Beer Sales shall be on Tribal Land, including leases thereon.

403. Sales for Cash. All Liquor and Low-Point Beer sales shall be on a cash only basis and no credit shall be extended to any person, organization, or entity, except that this provision does not prevent the use of ATM cards, debit cards, or major credit cards.

404. Sale for Personal Consumption. All sales shall be for the personal use and consumption of the purchaser. Resale of any Alcoholic Beverage or Low-Point Beer purchased within the Tribal Lands is prohibited. Any person who is not licensed pursuant to this Liquor Ordinance who purchases an Alcoholic Beverage or Low-Point Beer on Tribal Land and sells it, whether in the original container or not, shall be guilty of a violation of this Liquor Ordinance and shall be subject to paying damages to the Tribe as set forth herein.

Licensing

501. Tribal Liquor and Low-Point Beer License Requirements. No Tribal license shall be issued under this Liquor Ordinance except upon a sworn application filed with the Executive Committee or its designee containing a full and complete showing of the following:

a. Satisfactory proof that the applicant is or will be duly licensed by the State of Oklahoma to sell Alcoholic Beverages or Low-Point Beer, whichever is applicable;

b. Satisfactory proof that the applicant is of good character and reputation and that the applicant is financially responsible;

c. The description of the premises in which the Alcoholic Beverages or Low-Point Beer are to be sold and proof that the applicant is the owner of such premises or the lessee of such premises for at least the term of the license;

d. Agreement by the applicant to accept and abide by all conditions of the Tribal license;

e. Payment of a fee established from time to time by the Executive Committee. Said fee is established initially at $1,250.00 but can be changed by Executive Committee resolution at any time; and

f. Satisfactory proof that neither the applicant, nor the applicant's spouse, nor any principal owner, officer, shareholder, or director of the applicant, if an entity, has ever been convicted of a felony or a crime of moral turpitude.

502. Hearing on Application for Tribal Liquor or Low-Point Beer License. All applications for a Tribal Liquor or Low-Point Beer license shall be considered by the Executive Committee or its designee in open session at which the applicant, his, her or its attorney, and any person protesting the application shall have the right to be present, and to offer sworn oral or documentary evidence relevant to the application. After the hearing, the Executive Committee shall determine whether to grant or deny the application based on: (1) Whether the requirements of section 501 have been met; and (2) whether the Executive Committee or its designee, in its discretion, determines that granting the license is in the best interest of the Tribe. In the event that the applicant is a member of the Executive Committee, or the applicant is a member of the immediate family of an Executive Committee member, such Executive Committee member shall not vote on the application or participate in the application hearing as an Executive Committee member.

503. Temporary Permits. The Executive Committee or its designee may grant a temporary permit for the sale of Liquor or Low-Point Beer for a period not to exceed three (3) days to any person applying to the same in connection with a Tribal or community activity, provided that the conditions prescribed in Section 504 of this Liquor Ordinance shall be observed by the permittee. Each permit issued shall specify the types of intoxicating beverages to be sold. Further, a fee of $150.00 will be assessed on temporary permits.

504. Conditions of a Tribal Liquor or Low-Point Beer License. Any Tribal Liquor or Low-Point Beer license issued under this Liquor Ordinance shall be subject to such reasonable conditions as the Executive Committee or its designee shall fix including but not limited to the following:

a. The license shall be for a term not to exceed one (1) year.

b. The licensee shall at all times maintain an orderly, clean, and neat establishment, both inside and outside the licensed premises.

c. The licensed premises shall be subject to patrol by Tribal law enforcement personnel and such other law enforcement officials as may be authorized under Federal, Oklahoma, or Tribal law.

d. The licensed premises shall be open to inspection by duly authorized Tribal officials at all times during the regular business hours.

e. Subject to the provisions of subsection "g" of this section, no Liquor or Low-Point Beer shall be sold, served, disposed of, delivered, or given to any person, or consumed on the licensed premises except in conformity with the hours and days prescribed by the laws of the State of Oklahoma, and in accordance with the hours fixed by the Executive Committee, provided that the licensed premises shall not operate or open earlier, or operate or close later, than is permitted by the laws of the State of Oklahoma.

f. No Liquor shall be sold within 200 feet of a polling place on Tribal election days, or when a referendum is held of the people of the Tribe, and including special days of observation as designated by the Executive Committee.

g. All acts and transactions under authority of the Tribal Liquor and Low-Point Beer license shall be in conformity with the laws of the State of Oklahoma, with this Liquor Ordinance, with any applicable Tribal rules and regulations, and with any Tribal Liquor or Low-Point Beer license issued pursuant to this Liquor Ordinance.

h. No person under the age permitted under the laws of the State of Oklahoma shall be sold, served, delivered, given, or allowed to consume Alcoholic Beverages in the licensed establishment or area.

i. There shall be no discrimination in the operations under the Tribal license by reason of sex, race, color, or creed, provided that Tribal licensees may adopt Tribal or Indian preference policies.

505. License Not a Property Right. Notwithstanding any other provision of this Liquor Ordinance, a Tribal Liquor or Low-Point Beer license is a mere permit for a fixed duration of time. A Tribal Liquor or Low-Point Beer license shall not be deemed a property right or vested right of any kind, nor shall the granting of a Tribal Liquor or Low-Point Beer license give rise to a presumption of legal entitlement to a license or permit in a subsequent time period.

506. Assignment or Transfer. No Tribal license issued under this Liquor Ordinance shall be assigned or transferred without the prior written approval of the Executive Committee expressed by formal resolution.

Civil Violations

601. Sale or Possession With Intent to Sell Without a Permit. Any person who shall sell or offer for sale or distribute or transport in any manner, any Liquor or Low-Point Beer in violation of this Liquor Ordinance, or who shall operate or shall have Liquor or Low-Point Beer in his or her possession with intent to sell or distribute without a license or permit, shall be guilty of a violation of this Liquor Ordinance.

602. Purchases From Other Than Licensed or Allowed Facilities. Any person who, within the Tribal Lands, buys Liquor or Low-Point Beer from any person other than at a properly licensed or allowed facility shall be guilty of a violation of this Liquor Ordinance.

603. Sales to Persons Under the Influence of Liquor or Low-Point Beer. Any person who sells Liquor to a person apparently under the influence of Liquor or Low-Point Beer shall be guilty of a violation of this Liquor Ordinance.

604. Consuming Liquor in Public Conveyance. Any person engaged wholly or in part in the business of carrying passengers for hire, and every agent, servant or employee or such person who shall knowingly permit any person to drink any Liquor or Low-Point Beer in any public conveyances shall be guilty of an offense. Any person who shall drink any Liquor in a public conveyance shall be guilty of a violation of this Liquor Ordinance.

605. Consumption or Possession of Liquor or Low-Point Beer by Persons Under 21 Years of Age. No person under the age of 21 years shall consume, acquire, or have in his or her possession any Liquor or Low-Point Beer. No person shall permit any other person under the age of 21 to consume Liquor or Low-Point Beer on his or her premises or any premises under his or her control except in those situations set out in this section. Any person violating this section shall be guilty of a separate violation of this Liquor Ordinance for each and every drink so consumed.

606. Sales of Liquor or Low-Point Beer to Persons Under 21 Years of Age. Any person who shall sell or provide Liquor or Low-Point Beer to any person under the age of 21 years shall be guilty of a violation of this Liquor Ordinance for each sale or drink provided.

607. Transfer of Identification to Minor. Any person who transfers in any manner an identification of age to a minor for the purpose of permitting such minor to obtain Liquor or Low-Point Beer shall be guilty of an offense; provided, that corroborative testimony of witness other than the minor shall be a requirement of finding a violation of this Liquor Ordinance.

608. Use of False or Altered Identification. Any person who attempts to purchase an Alcoholic Beverage or Low-Point Beer through the use of a false or altered identification shall be guilty of violating this Liquor Ordinance.

609. Acceptable Identification. Where there may be a question of a person's right to purchase Liquor or Low-Point Beer by reason of his or her age, such person shall be required to present any one of the following cards of identification which shows his or her correct age and bears his or her signature and photograph: (1) A driver's license of any State or identification card issued by any State department of motor vehicles; (2) United States active duty military; (3) a passport, or (4) a Tribal enrollment or identification card issued by any Federally recognized Indian Tribe.

610. Violations of this Liquor Ordinance. Any person guilty of a violation of this Ordinance shall be liable to pay the Tribe a civil fine not to exceed $1,000 per violation as civil damages to defray the Tribe's cost of enforcement of this Liquor Ordinance. In addition to any penalties so imposed, any license or permit issued hereunder may be suspended or canceled by the Executive Committee for the violation of any of the provisions of this Liquor Ordinance, or of the Tribal license or permit, upon hearing before the Executive Committee after ten (10) days' notice to the licensee. The decision of the Executive Committee shall be final and no appeal therefrom is allowed. Notice of an Executive Committee hearing regarding an alleged violation of this Ordinance shall be given to the affected individual(s) or entities at least ten (10) days in advance of the hearing. The notice will be delivered in person or by certified mail with the Executive Committee retaining proof of service. The notice will set out the right of the alleged violation to be represented by Counsel retained by the alleged violator, the right to speak and to present witnesses and to cross examine any witnesses against them.

611. Possession of Liquor or Low-Point Beer Contrary to This Liquor Ordinance. Liquor or Low-Point Beer possessed contrary to the terms of this Liquor Ordinance are declared to be contraband. Any Tribal agent, employee, or officer who is authorized by the Executive Committee to enforce this section shall have the authority to, and shall, seize all contraband.

612. Disposition of Seized Contraband. Any officer seizing contraband shall preserve the contraband in accordance with appropriate law. Upon being found in violation of this Liquor Ordinance by the Executive Committee, the party shall forfeit all right, title and interest in the items seized which shall become the property of the Tribe.

Taxes

701. Sales Tax. There is hereby levied and shall be collected a tax on each sale of Alcoholic Beverages or Low-Point Beer on Tribal Land in the amount determined by the Executive Committee. The tax imposed by this section shall apply to all retail sales of Liquor or Low-Point Beer on Tribal Lands and shall preempt any tax imposed on such Liquor or Low-Point Beer sales by the State of Oklahoma.

702. Payment of Taxes to Tribe. All taxes from the sale of Alcoholic Beverages or Low-Point Beer on Tribal Lands shall be paid over to the Trust Agent of the Tribe.

703. Taxes Due. All taxes from the sale of Alcoholic Beverages and Low-Point Beer on Tribal Lands are due within thirty (30) days of the end of the calendar quarter for which the taxes are due.

704. Reports. Along with payment of the taxes imposed herein, the taxpayer shall submit an accounting for the quarter of all income from the sale or distribution of Alcoholic Beverages and Low-Point Beer as well as for the taxes collected.

705. Audit. As a condition of obtaining a license, the licensee must agree to the review or audit of its books and records relating to the sale of Alcoholic Beverages and Low-Point Beer on Tribal Lands. Said review or audit may be done annually by the Tribe through its agents or employees whenever, in the opinion of the Executive Committee, such a review or audit is necessary to verify the accuracy of reports.

Profits

801. Disposition of Proceeds. The gross proceeds collected by the Executive Committee from all licensing provided under this Liquor Ordinance, or the imposition of civil penalties for violating this Ordinance, or from the taxation of the sales of Alcoholic Beverages and Low-Point Beer on Tribal Lands, shall be distributed as follows:

a. For the payment of all necessary personnel, administrative costs, and legal fees for the operation and its activities.

b. The remainder shall be turned over to the Trust Agent.

Severability and Miscellaneous

901. Severability. If any provision or application of this Liquor Ordinance is determined upon review by a court of competent jurisdiction to be invalid, such adjudication shall not be held to render ineffectual the remaining portions of this Ordinance or to render such provisions inapplicable to other persons or circumstances.

902. Prior Enactments. Any and all prior ordinances, resolutions or enactments of the Executive Committee which are inconsistent with the provisions of this Liquor Ordinance are hereby repealed.

903. Conformance with Tribal, State, and Federal Law. This Ordinance conforms with all Tribal law and governing documents. All provisions and transactions under this Ordinance shall be in conformity with Oklahoma State law regarding the sale of Alcoholic Beverages and Low-Point Beer to the extent required by 18 U.S.C. § 1161, provided that § 1161 shall not be deemed to waive Tribal sovereign immunity in any respect, and with all Federal laws regarding alcohol in Indian country.

904. Enforcement. All actions brought by the Executive Committee to enforce the provisions of this Ordinance shall be filed in the Court of Indian Offenses for the Wichita and Affiliated Tribes, or such Tribal court as may be established in its place, which shall have exclusive jurisdiction over the enforcement and interpretation of this Ordinance.

905. Effective Date. This Ordinance becomes effective as of the date the Secretary of the Interior certifies the Ordinance and publishes it in the **Federal Register.**

Amendment

1001. Amendment or Repeal. This Ordinance may be amended or repealed by a majority vote of the Executive Committee. Amendments of this Ordinance will be published in the **Federal Register** to become effective.

Sovereign Immunity

1101. Nothing contained in this Liquor Ordinance is intended to nor does in anyway limit, alter, restrict, or waive the Tribe's sovereign immunity from unconsented suit or action. Tribal Liquor and Low-Point Beer licensees entitled to assert the defense of Tribal sovereign immunity shall not be deemed to have waived that immunity in any dram-shop action in any court whether Tribal, Federal, or State.

Dram-Shop Actions

1201. The Court of Indian Offense for the Wichita and Affiliated Tribes, or such Tribal court as may be established in its place, shall have exclusive jurisdiction over any dram-shop action against a Tribal Liquor or Low-Point Beer licensee.

[FR Doc. 2010–18319 Filed 7–26–10; 8:45 am]

BILLING CODE 4310–4J–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–729]

Certain Semiconductor Products Made by Advanced Lithography Techniques and Products Containing Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on June 23, 2010, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of STC.UNM of Albuquerque, New Mexico. A supplement to the complaint was filed on July 15, 2010. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain semiconductor products made by advanced lithography techniques and products containing same by reason of infringement of certain claims of U.S. Patent No. 6,042,998. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and a cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Thomas S. Fusco, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2571.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2010).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on July 20, 2010, *ordered that* —

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain semiconductor products made by advanced lithography techniques or products containing same that infringe one or more of claims 1, 6, and 7 of U.S. Patent No. 6,042,998, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: STC.UNM, 801 University Blvd., SE., Suite 101, Albuquerque, New Mexico 87106.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Taiwan Semiconductor Manufacturing, Company Limited, 8, Li-Hsin Rd. 6, Hsinchu Science Park, Hsinchu, Taiwan 300–77.

Samsung Electronics Company Limited, 250, Taepyongro 2-ga, Jung-gu, Seoul 100–742, South Korea.

(c) The Commission investigative attorney, party to this investigation, is Thomas S. Fusco, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)–(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

Issued: July 21, 2010.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–18272 Filed 7–26–10; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary; Submission for OMB Review; Comment Request

ACTION: Submission for OMB Review; Comment Request.

SUMMARY: The Department of Labor (DOL) hereby announces the submission of the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation; including, among other things, a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the *RegInfo.gov* Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Linda Watts Thomas on 202–693–4223 (this is not a toll-free number) and e-mail mail to: *DOL_PRA_PUBLIC@dol.gov.*

Interested parties are encouraged to send written comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor—Mine Safety and Health Administration (MSHA), Office of Management and Budget, 725 17th St., NW., Room 10235, Washington, DC 20503, Telephone: 202–395–4816/Fax 202–395–5806 (these are not toll-free numbers), e-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register.** In order to ensure the appropriate consideration, comments should reference the applicable OMB Control Number (see below).

The OMB is particularly interested in comments which:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Mine Safety and Health Administration.

Type of Review: Revision of a currently approved collection.

Title: Certificate of Electrical Training.

OMB Control Number: 1219–0001.

Frequency: Mandatory.

Form Number: MSHA Form 5000–1.

Affected Public: Business or other for-profit, State, Local, or Tribal Governments.

Cost to Federal Government: $54,045.

Total Burden Respondents: 17,960.

Total Number of Responses: 2,796.

Total Burden Hours: 890.

Total Hour Burden Cost (operating/maintaining): $29,483.

Description: MSHA Form 5000–1, "Certificate of Electrical Training," is required to be used by instructors for reporting to MSHA the qualifications of those persons who have satisfactorily completed a coal mine electrical training program. Based on the information submitted on Form 5000–1, MSHA issues certification cards that identify these individuals as qualified to perform certain tasks at the mine. For additional information, see related notice published in the **Federal Register** on February 4, 2010 (Vol. 75, page 5808).

Dated:July 8, 2010.

Linda Watts Thomas,

Acting Departmental Clearance Officer.

[FR Doc. 2010–18349 Filed 7–26–10; 8:45 am]

BILLING CODE 4510–79–P

DEPARTMENT OF LABOR

Office of the Secretary; Submission for OMB review; comment request

ACTION: Submission for OMB Review; Comment Request.

SUMMARY: The Department of Labor (DOL) hereby announces the submission of the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation; including, among other things, a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the *RegInfo.gov* Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Linda Watts Thomas on 202–693–4223 (this is not a toll-free number) and e-mail mail to: *DOL_PRA_PUBLIC@dol.gov*.

Interested parties are encouraged to send written comments to the Office of Information and Regulatory Affairs, Attn.: OMB Desk Officer for the Department of Labor—Mine Safety and Health Administration (MSHA), Office of Management and Budget, 725 17th Street, NW., Room 10235, Washington, DC 20503, Telephone: 202–395–4816/Fax 202–395–5806 (these are not toll-free numbers), e-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference the applicable OMB Control Number (see below).

The OMB is particularly interested in comments which:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Mine Safety and Health Administration.

Type of Review: Revision of a currently approved collection.

Title of Collection: Application for a Permit to Fire More than 20 Boreholes for the use of Nonpermissible Blasting Units, Explosives and Shot-firing Units.

OMB Control Number: 1219–0025.

Frequency: Mandatory.

Affected Public: Business or other for-profit.

Cost to Federal Government: $8,902.

Total Burden Respondents: 68.

Total Number of Responses: 101.

Total Burden Hours: 79.

Total Hour Burden Cost (operating/maintaining): $614.

Description: Under section 313 of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 873, any explosives used in underground coal mines must be permissible. The Mine Act also provides that, under safeguards prescribed by the Secretary of Labor, a mine operator may permit the firing of more than 20 shots and the use of nonpermissible explosives in sinking shafts and slopes from the surface in rock. Title 30 CFR 75.1321 outlines the procedures by which a permit may be issued for the firing of more than 20 boreholes and/or the use of nonpermissible shot-firing units in underground coal mines. In those instances in which there is a misfire of explosives, 30 CFR 75.1327 requires that a qualified person post each accessible entrance to the affected area with a warning to prohibit entry. Title 30 CFR 77.1909–1 outlines the procedures by which a coal mine operator may apply for a permit to use nonpermissible explosives and/or shot-firing units in the blasting of rock while sinking shafts or slopes for underground coal mines. For additional information, see related notice published in the **Federal Register** on January 29, 2010 (Vol. 75 page 4848).

Dated: July 8, 2010.

Linda Watts Thomas,

Acting Departmental Clearance Officer.

[FR Doc. 2010–18350 Filed 7–26–10; 8:45 am]

BILLING CODE 4510–79–P

DEPARTMENT OF LABOR

Office of the Secretary; Submission for OMB review; Comment Request

ACTION: Submission for OMB review; comment request.

SUMMARY: The Department of Labor (DOL) hereby announces the submission of the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation; including, among other things, a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Linda Watts Thomas on 202–693–4223 (this is not a toll-free number) and e-mail mail to: *DOL_PRA_PUBLIC@dol.gov.*

Interested parties are encouraged to send written comments to the Office of Information and Regulatory Affairs, Attn.: OMB Desk Officer for the Department of Labor—Mine Safety and Health Administration, Room 10235, Washington, DC 20503, Telephone: (202) 395–4816/Fax (202) 395–5806 (these are not toll-free numbers), *e-mail: OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference the applicable OMB Control Number (see below).

The OMB is particularly interested in comments which:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Mine Safety and Health Administration.

Type of Review: Revision of currently approved collection.

Title of Collection: Ventilation Plans, Tests, and Examinations in Underground Coal Mines.

OMB Control Number: 1219–0088.

Frequency: Mandatory.

Affected Public: Business or other for profits.

Cost to Federal Government: $188,426.

Total Burden Respondents: 457.

Total Number of Responses: 1,022,636.

Total Burden Hours: 1,363,130.

Total Hour Burden Cost (operating/maintaining): $176,213.

Description: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995(PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the extension of the information collection related to the 30 CFR 75.310, 75.312, 75.342, 75.351, 75.360, 75.361, 75.362, 75.363, 75.364, 75.370, 75.371, and 75.382. For additional information, see related notice published in the **Federal Register** on January 12, 2010, (Vol. 75 page 1655).

Dated: July 9, 2010.

Linda Watts Thomas,

Acting Departmental Clearance Officer.

[FR Doc. 2010–18351 Filed 7–26–10; 8:45 am]

BILLING CODE 4510–43–P

LEGAL SERVICES CORPORATION

Sunshine Act Meetings of the Board of Directors; Notice

DATE AND TIME: The Legal Services Corporation Board of Directors will meet on July 30–31, 2010. On Friday July 30, the meeting will commence at 3:15 p.m., Central Time. On July 31, the first meeting will commence at 8:30 a.m., Central Time. On each of these two days, each meeting other than the first meeting of the day will commence promptly upon adjournment of the immediately preceding meeting.

LOCATION: The Hyatt Regency Hotel, 333 West Kilbourn Avenue, Milwaukee, Wisconsin.

PUBLIC OBSERVATION: Unless otherwise noticed, all meetings of the LSC Board of Directors are open to public observation. Members of the public that are unable to attend but wish to listen to a public proceeding may do so by following the telephone call-in directions given below. You are asked to keep your telephone muted to eliminate background noises. From time to time the presiding Chair may solicit comments from the public.

CALL-IN DIRECTIONS FOR OPEN SESSIONS:

- Call toll-free number: 1–(866) 451–4981;
- When prompted, enter the following numeric pass code: 5907707348;
- When connected to the call, please "*MUTE*" your telephone immediately.

MEETING SCHEDULE

	Time [1]
Friday, July 30, 2010:	
1. Promotion & Provision for the Delivery of Legal Services Committee ("Promotions & Provisions Committee").	3:15 p.m.
2. Governance & Performance Review Committee	
3. Operations & Regulations Committee	
Saturday, July 31, 2010:	
4. Finance Committee	8:30 a.m.
5. Audit Committee	
6. Board of Directors	

[1] Please note that all times in this notice are in the *Central Time* zone.

STATUS OF MEETING: Open, except as noted below.

- *Board of Directors*—Open, except that a portion of the meeting of the Board of Directors may be closed to the public pursuant to a vote of the Board of Directors who will consider and perhaps act on the General Counsel's report on potential and pending litigation involving LSC, consider and may act on a report from the Operations & Regulations Committee regarding an employee benefits matter, and hear briefings by LSC's President and Inspector General.[2]

A *verbatim* written transcript will be made of the closed session of the Board meeting. However, the transcript of any portions of the closed session falling within the relevant provisions of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(2) and (9)(B), and the corresponding provisions of the Legal Services Corporation's implementing regulation, 45 CFR 1622.5(a) and (g), will not be available for public inspection. A copy of the General Counsel's Certification that in his opinion the closing is authorized by law will be available upon request.

- *Governance & Performance Review Committee*—Open, except that a portion of the meeting of the Governance & Performance Review Committee may be closed to the public pursuant to a vote of the Board of Directors so the Committee can act and consider a records retention matter. A *verbatim* written transcript will be made of the closed session of the Committee meeting. However, the transcript of any portions of the closed session falling within the relevant provisions of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(2), and the corresponding provisions of the Legal Services Corporation's implementing regulation, 45 CFR 1622.5(a) will not be available for public inspection. A copy of the General Counsel's Certification that in his opinion the closing is authorized by law will be available upon request.
- *Operations & Regulations Committee*—Open, except that a portion of the meeting of the Operations & Regulations Committee may be closed to the public pursuant to a vote of the Board of Directors so the Committee can act and consider an employee benefits matter. A *verbatim* written transcript will be made of the closed session of the Committee meeting. However, the transcript of any portions of the closed session falling within the relevant provisions of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(2), and the corresponding provisions of the Legal Services Corporation's implementing regulation, 45 CFR 1622.5(a) will not be available for public inspection. A copy of the General Counsel's Certification that in his opinion the closing is authorized by law will be available upon request.

[2] Any portion of the closed session consisting solely of staff briefings does not fall within the Sunshine Act's definition of the term "meeting" and, therefore, the requirements of the Sunshine Act do not apply to such portion of the closed session. 5 U.S.C. 552b(a)(2) and (b). *See also* 45 CFR 1622.2 & 1622.3.

MATTERS TO BE CONSIDERED:

Friday, July 20, 2010

Promotion and Provision for the Delivery of Legal Services Committee

Agenda

1. Approval of agenda.
2. Approval of Minutes of the Committee's meeting of April 16, 2010.
3. Consider and act on proposed revised Committee Charter.

Staff report—*Karen Sarjeant, Vice President for Program and Compliance.*

4. Public comment.
5. Consider and act on other business.
6. Consider and act on adjournment of meeting.

Governance and Performance Review Committee

Agenda

Open Session

1. Approval of agenda.
2. Approval of minutes of the Committee's meeting of April 17, 2010.
3. Staff report on Virtual Board Manual.
4. Consider and act on Committee Self-Evaluation Forms.
5. Discussion of LSC research agenda, goals, methods, and areas of concentration.
6. Issues from the OIG OLA Report.
7. Consider and act on other business.
8. Public Comment.

Closed Session

9. Consider and act on records retention matter.
10. Consider and act on motion to adjourn meeting.

Operations & Regulations Committee

Agenda

Open Session

1. Approval of agenda.
2. Approval of minutes of the Committee's meeting of April 17, 2010.
3. Approval of minutes of the Committee's *joint* meeting of June 15, 2010 with the Audit Committee.
4. Consider and act on potential initiation of rulemaking to amend 45 CFR part 1622 to remove from its requirements the Board's Search and Development Committees and the Board's Governance & Performance Review Committee when it is meeting to consider performance evaluations of the President and the Inspector General.

- Presentation by Mattie Cohan, Senior Assistant General Counsel.
- Comment by Laurie Tarantowicz, Assistant Inspector General and Legal Counsel.

• Public Comment.
5. Consider and act on the proposed 2011 Grant Assurances.
• Presentation by Karen Sarjeant, Vice President for Programs and Compliance.
• Public Comment.
6. Public comment.
7. Consider and act on other business.

Closed Session

8. Consider and act on an employee benefits matter.
9. Consider and act on adjournment of meeting.

Saturday, July 31, 2010

Finance Committee

Agenda

1. Approval of agenda.
2. Approval of the minutes of the Committee's meeting of April 17, 2010.
3. Consider and act on potential advisory committee member for the Finance Committee.
4. Presentation on LSC's Financial Reports for the first eight months of FY 2010.
• Presentation by David Richardson, Treasurer/Comptroller.
5. Consider and act on revisions to the Consolidated Operating Budget for FY 2010 including internal budgetary adjustments and recommend *Resolution 2010–XXX* to the full Board.
• Presentation by David Richardson, Treasurer/Comptroller.
6. Consider and act on proposed 2010 pay increase.
• Presentation by Victor Fortuno, President.
• Comments by David Richardson, Treasurer/Comptroller.
• Comments by Jeffrey Schanz, Inspector General.
7. Consider and act on the Temporary Operating Budget for FY 2011 and recommend *Resolution 2010–XXX* to the full Board for action.
• Presentation by David Richardson, Treasurer/Comptroller.
8. Discussion of FY 2012 Budget Request considerations.
9. Consider and act on amendment to LSC's 403(b) plan.
• Presentation by Alice Dickerson, Director of Human Resources.
• Comments by Mark Freedman, Office of Legal Affairs.
10. Staff report on the Loan Repayment Assistance Program ("LRAP").
• Bristow Hardin, Program Analyst, Office of Program Performance.
11. Public comment.
12. Consider and act on other business.
13. Consider and act on adjournment of meeting.

Audit Committee

Agenda

10. Approval of agenda.
11. Approval of minutes of the Committee's April 17, 2010 meeting.
12. Approval of minutes of the Committee's June 15, 2010 joint meeting with the Operations and Regulations Committee.
13. Report on 403(b) plan performance and annual audit and consider and act on changes to LSC's 403(b) Plan.
• Alice Dickerson, Director of Human Resources.
• Mark Freedman, Office of Legal Affairs.
14. Report on TIG grants management.
• Janet LaBella, Director, Office of Program Performance.
• Glenn Rawdon, TIG program counsel.
• David Richardson, Treasurer and Comptroller.
15. Report on timely issuance of OCE and OPP program visit reports.
• Karen Sarjeant, Vice President for Programs and Compliance.
16. Consider and act on *Resolution 2010–XXX* regarding future amendments to the LSC Accounting Manual.
17. Consider and act on complaint procedure for audit committee.
18. Review of internal controls associated with grant awards.
• Karen Sarjeant, Vice President for Programs and Compliance.
• Janet LaBella, Director, Office of Program Performance.
• David Richardson, Treasurer and Comptroller.
19. Briefing by Inspector General.
• Jeffrey Schanz, Inspector General.
20. Public comment.
21. Consider and act on other business.
22. Consider and act on adjournment of meeting.

Board of Directors

Agenda

Open Session

1. Approval of agenda.
2. Approval of Minutes of the *Board's* Open Session meeting of April 17, 2010.
3. Approval of Minutes of the *Board's* Open Session *Telephonic* meeting of May 19, 2010.
4. Approval of Minutes of the *Board's* Open Session *Telephonic* meeting of June 15, 2010.
5. Consider and act on report from Thomas Smegal, Chairman, Board of Directors of Friends of the Legal Services Corporation, regarding ownership of 3333 K Street, NW., Washington, DC, the property housing LSC's offices.
6. *Chairman's* Report.
7. *Members'* Reports.
8. *President's* Report.
9. *Inspector General's* Report.
10. Consider and act on the report of the *Search Committee for LSC President.*
11. Consider and act on the report of the *Promotion & Provision for the Delivery of Legal Services Committee.*
12. Consider and act on the report of the *Finance Committee.*
13. Consider and act on the report of the *Audit Committee.*
14. Consider and act on the report of the *Operations & Regulations Committee.*
15. Consider and act on the report of the *Governance & Performance Review Committee.*
16. Consider and act on *Resolution 2010–XXX* recognizing the late Edna Fairbanks-Williams and her contributions to the civil legal services community.
17. Consider and act on whether to establish a Development Committee and related proposed Charter, *Resolution 2010–XXX.*
18. Staff Report on Strategic Directions performance measures for 2006–2010.
19. Consider and act on designation of new LSC Ethics Officer.
20. Staff Report on the provision of civil legal services to veterans.
21. Consider and act on Meeting Schedule for calendar year 2011.
22. Public comment.
23. Consider and act on other business.
24. Consider and act on whether to authorize an executive session of the *Board* to address items listed below under *Closed Session.*

Closed Session

25. Approval of minutes of the *Board's* April 17, 2010 Closed Session meeting.
26. Consider and act on General Counsel's report on potential and pending litigation involving LSC.
27. Consider and act on report of the Governance & Performance Review Committee regarding a records retention matter.
28. Consider and act on report of the Operations & Regulations Committee regarding an employee benefits matter.
29. IG briefing of the Board.
30. Consider and act on motion to adjourn meeting.

Contact Person for Information: Katherine Ward, Executive Assistant to the Vice President & General Counsel, at (202) 295–1500. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov.*

Special Needs: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Katherine Ward, at (202) 295–1500 or *FR_NOTICE_QUESTIONS@lsc.gov.*

Dated: July 23, 2010.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 2010–18579 Filed 7–23–10; 4:15 pm]

BILLING CODE 7050–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act; Notice of Agency Meeting

TIME AND DATE: 10 a.m., Thursday, July 29, 2010.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Proposed Rule—Part 750 of NCUA's Rules and Regulations, Golden Parachute and Indemnification Payments.
2. Interim Final Rule—Part 707 of NCUA's Rules and Regulations, Truth in Savings.
3. Interim Final Rule—Part 701 of NCUA's Rules and Regulations, Low-Income Definition.
4. Reprogramming of NCUA's Operating Budget for 2010.
5. Insurance Fund Report.

RECESS: 11 a.m.

TIME AND DATE: 11:15 a.m., Thursday, July 29, 2010.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Creditor Claim Appeal. Closed pursuant to exemption (6).
2. Consideration of Supervisory Activities. Closed pursuant to exemptions (8), (9)(A)(ii) and 9(B).

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, Telephone: 703–518–6304.

Mary Rupp,

Board Secretary.

[FR Doc. 2010–18504 Filed 7–23–10; 4:15 pm]

BILLING CODE P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act; Notice of Agency Meeting

TIME AND DATE: 9 a.m., Friday, July 30, 2010.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTER TO BE CONSIDERED:

1. Consideration of Supervisory Activities (3). Closed pursuant to some or all of the following exemptions: (8), (9)(A)(ii) and (9)(B).

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, Telephone: 703–518–6304.

Mary Rupp,

Board Secretary.

[FR Doc. 2010–18506 Filed 7–23–10; 4:15 pm]

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NUCLEAR REGULATORY COMMISSION

[NRC–2010–0256]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from July 1, 2010 to July 14, 2010. The last biweekly notice was published on July 13, 2010 (75 FR 39975).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules, Announcements, and Directives Branch (RADB), TWB–05–B01M, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be faxed to the RADB at 301–492–3446. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E–Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov,* or by telephone at (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through EIE, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing

system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E–Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by e-mail at *MSHD.Resource@nrc.gov,* or by a toll-free call at (866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants.

Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

For further details with respect to this license amendment application, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of amendment request: April 8, 2010.

Description of amendment request: The amendments would revise Technical Specification (TS) 2.2, "Safety Limit Violations," consistent with Technical Specification Task Force (TSTF) change traveler TSTF–5–A, and TS 5.2.1, "Onsite and Offsite Organizations," consistent with TSTF–65–A, Revision 1. Specifically, the proposed amendment would delete redundant reporting and operational restriction provisions from TS 2.2 and replace plant-specific organization titles with generic organization titles in TS 5.2.1. Both TSTF–5–A and TSTF–65–A were incorporated in Revision 2 of NUREG–1432, "Standard Technical Specifications for Combustion Engineering Plants."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

These changes involve minor changes in organization titles and remove redundant and unnecessary reporting requirements. The changes are consistent with TSTF–5 and TSTF–65, which have been approved by the NRC Staff, and included in Revision 2 of NUREG–1432. Technical Specification Safety Limit violation reporting is redundant to 10 CFR 50.36(c)(7) and (8) and 10 CFR 50.72 and 73. The removal of the notification, reporting, and startup requirements from the TS is an administrative change because the current requirements duplicate what is already contained in the regulations. The proposed changes do not alter existing controls on plant operation (*i.e.,* safety limit values, LCOs [Limiting Conditions for Operations], Surveillance Requirements or Design Features), but only remove the administrative burden of maintaining redundant notification, reporting, and plant startup requirements.

Functions which are necessary to operate the facility safely and in accordance with the operating licenses remain within the organization and will not affect the safe operation of the plant and will continue to ensure proper control of administrative activities. The proposed changes will not affect the operation of structures, systems, or components, and will not reduce programmatic controls such that plant safety would be affected.

Based on the above, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes will not affect the operation of structures, systems, or components, and will not reduce programmatic controls such that plant safety would be affected. The generic title changes and deletion of redundant reporting are administrative.

Based on the above, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The changes are administrative and will not diminish any organizational or administrative controls currently in place. The proposed change will not affect the operation of structures, systems, or components, and will not reduce programmatic controls such that plant safety would be affected. Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Michael G. Green, Senior Regulatory Counsel, Pinnacle West Capital Corporation, P.O. Box 52034, Mail Station 8695, Phoenix, Arizona 85072–2034.

NRC Branch Chief: Michael T. Markley.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of amendment request: April 29, 2010.

Description of amendment request: The amendments would revise the Technical Specifications (TSs) to incorporate Technical Specifications Task Force (TSTF) change traveler TSTF–479–A, "Changes to Reflect Revision of 10 CFR 50.55a," as modified by TSTF–497–A, "Limit Inservice Testing Program SR [Surveillance Requirement] 3.0.2 Application to Frequencies of 2 Years or Less." Specifically, the changes associated with TSTF–479–A would modify the reference in TS 5.5.8, "Inservice Testing Program," from the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code to the ASME Code for Operation and Maintenance of Nuclear Power Plants (OM Code) and would specify that the extension allowance of SRs is applicable to the frequencies in the Inservice Testing Program (IST). The changes associated with TSTF–497–A would limit the applicability of SR 3.0.2 to frequencies of 2 years or less. In addition, the amendment would remove the reference to component supports for consistency with the Standard Technical Specifications because the supports are included in the licensee's Inservice Inspection Program.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes revise TS 5.5.8, "Inservice Testing Program," for consistency with the requirements of 10 CFR 50.55a(f)(4) regarding the IST of pumps and valves and eliminates a statement regarding the testing of supports. The proposed changes incorporate revisions to the ASME Code that result in a net improvement in the measures for testing pumps and valves and the editorial change eliminates confusion as to the testing program for supports and will align the PVNGS specification wording to that of NUREG–1432, Revision 3.1, Standard Technical Specifications Combustion Engineering Plants. The proposed changes do not impact any accident initiators or analyzed events or assumed mitigation of accident or transient events, nor does it involve the addition or removal of any equipment, or any design changes to the facility.

Therefore, the proposed change does not represent a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes revise TS 5.5.8, "Inservice Testing Program," for consistency with the requirements of 10 CFR 50.55a(f)(4) regarding the IST of pumps and valves and eliminates a statement regarding the testing of supports. The proposed change incorporates revisions to the ASME Code that result in a net improvement in the measures for testing pumps and valves and the editorial change eliminates confusion as to the testing program for supports and aligns wording to that of the standard specification.

The proposed changes do not involve a modification to the physical configuration of the plant (*i.e.,* no new equipment will be installed) or change in the methods governing normal plant operation. The proposed changes will not impose any new or different requirements or introduce a new accident initiator, accident precursor, or malfunction mechanism. Additionally, there is no change in the types or increases in the amounts of any effluent that may be released off-site and there is no increase in individual or cumulative occupational exposure.

Therefore, this proposed change does not create the possibility of an accident of a different kind than previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed changes revise TS 5.5.8, "Inservice Testing Program," for consistency with the requirements of 10 CFR 50.55a(f)(4) regarding the inservice testing of pumps and valves and eliminates a statement regarding the testing of supports. The proposed changes incorporate revisions to the ASME Code that result in a net improvement in the measures for testing pumps and valves and the editorial change eliminates confusion as to the testing program for supports and aligns wording to that of the standard specification. The safety functions of the affected pumps and valves will be maintained.

Therefore, this proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Michael G. Green, Senior Regulatory Counsel, Pinnacle West Capital Corporation, P.O. Box 52034, Mail Station 8695, Phoenix, Arizona 85072–2034. *NRC Branch Chief:* Michael T. Markley.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of amendment request: April 29, 2010.

Description of amendment request: The amendments would remove the Main Steam and Main Feedwater Valve Isolation Times from the Technical Specifications (TSs) in accordance with Nuclear Regulatory Commission (NRC)-approved TS Task Force (TSTF) Standard Technical Specification change traveler TSTF–491, Revision 2, "Removal of the Main Steam and Main Feedwater Valve Isolation Times from Technical Specifications." The isolation times would be located outside of the TSs in a document subject to control by the 10 CFR 50.59 process.

The NRC staff issued a Notice of Availability of "Technical Specification Improvement to Remove the Main Steam and Main Feedwater Valve Isolation Time from Technical Specifications Using the Consolidated Line Item Improvement Process," associated with TSTF–491, Revision 2, in the **Federal Register** on December 29, 2006 (71 FR 78472). The notice included a model license amendment request. The notice also announced that the previously published (71 FR 193, October 5, 2006) model safety evaluation and model No Significant Hazards Consideration (NSHC) determination may be referenced in plant-specific applications to adopt the changes. In its application dated April 29, 2010, the licensee affirmed the applicability of the model NSHC determination which is presented below.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of NSHC adopted by the licensee is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change allows relocating main steam and main feedwater valve isolation times to the Licensee Controlled Document that is referenced in the Bases. The proposed change is described in Technical Specification Task Force (TSTF) Standard TS Change Traveler TSTF–491 related to relocating the main steam and main feedwater valves isolation times to the Licensee Controlled Document that is referenced in the Bases and replacing the isolation time with the phase, "within limits."

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed). The proposed changes relocate the main steam and main feedwater isolation valve times to the Licensee Controlled Document that is referenced in the Bases. The requirements to perform the testing of these isolation valves are retained in the TS. Future changes to the Bases or licensee-controlled document will be evaluated pursuant to the requirements of 10 CFR 50.59, "'Changes, test and experiments", to ensure that such changes do not result in more than minimal increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, and configuration of the facility or the manner in which the plant is operated and maintained. The proposed changes do not adversely affect the ability of structures, systems and components (SSCs) to perform their intended safety function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed changes do not affect the source term, containment isolation, or radiological consequences of any accident previously evaluated. Further, the proposed changes do not increase the types and the amounts of radioactive effluent that may be released, nor significantly increase individual or cumulative occupation/public radiation exposures.

Therefore, the changes do not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed changes relocate the main steam and main feedwater valve isolation times to the Licensee Controlled Document that is referenced in the Bases. In addition, the valve isolation times are replaced in the TS with the phase "within limits". The changes do not involve a physical altering of the plant (*i.e.,* no new or different type of equipment will be installed) or a change in methods governing normal [plant] operation. The requirements in the TS continue to require testing of the main steam and main feedwater isolation valves to ensure the proper functioning of these isolation valves.

Therefore, the changes do not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The proposed changes relocate the main steam and main feedwater valve isolation times to the Licensee Controlled Document that is referenced in the Bases. In addition, the valve isolation times are replaced in the TS with the phase "within limits". Instituting the proposed changes will continue to ensure the testing of main steam and main feedwater isolation valves. Changes to the Bases or license controlled document are performed in accordance with 10 CFR 50.59. This approach provides an effective level of regulatory control and ensures that main steam and feedwater isolation valve testing is conducted such that there is no significant reduction in the margin of safety.

The margin of safety provided by the isolation valves is unaffected by the proposed changes since there continue to be TS requirements to ensure the testing of main steam and main feedwater isolation valves. The proposed changes maintain sufficient controls to preserve the current margins of safety.

The NRC staff has reviewed the analysis adopted by the licensee and, based on that review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves NSHC.

Attorney for licensee: Michael G. Green, Senior Regulatory Counsel, Pinnacle West Capital Corporation, P.O. Box 52034, Mail Station 8695, Phoenix, Arizona 85072–2034.

NRC Branch Chief: Michael T. Markley.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: June 17, 2010.

Description of amendment request: The proposed change would revise Technical Specification (TS) 6.5.16, "Containment Leakage Rate Testing Program," to allow for the extension of the 10-year frequency of the Arkansas Nuclear One, Unit 2 (ANO–2) Type A or Integrated Leak Rate Test (ILRT) to be extended to 15 years on a permanent basis.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment involves changes to the ANO–2 Containment Leakage Rate Testing Program. The proposed amendment does not involve a physical change to the plant or a change in the manner in which the plant is operated or controlled. The primary containment function is to provide an essentially leak tight barrier against the uncontrolled release of radioactivity to the environment for postulated accidents. As such, the containment itself and the testing requirements to periodically demonstrate the integrity of the containment exist to ensure the plant's ability to mitigate the consequences of an accident, do not involve any accident precursors or initiators.

Therefore, the probability of occurrence of an accident previously evaluated is not significantly increased by the proposed amendment.

The proposed amendment adopts the NRC-accepted guidelines of [Nuclear Energy Institute (NEI)] 94–01, Revision 2–A ["Industry Guideline for Implementing Performance-Based Option of 10 CFR Part 50, Appendix J," dated October 2008], for development of the ANO–2 performance-based testing program. Implementation of these guidelines continues to provide adequate assurance that during design basis accidents, the primary containment and its components will limit leakage rates to less the values assumed in the plant safety analyses. The potential consequences of extending the ILRT interval to 15 years have been evaluated by analyzing the resulting changes in risk. The increase in risk in terms of person-rem [roentgen equivalent man] per year within 50 miles resulting from design basis accidents was estimated to be acceptably small and determined to be within the guidelines published in [NRC Regulatory Guide] 1.174 ["An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis"]. Additionally, the proposed change maintains defense-in-depth by preserving a reasonable balance among prevention of core damage, prevention of containment failure, and consequence mitigation. ANO–2 has determined that the increase in Conditional Containment Failure Probability due to the proposed change would be very small.

Therefore, it is concluded that the proposed amendment does not significantly increase the consequences of an accident previously evaluated.

Based on the above discussion, it is concluded that the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment adopts the NRC-accepted guidelines of NEI 94–01, Revision 2–A, for the development of the ANO–2 performance-based leakage testing program, and establishes a 15-year interval for the performance of the containment ILRT. The containment and the testing requirements to periodically demonstrate the integrity of the containment exist to ensure the plant's ability to mitigate the consequences of an accident, do not involve any accident precursors or initiators. The proposed change does not involve a physical change to the plant (*i.e.,* no new or different type of equipment will be installed) or a change to the manner in which the plant is operated or controlled.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment adopts the NRC-accepted guidelines of NEI 94–01, Revision 2–A, for the development of the ANO–2 performance-based leakage testing program, and establishes a 15 year interval for the performance of the containment ILRT. This amendment does not alter the manner in which safety limits, limiting safety system setpoints, or limiting conditions for operation are determined. The specific requirements and conditions of the Containment Leakage Rate Testing Program, as defined in the TS, ensure that the degree of primary containment structural integrity and leak-tightness that is considered in the plant's safety analysis is maintained. The overall containment leakage rate limit specified by the TS is maintained, and the Type A, Type B, and Type C containment leakage tests will be performed at the frequencies established in accordance with the NRC-accepted guidelines of NEI 94–01, Revision 2–A.

Containment inspections performed in accordance with other plant programs serve to provide a high degree of assurance that the containment will not degrade in a manner that is not detectable by an ILRT. A risk assessment using the current ANO–2 PSA [Probabilistic Safety Assessment] model concluded that extending the ILRT test interval from ten years to 15 years results in a very small change to the ANO–2 risk profile.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Joseph A. Aluise, Associate General Counsel—Nuclear, Entergy Services, Inc., 639 Loyola Avenue, New Orleans, Louisiana 70113.

NRC Branch Chief: Michael T. Markley.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment request: June 14, 2010.

Description of amendment request: The proposed amendments would allow a revision of the licensing basis, as described in the Final Safety Analysis Report Update (FSARU), to include damping values for the seismic design and analysis of the integrated head assembly (IHA) that are consistent with the recommendations of Regulatory Guide (RG) 1.61, "Damping Values for Seismic Design of Nuclear Power Plants," Revision 1. In addition, the RG 1.61, Revision 1, Table 1 note allowing the use of a "weighted average" for design-basis safe-shutdown earthquake (SSE) damping values applicable to steel structures of different connection types will also be applied to determine the IHA design-basis operating-basis earthquake (OBE) damping values.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change would allow use of critical damping values consistent with the recommendations of RG 1.61, "Damping Values for Seismic Design of Nuclear Power Plants," Revision 1, dated March 2007, for the seismic design and analysis of the IHA. The RG 1.61, Revision 1, Table 1 note allowing use of a "weighted average" for design-basis SSE damping values applicable to steel structures of different connection types, is also applied to determine the IHA design-basis OBE damping values. RG 1.61, Revision 1, Table 2 for OBE damping values does not contain the same note as found in Table 1. However use of the note for the determination of the DE [design earthquake] damping value is consistent with the use of the note for the determination of the DDE [double design earthquake] and HE [Hosgri earthquake] damping values, and a weighted average more realistically represents the IHA structure.

RG 1.61, Revision 1, specifies the damping values that the NRC staff currently considers acceptable for complying with the agency's regulations and guidance for seismic analysis. Revision 1 incorporates the latest data and information, and reduces unnecessary conservatism in specification of damping values for seismic design and analysis of SSCs [structures, systems, and components].

The proposed change does not change the design functions of the IHA or its response to design-basis events, nor does it affect the capability of related SSCs to perform their design or safety functions. The use of the proposed damping values in the seismic design and analysis of the IHA is related to the ability of the IHA to function in response to design-basis seismic events, and is unrelated to the probability of occurrence of those events, or other previously evaluated accidents. Therefore the proposed change will not have any impact on the probability of an accident previously evaluated.

The proposed damping values are an element of the seismic analyses performed to confirm the ability of the IHA to function under postulated seismic events while maintaining resulting stresses within ASME [American Society of Mechanical Engineers Boiler and Pressure Vessel Code] Section III allowable values. Therefore, the use of damping values consistent with the recommendations of RG 1.61, Revision 1 does not result in an increase in the consequences of accidents previously evaluated.

Therefore, the proposed change does not involve a significant increase in the

probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve changes to any plant SSCs, nor does it involve changes to any plant operating practice or procedure. The damping values are an element of the seismic analyses performed to confirm the ability of the IHA to function under postulated seismic events while maintaining resulting stresses within ASME Section III allowable values. Therefore, no credible new failure mechanisms, malfunctions, or accident initiators not considered in the design and licensing bases are created that would create the possibility of a new or different kind of accident.

Therefore the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The design basis of the plant requires structures to be capable of withstanding normal and accident loads including those from a design basis earthquake. The proposed change would allow the use of damping values in the IHA seismic analyses that are in general more realistic and, thus, more accurate than the damping values recommended in RG 1.61, Revision 0, used in the analysis for the HE, or the plant specific damping values used in the original analysis for the DE and DDE. The NRC stated, in NUREG–0675, "Safety Evaluation Report Related to the Operation of Diablo Canyon Nuclear Power Plant, Units 1 and 2," Supplement No. 7, that allowing use of the higher damping values in RG 1.61, Revision 0 for the HE re-evaluation, versus the lower values used in the original analysis, is realistic and should not be regarded as an arbitrary lowering of the margins of safety. The damping values in RG 1.61, Revision 0, were based on limited data, expert opinion, and other information available in 1973. NRC and industry research since 1973 show that the damping values provided in the original version of RG 1.61 may not reflect realistic damping values for SSCs. RG 1.61, Revision 1, therefore, provides damping values based on the updated research results that predict and estimate damping values for seismic design of SSCs in nuclear power plants, and similarly should not be regarded as an arbitrary lowering of the margins of safety.

As discussed above, damping values are an element of the seismic analyses performed to confirm the ability of the IHA to function during design-basis seismic events while maintaining resulting stresses within ASME Section III allowable values. The proposed change [to] allow use of damping values consistent with the recommendations of RG 1.61, Revision 1, versus the damping values in the current licensing basis could result in lower calculated stresses. The analysis done for the IHA using the proposed damping values showed the ASME Section III allowable values are met. Sufficient safety margins are maintained when Codes and standards or alternatives approved for use by the NRC are met.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Jennifer Post, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Branch Chief: Michael T. Markley.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of amendment request: May 28, 2010.

Description of amendment request: To revise Technical Specification (TS) 4.2.2 "Control Rod Assemblies." The proposed change would include silver-indium-cadmium material in addition to the boron carbide control rod material.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Watts Bar Unit 1 Technical Specification 4.2.2, Control Rod Assemblies, is revised to include [silver-indium-cadmium] Ag-In-Cd material in addition to the [boron carbide] B4C control rod material. In addition to the absorber material change, the replacement [enhanced performance] EP Ag-In-Cd [rod cluster control assemblies] RCCAs will be coupled with Control Rod Drive Mechanism (CRDM) drive rod shafts which are lighter than the CRDM drive rod shaft coupled to the B4C drive rod shafts. Also, the EP Ag-In-Cd RCCAs are heavier than the B4C RCCAs and have a different reactivity, or rod worth.

There are a number of events that are related to inadvertent movement of the RCCAs; however, they are not initiated by the RCCAs. They are initiated by the failure of plant structures, systems, or components (SSC) other than the RCCAs. The proposed changes to the RCCA design do not have a detrimental impact on the integrity of any plant SSC that initiates an analyzed event. In addition, the EP Ag-In-Cd RCCAs have the capability to mitigate events, because:

(a) The Ag-In-Cd RCCA/standard drive line weight continues to meet the rod drop time of 2.7 seconds limit listed in Technical Specification 3.1.5 (Rod Group Alignment Limits); and

(b) The reactivity difference was addressed for the impact on core neutronics and safety analyses. It was determined that the reactivity change can be accommodated within the bounds of the current safety analysis limits using approved NRC methodology. Future core designs will use an NRC approved methodology as the means to demonstrate the continued safe operation of the plant with the EP Ag-In-Cd RCCAs.

The change does not adversely affect the protective and mitigative capabilities of the plant, nor does the change affect the initiation or probability of occurrence of any accident. The SSCs will continue to perform their intented safety functions. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Watts Bar Unit 1 Technical Specification 4.2.2, Control Rod Assemblies, is revised to include Ag-In-Cd material in addition to the B4C control rod material. In addition to the absorber material change, the replacement EP Ag-In-Cd RCCAs will be coupled with Control Rod Drive Mechanism (CRDM) drive rod shafts which are lighter than the CRDM drive rod shaft coupled to the B4C drive rod shafts. Also, the EP Ag-In-Cd RCCAs are heavier than the B4C RCCAs and have a different reactivity, or rod worth.

The EP Ag-In-Cd RCCAs are identical to the current RCCAs in terms of form, fit, and function. The proposed changes will not introduce any new failure mechanisms, malfunctions, or accident initiators not already considered in the design and licensing basis. The possibility of a new or different malfunction of safety-related equipment is not created. No new accident scenarios, transient precursors, or limiting single failures are introduced as a result of these changes. There will be no adverse effects or challenges imposed on any safety-related system as a result of these changes. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

Watts Bar Unit 1 Technical Specification 4.2.2, Control. Rod Assemblies, is revised to include Ag-In-Cd material in addition to the B4C control rod material. In addition to the absorber material change, the replacement EP Ag-In-Cd RCCAs will be coupled with Control Rod Drive Mechanism (CRDM) drive rod shafts which are lighter than the CRDM drive rod shaft coupled to the B4C drive rod shafts. Also, the EP Ag-In-Cd RCCAs are heavier than the B4C RCCAs and have a different reactivity, or rod worth. The changes in weight and reactivity of the CRDM/RCCA on the design criteria and safety analysis have been addressed.

The proposed changes regarding the Ag-In-Cd RCCAs do not involve a significant reduction in a margin of safety, because:

(a) The Ag-In-Cd RCCA/standard drive line weight continues to meet the rod drop time

of 2.7 seconds limit listed in Technical Specification 3.1.5 (Rod Group Alignment Limits); and

(b) The reactivity difference was addressed for the impact on core neutronics and safety analyses. It was determined that the reactivity change can be accommodated within the bounds of the current safety analysis limits using approved NRC methodology. Future core designs will use an NRC approved methodology as the means to demonstrate the continued safe operation of the plant with the EP Ag-In-Cd RCCAs. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Branch Chief: Stephen J. Campbell.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr.resource@nrc.gov.*

FirstEnergy Nuclear Operating Company, et al., Docket No. 50–334 Beaver Valley Power Station, Unit No. 1 (BVPS–1), Beaver County, Pennsylvania

Date of application for amendment: July 6, 2009, as supplemented on March 10, 2010.

Brief description of amendment: The amendment revises Technical Specification (TS) 5.6.3, "Core Operating Limits Report," to allow the use of the generically approved Topical Report, WCAP–16009–P–A, "Realistic Large Break LOCA [Loss-of-Coolant Accident] Evaluation Methodology Using Automated Statistical Treatment of Uncertainty Method," for BVPS–1.

Date of issuance: July 1, 2010.

Effective date: As of the date of issuance, and shall be implemented prior to startup following the fall 2010 maintenance and refueling outage.

Amendment No: 286.

Facility Operating License No. DPR–66: The amendment revised the License and TS.

Date of initial notice in **Federal Register**: December 1, 2009 (74 FR 62835). The March 8, 2010, supplement provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 1, 2010.

No significant hazards consideration comments received: No.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–220, Nine Mile Point Nuclear Station, Unit No. 1 (NMP1), Oswego County, New York

Date of application for amendment: July 2, 2009.

Brief description of amendment: The amendment revises the TSs by removing position indication for the relief valves and safety valves from TS 3.6.11, "Accident Monitoring Instrumentation." The amendment would also correct an editorial error in the title of Table 4.6.11, "Accident Monitoring Instrumentation Surveillance Requirement."

Date of issuance: June 29, 2010.

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment No.: 205.

Renewed Facility Operating License No. DPR–63: The amendment revises the License and TSs.

Date of initial notice in ***Federal Register***: October 14, 2009 (74 FR 52826).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 29, 2010.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant (WBN), Unit 1, Rhea County, Tennessee

Date of application for amendment: November 30, 2009.

Brief description of amendment: The amendment revises the emergency diesel generator (DG) Completion Time for inoperable DGs in Technical Specification (TS) 3.8.1, "AC Sources Operating." The amendment revises the Completion Time from 14 days to 72 hours for restoring one or more inoperable DG(s) in one train to an operable status. The amendment was requested because of the potential completion and startup of the WBN Unit 2.

Date of issuance: July 6, 2010.

Effective date: As of the date of issuance and shall be implemented after the issuance of the facility operating license for WBN Unit 2 and prior to WBN Unit 2 entry into Mode 4, "Hot Shutdown."

Amendment No.: 84.

Facility Operating License No. NPF–90: Amendment revised the License and TSs.

Date of initial notice in ***Federal Register***: March 9, 2010 (75 FR 10830).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 6, 2010.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 15th day of July 2010.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–18078 Filed 7–26–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0002]

Sunshine Act; Notice of Meeting

DATE: Weeks of July 26, August 2, 9, 16, 23, 30, 2010.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of July 26, 2010

There are no meetings scheduled for the week of July 26, 2010.

Week of August 2, 2010—Tentative

There are no meetings scheduled for the week of August 2, 2010.

Week of August 9, 2010—Tentative

Thursday, August 12, 2010

9:30 a.m. Meeting with Organization of Agreement States (OAS) and Conference of Radiation Control Program Directors (CRCPD) (Public Meeting) (*Contact:* Cindy Flannery, 301 415–0223).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of August 16, 2010—Tentative

There are no meetings scheduled for the week of August 16, 2010.

Week of August 23, 2010—Tentative

There are no meetings scheduled for the week of August 23, 2010.

Week of August 30, 2010—Tentative

There are no meetings scheduled for the week of August 30, 2010.

* * * * *

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

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Additional Information

Affirmation of David Geisen, NRC Staff Petition for Review of LBP–09–24 (Aug. 28, 2009) previously scheduled on Friday, July 16, 2010, was postponed.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Angela Bolduc, Chief, Employee/Labor Relations and Work Life Branch, at 301–492–2230, TDD: 301–415–2100, or by e-mail at *angela.bolduc@nrc.gov. mailto:dlc@nrc.gov. mailto:aks@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an e-mail to *darlene.wright@nrc.gov.*

Dated: July 22, 2010.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2010–18482 Filed 7–23–10; 4:15 pm]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Submission of Information Collection for OMB Review; Comment Request; Payment of Premiums

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval of revised collection of information.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) is modifying the collection of information under Part 4007 of its regulation on Payment of Premiums (OMB control number 1212–0007; expires February 28, 2011) and is requesting that the Office of Management and Budget (OMB) extend approval of the collection of information under the Paperwork Reduction Act for three years. This notice informs the public of PBGC's request and solicits public comment on the collection of information.

DATES: Comments must be submitted by August 26, 2010.

ADDRESSES: Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, via electronic mail at *OIRA_DOCKET@omb.eop.gov* or by fax to (202) 395–6974.

Copies of the collection of information and PBGC's request may be obtained without charge by writing to the Disclosure Division, Office of General Counsel, 1200 K Street, NW., Washington, DC 20005–4026, or by visiting the Disclosure Division or calling 202–326–4040 during normal business hours. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.) The premium payment regulation and the premium instructions (including illustrative forms) for 2010 and prior years can be accessed on PBGC's Web site at *http://www.pbgc.gov.*

FOR FURTHER INFORMATION CONTACT: James Bloch, Program Analyst, Legislative and Policy Division, or Catherine B. Klion, Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026; 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: Section 4007 of Title IV of the Employee Retirement Income Security Act of 1974 (ERISA) requires pension plans covered under Title IV pension insurance programs to pay premiums to PBGC. Pursuant to section 4007, PBGC has issued its regulation on Payment of Premiums (29 CFR Part 4007). Under § 4007.3 of the premium payment regulation, plan administrators are required to file premium payments and information prescribed by PBGC. Premium information must be filed electronically using "My Plan Administration Account" ("My PAA") through PBGC's Web site except to the extent PBGC grants an exemption for good cause in appropriate circumstances, in which case the information must be filed using an approved PBGC form. The plan administrator of each pension plan covered by Title IV of ERISA is required to submit one or more premium filings for each premium payment year. Under § 4007.10 of the premium payment regulation, plan administrators are required to retain records about premiums and information submitted in premium filings.

PBGC needs information from premium filings to identify the plans for which premiums are paid, to verify whether the amounts paid are correct, to help PBGC determine the magnitude of its exposure in the event of plan termination, to help track the creation of new plans and transfer of participants and plan assets and liabilities among plans, and to keep PBGC's insured-plan inventory up to date. That information and the retained records are also needed for audit purposes.

All plans covered by Title IV of ERISA pay a flat-rate per-participant premium. An underfunded single-employer plan also pays a variable-rate premium based on the value of the plan's unfunded vested benefits.

Large-plan filers (*i.e.,* plans that were required to pay premiums for 500 or more participants for the prior plan year) are required to pay PBGC's flat-rate premium early in the premium payment year. Because the participant count often is not available until late in the premium payment year, PBGC permits filers to make an "Estimated flat-rate premium filing."

All plans are required to make a "Comprehensive premium filing." Comprehensive filings are used to report (i) the flat-rate premium and related data (all plans), (ii) the variable-rate premium and related data (single-employer plans), and (iii) additional data such as identifying information and miscellaneous plan-related or filing-related data (all plans). For large plans, the Comprehensive filing also serves to reconcile an estimated flat-rate premium paid earlier in the year.

PBGC intends to revise the 2011 filing instructions to:

- Remove references to a transition rule in section 430 of the Internal Revenue Code that no longer applies.
- Remove instructions about the credit card payment option for premium payments, which is being eliminated because of low usage.
- Clarify that if a plan has been frozen more than once, a filer should report the most recent date that the plan became closed to new entrants. These instructions parallel the benefit-accrual-freeze instructions.
- Make minor editorial changes.

PBGC intends to revise the 2012 filing instructions to require plans using the alternative premium funding target to report the "effective interest rate" (defined in section 430(h) of the Internal Revenue Code). PBGC will use this information to update its annual contingency list and financial statements more timely and accurately. PBGC is not making this change until 2012 to provide time to modify its premium accounting system to handle the new data element.

The collection of information under the regulation has been approved through February 28, 2011, by OMB under control number 1212–0007. PBGC is requesting that OMB extend approval of the collection of information, with modifications, for another three years. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

PBGC estimates that it will receive 34,300 premium filings per year from 28,500 plan administrators under this collection of information. PBGC further estimates that the average annual burden of this collection of information is 9,000 hours and $59,960,000.

Issued in Washington, DC, July 21, 2010.

John H. Hanley,

Director, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation.

[FR Doc. 2010–18302 Filed 7–26–10; 8:45 am]

BILLING CODE 7709–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2010–28 and CP2010–71; Order No. 492]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service filing to add Global Expedited Package Services 3 to the competitive product list. The Postal Service has also filed a related contract. This notice addresses procedural steps associated with the filing.

DATES: Comments are due: July 27, 2010.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, *stephen.sharfman@prc.gov* or 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Notice of Filing
III. Ordering Paragraphs

I. Introduction

On July 14, 2010, the Postal Service filed a notice announcing that it has entered into an additional Global Expedited Package Services (GEPS) contract and seeks to add it as Global Expedited Package Services 3 to the competitive product list.[1] The Postal Service believes the instant contract is functionally equivalent to previously submitted GEPS 2 contracts, and is supported by Governors' Decision No. 08–7, attached to the Notice and originally filed in Docket No. CP2008–4. *Id.* at 1, Attachment 4. 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 Postal Service seeks to add the GEPS 3 product to the competitive product list. *Id.* at 2. Although the filing is styled as a "request," it does not appear to have been submitted pursuant to 39 CFR 3020.30 *et seq.* Docket No. MC2010–28 is established to consider this aspect of the Postal Service's filing. Docket No. CP2010–71 is established to consider the instant contract.

The instant contract. The Postal Service filed the instant contract pursuant to 39 CFR 3015.5. In addition, the Postal Service contends that the contract is in accordance with Order No. 86. The term of the contract is 1 year from the date the Postal Service notifies the customer that all necessary regulatory approvals have been received. The Postal Service relates that the instant contract is for the same mailer as in Docket No. CP2009–50. It states the mailer's current contract ends July 31, 2010, and it expects the new contract to begin August 1, 2010.

In support of its Notice, the Postal Service filed five attachments as follows:

1. Attachment 1–statement of supporting justification required by 39 CFR 3020.32;

[1] Notice and Request of the United States Postal Service to Add Global Expedited Package Services 3 to the competitive products list and Notice of Filing of Functionally Equivalent Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, July 14, 2010 (Notice); see also Notice of Errata Concerning Electronic Filing, July 15, 2010.

[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).

2. Attachment 2–a redacted copy of the contract a certified statement required by 39 CFR 3015.5(c)(2);

3. Attachment 3–a certified statement required by 39 CFR 3015.5(c)(2);

4. Attachment 4–a redacted copy of Governors' Decision No. 08–07, which establishes prices and classifications for GEPS contracts, a description of applicable GEPS contracts, formulas for prices, an analysis and certification of the Governors' vote; and

5. Attachment 5–an application for non-public treatment of materials to maintain redacted portions of the contract and supporting documents under seal.

Functional equivalence. The Notice advances reasons why the instant GEPS 3 contract fits within the Mail Classification Schedule language for GEPS contracts. The Postal Service contends that instant contract is functionally equivalent to previous GEPS 2 contracts and should be added to the competitive product list as GEPS 3 to replace GEPS 2 contracts as they expire. *Id.* at 4. It asserts that the instant contract shares the same cost and market characteristics as the previously filed GEPS 2 contracts and the same customers, small or medium-sized businesses, that mail products directly to foreign destinations using Express Mail International, Priority Mail International, or both. *Id.*

The Postal Service identifies customer-specific information, general contract terms and other differences that distinguish the instant contract from the baseline GEPS 2 agreement, all of which are highlighted in the Notice. *Id.* at 5–8.

The Postal Service contends that in spite of these differences the instant contract is functionally equivalent to previously filed GEPS contracts and fits within the requirements of the Governors Decision for GEPS agreements. *Id.* at 5. *See also id.* ("[T]he relevant characteristics are similar, if not the same, for this GEPS 3 contract and the previously filed contracts.").

The Postal Service also contends that its filings demonstrate that the new GEPS 3 contract complies with the requirements of 39 U.S.C. 3633, is functionally equivalent to other GEPS contracts and should be considered the baseline for future GEPS agreements. It requests approval for the contract to be included within the GEPS 3 product. *Id.* at 8.

Baseline treatment. The Postal Service states that the instant contract takes the place of its immediate predecessor which served as the baseline contract for the GEPS 2 product. It requests that the instant contract be considered the new 'baseline' agreement for consideration of future GEPS 3 agreements' functional equivalency." *Id.* at 8.

II. Notice of Filing

The Commission establishes Docket Nos. MC2010–28 and CP2010–71 for consideration of matters raised in the Postal Service's Notice.

Interested persons may submit comments on whether the Postal Service's contract is consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR 3020 subpart B. Comments are due no later than July 27, 2010. The public portions of these filings can be accessed via the Commission's Website (*http://www.prc.gov*).

The Commission appoints Paul L. Harrington to serve as Public Representative in the captioned filings.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2010–28 and CP2010–71 for consideration of matters raised by the Postal Service's Notice.

2. Comments by interested persons in these proceedings are due no later than July 27, 2010.

3. Pursuant to 39 U.S.C. 505, Paul L. Harrington is appointed to serve as the officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2010–18314 Filed 7–26–10; 8:45 am]

BILLING CODE 7710–FW–S

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review, Request for Comments

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) is forwarding an Information Collection Request (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB) to request an extension of an existing collection of information: 3220–0025, RUIA Investigations and Continuing Entitlement, consisting of RRB Form(s) UI–9, Applicant's Statement of Employment and Wages, UI–23, Claimant's Statement of Service, UI–44, Claim for Credit for Military Service, ID–4F, Advising of Ineligibility for RUIA Benefits, ID–4U, Advising of Service/Earnings Requirements for RUIA Benefits, ID–4Y, Advising of Ineligibility for Sickness Benefits, ID–4X, Advising of Service/Earnings Requirements for Sickness Benefits, ID–20–1, Advising that Normal Unemployment Benefits Are About to Be Exhausted, ID–20–2, Advising that Normal Sickness Benefits Are About to Be Exhausted, ID–20–4, Advising That Normal Sickness Benefits Are About to Be Exhausted/Non-Entitlement, ID–5I, Letter to Non-Railroad Employers on Employment and Earnings of a Claimant, ID–5R (SUP), Report of Employees Paid RUIA Benefits for Every Day in Month Reported as Month of Creditable Service, ID–49R, Letter to Railroad Employers for Payroll Information, and UI–48, Claimant's Statement Regarding Benefit Claim for Days of Employment. Our ICR describes the information we seek to collect from the public. Review and approval by OIRA ensures that we impose appropriate paperwork burdens.

Completion of Forms ID–5I, ID–5R(SUP), ID–49R and UI–48 is voluntary. Completion of Forms UI–9, UI–23, UI–44, ID–4F, ID–4U, ID–4K, ID–4Y, ID–20–1, ID–20–2, and ID–204 is required to obtain or retain benefits. One response is required of each respondent.

The RRB invites comments on the proposed collection of information to determine (1) the practical utility of the collection; (2) the accuracy of the estimated burden of the collection; (3) ways to enhance the quality, utility and clarity of the information that is the subject of collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. Comments to RRB or OIRA must contain the OMB control number of the ICR. For proper consideration of your comments, it is best if RRB and OIRA receive them within 30 days of publication date.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (75 FR 16874 on April 2, 2010) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: RUIA Investigations and Continuing Entitlement.

OMB Control Number: 3220–0025.

Form(s) submitted: UI–9, UI–23, UI–44, ID–4F, ID–4U, ID–4X, ID–4Y, ID–20–1, ID–20–2, ID–20–4, ID–5I, ID–5R(SUP), ID–49R, UI–48.

Type of request: Extension of a currently approved collection.

Affected public: Individuals or households, Business or other for-profit, Non-profit institutions, State, Local or Tribal Government.

Abstract: The information collection has two purposes. When RRB records that railroad service and/or compensation is insufficient to qualify a claimant for unemployment or sickness benefits, the RRB obtains information needed to reconcile the compensation and/or service on record with that claimed by the employee. Other forms in the collection allow the RRB to determine whether unemployment or sickness benefits were properly obtained.

Changes Proposed: The RRB proposes no changes to any of the forms in the collection.

The proposed burden estimate for this ICR is as follows:

Estimated annual number of respondents: 10,700.

Total annual responses: 10,700.

Total annual reporting hours: 2,512.

FOR FURTHER INFORMATION CONTACT: Copies of the form and supporting documents can be obtained from Charles Mierzwa, the agency clearance officer at (312–751–3363) or *Charles.Mierzwa@RRB.gov.*

Comments regarding the information collection should be addressed to Patricia A. Henaghan, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or e-mailed to *Patricia.Henaghan@RRB.GOV* and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Charles Mierzwa,

Clearance Officer.

[FR Doc. 2010–18271 Filed 7–26–10; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–29366; 812–13796]

Goldman, Sachs & Co., et al.; Notice of Application and Temporary Order

July 21, 2010.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 ("Act").

SUMMARY OF APPLICATION: Applicants have received a temporary order exempting them from section 9(a) of the Act, with respect to an injunction entered against Goldman, Sachs & Co. ("Goldman Sachs") on July 20, 2010 by the United States District Court for the Southern District of New York (the "Injunction"), until the Commission takes final action on an application for a permanent order. Applicants also have applied for a permanent order.

APPLICANTS: Goldman Sachs, Goldman Sachs Asset Management, L.P. ("GSAM, L.P."), Goldman Sachs Asset Management International ("GSAMI"), Goldman Sachs Hedge Fund Strategies LLC ("GSHFS"), Commonwealth Annuity and Life Insurance Company ("Commonwealth"), First Allmerica Financial Life Insurance Company ("FAFLIC") and Epoch Securities, Inc. ("Epoch," together, the "Applicants").[1]

FILING DATES: The application was filed on July 16, 2010, and amended on July 21, 2010.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 16, 2010, and should be accompanied by proof of service on Applicants, 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 Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities & Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants: Goldman Sachs, GSAM, L.P. and GSHFS, 200 West Street, New York, NY 10282; GSAMI, Christchurch Court, 10–15 Newgate Street, London, England EC1A7HD; and Commonwealth, FAFLIC and Epoch, 132 Turnpike Road, Southborough, MA 01772.

FOR FURTHER INFORMATION CONTACT: Jaea F. Hahn, Senior Counsel, at (202) 551–6870 or Janet M. Grossnickle, Assistant Director, at 202–551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a temporary order and a summary of the application. The complete 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.

Applicants' Representations

1. Goldman Sachs, a New York limited partnership, is a global investment banking and securities firm. Goldman Sachs is registered as an investment adviser with the Commission pursuant to section 203 of the Investment Advisers Act of 1940 ("Advisers Act"). Goldman Sachs is also registered as a broker-dealer under the Securities Exchange Act of 1934 (the "Exchange Act") and acts as a principal underwriter of certain registered investment companies. GSAM, L.P., GSAMI and GSHFS are each registered under the Advisers Act as investment advisors and provide investment advisory or subadvisory services to Funds.[2] Commonwealth and FAFLIC are insurance companies domiciled in Massachusetts and each acts as depositor for certain separate accounts that are registered as UITs under the Act. Epoch is a registered broker-dealer that acts as principal underwriter for the UITs of Commonwealth and FAFLIC. Each of Goldman Sachs, GSAM, L.P., GSAMI and GSHFS provide investment advisory services to ESCs, as defined in section 2(a)(13) of the Act, which provide investment opportunities for partners of Goldman Sachs (prior to its initial public offering) and certain employees and consultants of Goldman Sachs and its affiliates. GSHFS does not currently provide investment advisory services to registered investment companies.

2. On July 20, 2010, the United States District Court for the Southern District of New York entered a final judgment, which included the Injunction against Goldman Sachs in a matter brought by the Commission ("Final Judgment").[3] The Commission alleged in the complaint ("Complaint") that offering materials related to a transaction in

[1] Applicants request that any relief granted pursuant to the application also apply to any existing company of which Goldman Sachs is an affiliated person and to any other company of which Goldman Sachs may become an affiliated person in the future (together with Applicants, "Covered Persons").

[2] "Funds" refer to any registered investment company or employees' securities company ("ESC") for which a Covered Person serves as an investment adviser, subadviser or depositor, or any registered open-end investment company, registered unit investment trust ("UIT") or registered face amount certificate company for which a Covered Person serves as principal underwriter (such activities, collectively, "Fund Servicing Activities").

[3] *Securities and Exchange Commission* v. *Goldman, Sachs & Co. and Fabrice Tourre,* 10–CV–03229 (S.D.N.Y. July 20, 2010).

which Goldman Sachs or its affiliates sold synthetic collateralized debt obligations, which referenced a portfolio of synthetic mortgage-backed securities, to two institutional investors in early 2007 ("Transaction"), should have disclosed that the hedge fund assuming the short side of the Transaction had played a role in the selection process. As part of an agreement to settle the action, Goldman Sachs entered into a consent in which it acknowledged that it was a mistake not to disclose the role of the hedge fund in the Transaction and consented to the entry of the Final Judgment, including the Injunction. The Final Judgment will also decree that Goldman Sachs is liable for disgorgement of $15 million and a civil penalty of $535 million.[4]

Applicants' Legal Analysis

1. Section 9(a)(2) of the Act, in relevant part, prohibits a person who has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security from acting, among other things, as an investment adviser or depositor of any registered investment company or a principal underwriter for any registered open-end investment company, registered UITs or registered face-amount certificate company. Section 9(a)(3) of the Act makes the prohibition in section 9(a)(2) applicable to a company any affiliated person of which has been disqualified under the provisions of section 9(a)(2). Section 2(a)(3) of the Act defines "affiliated person" to include any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that Goldman Sachs is an affiliated person of each of the other Applicants within the meaning of section 2(a)(3) of the Act because they are under common control. Applicants state that entry of the Final Judgment would result in the disqualification of Goldman Sachs under section 9(a)(2) and the other Applicants under section 9(a)(3) of the Act.

2. Section 9(c) of the Act provides that the Commission shall grant an application for exemption from the disqualification provisions of section 9(a) if it is established that these provisions, as applied to Applicants, are unduly or disproportionately severe or that Applicants' conduct has been such as not to make it against the public interest or the protection of investors to grant the application. Applicants have filed an application pursuant to section 9(c) seeking a temporary and permanent order exempting them from the disqualification provisions of section 9(a) of the Act.

3. Applicants believe they meet the standards for exemption specified in section 9(c). Applicants state that the prohibitions of section 9(a) as applied to them would be unduly and disproportionately severe and that the conduct of Applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption from section 9(a).

4. Applicants state that the violations alleged in the Complaint did not involve Fund Servicing Activities or the current or former Goldman Sachs employees who are or were involved in Fund Servicing Activities. Applicants also state that no current or former director, officer, or employee of Goldman Sachs or the other Applicants—who is involved in providing Fund Servicing Activities to Funds—had any knowledge of, or was involved in, the conduct that forms the basis of the Complaint. Applicants further state that the individual defendant named in the Complaint and the other personnel at Goldman Sachs who were involved in the violations alleged in the Complaint have had no and will not have any future involvement in providing Fund Servicing Activities to Funds. Applicants represent that the alleged conduct giving rise to the Final Judgment did not involve any Fund or the assets of any Fund for which an Applicant provided Fund Servicing Activities.

5. Applicants state that the inability of the Applicants to engage in Fund Servicing Activities would result in potentially severe hardships for the Funds (including the UITs) and their shareholders or contract holders. Applicants state that they will distribute, as soon as reasonably practicable, written materials, including an offer to meet in person to discuss the materials, to the boards of directors or trustees of the Funds (excluding for this purpose, the ESCs) (the "Boards"), including the directors who are not "interested persons," as defined in section 2(a)(19) of the Act, of such Funds and their independent legal counsel, as defined in rule 0–1(a)(6) under the Act, if any, regarding the Injunction, any impact on the Funds, and the application. Applicants have provided and will continue to provide the Funds with all information concerning the Final Judgment and the application that is necessary for the Funds to fulfill their disclosure and other obligations under the Federal securities laws.

6. Applicants also assert that, if they were barred from providing Fund Servicing Activities to the Funds and ESCs, the effect on their businesses and employees would be severe. Applicants state that they have committed substantial resources to establish an expertise in Fund Servicing Activities. Applicants further state that prohibiting them from Fund Servicing Activities would not only adversely affect their businesses, but would also adversely affect over 600 employees at GSAM, L.P. alone that are involved in those activities. Applicants also state that disqualifying Goldman Sachs, GSAM, L.P., GSAMI and GSHFS from continuing to provide investment advisory services to ESCs is not in the public interest or in furtherance of the protection of investors. Applicants assert that it would not be consistent with the purposes of the ESC provisions of the Act or the representations made in the application for the ESC order to require another entity not affiliated with Goldman Sachs to manage the ESCs. In addition, participants in the ESCs have subscribed for interests in the ESCs with the expectation that the ESCs would be managed by Goldman Sachs or one of its affiliates.

7. Applicants state that Goldman Sachs has previously sought and received exemptions under section 9(c) of the Act on four occasions, as described in the application.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, the Covered Persons, including without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

[4] The Final Judgment will also require Goldman Sachs to comply with certain undertakings relating to (i) the vetting and approval process for offerings of residential mortgage-related securities products by its firmwide Capital Committee, (ii) review of marketing materials used in connection with residential mortgage-related securities offerings by Goldman Sachs' Legal Department and Compliance Department, (iii) annual internal audits of the review of such marketing materials, (iv) where Goldman Sachs is the lead underwriter of an offering of residential mortgage-related securities and retains outside counsel to advise on the offering, review of the related offering materials by outside counsel and (v) education and training of persons involved in the structuring or marketing of residential mortgage-related securities offerings.

Temporary Order

The Commission has considered the matter and finds that Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly,

It is hereby ordered, pursuant to section 9(c) of the Act, that Covered Persons are granted a temporary exemption from the provisions of section 9(a), effective as of the date of the Injunction, solely with respect to the Injunction, subject to the condition in the application, until the date the Commission takes final action on an application for a permanent order.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–18313 Filed 7–26–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

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 Closed Meetings on Wednesday, July 28, 2010 at 2:30 p.m. and on Thursday, July 29, 2010 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meetings. 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 Casey, as duty officer, voted to consider the items listed for the Closed Meetings in closed session, and determined that no earlier notice thereof was possible.

The subject matter of the Closed Meeting scheduled for Wednesday, July 28, 2010 will be:

Institution and settlement of an injunctive action; and

Institution and settlement of administrative proceedings.

The subject matter of the Closed Meeting scheduled for Thursday, July 29, 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: July 22, 2010.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–18451 Filed 7–23–10; 11:15 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62539; File No. SR–FINRA–2010–029]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving the Proposed Rule Change To Adopt FINRA Rule 5141 (Sale of Securities in a Fixed Price Offering) in the Consolidated FINRA Rulebook

July 21, 2010.

I. Introduction

On May 27, 2010, the Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposal to adopt FINRA Rule 5141 (Sale of Securities in a Fixed Price Offering) in the consolidated FINRA rulebook and to delete NASD Rules 0120(h), 2730, 2740 and 2750, and NASD IM–2730, IM–2740 and IM–2750. This proposal was published for comment in the **Federal Register** on June 21, 2010.[3] The Commission received no comments regarding the proposal. This order approves this proposed rule change.

II. Description of the Proposed Rule Change

As part of the process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook"),[4] FINRA proposed to adopt FINRA Rule 5141 (Sale of Securities in a Fixed Price Offering) in the Consolidated FINRA Rulebook and to delete NASD Rules 0120(h), 2730, 2740 and 2750, and NASD IM–2730, IM–2740 and IM–2750.

Proposed FINRA Rule 5141 would be a new, consolidated rule intended to protect the integrity of fixed price offerings [5] by ensuring that securities in such offerings are sold to the public at the stated public offering price or prices, thereby preventing an undisclosed better price. The proposed rule is based in part on, and would replace, the current fixed price offering rules (NASD Rules 0120(h), 2730, 2740 and 2750 and associated Interpretive Materials ("IMs") 2730, 2740 and 2750).[6] Like the current fixed price offering rules, the proposed rule would prohibit the grant of certain preferences (*e.g.,* selling concessions, discounts, other allowances or various economic equivalents) in connection with fixed price offerings of securities.

A. Proposed FINRA Rule 5141

Paragraph (a) of the proposed rule would provide that no member or person associated with a member that participates in a selling syndicate or

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 62299 (June 16, 2010), 75 FR 35105 (June 21, 2010) (SR–FINRA–2010–029) ("Notice").

[4] The current FINRA rulebook consists of: (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE ("Incorporated NYSE Rules") (together, the NASD Rules and Incorporated NYSE Rules are referred to as the "Transitional Rulebook"). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see Information Notice,* March 12, 2008 (Rulebook Consolidation Process).

[5] NASD Rule 0120(h) defines the term "fixed price offering" to mean the offering of securities at a stated public offering price or prices, all or part of which securities are publicly offered in the United States or any territory thereof, whether or not registered under the Securities Act of 1933. The term does not include offerings of "exempted securities" or "municipal securities" as those terms are defined in Sections 3(a)(12) and 3(a)(29), respectively, of the Securities Exchange Act or offerings of redeemable securities of investment companies registered pursuant to the Investment Company Act of 1940 which are offered at prices determined by the net asset value of the securities. The proposed rule change would incorporate the definition of "fixed price offering" into the proposed rule in substantially identical form. *See* proposed FINRA Rule 5141.04. *See also* Section II.B *infra* and Section (C) under Item II.C in the Notice.

[6] The current fixed price offering rules are also known as the *Papilsky* rules because of the court decision with which they are commonly associated. *See Papilsky* v. *Berndt,* Fed. Sec. L. Rep (CCH) ¶ 95,627 (S.D.N.Y. June 24, 1976). For more information regarding the background of NASD Rules 0120(h), 2730, 2740 and 2750 and the associated IMs, *see Notice to Members* 81–3 (February 1981) (Adoption of New Rules Concerning Securities Distribution Practices) ("*Notice to Members* 81–3"); *see also* Securities Exchange Act Release No. 17371 (December 12, 1980), 45 FR 83707 (December 19, 1980) (File No. SR–NASD–78–3).

selling group [7] or that acts as the single underwriter [8] in connection with a fixed price offering may offer or grant, directly or indirectly, to any person [9] or account that is not a member of the selling syndicate or selling group or that is a person or account other than the single underwriter [10] any securities in the offering at a price below the stated public offering price (*i.e.,* a "reduced price").[11]

Proposed FINRA Rule 5141(a) further provides that, subject to the requirements of FINRA Rule 5130,[12] a member of a selling syndicate or selling group, or a member that acts as the single underwriter, would be permitted to sell securities in the offering to an affiliated person, provided the member does not sell the securities to the affiliated person at a reduced price as set forth under proposed FINRA Rule 5141.01.[13] The requirements of the proposed rule would apply until the termination of the offering or until a member, having made a bona fide public offering of the securities, is unable to continue selling such securities at the stated public offering price.[14]

Proposed FINRA Rule 5141(b) provides that nothing in the proposed rule would prohibit the purchase and sale of securities in a fixed price offering between members of the selling syndicate or selling group.[15]

Proposed FINRA Rule 5141.01 defines the term "reduced price." The proposed rule provides that, for purposes of the rule, "reduced price" includes, without limitation, any offer or grant of any selling concession, discount or other allowance, credit, rebate, reduction of any fee (including any advisory or service fee), any sale of products or services at prices below reasonable commercially available rates for similar products and services (except for research, which, as discussed below, is subject to proposed FINRA Rule 5141.02), or any purchase of or arrangement to purchase securities from the person or account at more than their fair market price in exchange for securities in the offering.[16] FINRA noted that the proposed rule's approach of setting forth a definition for the term "reduced price" is new and is designed, like the current fixed price offering rules, to prohibit in comprehensive terms the direct or indirect offering of various economic equivalents of a price below the stated public offering price. For example, under the proposed definition of "reduced price" the practice of overtrading—addressed under current NASD Rule 2730 [17]—would be prohibited. Similarly, under the proposed definition improper underwriting recapture—addressed under current NASD Rule 2740 [18]—would also be prohibited.

Proposed FINRA Rule 5141.02 is based generally on NASD Rules 2740(a)(1) and (b) and IM–2740 and would preserve the allowance permitted under those rules with respect to research services. Specifically, the proposed rule provides that nothing in the new rule would prohibit a member or person associated with a member that participates in a selling syndicate or selling group, or that acts as the single underwriter, from selling securities in the offering to a person or account to which it has provided or will provide research, provided the person or account pays the stated public offering price for the securities and the research is provided pursuant to [19] the requirements of Section 28(e) of the Act.[20] The proposed rule would provide

[7] The terms "selling group" and "selling syndicate" are defined in NASD Rules 0120(p) and (q), respectively. Other than to reflect the new conventions of the Consolidated FINRA Rulebook, FINRA did not propose to alter these two definitions.

[8] In response to commenter suggestion, FINRA revised the proposed rule to clarify that it would apply to any member acting as the single underwriter in an offering. *See* Section (A) under Item II.C in the Notice; *see also* proposed FINRA Rules 5141(a), 5141.02 and 5141.03.

[9] NASD Rule 0120(n) defines "person" to include any natural person, partnership, corporation, association, or other legal entity. Other than to reflect the new conventions of the Consolidated FINRA Rulebook, FINRA did not propose to alter this definition.

[10] Proposed FINRA Rule 5141(a) is based in part on NASD Rule 2740(a), which provides, among other things, that in connection with the sale of securities which are part of a fixed price offering a member may not grant or receive selling concessions, discounts, or other allowances except as consideration for services rendered in distribution and may not grant such concessions, discounts or other allowances to anyone other than a broker or dealer actually engaged in the investment banking or securities business. FINRA stated that it believes that it serves the interest of clarity for the new, consolidated rule to specify that its requirements apply to members of the selling syndicate or selling group, as those terms are defined under the FINRA rulebook, or the member acting as the single underwriter, as applicable.

[11] As discussed below, proposed FINRA Rule 5141.01 defines the term "reduced price" for purposes of the proposed rule.

[12] FINRA Rule 5130 (former NASD Rule 2790) addresses restrictions on the purchase and sale of initial equity public offerings. The rule generally prohibits sales to and purchases by a broker-dealer and accounts in which a broker-dealer has a beneficial interest.

[13] The proposed rule change would eliminate the general prohibition on transactions with related persons as set forth in current NASD Rule 2750 (subject, as already discussed, to the requirements of FINRA Rule 5130). FINRA stated that it believes that the new, consolidated rule serves the core purpose of the fixed price offering rules because it prohibits the conferring of a reduced price on a person or account that is not a member of the selling syndicate or selling group or that is a person or account other than the single underwriter, regardless of whether they are an affiliated person. Accordingly, the new rule would render Rule 2750's general prohibition on related person transactions redundant. *See* Section II.B *infra.*

[14] The proposed rule provides that, for purposes of the rule, securities in a fixed price offering would be presumed salable if the securities immediately trade in the secondary market at a price or prices which are above the stated public offering price. This is based in part on NASD Rule 2750(d), which provides among other things that a member or a related person of a member is "presumed not to have made a bona fide public offering * * * if the securities being offered immediately trade in the secondary market at a price or prices which are at or above the public offering price." FINRA stated that it believes that the standard set forth in the proposed rule is clear and easily applied. *See* Section (F) under Item II.C in the Notice. FINRA noted that the proposed rule does not attempt to define "bona fide public offering" per se because the term "bona fide" speaks for itself and, as noted in current IM–2750, any such determination must rest on the basis of all relevant facts and circumstances.

[15] FINRA stated that it believes that it serves the interest of regulatory clarity for the new, consolidated rule to provide that the rule does not prohibit this aspect of the underwriting process.

[16] The proposed rule defines "fair market price" to refer generally to a price or range of prices at which a buyer and a seller, each unrelated to the other, would purchase the securities in the ordinary course of business in transactions that are of similar size and similar characteristics and are independent of any other transaction. FINRA stated that it believes that this standard, based in part on current NASD Rule 2730(b)(2), is straightforward and easily applied. For further discussion, *see* Section (E) under Item II.C in the Notice. Similarly, FINRA stated that it believes that the standard "reasonable commercially available rates for similar products and services"—new for purposes of the proposed rule—is clear and effective. Lastly, FINRA noted that the proposed definition of "fair market price" is solely for purposes of proposed FINRA Rule 5141 and is not intended to affect any other provisions with respect to pricing that are set forth in FINRA rules.

[17] When Rule 2730 was adopted in its current form—then designated as Section 8 of Article III of the Rules of Fair Practice—FINRA explained: "An overtrade occurs when, as part of a swap, a dealer pays more for securities purchased from an institution than their fair market price. It also occurs if the member acting as agent charges less than a normal commission. In either event, the net effect of what the customer receives is a discount from the public offering price and is therefore prohibited." *See Notice to Members* 81–3.

[18] In *Notice to Members* 81–3, FINRA explained that Rule 2740, then designated as Section 24 of Article III of the Rules of Fair Practice, "serves the twofold function of promoting the securities distribution process and assuring that the selling concession, discount or other allowance offered to professional broker/dealers to facilitate the distribution of securities to investors is given, consistent with the representations made to the public in prospectuses, only to persons who are entitled to it. Thus, the section prohibits the surreptitious and unfair discriminatory granting of a discount to select investors who are in a position to take advantage of various recapture devices."

[19] FINRA made a minor revision to proposed FINRA Rule 5141.02 so as to clarify that research, in order to qualify under the proposed rule, must be provided pursuant to the cited provision of the Act. *See Regulatory Notice* 09–45 (Fixed Price Offerings) (August 2009).

[20] FINRA noted their belief that proposed FINRA Rule 5141.02 serves the interest of regulatory clarity

that, like current NASD Rule 2740(b) and IM–2740, investment management or investment discretionary services are not research. The proposed rule further requires that any product or service provided by a member or person associated with a member that does not qualify as research must not confer a reduced price as set forth in proposed FINRA Rule 5141.01.

Proposed FINRA Rule 5141.03 is new and provides that transactions between a member of a selling syndicate or selling group, or between a single underwriter, and an affiliated person that are part of the normal and ordinary course of business and are unrelated to the sale or purchase of securities in a fixed price offering would not be deemed to confer a reduced price under the rule.[21]

Proposed FINRA Rule 5141.04 incorporates the current definition of "fixed price offering" as set forth in current NASD Rule 0120(h) with only minor changes, primarily to reflect the new conventions of the Consolidated FINRA Rulebook.[22]

Lastly, proposed FINRA Rule 5141.05 is new and would clarify that a member that is an investment adviser may exempt securities that are purchased as part of a fixed price offering from the calculation of annual or periodic asset-based fees that the member charges a customer, provided the exemption is part of the member's normal and ordinary course of business with the customer and is not in connection with an offering.

B. Deletion of NASD Rules 2730, 2740, 2750 and 0120(h) and Associated IMs 2730, 2740 and 2750

As noted above, proposed FINRA Rule 5141 is a new, consolidated rule that is based in part on, and replaces, the current fixed price offering rules (NASD Rules 2730, 2740, 2750 and 0120(h) and associated IMs 2730, 2740 and 2750). Following are the specific requirements set forth in the current fixed price offering rules that would be deleted as rendered redundant or obsolete by the new, consolidated rule:

1. NASD Rule 2730 and IM–2730

NASD Rule 2730(a) generally prohibits overtrading by providing that a member engaged in a fixed price offering, who purchases or arranges the purchase of securities taken in trade, must purchase the securities at a fair market price at the time of purchase or act as agent in the sale of such securities and charge a normal commission. NASD Rule 2730(b) defines the terms "taken in trade," "fair market price" and "normal commission." NASD Rule 2730(c) sets forth certain criteria as to what constitutes the fair market price of securities taken in trade.[23] FINRA proposed to delete NASD Rules 2730(a) through (c) and the corresponding provisions under IM–2730 because FINRA believed that proposed FINRA Rule 5141(a) and the definitions of "reduced price" and "fair market price" set forth in proposed FINRA Rule 5141.01 would serve the purposes of the NASD provisions in more straightforward and streamlined fashion and accordingly render them obsolete.[24]

NASD Rule 2730(d) addresses how bid and offer quotations for transactions subject to Rule 2730 must be obtained.[25] FINRA proposed to delete NASD Rule 2730(d) and the corresponding provisions under IM–2730 because FINRA believed that they are rendered obsolete in view of FINRA's proposed deletion of the other portions of NASD Rule 2730.

NASD Rule 2730(e) imposes certain recordkeeping requirements. Among other things, the rule requires a member who purchases a security taken in trade to keep adequate records to demonstrate compliance with the rule and to preserve the records for at least 24 months after the transaction.[26] FINRA proposed to delete NASD Rule 2730(e) and the corresponding provisions under IM–2730 because FINRA believed that they are rendered obsolete in light of FINRA's proposed deletion of the other portions of Rule 2730 and in light of members' supervisory and transactional recordkeeping obligations under FINRA and Commission rules.[27]

2. NASD Rule 2740 and IM–2740

NASD Rule 2740(a) generally provides that in connection with a fixed price offering, selling concessions, discounts or other allowances may only be paid to brokers or dealers actually engaged in the investment banking or securities business and only as consideration for services rendered in distribution.[28] Rule 2740(a)(1) provides that nothing in the rule prohibits a member from selling securities in a fixed price offering to any person or account to whom the member has provided, or will provide, bona fide research, if the purchaser pays the stated public offering price for the securities. Rule 2740(a)(2) provides that nothing in the rule prohibits a member from selling securities in a fixed price offering that the member owns to any person at any net price which may be fixed by the member unless prevented by agreement. FINRA proposed to delete NASD Rules 2740(a), (a)(1) and (a)(2) and the corresponding provisions under IM–2740 because FINRA believed that proposed FINRA Rules 5141(a), 5141.01 and 5141.02, in combination, achieve the purpose of the NASD provisions and accordingly render them obsolete.[29]

NASD Rule 2740(b) defines "bona fide research" to mean advice, rendered either directly or through publications or writings, as to the value of securities, the advisability of investing in, purchasing, or selling securities, and the availability of securities or purchasers or sellers of securities, or analyses and reports concerning issuers, industries, securities, economic factors and trends, portfolio strategy, and performance of accounts.[30] Rule 2740(b) and the interpretive material under "Bona Fide Research Exclusion" under IM–2740 further provide that investment

by articulating the allowance for research in straightforward and streamlined fashion.

[21] FINRA believes that this provision is a useful clarification that would generally protect ordinary-course business transactions between members of a selling syndicate or selling group, or between a single underwriter, and affiliates from being deemed transactions that confer a reduced price (so long as such transactions are unrelated to the sale or purchase of securities in a fixed price offering). *See* Section (D) under Item II.C in the Notice.

[22] *See* note 5.

[23] Corresponding interpretive material in the first paragraph of IM–2730 addresses in detail, for compliance purposes, a "safe harbor" for certain transactions in securities with respect to the fair market price requirements. Corresponding interpretive materials under "Presumption of Noncompliance," "No Presumptions" and "Fair Market Price at the Time of Purchase," all under IM–2730, address additional fair market price-related criteria.

[24] *See* notes 16 and 17 and accompanying text.

[25] The quotations requirements set forth in NASD Rule 2730(d) are further elaborated by corresponding interpretive material under "Quotations" under IM–2730.

[26] Corresponding interpretive material under "Adequate Records" under IM–2730 sets forth additional requirements with respect to recordkeeping.

[27] The Commission staff remind FINRA members of their recordkeeping obligations under Rules 17a–3 and 17a–4 under the Act.

[28] Corresponding interpretive material in the first four paragraphs of IM–2740 provide further elaboration of requirements with respect to the term "services in distribution" and related issues.

[29] *See* notes 10 and 18 and accompanying text.

[30] Corresponding interpretive material under "Bona Fide Research Exclusion" under IM–2740 provides that the definition of "bona fide research" is "substantially the same" as the definition of research that is set forth under Securities Exchange Act Section 28(e)(3), and incorporates by reference Commission guidance as to the circumstances when the exclusion for bona fide research is available. The "Bona Fide Research Exclusion" interpretive material further reiterates that investment management or investment discretionary services are not bona fide research. Additional corresponding interpretive material under "Indirect Discounts" under IM–2740 addresses products or services that fail to qualify as bona fide research.

management or investment discretionary services are not bona fide research. FINRA proposed to delete NASD Rule 2740(b) and the corresponding provisions under IM–2740 because FINRA believed that proposed FINRA Rule 5141.02 serves the purpose of the NASD provisions in more straightforward and streamlined fashion and accordingly renders them obsolete.[31]

NASD Rule 2740(c) requires a member who grants a selling concession, discount or other allowance to another person to obtain a written agreement from that person that he or she will comply with Rule 2740. If a member grants a selling concession, discount or other allowance to a non-member broker or dealer in a foreign country, the rule requires that the member must obtain from that non-member an agreement that it will comply with NASD Rules 2730 and 2750 (in addition to Rule 2740) as if the non-member were a member, and that the non-member will comply with NASD Rule 2420 as that rule applies to a non-member broker-dealer in a foreign country. FINRA proposed to delete NASD Rule 2740(c) because FINRA believed that it is sufficient to apply the requirements of the new, consolidated rule to FINRA members. The relationships between foreign non-members and their customers are beyond the scope of the proposed rule change.[32] FINRA noted that the requirements of proposed FINRA Rule 5141 would apply to members—and would reach any reduced prices that members offer or grant to non-members—regardless of whether agreements to comply with rules are obtained.[33]

NASD Rule 2740(d) requires a member that receives an order from any person designating another broker or dealer to receive credit for the sale to file reports with FINRA within thirty days after the end of each calendar quarter with respect to each fixed price offering that terminated during the quarter. The rule further specifies certain information the reports must contain. NASD Rule 2740(e) requires a member that is designated by its customer for the sale of securities to keep and maintain for twenty-four months records of information similar to that set forth in NASD Rule 2740(d). FINRA proposed to delete NASD Rules 2740(d) and (e) because FINRA believed that they are rendered obsolete in light of the proposed deletion of the other portions of NASD Rule 2740 and in light of members' supervisory and transactional recordkeeping obligations under FINRA and Commission rules.[34] Further, FINRA noted that its regulatory programs in connection with the proposed rule change will not require specific quarterly filings such as those currently required pursuant to NASD Rule 2740(d).

3. NASD Rule 2750 and IM–2750

NASD Rule 2750(a) provides that no member engaged in a fixed price offering of securities is permitted to sell the securities to, or place the securities with, any person or account which is a related person of the member, unless the related person is itself subject to the rule or is a non-member broker-dealer that has entered into the agreements required under Rule 2740(c). NASD Rules 2750(b) and (c) address criteria pertaining to the term "related person." As discussed earlier, the proposed rule change would eliminate the prohibitions under Rule 2750(a), which FINRA believes would be redundant in light of the proposed rule's overall protections against the conferring of a reduced price.[35] Accordingly, FINRA proposed to delete NASD Rule 2750(a), as well as Rules 2750(b) and (c), as FINRA believed that the criteria pertaining to the term "related person" would be rendered obsolete.

NASD Rule 2750(d) provides that the rule's prohibitions do not apply to the sale or placement of securities in a trading or investment account of a member or a related person of a member after the termination of the fixed price offering if the member or related person has made a bona fide public offering of the securities.[36] FINRA proposed to delete NASD Rule 2750(d) and the corresponding provisions under IM–2750 because FINRA believed that the provisions are obsolete in light of the proposed deletion of the other portions of Rule 2750.

The first paragraph of IM–2750 addresses certain conditions under which a member that acts or plans to act as a sponsor of a unit investment trust is deemed not to violate Rule 2750. FINRA proposed to delete the IM provisions because FINRA believed that they are obsolete in light of the proposed deletion of the other portions of NASD Rule 2750.

Lastly, as noted earlier in this filing, the proposed rule change would incorporate the definition of "fixed price offering" set forth in current NASD Rule 0120(h) into the proposed rule in substantially identical form.[37] Accordingly, NASD Rule 0120(h) would be deleted.

FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval. The effective date will be no later than 180 days following publication of the *Regulatory Notice* announcing Commission approval.

III. Discussion and Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder that are applicable to a national securities association.[38] In particular, the Commission believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[39] which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission believes that the proposed rule change will streamline and reorganize the existing rules and protect the integrity of fixed price offerings by ensuring that securities in such offerings are sold to the public at the stated public offering price or prices, thereby preventing an undisclosed better price.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[40] that the proposed rule change (File No. SR–FINRA–2010–029) be, and hereby is, approved.[41]

[31] *See* notes 19 and 20 and accompanying text.

[32] Underwriting terms in foreign jurisdictions vary considerably, as do applicable regulatory requirements.

[33] For further discussion *see* Section (G) under Item II.C in the Notice. FINRA notes that NASD Rule 2420 is being addressed separately as part of the rulebook consolidation process. *See Regulatory Notice* 09–69 (FINRA Requests Comment on Proposed Consolidated FINRA Rule Governing Payments to Unregistered Persons) (December 2009).

[34] The Commission staff again remind FINRA members of their recordkeeping obligations under Rules 17a–3 and 17a–4 under the Act.

[35] *See* note 13 and accompanying text.

[36] NASD Rule 2750(d) and corresponding interpretive material in the second paragraph under IM–2750 further set forth certain provisions with respect to bona fide public offerings. *See* note 13 and accompanying text.

[37] *See* note 5.

[38] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[39] 15 U.S.C. 78o–3(b)(6).

[40] 15 U.S.C. 78s(b)(2).

[41] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–18301 Filed 7–26–10; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62543; File No. SR–NASDAQ–2010–075]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by The NASDAQ Stock Market LLC Relating to Fees for Execution of Contracts on the NASDAQ Options Market

July 21, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on June 30, 2010, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify Exchange Rule 7050 governing pricing for NASDAQ members using the NASDAQ Options Market ("NOM"), NASDAQ's facility for executing and routing standardized equity and index options. Specifically, NOM proposes to: (i) Modify pricing for both Penny Pilot[3] Options and All Other Options with respect to the fees for adding[4] and removing liquidity[5] as well as the rebates for adding and removing liquidity; (ii) eliminate the rebates for adding and fees for removing liquidity in options overlying Standard and Poor's Depositary Receipts/SPDRs ("SPY"),[6] PowerShares QQQ Trust ("QQQQ")® and Ishares Russell 2000 ("IWM"); (iii) eliminate the fee for an order that executes against another order entered by the same firm; and (iv) allow a rebate for Customer orders which execute against other customer orders.

While changes pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative for transactions on July 1, 2010.

The text of the proposed rule change is set forth below. Proposed new text is in italic and deleted text is in [brackets].

7050. NASDAQ Options Market

The following charges shall apply to the use of the order execution and routing services of the NASDAQ Options Market for all securities.

(1) Fees for Execution of Contracts on the NASDAQ Options Market

FEES AND REBATES

(per executed contract)

	Customer	Firm	Non-NOM market maker	NOM market maker
Penny Pilot Options:				
Rebate to Add Liquidity	$0.[25]*32*	$0.[25]*10*	$0.25	$0.[25]*30*
Fee for Removing Liquidity	$0.[35]*40*	$0.45	$0.45	$0.45
[IWM, QQQQ, SPY]				
[Rebate to Add Liquidity]	[$0.30]	[$0.30]	[$0.30]	[$0.30]
[Fee for Removing Liquidity]	[$0.35]	[$0.45]	[$0.45]	[$0.45]
NDX and MNX				
Rebate to Add Liquidity	$0.10	$0.10	$0.10	$0.20
Fee for Removing Liquidity	$0.50	$0.50	$0.50	$0.40
All Other Options:				
Fee for Adding Liquidity	[Free]*$0.00*	$0.[30]*45*	$0.[30]*45*	$0.30
Fee for Removing Liquidity	[−]*$0.40*	$0.4[0]*5*	$0.45	$0.45
Rebate [for] *to* [Removing] *Add* Liquidity[*]	$0.20	[−]*$0.00*	[−]*$0.00*	*$0.00*[−]

[Transactions in which the same participant is the buyer and the seller shall be charged a net fee of $0.10 per executed contract.]

[*No rebate will be paid when a customer order executes against another customer order.]

* * * * *

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqomx.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Penny Pilot was established in March 2008 and in October 2009 was expanded and extended through December 31, 2010. *See* Securities Exchange Act Release Nos. 57579 (March 28, 2008), 73 FR 18587 (April 4, 2008) (SR–NASDAQ–2008–026) (notice of filing and immediate effectiveness establishing Penny Pilot); 60874 (October 23, 2009), 74 FR 56682 (November 2, 2009) (SR–NASDAQ–2009–091) (notice of filing and immediate effectiveness expanding and extending Penny Pilot); 60965 (November 9, 2009), 74 FR 59292 (November 17, 2009) (SR–NASDAQ–2009–097) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 61455 (February 1, 2010), 75 FR 6239 (February 8, 2010) (SR–NASDAQ–2010–013) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); and 62029 (May 4, 2010), 75 FR 25895 (May 10, 2010) (SR–NASDAQ–2010–053) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot). *See also* Exchange Rule Chapter VI, Section 5.

[4] An order that adds liquidity is one that is entered into NOM and rests on the NOM book.

[5] An order that removes liquidity is one that is entered into NOM and that executes against an order resting on the NOM book.

[6] SPY options are based on the SPDR exchange-traded fund ("ETF"), which is designed to track the performance of the S&P 500 Index.

statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is proposing to modify Rule 7050 governing the fees assessed for options orders entered into NOM. Specifically, NASDAQ is proposing to modify pricing for both Penny Pilot Options and All Other Options with respect to the fees for adding and removing liquidity as well as the rebates for adding liquidity. These amendments to the fees are part of the Exchange's continued effort to attract and enhance participation in NOM. By amending its fees, NASDAQ seeks to encourage industry market makers to participate as registered market makers on NOM in order to attract additional liquidity.

Currently, NASDAQ distinguishes between options that are included in the Penny Pilot and those that are not.

Penny Options—Adding Liquidity: The Exchange currently pays a rebate of $0.25 per executed contract to members providing liquidity through NOM in options included in the Penny Pilot and in the capacity of "Customer", "firm", "NOM Market Maker"[7] or "Non-NOM Market Maker"[8]. The Exchange proposes to amend these fees as follows: Customers would be rebated $0.32 per contract instead of $0.25 per contract; a firm would be rebated $0.10 per contract instead of $0.25 per contract; and a NOM Market Maker would be rebated $0.30 per contract instead of $0.25 per contract.[9]

Penny Options—Removing Liquidity: The Exchange assesses a fee to members removing liquidity through NOM in options included in the Penny Pilot and charges a fee of $0.35 per executed contract to Customers for removing such liquidity and a fee of $0.45 per executed contract to members in the capacity of firm, NOM Market Maker and Non-NOM Market Maker for removing liquidity. The Exchange proposes to amend these fees as follows: Customers would be assessed $0.40 per contract instead of $0.35 per contract.[10]

Non-Penny Options—Adding Liquidity: The Exchange assesses a fee of $0.30 per executed contract to members providing liquidity through NOM in options not included in the Penny Pilot (under the category of All Other Options) in the capacity of firm, NOM Market Maker and Non-NOM Market Maker. The Exchange currently assesses no execution fees for members adding liquidity through NOM, in All Other Options, with an account type Customer, and will continue to assess no fee. The Exchange proposes to amend these fees for adding liquidity as follows: a firm would be assessed $0.45 per contract instead of $0.30 per contract; and a Non-NOM Market Maker would be assessed a fee of $0.45 per contract instead of $0.30 per contract.[11]

Non-Penny Options—Removing Liquidity: The Exchange assesses fees to members removing liquidity through NOM in All Other Options and charges a fee of $0.40 per executed contract to members removing liquidity in the capacity of firm and a fee of $0.45 per executed contract to members removing liquidity in the capacity of NOM Market Maker and Non-NOM Market Maker. The Exchange currently assesses no execution fees for members removing liquidity through NOM, in All Other Options, with an account type Customer. The Exchange proposes to amend these fees for removing liquidity as follows: a Customer would be assessed $0.40 per contract instead of $0.00 and a firm would be assessed a fee of $0.45 per contract instead of $0.40.[12]

Non-Penny Options—Rebates: The Exchange currently provides a rebate for removing liquidity through NOM in Non-Penny Options (All Other Options) of $0.20 per executed contract to members acting in the capacity of Customer. The Exchange proposes to pay a rebate to add liquidity through NOM in All Other Options of $0.20 per executed contract to members acting in the capacity of Customer and eliminate the rebate for removing liquidity.[13]

Elimination of IWM, QQQQ and SPY: The Exchange currently pays a rebate of $0.30 per executed contract to all members for adding liquidity in options overlying IWM, QQQQ and SPY. The Exchange also currently assesses a fee of $0.35 per executed contract to members removing liquidity through NOM in options overlying IWM, QQQQ and SPY in the capacity of Customer and a fee of $0.45 per executed contract to all members removing liquidity in the capacity of firm, NOM Market Maker and Non-NOM Market Maker.

The Exchange proposes to eliminate the rebate for adding liquidity and the fee for removing liquidity in options overlying IWM, QQQQ and SPY. Members would be assessed the rates currently applicable to Penny Pilot Options going forward. The Exchange no longer believes that these rebates and fees are necessary incentives to promote order flow in these symbols.

Elimination of Fees: The Exchange currently assesses a net fee of $0.10 per executed contract when a member order executes against an order entered by the same firm. In other words, a transaction in which the same participant is both the buyer and the seller is currently assessed a net fee of $0.10 per contract. The Exchange is proposing to eliminate this fee as the Exchange believes that this fee is no longer necessary. The fee was initially enacted to change the distinction between orders that interact with other members' orders and those that interact with orders from the same firm. At this time, the Exchange believes that this distinction is no longer necessary to compete for order flow.

Similarly, the Exchange proposes to eliminate the text which states that "No rebate will be paid when a customer order executes against another customer order." The Exchange believes that this distinction is no longer necessary and that the elimination of this language will afford Customers additional rebates and create additional incentives to enhance participation in NOM.

While changes pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative for transactions on July 1, 2010.

2. Statutory Basis

NASDAQ believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,[14] in general, and with Section 6(b)(4) of the Act,[15] in particular, in that it provides

[7] A NOM Market Maker must be registered as such pursuant to Chapter VII, Section 2 of Exchange rules, and must remain in good standing pursuant to Chapter VII, Section 2. In order to receive NOM Market Maker pricing in all securities, the firm must be registered as a NOM Market Maker in at least one security.

[8] A Non-NOM Market Maker is a registered market maker on another options market that appends the market maker designation to orders executed on NOM.

[9] A Non-NOM Market Maker would continue to be rebated $0.25 per contract.

[10] A firm, NOM Market Maker and Non-NOM Market Maker would continue to be assessed $0.45 per contract.

[11] The fees currently assessed on NOM Market Makers for adding liquidity in Non-Penny Options (All Other Options) will remain the same.

[12] The fees currently assessed on NOM Market Makers and Non-NOM Market Makers for removing liquidity in Non-Penny Options (All Other Options) will remain the same.

[13] The Exchange currently does not provide firms, NOM Market Makers and Non-NOM Market Makers rebates in Non-Penny options (All Other Options) and is not proposing any changes at this time for these members.

[14] 15 U.S.C. 78f.

[15] 15 U.S.C. 78f(b)(4).

for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls. The Exchange believes the proposed amendments to the fees and rebates for adding and removing liquidity are equitable and reasonable because they are within the range of fees assessed by other exchanges employing similar pricing schemes and that the proposed fees apply fairly to all similarly situated participants on NOM for reasons discussed in greater detail below.

With respect to the proposed rebates for adding liquidity in Penny Options, the Exchange believes that its proposal to increase the current rebate of $0.25 per contract to $0.32 per contract for customers is both reasonable and equitable because the rebate is consistent with other rebates being paid in certain symbols at NYSE Arca, Inc. ("NYSE Arca").[16] Moreover, the Exchange is seeking to provide the appropriate incentives to broker-dealers acting as agent for customer orders to select the Exchange as a venue to post customer limit orders. The Exchange also proposes to increase the current rebate of $0.25 per contract to $0.30 per contract for NOM Market Makers. The Exchange believes that this increase is equitable and reasonable because the proposed increase is within the range of similar fees assessed by other exchanges, such as the price differential for market makers and other broker-dealer on other exchanges. Specifically, the rate differential between NOM Market Makers and Non-NOM Market Makers is currently similar to pricing distinctions employed at, the International Securities Exchange, Inc. ("ISE"),[17] which assesses a Non-ISE Market Maker[18] $0.45 per contract for trading in equity options, while an ISE Market Maker at the lowest tier (highest rate) is assessed $0.18 per contract.[19] Finally, the Exchange has decreased the rebate from $0.25 per contract to $0.10 per contract for Firms. As with the other proposed changes, the Exchange believes that this proposal is reasonable because it is within the range of fees assessed at other exchanges and the proposed price differential is similar to other price differentials on other exchanges. For example, a Firm Proprietary order at ISE is assessed a maker fee of $0.10 per contract while a Market Maker Plus receives a $0.10 per contract rebate in ISE's select symbols.[20] In addition to the fair price differential, the Exchange believes its proposed fee changes are just and equitable because market makers have obligations to the market place and regulatory burdens placed on them that other broker-dealers trading for their own account do not currently endure.

The Exchange has also amended its fees for removing liquidity in Penny Options. The Exchange increased the fee for removing liquidity that is assessed to broker-dealers for customer orders from $0.35 per contract to $0.40 per contract. The Exchange believes that this amendment is reasonable and equitable because it is still less than the fee of $0.45 per contract that is currently assessed on Firms, NOM Market Makers and Non-NOM Market Makers and $0.05 less than the fees for removing liquidity at NYSEArca in Penny Options.[21]

The Exchange has also proposed to amend its fees in non-Penny Options (All Other Options). Specifically, the Exchange has increased its fees for adding liquidity for both Firms and Non-NOM Market Makers from $0.30 per contract to $0.45 per contract. The Exchange believes that these fees are reasonable because they are within the range of fees assessed in the industry. Further, the Exchange believes that it is equitable because the price differential exists currently on ISE. At ISE, a Non-ISE Market Maker (FARMM) is assessed a $0.20 per contract make fee in the select symbols, while a Market Maker is assessed $0.10 per contract.[22] As mentioned previously, there are also existing price differentials on ISE as between an ISE Market Maker and a Non-ISE Market Maker. As discussed, market makers have certain obligations to the market and regulatory requirements, which normally do not apply to Firms and Broker Dealers.[23]

Additionally, the Exchange is proposing to assess to a customer a $0.40 per contract fee for removing liquidity. Currently, customer orders do not pay for removing liquidity. The Exchange believes that this fee proposal is reasonable because it is within the range of rates being assessed to other market participants and to broker-dealers for executing customer order in Penny Options at other exchanges. The Exchange also believes that this fee proposal is equitable because it is $0.05 per contract less the fees being assessed on Firms, NOM Market Makers and Non-NOM Market Makers. The Exchange also proposes to increase the fee for removing liquidity that is being assessed on Firms from $0.40 per contract to $0.45 per contract. The Exchange believes that this proposal is both reasonable and equitable because it is the exact fee currently being assessed on NOM Market Makers and Non-NOM Market Makers. Keeping rates reasonable for customer orders is necessary to provide incentives for customer order flow in a mature, highly competitive market place. Finally, the Exchange is amending All Other Options to convert its rebate for removing liquidity to a rebate for adding liquidity. The Exchange proposes to pay a rebate to customer orders for adding liquidity of $.20. The Exchange was previously paying customer orders that removed liquidity $.20. The Exchange believes that this proposal is reasonable because customers are still receiving a rebate, but for adding versus removing liquidity. Also, the Exchange believes that the proposal is equitable because broker-dealers acting as agent for customer orders will be eligible to receive rebates similar to rebates found on other exchange for certain symbols. Also, the rebate serves to incentivize increased customer order flow to be sent to the Exchange for the benefit of all market participants.

The Exchange also believes that its proposal to eliminate the rebate to add liquidity and fee for removing liquidity for options overlying IWM, QQQQ and SPY is both reasonable and equitable because the Exchange is proposing to remove these fees for all participants. The same applies to the Exchange proposal to eliminate the $0.10 net fee for executed contracts which applies to transactions in which the same participant is the buyer and the seller as it was rarely assessed.

NASDAQ is one of eight options market in the national market system for standardized options. It is a mature, robust market that is highly competitive. Joining NASDAQ and electing to trade options is entirely voluntary. Under these circumstances, NASDAQ's fees must be competitive, fair and just in order for NASDAQ to attract order flow, execute orders, and grow as a market. NASDAQ thus believes that its fees are equitable, fair and reasonable and consistent with the Exchange Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not

[16] *See* NYSE Arca's Fee Schedule.

[17] *See* ISE's Schedule of Fees.

[18] A Non-ISE Market Maker means a market maker as defined in Section 3(a)(38) of the Act registered in the same options class on another options exchange. *See* ISE's Schedule of Fees.

[19] *See* ISE's Schedule of Fees.

[20] *See* ISE's Schedule of Fees.

[21] *See* NYSE Arca's Fee Schedule.

[22] *See* ISE's Schedule of Fees.

[23] *See* Exchange Rules Section VII, Market Participants, Sections 5, Obligations of Market Makers, and Section 6, Market Maker Quotations.

necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [24] and paragraph (f)(2) of Rule 19b–4 [25] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2010–075 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2010–075. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2010–075 and should be submitted on or before August 17, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–18404 Filed 7–26–10; 8:45 am]

BILLING CODE 8010–01–P

[24] 15 U.S.C. 78s(b)(3)(A)(ii).

[25] 17 CFR 240.19b–4(f)(2).

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62540; File No. SR–NYSEAmex–2010–70]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC Extending the Operative Date of NYSE Amex Equities Rule 92(c)(3) From July 31, 2010 to December 31, 2010

July 21, 2010.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the "Act") [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on July 9, 2010, NYSE Amex LLC (the "Exchange" or "NYSE Amex") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the operative date of NYSE Amex Equities Rule 92(c)(3) from July 31, 2010 to December 31, 2010. The text of the proposed rule change is available at the Exchange, the Commission's Web site at *http://www.sec.gov,* the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to extend the delayed operative date of Rule 92(c)(3) from July 31, 2010 to December 31, 2010. The Exchange believes that this extension will provide the time necessary for the Exchange, the New York Stock Exchange LLC ("NYSE"), and the Financial Industry Regulatory Authority, Inc. ("FINRA") to harmonize their respective rules concerning customer order protection to achieve a standardized industry practice.[4]

Background:

On July 5, 2007, the Commission approved amendments to NYSE Rule 92 to permit riskless principal trading at the NYSE.[5] These amendments were filed in part to begin the harmonization process between NYSE Rule 92 and FINRA's Manning Rule.[6] In connection with those amendments, the NYSE implemented for an operative date of January 16, 2008, NYSE Rule 92(c)(3), which permits NYSE member organizations to submit riskless

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] NYSE has filed a companion rule filing to conform its Rules to the changes proposed in this filing. *See* SR–NYSE–2010–52, formally submitted July 9, 2010.

[5] *See* Securities Exchange Act Release No. 56017 (Jul. 5, 2007), 72 FR 38110 (Jul. 12, 2007) (SR–NYSE–2007–21).

[6] *See* NASD Rule 2111 and IM–2110–2.

principal orders to the NYSE, but requires them to submit to a designated NYSE database a report of the execution of the facilitated order. That rule also requires members to submit to that same database sufficient information to provide an electronic link of the execution of the facilitated order to all of the underlying orders.

For purposes of NYSE Rule 92(c)(3), the NYSE informed member organizations that when executing riskless principal transactions, firms must submit order execution reports to the NYSE's Front End Systemic Capture ("FESC") database linking the execution of the riskless principal order on the NYSE to the specific underlying orders. The information provided must be sufficient for both member firms and the NYSE to reconstruct in a time-sequenced manner all orders, including allocations to the underlying orders, with respect to which a member organization is claiming the riskless principal exception.

Because the rule change required both the NYSE and member organizations to make certain changes to their trading and order management systems, the NYSE filed to delay to May 14, 2008 the operative date of the NYSE Rule 92(c)(3) requirements, including submitting end-of-day allocation reports for riskless principal transactions and using the riskless principal account type indicator.[7] The NYSE filed for additional extensions of the operative date of Rule 92(c)(3) to December 31, 2009.[8] Because NYSE Amex adopted NYSE Rule 92 in its then current form,[9] the delayed operative date for the NYSE Rule 92(c)(3) reporting requirements also applied for NYSE Amex Equities Rule 92(c)(3) reporting requirements and the Exchange filed for additional extensions of the operative date, the most recent of which was an extension to July 31, 2010.[10]

Request for Extension:

FINRA, NYSE, and the Exchange have been working diligently on fully harmonizing their respective rules, including reviewing the possibilities for a uniform reporting standard for riskless principal transactions. However, because of the complexity of the existing customer order protection rules, including the need for input from industry participants as well as Commission approval, the Exchange, NYSE, and FINRA will not have harmonized their respective customer order protection rules by the current July 31, 2010 date for the implementation of the FESC riskless principal reporting.

The Exchange notes that it has agreed with NYSE and FINRA to pursue efforts to harmonize customer order protection rules. On December 10, 2009, FINRA filed with the Commission its rule proposal to adopt a new industry standard for customer order protection as proposed FINRA Rule 5320.[11] That proposed filing is based on the draft rule text that FINRA and NYSE Regulation each circulated to their respective member participants and includes copies of the comment letters that FINRA and NYSE Regulation received on the rule proposal. The Exchange intends to adopt a new customer order protection rule that is substantially identical to proposed FINRA Rule 5320.

FINRA has filed to extend the time for Commission action on its rule filing to adopt proposed FINRA Rule 5320 to July 16, 2010. As proposed by FINRA, however, its proposed new rule will not be effective upon approval. Rather, the rule filing will become effective at a later date, not yet known, in order to provide time for FINRA, NYSE, and market participants to implement programming changes associated with the proposed new rule.

The Exchange continues to believe that pending full harmonization of the respective customer order protection rules, it would be premature to require firms to meet the current Rule 92(c)(3) FESC reporting requirements.[12] Indeed, having differing reporting standards for riskless principal orders would be inconsistent with the overall goal of the harmonization process.

Accordingly, to provide the Exchange, NYSE, and FINRA the time necessary to obtain Commission approval for and implement a harmonized rule set that would apply across their respective marketplaces, including a harmonized approach to riskless principal trade reporting, the Exchange is proposing to delay the operative date for NYSE Amex Equities Rule 92(c)(3) from July 31, 2010 to December 31, 2010.

Pending the harmonization of the three rules, the Exchange will continue to require that, as of the date each member organization implements riskless principal routing, the member organizations have in place systems and controls that allow them to easily match and tie riskless principal execution on the Exchange to the underlying orders and that they be able to provide this information to the Exchange upon request. To make clear that this requirement continues, the Exchange proposes to amend supplementary material .95 to Rule 92 to specifically provide that the Rule 92(c)(3) reporting requirements are suspended until December 31, 2010 and that member organizations are required to have in place such systems and controls relating to their riskless principal executions on the Exchange. Moreover, the Exchange will coordinate with NYSE and FINRA to examine for compliance with the rule requirements for those firms that engage in riskless principal trading under Rule 92(c).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),[13] in general, and furthers the objectives of Section 6(b)(5) of the Act,[14] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes the proposed extension provides the Exchange, NYSE, and FINRA the time necessary to develop a harmonized rule concerning customer order protection that will enable member organizations to participate in the national market system without unnecessary impediments.

[7] *See* Securities Exchange Act Release No. 56968 (Dec. 14, 2007), 72 FR 72432 (Dec. 20, 2007) (SR–NYSE–2007–114).

[8] *See* Securities Exchange Act Release Nos. 57682 (Apr. 17, 2008), 73 FR 22193 (Apr. 24, 2008) (SR–NYSE–2008–29); 59621 (Mar. 23, 2009), 74 FR 14179 (Mar. 30, 2009) (SR–NYSE–2009–30); 60396 (July 30, 2009), 74 FR 39126 (Aug. 5, 2009) (SR–NYSE–2009–73); and 61251 (Dec. 29, 2009), 75 FR 482 (Jan. 5, 2010) (SR–NYSE–2009–129).

[9] The NYSE Amex Equities Rules, which became operative on December 1, 2008, are substantially identical to the current NYSE Rules 1–1004 and the Exchange continues to update the NYSE Amex Equities Rules as necessary to conform with rule changes to corresponding NYSE Rules filed by the NYSE. *See* Securities Exchange Act Release Nos. 58705 (Oct. 1, 2008), 73 FR 58995 (Oct. 8, 2008) (SR–Amex–2008–63); 58833 (Oct. 22, 2008), 73 FR 64642 (Oct. 30, 2008) (SR–NYSE–2008–106); 58839 (Oct. 23, 2008), 73 FR 64645 (October 30, 2008) (SR–NYSEALTR–2008–03); 59022 (Nov. 26, 2008), 73 FR 73683 (Dec. 3, 2008) (SR–NYSEALTR–2008–10); and 59027 (Nov. 28, 2008), 73 FR 73681 (Dec. 3, 2008) (SR–NYSEALTR–2008–11).

[10] *See* Securities Exchange Act Release Nos. 59620 (Mar. 23, 2009), 74 FR 14176 (Mar. 30, 2009) (SR–NYSEALTR–2009–29); 60397 (July 30, 2009), 74 FR 39128 (Aug. 5, 2009) (SR–NYSEAmex–2009–48); and 61250 (Dec. 29, 2009), 75 FR 477 (Jan. 5, 2010) (SR–NYSEAmex–2009–92).

[11] *See* SR–FINRA–2009–090 (December 10, 2009).

[12] The Exchange notes that it would also need to make technological changes to implement the proposed FESC reporting solution for Rule 92(c)(3).

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act [15] and Rule 19b–4(f)(6) thereunder.[16]

The Exchange has requested the Commission to waive the 30-day operative delay so that the Exchange can extend the operative date of NYSE Amex Equities Rule 92(c)(3) without interruption. The Exchange notes that extending the delayed operative date of Rule 92(c)(3) from July 31, 2010 to December 31, 2010 will provide sufficient time for the Exchange, NYSE, and FINRA to obtain Commission approval for and implement a harmonized approach to customer order protection rules, including how riskless principal transactions should be reported. The Commission hereby grants the Exchange's request and believes such waiver is consistent with the protection of investors and the public interest.[17] Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEAmex-2010–70 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–NYSEAmex-2010–70. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAmex-2010–70 and should be submitted on or before August 17, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Florence E. Harmon,

Deputy Secretary.

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BILLING CODE 8010–01–P

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[17] For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62541; File No. SR–NYSE–2010–52]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Extending the Operative Date of NYSE Rule 92(c)(3) From July 31, 2010 to December 31, 2010

July 21, 2010.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the "Act") [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on July 9, 2010, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the operative date of NYSE Rule 92(c)(3) from July 31, 2010 to December 31, 2010. The text of the proposed rule change is available at the Exchange, the Commission's Web site at *http://www.sec.gov,* the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of,

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to extend the delayed operative date of NYSE Rule 92(c)(3) from July 31, 2010 to December 31, 2010. The Exchange believes that this extension will provide the time necessary for the Exchange and the Financial Industry Regulatory Authority, Inc. ("FINRA") to harmonize their respective rules concerning customer order protection to achieve a standardized industry practice.

Background

On July 5, 2007, the Commission approved amendments to NYSE Rule 92 to permit riskless principal trading at the Exchange.[4] These amendments were filed in part to begin the harmonization process between Rule 92 and FINRA's Manning Rule.[5] In connection with those amendments, the Exchange implemented for an operative date of January 16, 2008, NYSE Rule 92(c)(3), which permits Exchange member organizations to submit riskless principal orders to the Exchange, but requires them to submit to a designated Exchange database a report of the execution of the facilitated order. That rule also requires members to submit to that same database sufficient information to provide an electronic link of the execution of the facilitated order to all of the underlying orders.

For purposes of NYSE Rule 92(c)(3), the Exchange informed member organizations that when executing riskless principal transactions, firms must submit order execution reports to the Exchange's Front End Systemic Capture ("FESC") database linking the execution of the riskless principal order on the Exchange to the specific underlying orders. The information provided must be sufficient for both member firms and the Exchange to reconstruct in a time-sequenced manner all orders, including allocations to the underlying orders, with respect to which a member organization is claiming the riskless principal exception.

Because the rule change required both the Exchange and member organizations to make certain changes to their trading and order management systems, the NYSE filed to delay to May 14, 2008 the operative date of the NYSE Rule 92(c)(3) requirements, including submitting end-of-day allocation reports for riskless principal transactions and using the riskless principal account type indicator.[6] The Exchange filed for additional extensions of the operative date of Rule 92(c)(3), the most recent of which was an extension to July 31, 2010.[7]

Request for Extension [8]

FINRA and the Exchange have been working diligently on fully harmonizing their respective rules, including reviewing the possibilities for a uniform reporting standard for riskless principal transactions. However, because of the complexity of the existing customer order protection rules, including the need for input from industry participants as well as Commission approval, the Exchange and FINRA will not have harmonized their respective customer order protection rules by the current July 31, 2010 date for the implementation of the FESC riskless principal reporting.

The Exchange notes that it has agreed with FINRA to pursue efforts to harmonize customer order protection rules. On December 10, 2009, FINRA filed with the Commission its rule proposal to adopt a new industry standard for customer order protection as proposed FINRA Rule 5320.[9] That proposed filing is based on the draft rule text that FINRA and NYSE Regulation each circulated to their respective member participants and includes copies of the comment letters that FINRA and NYSE Regulation received on the rule proposal. The Exchange intends to adopt a new customer order protection rule that is substantially identical to proposed FINRA Rule 5320.

FINRA has filed to extend the time for Commission action on its rule filing to adopt proposed FINRA Rule 5320 to July 16, 2010. As proposed by FINRA, however, its proposed new rule will not be effective upon approval. Rather, the rule filing will become effective at a later date, not yet known, in order to provide time for FINRA, NYSE, and market participants to implement programming changes associated with the proposed new rule.

The Exchange continues to believe that pending full harmonization of the respective customer order protection rules, it would be premature to require firms to meet the current Rule 92(c)(3) FESC reporting requirements.[10] Indeed, having differing reporting standards for riskless principal orders would be inconsistent with the overall goal of the harmonization process.

Accordingly, to provide the Exchange and FINRA the time necessary to obtain Commission approval for and implement a harmonized rule set that would apply across their respective marketplaces, including a harmonized approach to riskless principal trade reporting, the Exchange is proposing to delay the operative date for NYSE Rule 92(c)(3) from July 31, 2010 to December 31, 2010.

Pending the harmonization of the two rules, the Exchange will continue to require that, as of the date each member organization implements riskless principal routing, the member organization have in place systems and controls that allow them to easily match and tie riskless principal execution on the Exchange to the underlying orders and that they be able to provide this information to the Exchange upon request. To make clear that this requirement continues, the Exchange proposes to amend supplementary material .95 to Rule 92 to specifically provide that the Rule 92(c)(3) reporting requirements are suspended until December 31, 2010 and that member organizations are required to have in place such systems and controls relating to their riskless principal executions on the Exchange. Moreover, the Exchange will coordinate with FINRA to examine for compliance with the rule requirements for those firms that engage in riskless principal trading under Rule 92(c).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),[11] in general, and furthers the

[4] *See* Securities Exchange Act Release No. 56017 (July 5, 2007), 72 FR 38110 (July 12, 2007) (SR–NYSE–2007–21).

[5] *See* NASD Rule 2111 and IM–2110–2.

[6] *See* Securities Exchange Act Release No. 56968 (Dec. 14, 2007), 72 FR 72432 (Dec. 20, 2007) (SR–NYSE–2007–114).

[7] *See* Securities Exchange Act Release Nos. 57682 (Apr. 17, 2008), 73 FR 22193 (Apr. 24, 2008) (SR–NYSE–2008–29); 59621 (Mar. 23, 2009), 74 FR 14179 (Mar. 30, 2009) (SR–NYSE–2009–30); 60396 (July 30, 2009), 74 FR 39126 (Aug. 5, 2009) (SR–NYSE–2009–73); and 61251 (Dec. 29, 2009), 75 FR 482 (Jan. 5, 2010) (SR–NYSE–2009–129).

[8] NYSE Amex LLC has filed a companion rule filing to conform its Equities Rules to the changes proposed in this filing. *See* SR–NYSEAmex–2009–70 [sic], formally submitted July 9, 2010.

[9] *See* SR–FINRA–2009–090 (December 10, 2009).

[10] The Exchange notes that it would also need to make technological changes to implement the proposed FESC reporting solution for Rule 92(c)(3).

[11] 15 U.S.C. 78f(b).

objectives of Section 6(b)(5) of the Act,[12] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes the proposed extension provides the Exchange and FINRA the time necessary to develop a harmonized rule concerning customer order protection that will enable member organizations to participate in the national market system without unnecessary impediments.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6) thereunder.[14]

The Exchange has requested the Commission to waive the 30-day operative delay so that the Exchange can extend the operative date of NYSE Rule 92(c)(3) without interruption. The Exchange notes that extending the delayed operative date of Rule 92(c)(3) from July 31, 2010 to December 31, 2010 will provide sufficient time for the Exchange and FINRA to obtain Commission approval for and implement a harmonized approach to customer order protection rules, including how riskless principal transactions should be reported. The Commission hereby grants the Exchange's request and believes such waiver is consistent with the protection of investors and the public interest.[15] Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2010–52 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–NYSE–2010–52. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2010–52 and should be submitted on or before August 17, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–18409 Filed 7–26–10; 8:45 am]

BILLING CODE 8010–01–P

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[15] For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statements: National Summary of Rescinded Notices of Intent

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: The FHWA is issuing this notice to advise the public that 15 States, including the District of Columbia, have rescinded Notices of Intent (NOIs) to prepare 20 Environmental Impact Statements (EISs) for proposed highway projects. The FHWA Division Offices, in consultation with the State Departments of Transportation (State DOTs), determined that nine projects were no longer viable and have formally cancelled the projects. No further Federal resources will be expended on these projects; the environmental review process has been terminated. Nine projects have been reduced in scope and now meet the criteria for an Environmental Assessment (EA) or a Categorical Exclusion (CE). One project is now proceeding as a corridor study.

One project was rescinded as the FHWA is no longer the lead Federal agency for the project.

FOR FURTHER INFORMATION CONTACT: Bethaney Bacher-Gresock, Office of Project Development and Environmental Review, (202) 366–4196; Janet Myers, Office of the Chief Counsel, (202) 366–2019; Federal Highway Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded by accessing the **Federal Register**'s home page at: *http://www.archives.gov* and the Government Printing Office's Web page at *http://www.gpoaccess.gov/nara.*

Background

The FHWA, as lead Federal agency under the National Environmental Policy Act (NEPA) and in furtherance of its oversight and stewardship responsibilities under the Federal-aid highway program, periodically requests that its Division Offices review, with the State DOTs, the status of all EISs and place those projects that are not actively progressing in a timely manner in an inactive project status. The FHWA maintains lists of active and inactive EIS projects on its Web site at *http://www.environment.fhwa.dot.gov/.* The FHWA has determined that inactive projects that are no longer a priority or that lack financial resources should be rescinded with a **Federal Register** notice notifying the public that project activity has been terminated. This notice covers the time period since the last summary was issued on May 14, 2009, and published in the **Federal Register** at 74 FR 25797 (May 29, 2009). As always, FHWA encourages State DOTs to work with their FHWA Division Office to determine when it is most prudent to initiate an EIS in order to best balance available resources as well as the expectations of the public.

The FHWA is issuing this notice to advise the public that 15 States (California, Colorado, District of Columbia, Florida, Iowa, Illinois, Maryland, Minnesota, Missouri, New Jersey, New York, Oregon, Tennessee, Texas, and Washington) have recently rescinded previously issued NOIs for 20 EISs for proposed highway projects. A listing of these projects, general location, original NOI date of publication in the **Federal Register**, and the date that the NOI was formally rescinded by notice published in the **Federal Register**, is provided below.

The FHWA Division Offices, in consultation with the State DOTs, determined that nine of these projects were no longer viable projects and have formally cancelled those projects. The projects are: The Gaming Area (SH 119 Corridor) project in Gilpin, Clear Creek, and Jefferson Counties, Colorado; County Road 951 project in Lee and Collier Counties, Florida; Lake County Illinois Transportation Improvement Project; Intersection of Route 213 and Nye School Road in Rock County, Wisconsin to the interchange of Rockton Road and I–90 in Winnebago, Illinois; University of Maryland Campus Study from I–95/I–495 and points north located in Prince George's County, Maryland; Jefferson County Missouri Transportation Improvements Project; Harmony Road, Clackamas County, Oregon; SH 35 Roadway between Bellfort Road and FM 1462 in Harris and Brazoria Counties, Texas; and the BNSF Railway Mainline Kelso-Martin's Bluff Rail Project (south of Kalama, Washington).

The FHWA Division Offices, in consultation with the State DOTs, determined that nine projects would be reduced in scope. In California, the I–805 Managed Lane South Project has been reduced in scope and now meets the criteria for an EA. The Klingle Road, N.W. project in the District of Columbia was rescoped and is now an EA focusing on environmental remediation and the development of a multiuse trail. In Maryland, the MD 4 from MD 2 to MD 235 (Thomas Johnson Memorial Bridge) in Calvert and St. Mary's Counties has been rescoped and now meets the criteria for an EA. In Minnesota, the Tier 1 EIS 33rd Street Corridor between TH 15 and TH 10 in Sherburne and Stearns Counties has been reduced in scope and now meets the criteria for an EA, other components could proceed at a later date. In Missouri, the U.S. Route 65 Relocation Project in Benton County has been reduced in scope as relocation of U.S. Route 65 is no longer being considered. Also in Missouri, the Route 47 Transportation System Improvements Project in Warren and Franklin Counties has been reduced in scope and only covers the bridge replacement. In New Jersey, the proposed South Branch Parkway project in Hunterdon County was reduced in scope as it was determined that key elements of the purpose and need may be met by making improvements to the existing Route 31. In New York, project scoping indicated that few highway improvements are required for the Route 531 Extension project Monroe County and those that are needed will be progressed as CEs. In Tennessee, the State Route 91 Improvements project in Elizabethton, Carter County, was reduced in scope to the transportation systems management and upgrades options to as new location alternatives could have significant adverse environmental impacts.

In addition, one project in Polk County, Iowa, the Tiered EIS Northeast Beltway Study, was rescinded due to scheduling and a lack of project funding; it is currently proceeding as a corridor study.

In addition, the FHWA Division Office, in consultation with the State DOT, rescinded one project because FHWA is no longer serving as the lead Federal agency. The San Ysidro Port of Entry project in San Diego County, California was redesigned and the General Services Agency is now the lead Federal agency. The FHWA is a cooperating agency.

State	Project name—location	NOI date	Rescinded date
CA	I–805 Managed Lane South Project—San Diego County	7/11/2007	12/8/2009
CA	San Ysidro Port of Entry—San Diego County	7/2/2003	12/22/2009
CO	Gaming Area EIS (SH 119 Corridor)—Gilpin, Clear Creek and Jefferson Counties.	8/11/2000	4/7/2010
DC	Klingle Road, N.W.—Washington, D.C.	3/18/2004	6/7/2010
FL	County Road 951—Lee and Collier Counties	6/27/2005	3/10/2010
IA	Tiered EIS Northeast Beltway Study—Polk County	5/5/2006 and 6/1/2009	12/21/2009
IL	Lake County Transportation Improvement Project	9/21/2001*	10/23/2008
IL	Intersection of Route 213 and Nye School Road in WI to the interchange of Rockton Road and I–90 in IL—Rock County, WI to Winnebago County, IL.	10/26/1995	5/7/2010
MD	University of Maryland Campus Study from I95/I495 and points north—Prince George's County.	6/11/2008	6/3/2010

State	Project name—location	NOI date	Rescinded date
MD	MD 4 from MD 2 to MD 235 (Thomas Johnson Memorial Bridge)—Calvert and St. Mary's Counties.	10/22/2007	6/4/2010
MN	Tier I EIS—33rd Street Corridor between TH 15 and TH 10—Sherburne and Stearns Counties.	12/26/2002	1/7/2010
MO	US Route 65 Relocation Project—Benton County	4/20/1994	2/27/2006
MO	Transportation Improvements Project—Jefferson County	12/19/2007	6/29/2009
MO	Route 47 Transportation System Improvements—Warren and Franklin Counties.	4/22/2008	6/1/2010
NJ	South Branch Parkway—Hunterdon County	11/24/2006	6/30/2009
NY	Route 531 Extension—Monroe County	1/14/2005	6/21/2010
OR	Harmony Road—Clackamas County	4/9/2007	4/5/2010
TN	State Route 91 Improvements in Elizabethton—Carter County.	2/2/2007	6/4/2010
TX	SH 35 Roadway between Bellfort Road and FM 1462—Harris and Brazoria Counties.	10/30/2003	3/3/2010
WA	BNSF Railway Mainline Kelso-Martin's Bluff Rail Project	4/2/2001	7/20/2009

*Date of Draft EIS, original NOI date unknown.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: July 6, 2010.

Gregory N. Nadeau,

Deputy Administrator.

[FR Doc. 2010–18318 Filed 7–26–10; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2000–7257; Notice No. 62]

Railroad Safety Advisory Committee; Notice of Meeting

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Announcement of Railroad Safety Advisory Committee (RSAC) Meeting.

SUMMARY: FRA announces the forty-second meeting of the RSAC, a Federal advisory committee that develops railroad safety regulations through a consensus process. The RSAC meeting topics will include opening remarks from the FRA Administrator, and status reports will be provided by the Passenger Hours of Service, Training Standards, Track Safety Standards, Passenger Safety, and Medical Standards Working Groups. Status updates will be provided on the following tasks arising out of the Rail Safety Improvement Act of 2008 (RSIA): Positive Train Control, Railroad Bridge Safety Management, Conductor Certification, and a possible new task regarding Dark Territory may be presented to the committee for approval. This agenda is subject to change, including the possible addition of further proposed tasks under the RSIA.

DATES: The meeting of the RSAC is scheduled to commence at 9:30 a.m. on Thursday, September 23, 2010, and will adjourn by 4:30 p.m.

ADDRESSES: The RSAC meeting will be held at the National Association of Home Builders National Housing Center, 1201 15th Street, NW., Washington, DC 20005. The meeting is open to the public on a first-come, first-served basis, and is accessible to individuals with disabilities. Sign and oral interpretation can be made available if requested 10 calendar days before the meeting.

FOR FURTHER INFORMATION CONTACT: Larry Woolverton, RSAC Administrative Officer/Coordinator, FRA, 1200 New Jersey Avenue, SE., Mailstop 25, Washington, DC 20590, (202) 493–6212; or Robert Lauby, Deputy Associate Administrator for Regulatory and Legislative Operations, FRA, 1200 New Jersey Avenue, SE., Mailstop 25, Washington, DC 20590, (202) 493–6302.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), FRA is giving notice of a meeting of the RSAC. The RSAC was established to provide advice and recommendations to FRA on railroad safety matters. The RSAC is composed of 54 voting representatives from 31 member organizations, representing various rail industry perspectives. In addition, there are non-voting advisory representatives from the agencies with railroad safety regulatory responsibility in Canada and Mexico, the National Transportation Safety Board, and the Federal Transit Administration. The diversity of the Committee ensures the requisite range of views and expertise necessary to discharge its responsibilities. See the RSAC Web site for details on prior RSAC activities and pending tasks at: *http://rsac.fra.dot.gov.* Please refer to the notice published in the **Federal Register** on March 11, 1996 (61 FR 9740) for additional information about the RSAC.

Issued in Washington, DC on July 21, 2010.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2010–18320 Filed 7–26–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Acceptance

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the City of Philadelphia Division of Aviation for Philadelphia International Airport (PHL) under the provisions of 49 U.S.C. 47501 *et seq.* (Aviation Safety and Noise Abatement Act) and 14 CFR Part 150 are in compliance with applicable requirements.

DATES: *Effective Date:* The effective date of the FAA's determination on the noise exposure maps is June 1, 2010.

FOR FURTHER INFORMATION CONTACT: Edward S. Gabsewics, CEP, Environmental Protection Specialist, FAA Harrisburg Airports District Office, 3905 Hartzdale Avenue, Suite 508, Camp Hill, PA 17011, 717–730–2832.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise Exposure maps submitted for Philadelphia International Airport (PHL) are in compliance with Applicable requirements of Part 150,

effective June 1, 2010. Under 49 U.S.C. Section 47503 of the Aviation Safety and Noise Abatement Act (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport. An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA has completed its review of the noise exposure maps and accompanying documentation submitted by the City of Philadelphia Division of Aviation. The documentation that constitutes the "Noise Exposure Maps" as defined in Section 150.7 of Part 150 includes the following from the PHL FAR Part 150 Noise Exposure Map Update Report:

- *Figure 1:* 2008 Existing Baseline Noise Exposure Map.
- *Figure 2:* 2013 Future Baseline Noise Exposure Map.
- *Section 1:* Appendix C, D and E—Consultation requirements.
- *Section 2:* Land Use Analysis.
- *Section 3:* 2008 Existing Baseline Noise Exposure Map and data requirements.
- *Table 3–1:* 2008 Existing Baseline Annual Average Day Operations.
- *Table 3–3:* 2008 Existing Baseline Runway Utilization.
- *Table 3–4:* 2008 Flight Track Utilization.
- *Section 4:* 2013 Future Baseline Noise Exposure Map and data requirements.
- *Table 4–1:* 2013 Future Baseline Annual Average Day Operations.
- *Table 4–2:* 2013 Future Baseline Runway Utilization.
- *Table 4–4:* 2013 Flight Track Utilization.

The FAA has determined that these noise exposure maps and accompanying documentation are in compliance with applicable requirements. This determination is effective on June 1, 2010. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program. If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under Section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of Section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator, under Section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the full noise exposure map documentation and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration's Harrisburg Airports District Office located at 3905 Hartzdale Drive, Suite 508, Camp Hill, PA 17011, Monday–Friday 8 a.m.–4:30 p.m.

Philadelphia International Airport's Office of the Noise Abatement Program Manager (Jonathan D. Collette) located at 2801 Island Avenue, Suite 13, Philadelphia, PA 19153, Monday–Friday 8 a.m.–4 p.m.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Camp Hill, Pennsylvania, June 1, 2010.

Lori K. Pagnanelli,

Manager, Harrisburg Airports District Office.

[FR Doc. 2010–17979 Filed 7–26–10; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In June 2010, there were six applications approved. Additionally, eight approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: County and City of Spokane, Washington.

Application Number: 10–08–C–00–GEG.

Application Type: Impose and use a PFC. PFC LEVEL: $4.50.

Total PFC Revenue Approved in This Decision: $850,000.

Earliest Charge Effective Date: August 1, 2012.

Estimated Charge Expiration Date: October 1, 2012.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Project Approved for Collection and Use: Master plan update.

Decision Date: June 4, 2010.

FOR FURTHER INFORMATION CONTACT: Trang Tran, Seattle Airports District Office, (425) 227–1662.

Public Agency: City of Presque Isle, Maine.

Application Number: 10–02–C–00–PQI.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $353,298.

Earliest Charge Effective Date: August 1, 2010.

Estimated Charge Expiration Date: January 1, 2018.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Project Approved for Collection and Use:

Rehabilitate runway 1/19 and runway safety area, phase I.

Snow removal equipment.

Crack seal and repair.

Rehabilitate, mark, and sign taxiway A.

Rehabilitate runway 1/19 and runway, phase II.

Decision Date: June 9, 2010.

FOR FURTHER INFORMATION CONTACT: Priscilla Scott, New England Regional Airports Division, (781) 238–7614.

Public Agency: Charlottesville—Albemarle Airport Authority, Charlottesville, Virginia.

Application Number: 10–19–C–00–CHO.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $3,454,340.

Earliest Charge Effective Date: August 1,2010.

Estimated Charge Expiration Date: August 1, 2016.

Class of Air Carriers Not Required To Collect PFC's: All air taxi/commercial operators filing or requested to file FAA Form 1800–31.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Charlottesville—Albemarle Airport.

Brief Description of Projects Approved for Collection and Use:

Relocate runway 3 localizer.

Pavement management program—rehabilitate taxiway F.

Runway 21 extension—runway protection zone land acquisition.

Runway 21 extension—phase 1A.

Runway 21 extension—phase 1B, excavate embankment.

Runway 21 extension—phase 1b, excavate embankment additional share.

Runway 21 extension—phase 2, pave construct runway only.

Pavement management program—mill/overlay taxiway sections.

Runway 21 extension—phase 3, construction parallel taxiway.

Runway 21 extension—phase 4a, runway safety area embankment.

Rehabilitate electrical vault.

Decision Date: June 9, 2010.

FOR FURTHER INFORMATION CONTACT: Jeffery Breeden, Washington Airports District Office, (703) 661–1363.

Public Agency: City of Albany, Georgia.

Application Number: 10–05–C–00–ABY.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $323,763.

Earliest Charge Effective Date: August 1,2010.

Estimated Charge Expiration Date: February 1, 2013.

Class of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Southwest Georgia Regional Airport.

Brief Description of Projects Approved for Collection and Use:

Terminal rehabilitation and expansion.

Airfield electrical improvements.

PFC application development.

Decision Date: June 14, 2010.

FOR FURTHER INFORMATION CONTACT: Anna Guss, Atlanta Airports District Office, (404) 305–7146.

Public Agency: City of Atlanta, Georgia.

Application Number: 10–12–C–00–Atl.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $19,332,000.

Earliest Charge Effective Date: January 1, 2023.

Estimated Charge Expiration Date: March 1, 2023.

Class of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators when enplaning revenue passengers in limited, irregular, special service air taxi/commercial operations such as air ambulance services, student instruction, and non-stop sightseeing flights that begin and end at the airport and are concluded within a 25-mile radius of the airport.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Hartsfield-Jackson Atlanta International Airport.

Brief Description of Project Approved for Collection and Use: Concourse D gate additions.

Decision Date: June 15, 2010.

FOR FURTHER INFORMATION CONTACT: Anna Guss, Atlanta Airports District Office, (404) 305–7146.

Public Agency: County of Pitken, Aspen, Colorado.

Application Number: 10–07–C–00–ASE.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $1,640,955.

Earliest Charge Effective Date: August 1, 2010.

Estimated Charge Expiration Date: August 1, 2012.

Class of Air Carriers Not Required To Collect PFC's: Non-scheduled on demand carriers, air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Aspen—Pitken County/Sardy Field.

Brief Description of Projects Approved for Collection and Use:

Snow removal equipment—runway sweeper.

Snow removal equipment—runway plow.

Airfield friction tester.

Snow removal equipment—airfield snow blower.

PFC application and administration fees.

Decision Date: June 18, 2010.

FOR FURTHER INFORMATION CONTACT: Chris Schaffer, Denver Airports District Office, (303) 342–1258.

AMENDMENTS TO PFC APPROVALS

Amendment No. city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
01–01–C–03–SAT San Antonio, TX	05/28/10	$238,029,391	$364,227,049	01/01/13	05/01/19
03–02–U–03–SAT San Antonio, TX	05/28/10	NA	NA	01/01/13	05/01/19

AMENDMENTS TO PFC APPROVALS—Continued

Amendment No. city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
04–03–U–SAT San Antonio, TX.	05/28/10	NA	NA	01/01/13	05/01/19
07–06–C–01–SUN Haily, ID	06/02/10	691,368	763,226	11/01/10	12/01/10
04–07–C–03–JNU Juneau, AK	06/03/10	5,226,106	3,566,606	09/01/08	03/01/08
07–07–C–01–ALO Waterloo, IA	06/14/10	356,706	363,977	03/01/11	03/01/11
09–14–C–01–MRY Monterey, CA	06/21/10	854,823	980,026	08/01/10	12/01/10
07–11–C–01–MCO Orlando, FL	06/22/10	48,580,000	49,330,000	07/01/20	07/01/20

Issued in Washington, DC on July 14, 2010.

Joe Hebert,

Manager, Financial Analysis and Passenger Facility Charge Branch.

[FR Doc. 2010–17982 Filed 7–26–10; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2010–0138]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt twenty-five individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions will enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions are effective July 27, 2010. The exemptions expire on July 27, 2012.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Room W64–224, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's Privacy Act Statement for the Federal Docket Management System published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

Background

On June 16, 2010, FMCSA published a Notice of receipt of Federal diabetes exemption applications from twenty-five individuals and requested comments from the public (75 FR 34206). The public comment period closed on July 16, 2010 and no comments were received.

FMCSA has evaluated the eligibility of the twenty-five applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current standard for diabetes in 1970 because several risk studies indicated that drivers with diabetes had a higher rate of crash involvement than the general population. The diabetes rule provides that "A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control" (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled "A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century." The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The September 3, 2003 (68 FR 52441) **Federal Register** Notice in conjunction with the November 8, 2005 (70 FR 67777) **Federal Register** Notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These twenty-five applicants have had ITDM over a range of 1 to 30 years. These applicants report no hypoglycemic reaction that resulted in loss of consciousness or seizure, that required the assistance of another person, or resulted in impaired cognitive function without warning symptoms in the past 5 years (with one year of stability following any such episode). In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision standard at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the June 16, 2010, **Federal Register** Notice and they will not be repeated in this Notice.

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes standard in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the

applicants' ITDM and vision, and reviewed the treating endocrinologists' medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes standard in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

FMCSA received no comments in this proceeding.

Conclusion

Based upon its evaluation of the twenty-five exemption applications, FMCSA exempts, Calvin R. Adams, Michael R. Amstutz, Clinton R. Carlson, II, Brandon L. Cheek, Michael J. Drake, Richard A. Dufton, Jr., Kenneth Dunn, Robert J. Dyxin, Scott D. Endres, Michael H. Hayden, Jarvis D. Hubbell, John T. Jones, Blake A. S. Keeten, Randall L. Koegel, Nicholas J. Niemerg, Dereck J. Oliveira, Paul J. O'Neil, Jr., Worden T. Price, Frankie R. Ramey, Michael Romero, Gary L. Sager, Darrel D. Schroeder, Steven M. Sernett, Scott C. Sevedge and Steven G. Woltman, from the ITDM standard in 49 CFR 391.41(b)(3), subject to the conditions listed under "Conditions and Requirements" above.

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption will be valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: July 20, 2010.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. 2010–18308 Filed 7–26–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1998–4334; FMCSA–2000–8398; FMCSA–2002–11714; FMCSA–2006–24015; FMCSA–2008–0106; FMCSA–2008–0174]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 59 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective August 18, 2010. Comments must be received on or before August 26, 2010.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–1998–4334; FMCSA–2000–8398; FMCSA–2002–11714; FMCSA–2006–24015; FMCSA–2008–0106; FMCSA–2008–0174, using any of the following methods.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. *Please see* the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476). This information is also available at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This Notice addresses 59 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 59 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Catarino, Aispuro, Gary R. Andersen, Edwin A. Betz, Donald L. Carman, Mitchell L. Carmen, Christopher R. Cone, Walter O. Connelly, Stephen B. Copeland, Armando P. D'Angeli, Donald R. Davis, Ivory Davis, Louis A. DiPasqua, Jr., Henry L. Donivan, Randy J. Doran, Robert E. Dukes, Roger D. Elders, James F. Epperson, Lucious J. Erwin, Riche Ford, Kelly L. Foster, Kevin J. Friedel, Donald W. Garner, Paul W. Goebel, Jr., Ronnie L. Hanback, Steven G. Harter, Michael C. Hensley, George F. Hernandez, Jr., Scott A. Hillman, Charles S. Huffman, Jesse P. Jamison, James A. Jones, Ronnie M. Jones, Andrew C. Kelly, Jason W. King, James T. Leek, Billy J. Lewis, Velmer L. McClelland, Larry McCoy, Sr., Robert W. McMillian, Danny W. Nuckles, Richard A. Peterson, Willam R. Proffitt, Chad M. Quarles, Carroll G. Quisenberry, Daniel S. Rebstad, Ryan J. Reimann, Ronney L. Rogers, Manuel C. Savin, Brandon J. See, Douglas A. Sharp, Ricky L. Shepler, LeTroy D. Sims, Robert M. Stewart, John L. Stone, Nils S. Thornberg, Daniel W. Toppings, Kenneth E. Valentine, Christopher R. Whitson, and George L. Young.

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 59 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (63 FR 66226; 64 FR 16517; 65 FR 78256; 66 FR 16311; 68 FR 13360; 70 FR 12265; 72 FR 27624; 67 FR 15662; 67 FR 37907; 69 FR 26206; 71 FR 26601; 73 FR 52451; 71 FR 14566; 71 FR 30227; 73 FR 48275; 73 FR 35194; 73 FR 48273; 73 FR 38497; 73 FR 48271). Each of these 59 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by August 26, 2010.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published Notices of final disposition announcing its decision to exempt these 59 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its Notices of applications. The Notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: July 19, 2010.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. 2010–18307 Filed 7–26–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2010–005–N–5]

Resolicitation of Applications for the Railroad Safety Technology Program Grant Program (RS–TEC–10–001)

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Funds Availability, Resolicitation of Applications (RS–TEC–10–001).

SUMMARY: Due to a significant number of technical errors in applicant grant proposal submissions for the Railroad Safety Technology Grant Program

(Funding Opportunity RS–TEC–10–001), the Federal Railroad Administration (FRA) has elected to reopen the application period.

Applicants who previously submitted a proposal for funding under this program and those who do not want to make changes to their submission do not need to do anything. Their original application will be reviewed as is.

Applicants wanting to make any changes to their application must reapply and submit a new, complete application package with all required documentation. The new application package will be reviewed and the previous application from the July 1, 2010, deadline will be ignored. It is therefore essential that applicants submit all required documentation as if they were a new applicant. Those seeking to modify their application must resubmit their proposals through Grants.gov (*http://www.grants.gov/*) before 23:59 (11:59 p.m.) Eastern Daylight Time September 3, 2010. Applications after this date and time will not be considered. Applications submitted directly to GrantSolutions or via e-mail, fax, or any other method other than Grants.gov, will not be considered.

The Railroad Safety Technology Program (RSTP) is a newly authorized program under the Rail Safety Improvement Act of 2008 (RSIA) (Pub. L. 110–432; October 16, 2008). The program authorizes DOT to provide grants to passenger and freight rail carriers, railroad suppliers, and State and local governments for projects that have a public benefit of improved railroad safety and efficiency. The program makes available $50 million in Federal funds. This grant program has a mandatory maximum 80 percent Federal, and minimum 20 percent grantee, cost share (cash or in-kind) requirement. Applications that do not clearly indicate at least a 20 percent non-Federal cost share, and do not adequately identify how the non-Federal cost share will be provided, will be rejected as nonresponsive.

DATES: FRA will begin accepting grant applications 10 days after publication of this Notice of Funding Availability in the **Federal Register**. Applications may be submitted until September 3, 2010. Reviews will be conducted immediately following the solicitation close date. Selection announcements will be made approximately 60 days after the closing date for applications.

ADDRESSES: All grant applications must be submitted through Grants.gov (*http://www.grants.gov*). The Grants.gov Web site allows organizations to find and electronically apply for competitive grant opportunities from all Federal grant-making agencies. Any entity wishing to submit an application pursuant to this notice should immediately initiate the process of registering with Grants.gov. FRA strongly recommends that applicants complete and submit their applications with sufficient lead time to account for any difficulties they may have in the use of Grants.gov. FRA does not recommend waiting until the closing date to submit applications. Instructions for the use of Grants.gov by applicants can be found on the Grants.gov Web site (*http://www.grants.gov/*). The help center for the use of Grants.gov can be reached at (800) 518–4726. The help center is closed on Federal holidays. Callers to the help center should have the Funding Opportunity Number (RS–TEC–10–001), the name of the agency you are applying to (Federal Railroad Administration), and the specific area of concern. No applications will be accepted after the closing date and time.

FOR FURTHER INFORMATION CONTACT: Those interested in responding to this solicitation are strongly encouraged to first call Dr. Mark Hartong, FRA, Senior Electronics Engineer (phone: (202) 493–1332; e-mail: *Mark.Hartong@dot.gov*); or Mr. David Blackmore, FRA, Program Manager, Advanced Technologies (phone: (312) 835–3903, e-mail: *David.Blackmore@dot.gov*) to discuss the prospective idea, its potential responsiveness to the solicitation, and potential for FRA interest. Taking this action could forestall costly efforts by interested parties whose proposed work may not be of interest to FRA under this grant. Nontechnical inquiries should be directed to the Grants Officer, Ms. Jennifer Capps (phone: (202) 493–0112, e-mail: *Jennifer.Capps@dot.gov*).

SUPPLEMENTARY INFORMATION:

Authority and Funding: RSTP, authorized under Section 105 of RSIA (Division A, Pub. L. 110–432) (49 U.S.C. 20158), authorizes the appropriation of $50 million annually for fiscal years (FY) 2009 through 2013. The Transportation, Housing and Urban Development, and Related Agencies Appropriations Act of 2010 provided $50 million for this purpose.

Eligible Organizations: Title 49 U.S.C. 20158 provides that "Grants shall be made under this section to eligible passenger and freight railroad carriers, railroad suppliers, and State and local governments for projects * * * that have a public benefit of improved safety and network efficiency."

To be eligible for assistance, entities must have either received approval of the Technology Implementation Plans (TIP) and Positive Train Control Implementation Plans (PTCIP) required by 49 U.S.C. 20156(e)(2) and 20157, or demonstrate, to the satisfaction of FRA, that they are currently developing the required plans. Preference will be given in the following order:

1. Entities that have completed and received FRA approval of both their TIP and PTCIP.
2. Entities that have completed and received FRA approval of their PTCIP.
3. Entities that have submitted their PTCIP to FRA for approval.
4. Entities that have certified to FRA progress towards completion of their PTCIP and TIP.
5. All other entities.

Collaborative project submissions by freight and passenger carriers, suppliers, and State and local governments on eligible projects will be evaluated more favorably.

Eligible Projects: Grant awards will focus on using technologies or methods that are ready for deployment, or of sufficient technical maturity that they can be made ready for deployment within the 24 months after the grant award. FRA will give preference to collaborative projects by multiple railroads that have active railroad carrier and sponsoring public authority participation in the following order:

Priority 1: Projects that:

(a) Support the resolution of Northeast Corridor Positive Train Control (PTC) interoperability issues,

(b) Support the resolution of mixed freight and passenger PTC interoperability issues in the Los Angeles basin, or

(c) Facilitate sharing of PTC communications infrastructure and spectrum.

Priority 2: Projects that:

(a) Support high-speed passenger operations using general freight PTC technologies, or

(b) Optimize PTC deployment on the core 2015 PTC territory, or

(c) Support PTC deployment on non-2015 core PTC territory.

Priority 3: All other projects.

Selection Criteria: Applications will be evaluated and ranked based on both technical and cost/price factors.

Technical Factors (75% overall weighting):

1. Responsiveness to Solicitation Intent and Requirements (20%): Degree to which the proposal meets the conceptual intent and submission requirements of the solicitation.

2. Significance for Implementing Interoperable PTC Deployment and Fit with FRA Mission (30%): Degree to which successful implementation of the

proposed idea would make interoperable PTC deployment more technically or economically practical (includes contribution to cost-effectiveness, reliability, safety, availability, or maintainability), and fit within FRA's primary mission of ensuring the safety of the Nation's approximately 700 railroads.

3. Technical Merit (20%): Degree to which proposed ideas exhibit a sound scientific and engineering basis; how well the proposed ideas could be practically applied in and would be compatible with the railroad environment; and perceived likelihood of technical and practical success.

4. Key Personnel and Supporting Organization (15%): Technical qualifications and demonstrated experience of key personnel proposed to lead and perform the technical efforts; qualifications of primary and supporting organizations to fully and successfully execute proposal plan within the proposed timeframe and budget.

5. Collaborative Efforts (15%): Degree to which the proposed effort is supported by multiple entities and the applicability and availability of results to the larger railroad industry.

Cost/Price Factor (25% overall weighting):

1. Affordability and degree to which proposed effort appears to be a good value for the amount of funding requested. This includes the reasonableness and realism of the proposed costs (60%).

2. The extent of proposed cost-sharing or cost-participation under the proposed effort (exclusive of the applicant's prior investment) (40%).

An offer must be found acceptable under all applicable evaluation factors to be considered eligible for award. Awards will be made to responsible applicants whose offers provide the best value to the Government in terms of technical excellence, cost or price, and performance risk, to include consistency and accord with the objectives of the solicitation and FRA's expressed areas of interest.

Requirements and Conditions for Grant Applications: Detailed application requirements and conditions may be found in the grant application guidance for this solicitation on Grants.gov. Before submitting their proposals, applicants must carefully read the grant guidance associated with this funding opportunity, ensure that their applications are submitted on or before the closing date provided herein, and ensure that they have complied with all of the requirements of the grant application guidance, including providing applicable certifications.

Information Collection: The Office of Management and Budget (OMB), under emergency clearance procedures, has approved the information collection associated with the PTC grant program for 6 months. The approval number for this collection of information is OMB No. 2130–0587, and the expiration date is September 30, 2010. FRA will be publishing a Notice in the **Federal Register** shortly in which the agency will be seeking regular OMB clearance for this collection of information. Such approvals are normally good for 3 years. FRA will publish a Notice for this second OMB approval once it is obtained.

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

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2010–18266 Filed 7–26–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Proposed Collection; Comment Request: CDFI/CDE Project Profiles Web Form

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A). Currently, the Community Development Financial Institutions (CDFI) Fund, Department of the Treasury, is soliciting comments concerning the CDFI/CDE Project Profile Web Form, a voluntary information collection effort involving all CDFI Fund programs. The specific information collection relates to the voluntary collection of narrative descriptions of projects financed by CDFI Fund awardees and allocatees in response to the public's request for better and more narrative information on impact and best practices associated with all of the CDFI Fund's programs. The purpose of the information collection is to more fully describe and record the innovative approaches community development financial institutions (CDFIs) and community development entities (CDEs) use in revitalizing communities and serving families, and the impact that these CDFIs and CDEs are realizing. CDFI Fund awardees and allocatees will be invited to submit narratives on community development projects that they believe demonstrate innovation or high impact. The project description may be for a project previously reported to the CDFI Fund through the Community Investment Impact System (CIIS) or for a new project that has not yet been reported in CIIS. The CDFI Fund plans to use the descriptions in CDFI Fund publications, on its Web site and in other ways to highlight the work of its awardees and allocatees.

DATES: Written comments should be received on or before September 27, 2010 to be assured of consideration.

ADDRESSES: Please direct all comments on the CDFI/CDE Project Profiles Web Form in writing to Kimberly Beauman, Legislative and External Affairs Specialist, CDFI Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005, by e-mail to *LegislativeAndExternalAffairsOffice@cdfi.treas.gov,* or by facsimile to (202) 622–7754. **Please note:** This is not a toll free number.

FOR FURTHER INFORMATION CONTACT: A draft of the information collection may be obtained from the CDFI Fund's Web site at *http://www.cdfifund.gov.* Requests for additional information should be directed to Kimberly Beauman, Legislative and External Affairs Specialist, CDFI Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005, or by phone to (202) 622–4436.

SUPPLEMENTARY INFORMATION:

Title: CDFI/CDE Project Profile Web Form.

Abstract: The voluntary collection of narrative descriptions of projects financed by CDFI Fund awardees and allocatees via the CDFI/CDE Project Profile Web Form is in response to the public's request for better and more narrative information on impact and best practices associated with all of the CDFI Fund's programs. The purpose is to more fully describe and record the innovative approaches CDFIs (Community Development Financial Institutions) and CDEs (Community Development Entity) use in revitalizing communities and serving families, and the impact that these CDFIs and CDEs are realizing.

Each best practice is generated by one or more of the following six CDFI Fund programs:

1. Through the CDFI Program by directly investing in, supporting and

training CDFIs that provide loans, investments, financial services and technical assistance to underserved populations and communities;

2. Through the New Markets Tax Credit (NMTC) Program by providing an allocation of tax credit authority to CDEs which enable them to attract investment from the private-sector and to reinvest these amounts in low-income communities;

3. Through the Bank Enterprise Award (BEA) Program by providing an incentive to FDIC insured banks and thrifts to invest in their communities and in CDFIs;

4. Through the Native American CDFI Assistance (NACA) Program, by providing financial assistance, technical assistance, and training to Native CDFIs and other Native entities proposing to become or create Native CDFIs;

5. Through the Capital Magnet Fund (CMF) Program, by providing competitively awarded grants to CDFIs and qualified nonprofit housing organizations to finance affordable housing activities as well as related economic development activities and community service facilities; and

6. Through the Financial Education and Counseling (FEC) Pilot Program, by providing grants to CDFIs and other eligible organizations to enable them to provide a range of financial education and counseling services to prospective homebuyers.

Current Actions: Revision of a currently approved collection.

Type of review: Regular review.

Affected Public: CDFIs and CDEs, including business or other for-profit institutions, nonprofit entities, and State, local and Tribal entities.

Estimated Number of Respondents: 100.

Estimated Annual Time per Respondent: 2.5 hours.

Estimated Total Annual Burden Hours: 250 hours.

Requests for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. *Comments are invited on:* (a) The accuracy of the agency's estimate of the burden of the collection of information; (b) ways to enhance the quality, utility, and clarity of the information to be collected; and (c) ways to minimize the burden of the collection of information on respondents, including through the use of technology.

Authority: 12 U.S.C. 4707 *et seq.;* 26 U.S.C. 45D.

Dated: July 21, 2010.

Donna J. Gambrell,

Director, Community Development Financial Institutions Fund.

[FR Doc. 2010–18372 Filed 7–26–10; 8:45 am]

BILLING CODE 4810–70–P

Federal Register

Tuesday,
July 27, 2010

Part II

Department of Education

Promoting Postbaccalaureate Opportunities for Hispanic Americans (PPOHA) Program; Notices

DEPARTMENT OF EDUCATION

Promoting Postbaccalaureate Opportunities for Hispanic Americans (PPOHA) Program

Catalog of Federal Domestic Assistance (CFDA) Number: 84.031M.

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of final requirements.

SUMMARY: The Assistant Secretary for Postsecondary Education announces requirements under the PPOHA Program. The Assistant Secretary may use one or more of these requirements for competitions in fiscal year (FY) 2010 and later years. We take this action to establish appropriate requirements for the PPOHA Program. We have based these requirements on existing rules for the Hispanic-Serving Institutions (HSI) Program, authorized by title V of the Higher Education Act of 1965, as amended (HEA), because the PPOHA Program and the HSI Program are governed by some common provisions and support similar institutions.

DATES: *Effective Date:* These requirements are effective August 26, 2010.

FOR FURTHER INFORMATION CONTACT: Dr. Maria E. Carrington, U.S. Department of Education, 1990 K Street, NW., Room 6036, Washington, DC 20006–8513. *Telephone:* (202) 502–7548 or by *e-mail: maria.carrington@ed.gov*.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service, toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: *Purpose of Program:* The purposes of the PPOHA Program are to: (1) Expand postbaccalaureate educational opportunities for, and improve the academic attainment of, Hispanic students; and (2) expand the postbaccalaureate academic offerings as well as enhance the program quality in the institutions of higher education that are educating the majority of Hispanic college students and helping large numbers of Hispanic and low-income students complete postsecondary degrees.

Program Authority: 20 U.S.C. 1102–1102c; 1161aa–1.

We published a notice of proposed requirements for this program in the **Federal Register** on June 3, 2010 (75 FR 31338). That notice contained background information and our reasons for proposing these particular requirements.

Except for minor revisions, there are no differences between the notice of proposed requirements and this notice of final requirements.

Public Comment: In response to our invitation in the notice of proposed requirements, we did not receive any comments on the proposed requirements. However, as a result of our further review of the proposed requirements since publication of the notice of proposed requirements, we have made two changes as follows:

Analysis of Comments and Changes:

Comment: None.

Discussion: In reviewing *Note 2* to proposed requirement 1 (*Eligibility Criteria (Use of 34 CFR 606.2(a) and (b), 606.3 through 606.5)*), we have determined that minor editorial changes are appropriate to clarify the discussion of the process that the Department will use to resolve a conflict between the enrollment data or documentation the applicant uses in its application to establish that it has an enrollment of undergraduate full-time equivalent (FTE) students that is at least 25 percent Hispanic students and data reported through the Department's Integrated Postsecondary Education Data System (IPEDS), the institution's State-reported enrollment data, and the institutional annual report.

Changes: We have revised this note to clarify that the data and documentation we are examining and comparing to the percentages or data reported through IPEDS, the IHE's State-reported enrollment data, and the institutional annual report are the data and documentation that the applicant submits as part of its 25 percent assurance verification.

Comment: None.

Discussion: Upon further review of *Requirement 2 (Use of Tie-Breaking Factors),* we determined that a clarification was appropriate. Specifically, in the final sentence of the first paragraph we stated that the Department will use 2008–2009 data for purposes of the funding considerations under this requirement. Because the Department will use 2008–2009 data for funding considerations in FY 2010 only, we have added language to make this clear.

Changes: We have revised the last sentence of the first paragraph of *Requirement 2 (Use of Tie-Breaking Factors* to clarify that, for purposes of making these funding considerations, we will use the most recent complete data available (*e.g.,* for FY 2010, we will use 2008–2009 data).

Final Requirements:

The Assistant Secretary establishes the following requirements for this program. We may apply one or more of these requirements in any year in which this program is in effect.

Requirement 1—Eligibility Criteria (Use of 34 CFR 606.2(a) and (b), 606.3 through 606.5).

Hispanic-Serving Institution (HSI): To qualify as an eligible HSI for the Promoting Postbaccalaureate Opportunities for Hispanic Americans (PPOHA) Program under sections 502 and 512(b) of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1101a and 1102a), an institution of higher education (IHE) must—

(a) Have an enrollment of needy students, as defined in section 502(b) of the HEA (section 502(a)(2)(A)(i) of the HEA; 20 U.S.C. 1101a(a)(2)(A)(i));

(b) Have, except as provided in section 522(b) of the HEA, average educational and general expenditures that are low, per full-time equivalent (FTE) undergraduate student, in comparison with the average educational and general expenditures per FTE undergraduate student of institutions that offer similar instruction (section 502(a)(2)(A)(ii) of the HEA; 20 U.S.C. 1101a(a)(2)(A)(ii));

Note: To demonstrate an enrollment of needy students and low average educational and general expenditures per FTE undergraduate student, an IHE must be designated as an "eligible institution" in accordance with 34 CFR 606.3 through 606.5 and the notice inviting applications for designation as an eligible institution for the fiscal year for which the grant competition is being conducted.

(c) Be accredited by a nationally recognized accrediting agency or association that the Secretary has determined to be a reliable authority as to the quality of education or training offered, or making reasonable progress toward accreditation, according to such an agency or association (section 502(a)(2)(A)(iv) of the HEA; 20 U.S.C. 1101a(a)(2)(A)(iv));

(d) Be legally authorized to provide, and provide within the State, an educational program for which the institution awards a bachelor's degree (section 502(a)(2)(A)(iii) of the HEA; 20 U.S.C. 1101a(a)(2)(A)(iii)); and

(e) Have an enrollment of undergraduate FTE students that is at least 25 percent Hispanic students at the end of the award year immediately preceding the date of application (section 502(a)(5)(B) of the HEA; 20 U.S.C. 1101a(a)(5)(B)).

Note 1: Funds for the PPOHA Program will be awarded each fiscal year; thus, for this program, the "end of the award year immediately preceding the date of application" refers to the end of the fiscal year prior to the application due date. The end of the fiscal year occurs on September 30 for any given year.

Note 2: In considering applications for grants under this program, the Department will compare the data and documentation the institution relied on in its application with data reported to the Department's Integrated Postsecondary Education Data System (IPEDS), the IHE's State-reported enrollment data, and the institutional annual report. If different percentages or data are reported in these various sources, the institution must, as part of the 25 percent assurance verification, explain the reason for the differences. If the IPEDS data show that less than 25 percent of the institution's undergraduate FTE students are Hispanic, the burden is on the institution to show that the IPEDS data are inaccurate. If the IPEDS data indicate that the institution has an undergraduate FTE less than 25 percent, and the institution fails to demonstrate that the IPEDS data are inaccurate, the institution will be considered ineligible.

Requirement 2—Use of Tie-Breaking Factors.

To resolve ties in the reader scores of applications for development grants, the Department will award one additional point to an application from an IHE that has an endowment fund for which the market value per FTE student is less than the comparable average current market value of the endowment funds per FTE student at similar type IHEs. In addition, to resolve ties in the reader scores of applications for PPHOA development grants, the Department will award one additional point to an application from an IHE that has expenditures for library materials per FTE student that are less than the comparable average expenditures for library materials per FTE student at similar type IHEs. (34 CFR 606.23(a)(1) and (2)). For the purpose of these funding considerations, we will use the most recent complete data available (*e.g.,* for FY 2010, we will use 2008–2009 data).

If a tie remains after applying the tie-breaker mechanism above, priority will be given for Individual Development Grants to applicants that have the lowest endowment values per FTE student. (34 CFR 606.23(b)(1))

Requirement 3—Limit on Applications From an Eligible Institution.

In any fiscal year, an eligible institution may submit only one application for a grant under the PPOHA Program. This restriction is intended to ensure that more Hispanic-serving institutions have an opportunity for assistance under Title V of the HEA.

Requirement 4—Limit on Use of Funds for Direct Student Assistance.

A PPOHA Program grantee may use no more than 20 percent of its total PPOHA Program grant award to provide financial support—in the form of scholarships, fellowships, and other student financial assistance—to low-income students.

This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use one or more of these requirements, we invite applications through a notice in the **Federal Register.**

Executive Order 12866: This notice has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with this regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits of the final requirements justify the costs.

We have determined, also, that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

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

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF), on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF, you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: July 21, 2010.

Eduardo M. Ochoa,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2010–18352 Filed 7–26–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Overview Information; Promoting Postbaccalaureate Opportunities for Hispanic Americans (PPOHA) Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010

Catalog of Federal Domestic Assistance (CFDA) Number: 84.031M.

Dates: Applications Available: July 27, 2010.

Deadline for Transmittal of Applications: August 26, 2010.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purposes of the PPOHA Program are to: (1) Expand postbaccalaureate educational opportunities for, and improve the academic attainment of, Hispanic students; and (2) expand the postbaccalaureate academic offerings as well as enhance the program quality in the institutions of higher education that are educating the majority of Hispanic college students and helping large numbers of Hispanic and low-income students complete postsecondary degrees.

Program Authority: 20 U.S.C. 1102–1102c; 1161aa–1.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 84, 85, 86, 97, 98, and 99. (b) The notice of final requirements, published elsewhere in this issue of the **Federal Register** (Final Requirements).

II. Award Information

Type of Award: Discretionary grant.

Estimated Available Funds: $9,785,518.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2011 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $385,000–575,000.

Estimated Average Size of Awards: $500,000.

Maximum Awards: The PPOHA awards individual development grants. We will not fund any application for a PPOHA Program individual development grant at an amount exceeding $575,000 for a single budget period of 12 months. During our initial review of applications, we may choose not to further consider or review an application with a budget that exceeds the maximum amount. The Assistant Secretary for Postsecondary Education may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 18–20.

Note: The Department is not bound by any estimates in this notice.

Note: Applicants should periodically check the PPOHA Program Web site for further information. The address is: *http://www.ed.gov/programs/ppoha/index.html.*

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* Institutions of higher education (IHEs) that offer a postbaccalaureate certificate or postbaccalaureate degree program and qualify as eligible Hispanic-serving institutions (HSIs) under section 502 of the HEA.

Eligibility Criteria (Use of 34 CFR 606.2(a) and (b), 606.3 through 606.5): To qualify as an eligible HSI for the PPOHA Program under sections 502 and 512(b) of the HEA (20 U.S.C. 1101a and 1102a), an IHE must—

(a) Have an enrollment of needy students, as defined in section 502(b) of the HEA; 20 U.S.C. 1101a(b) (cross-referenced in section 502(a)(2)(A)(i) of the HEA; 20 U.S.C. 1101a(a)(2)(A)(i));

(b) Have, except as provided in section 522(b) of the HEA, average educational and general expenditures that are low, per full-time equivalent (FTE) undergraduate student, in comparison with the average educational and general expenditures per FTE undergraduate student of institutions that offer similar instruction (section 502(a)(2)(A)(ii) of the HEA; 20 U.S.C. 1101a(a)(2)(A)(ii));

Note: To demonstrate an enrollment of needy students and low average educational and general expenditures per FTE undergraduate student, an IHE must be designated as an "eligible institution" in accordance with 34 CFR 606.3 through 606.5 and the notice inviting applications for designation as an eligible institution for the fiscal year for which the grant competition is being conducted.

(c) Be accredited by a nationally recognized accrediting agency or association that the Secretary has determined to be a reliable authority as to the quality of education or training offered, or making reasonable progress toward accreditation, according to such an agency or association (section 502(a)(2)(A)(iv) of the HEA; 20 U.S.C. 1101a(a)(2)(A)(iv));

(d) Be legally authorized to provide, and provide within the State, an educational program for which the institution awards a bachelor's degree (section 502(a)(2)(A)(iii) of the HEA; 20 U.S.C. 1101a(a)(2)(A)(iii)); and

(e) Have an enrollment of undergraduate FTE students that is at least 25 percent Hispanic students at the end of the award year immediately preceding the date of application (section 502(a)(5)(B) of the HEA; 20 U.S.C. 1101a(a)(5)(B)).

Note 1: Funds for the PPOHA Program will be awarded each fiscal year; thus, for this program, the "end of the award year immediately preceding the date of application" refers to the end of the fiscal year prior to the application due date. The end of the fiscal year occurs on September 30 for any given year.

Note 2: In considering applications for grants under this program, the Department will compare the data and documentation the institution relied on in its application with data reported to the Department's Integrated Postsecondary Education Data System (IPEDS), the IHE's State-reported enrollment data, and the institutional annual report. If different percentages or data are reported in these various sources, the institution must, as part of the 25 percent assurance verification, explain the reason for the differences. If the IPEDS data show that less than 25 percent of the institution's undergraduate FTE students are Hispanic, the burden is on the institution to show that the IPEDS data are inaccurate. If the IPEDS data indicate that the institution has an undergraduate FTE less than 25 percent, and the institution fails to demonstrate that the IPEDS data are inaccurate, the institution will be considered ineligible. (*See* Final Requirements.) [1]

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

3. *Other:*

(a) *Limit on Number of Individual Development Grants.* An eligible HSI will not be awarded more than one Individual Development Grant under the PPOHA Program (20 U.S.C. 1102c).

(b) *Limit on Applications From an Eligible Institution.* In any fiscal year, an eligible institution may submit only one application for a grant under the PPOHA Program. This restriction is intended to ensure that more Hispanic-serving institutions have an opportunity for assistance under Title V of the HEA. (*See* Final Requirements.)

[1] For purposes of making the determination described in paragraph (e) of the Eligibility Criteria for the FY 2010 competition, IHEs must report their undergraduate Hispanic FTE percent based on the student enrollment count closest to, but not after, September 30, 2009.

In addition, for purposes of establishing eligibility under 34 CFR 606.5 for this FY 2010 competition, the Notice Inviting Applications for Designation as Eligible Institutions for FY 2010 was published in the **Federal Register** on December 7, 2009 (74 FR 64059), and the deadline for applications was January 6, 2010. Only institutions that submitted the required application and received designation through that process are eligible to submit an application for this competition.

IV. Application and Submission Information

1. *Address to Request Application Package:* Dr. Maria E. Carrington, U.S. Department of Education, 1990 K Street, NW., room 6036, Washington, DC 20006–8513. Telephone: (202) 502–7548 or by e-mail: *Maria.Carrington@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: The application narrative (Part III) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We have established mandatory page limits for the PPOHA Program application. You must limit the section of the narrative that addresses the selection criteria to no more than 50 pages, using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1 inch margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, *except* titles, headings, footnotes, quotations, references, captions, and all text in charts, tables, figures, and graphs. These items may be single-spaced. Charts, tables, figures, and graphs in the application narrative count toward the page limit.
- Use a font that is either 12 point or larger, or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman and Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the Application for Federal Assistance (SF 424); the Department of Education Supplemental Information form (SF 424); Part II, Budget Information-Non-Construction Programs (ED Form 524); Part IV, the assurances and certifications; or the one-page project abstract and program activity budget detail form and supporting narrative. However, the page limit does apply to all of the application narrative section (Part III), including the budget narrative of the selection criteria. If you include any attachments or appendices not specifically requested in the application package, these items will be counted as part of your application narrative (Part III) for purposes of the page limit requirement. You must include your complete response to the selection criteria in the application narrative.

Note: The narrative response to the budget selection criteria is not the same as the activity detail budget form and supporting narrative. The supporting narrative for the activity detail budget form details the requested budget items line by line.

We will reject your application if you exceed the page limit; or if you apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: July 27, 2010.

Deadline for Transmittal of Applications: August 26, 2010.

Applications for grants under this program must be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants site. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under *For Further Information Contact* in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions: Limit on Use of Funds for Direct Assistance:* A PPOHA Program grantee may use no more than 20 percent of its total PPOHA Program grant award to provide financial support—in the form of scholarships, fellowships, and other student financial assistance—to low-income students.

We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, (1) you must have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN); (2) you must register both of those numbers with the Central Contractor Registry (CCR), the Government's primary registrant database; and (3) you must provide those same numbers on your application.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

7. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the PPOHA—CFDA Number 84.031M—must be submitted electronically using e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov*.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks

before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement*.

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

• You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E–Application will not accept an application for this program after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.

• The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.

• Your electronic application must comply with any page limit requirements described in this notice.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of e-Application Unavailability: If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2) (a) E–Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E–Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under *For Further Information Contact* (see VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of e-Application.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through e-Application because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to e-Application; and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Dr. Maria E. Carrington, U.S. Department of Education, 1990 K Street, NW., room 6036, Washington, DC 20006–8513. FAX: (202) 502–7861.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.031M), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.031M), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260. The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from section 75.210 of EDGAR (34 CFR 75.210) and are as follows. Applicants must address each of the selection criteria (separately for each proposed activity). The total weight of the selection criteria is 100 points; the weight of each criterion is noted in parentheses.

(a) *Need for project.* (Maximum 20 points) In determining the need for the proposed project, the Secretary considers:

(i) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project. (10 points)

(ii) The extent to which the proposed project will focus on serving or otherwise addressing the needs of disadvantaged individuals. (5 points)

(iii) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses. (5 points)

(b) *Quality of the project design.* (Maximum 15 points) In determining the quality of the design of the proposed project, the Secretary considers:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable. (10 points)

(ii) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs. (5 points)

(c) *Quality of project services.* (Maximum 15 points) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. In addition, the Secretary considers:

(i) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services. (10 points)

(ii) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice. (5 points)

(d) *Quality of project personnel.* (Maximum 10 points) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. In addition, the Secretary considers:

(i) The qualifications, including relevant training and experience, of the project director or principal investigator. (5 points)

(ii) The qualifications, including relevant training and experience, of key project personnel. (5 points)

(e) *Adequacy of resources.* (Maximum 5 points) In determining the adequacy of resources for the proposed project, the Secretary considers:

(i) The extent to which the budget is adequate to support the proposed project. (3 points)

(ii) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project. (2 points)

(f) *Quality of the management plan.* (Maximum 20 points) In determining the quality of the management plan for the proposed project, the Secretary considers:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks. (10 points)

(ii) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project. (5 points)

(iii) The adequacy of mechanisms for ensuring high-quality products and services from the proposed project. (5 points)

(g) *Quality of the project evaluation.* (Maximum 15 points) In determining the quality of the evaluation, the Secretary considers:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project. (5 points)

(ii) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible. (5 points)

(iii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes. (5 points)

2. *Review and Selection Process:* Additional factors we consider in selecting an application for an award are as follows:

(a) *Documentation.* Applicants must provide, as an attachment to the application, the documentation the institution relied upon in determining that at least 25 percent of the institution's undergraduate FTE students are Hispanic.

Note: The 25 percent requirement applies only to undergraduate Hispanic students and is calculated based upon FTE students. Instructions for formatting and submitting the verification documentation to e-Application are in the application package for this competition.

(b) *Tie-breaker for Development Grants.* To resolve ties in the reader scores of applications for development grants, the Department will award one additional point to an application from an IHE that has an endowment fund for

which the market value per FTE student is less than the comparable average current market value of the endowment funds per FTE student at similar type IHEs. In addition, to resolve ties in the reader scores of applications for PPHOA development grants, the Department will award one additional point to an application from an IHE that has expenditures for library materials per FTE student that are less than the comparable average expenditures for library materials per FTE student at similar type IHEs. (34 CFR 606.23(a)(1) and (2)).

For the purpose of these funding considerations, we will use the most recent complete data available (e.g., for FY 2010, we will use 2008–2009 data).

If a tie remains after applying the tie-breaker mechanism above, priority will be given for Individual Development Grants to applicants that have the lowest endowment values per FTE student. (34 CFR 606.23(b)(1)) (See Final Requirements)

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html*.

4. *Performance Measures:* The Secretary has established the following key performance measures for assessing the effectiveness of the PPOHA Program:

(a) The percentage change, over the five-year grant period, of the number of full-time degree-seeking graduate and professional students enrolled at HSIs currently receiving an award under this program.

(b) The percentage change, over the five-year grant period, of the number of master's, doctoral and first-professional degrees, and postbaccalaureate certificates awarded at HSIs currently receiving an award under this program.

(c) Cost per successful outcome: Federal cost per master's degree, doctoral and first-professional degree, and postbaccalaureate certificate at HSIs currently receiving an award under this program.

VII. Agency Contacts

For Further Information Contact: Dr. Maria E. Carrington, U.S. Department of Education, 1990 K Street, NW., room 6036, Washington, DC 20006–8513. Telephone: (202) 502–7548 or by e-mail: *Maria.Carrington@ed.gov*.

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or computer diskette) on request to the program contact person listed under *For Further Information Contact* in section VII of this notice.

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Dated: July 21, 2010.

Eduardo M. Ochoa,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2010–18355 Filed 7–26–10; 8:45 am]

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