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WHEN: Tuesday, October 5, 2010
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

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Presidential Documents

Title 3—

The President

Proclamation 8561 of September 15, 2010

National Hispanic Heritage Month, 2010

By the President of the United States of America

A Proclamation

From the early settlers of the New World to those reaching for the American dream today, Hispanics have shaped and strengthened our country. During National Hispanic Heritage Month, we pause to celebrate the immeasurable contributions these individuals have made to our Nation—from its inception to its latest chapters.

Reflecting the remarkable diversity of the American people, Hispanics represent a wide range of nationalities and backgrounds. Like so many Americans, Hispanics have overcome great obstacles to persevere and flourish in every sector of our society. With enduring values of faith and family, hard work and sacrifice, Hispanics have preserved the rich heritage of generations past while contributing mightily to the promise of our Nation for their children and grandchildren.

Hispanics are leaders in all aspects of our national life, from the Supreme Court and halls of Congress to boardrooms and Main Streets. Across America, Hispanics protect neighborhoods as police officers and first responders, guide young people as teachers and mentors, and boost economic growth as business owners and operators. As members of the Armed Forces, heroic Hispanic men and women have also fought and died to defend the liberties and security of the United States in every war since the American Revolution, many serving before becoming American citizens.

This month, we honor Hispanics for enriching the fabric of America, even as we recognize and rededicate ourselves to addressing the challenges to equality and opportunity that many Hispanics still face. In reflecting on our Nation's rich Hispanic heritage, let us take pride in our unique and vibrant history, and recommit to a shared future of freedom, prosperity, and opportunity for all.

To mark the achievements of Hispanics in the United States, the Congress, by Public Law 100–402, as amended, has authorized and requested the President to issue annually a proclamation designating September 15 through October 15 as "National Hispanic Heritage Month."

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim September 15 through October 15, 2010, as National Hispanic Heritage Month. I call upon public officials, educators, librarians, and all the people of the United States to observe this month with appropriate ceremonies, activities, and programs.

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

[FR Doc. 2010–23700
Filed 9–20–10; 8:45 am]
Billing code 3195–W0–P

Rules and Regulations

Federal Register

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0710; Directorate Identifier 2010–NE–26–AD; Amendment 39–16434; AD 2010–19–06]

RIN 2120–AA64

Airworthiness Directives; Turbomeca Arriel 1 Series Turboshaft Engines

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 an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Metallurgical non-conformities have been found when performing quality inspections during production of Arriel 1 gas generator (GG) second stage turbine discs introduced by Turbomeca Modification TU347 (P/N 0 292 25 040 0). Analysis has concluded that the approved life limit of the post-TU347 GG second stage turbine disc needs to be reduced to 2,500 GG cycles.

We are issuing this AD to prevent failure of the gas generator second stage turbine disc which could result in the release of high energy debris and damage to the helicopter.

DATES: This AD becomes effective October 6, 2010.

We must receive comments on this AD by October 21, 2010.

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Richard Woldan, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *e-mail: richard.woldan@faa.gov;* telephone (781) 238–7136; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, previously issued EASA AD 2010–0101–E, dated June 4, 2010, and has now issued a revision to that AD, which is AD 2010–0101R1, dated August 4, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

Metallurgical non-conformities have been found when performing quality inspections during production of Arriel 1 gas generator (GG) second stage turbine discs introduced by Turbomeca Modification TU347 (P/N 0 292 25 040 0). Analysis has concluded that the approved life limit of the post-TU347 GG second stage turbine disc needs to be reduced to 2,500 GG cycles.

Since issuance of AD 2010–0101–E, Turbomeca has introduced a reinforced Eddy-current inspection which provides a lower (improved) detection threshold of the metallurgical non-conformities. This reinforced Eddy-current inspection, named "CFR", combined with a revised analysis, allows to increase the life limit of the post-TU347 GG second Stage Turbine Discs identified as "CFR" over the 2,500 GG life cycles of the "non-CFR" Discs.

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

FAA's Determination and Requirements of This AD

This product 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, 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 EASA and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design. This AD requires:

- For gas generator second stage turbine discs, part number (P/N) 0 292 25 040 0 that do not have the "CFR" marking, removing them from service before exceeding 2,500 cycles-in-service (CIS) since-new or within 20 CIS from the effective date of the AD, whichever occurs later; and
- For gas generator second stage turbine discs, P/N 0 292 25 040 0 that have the "CFR" marking, removing them from service before exceeding 3,500 CIS since-new.

Differences Between the AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. This AD differs from the MCAI and/or service information as follows:

- EASA AD 2010–0101R1, dated August 4, 2010, requires second stage turbine discs with fewer than 2,500 CIS to be removed upon accumulating 2,500 CIS.
- EASA AD 2010–0101R1, dated August 4, 2010, requires revising the approved aircraft maintenance program to reflect the life limit of 2,500 CIS.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because of the short compliance

time in removing affected gas generator second stage discs that are near or over the reduced life limit. 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–2010–0710; Directorate Identifier 2010–NE–26–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 with FAA personnel concerning this AD. Using the search function of the Web site, anyone can find and read the comments in any of our dockets, including, if provided, the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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:

2010–19–06 Turbomeca: Amendment 39–16434.; Docket No. FAA–2010–0710; Directorate Identifier 2010–NE–26–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective October 6, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Turbomeca Arriel 1A, 1A1, 1B, 1C, 1C1, 1C2, 1D, 1D1, and 1S1 turboshaft engines that have incorporated Modification TU347. These engines are installed on, but not limited to, Eurocopter AS350 series, AS365 and SA365 series, Sikorsky S–76A series and S–76C series helicopters.

Reason

(d) Metallurgical non-conformities have been found when performing quality inspections during production of Arriel 1 gas generator (GG) second stage turbine discs introduced by Turbomeca Modification TU347 (P/N 0 292 25 040 0). Analysis has concluded that the approved life limit of the post-TU347 GG second stage turbine disc needs to be reduced to 2,500 GG cycles.

We are issuing this AD to prevent failure of the gas generator second stage turbine disc which could result in the release of high energy debris and damage to the helicopter.

Actions and Compliance

(e) Unless already done, do the following:

(1) For gas generator second stage turbine discs, part number (P/N) 0 292 25 040 0 that do not have the "CFR" marking, remove from service before exceeding 2,500 cycles-in-service (CIS) since-new or within 20 CIS from the effective date of this AD, whichever occurs later.

(2) For gas generator second stage turbine discs, P/N 0 292 25 040 0 that have the "CFR" marking, remove from service before exceeding 3,500 CIS since-new.

Gas Generator Second Stage Turbine Installation Prohibition

(3) After the effective date of this AD, for gas generator second stage turbine discs, P/N 0 292 25 040 0 that do not have the "CFR" marking, and have 2,500 or more CIS since-new, do not install into any engine.

(4) After the effective date of this AD, for gas generator second stage turbine discs, P/N 0 292 25 040 0 that have the "CFR" marking, and have 3,500 or more CIS since-new, do not install into any engine.

FAA AD Differences

(f) This AD differs from the Mandatory Continuing Airworthiness Information (MCAI) and/or service information as follows:

(1) European Aviation Safety Agency (EASA) AD 2010–0101R1, dated August 4, 2010, requires second stage turbine discs with fewer than 2,500 CIS to be removed upon accumulating 2,500 CIS.

(2) EASA AD 2010–0101R1, dated August 4, 2010, requires revising the approved aircraft maintenance program to reflect the new reduced life limit of 2,500 CIS.

Alternative Methods of Compliance (AMOCs)

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

Related Information

(h) Refer to EASA AD 2010–0101R1, dated August 4, 2010, and Turbomeca Alert Mandatory Service Bulletin No. A292 72 0831, Version B, dated July 7, 2010, for related information. Contact Turbomeca, 40220 Tarnos, France; telephone 33 05 59 74 40 00, fax 33 05 59 74 45 15, for a copy of this service information.

(i) Contact Richard Woldan, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New

England Executive Park, Burlington, MA 01803; *e-mail: richard.woldan@faa.gov;* telephone (781) 238–7136; fax (781) 238–7199, for more information about this AD.

Material Incorporated by Reference

(j) None.

Issued in Burlington, Massachusetts, on September 10, 2010.

Francis A. Favara,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2010–23100 Filed 9–20–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0816; Airspace Docket No. 10–ASO–30]

Amendment to Class D Airspace; Miami Opa Locka Airport, FL, and Hollywood, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, technical amendment.

SUMMARY: This action amends Class D airspace at Opa Locka Airport, Miami, FL; and Hollywood, FL, by correcting the geographic coordinates of the airport to aid in the navigation of our National Airspace System.

DATES: Effective date: 0901 UTC. October 21, 2010.

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

The FAA received a request from the National Aeronautical Navigation Services to correct the geographic coordinates for Opa Locka Airport in the Class D airspace for Miami and Hollywood, FL. This action makes the adjustment.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends Class D airspace at Miami, and Hollywood, FL. The geographic coordinates of the Opa Locka Airport will be corrected to coincide with the FAAs National Aeronautical Navigation Services. Accordingly, since this is an administrative change, and does not involve a change in the dimensions or operating requirements of that airspace, notice and public procedures under 5 U.S.C. 553(b) are unnecessary.

The Class D airspace designations are published in Paragraph 5000 of FAA order 7400.9U, signed August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designations listed in this document will be published subsequently in the Order.

The FAA has determined that his 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 Miami and Hollywood, FL.

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 7400.9U, Airspace Designations and Reporting Points, signed August 18, 2010, and effective September 15, 2010, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASO FL D Miami, Opa Locka Airport, FL [Amended]

Miami, Opa Locka Airport, FL
(Lat. 25°54′25″ N., long 80°16′42″ W.)
North Perry Airport
(Lat. 26°00′05″ N., long 80°14′26″ W.)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.3-mile radius of Opa Locka Airport excluding that airspace south of 25°52′03″ N., and that portion north of a line connecting the 2 points of intersection with a 4-mile radius centered on the North Perry Airport. This Class D airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASO FL D Hollywood, FL [Amended]

Hollywood, North Perry Airport, FL
(Lat. 26°00′05″ N., long 80°14′26″ W.)
Opa Locka Airport
(lat. 25°54′25″ N., long 80°16′42″ W.)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4-mile radius of the North Perry Airport; excluding the portion north of the north boundary of the Miami, FL, Class B airspace area and that portion south of a line connecting the 2 points of intersection with a 4.3-mile radius centered on the Opa Locka Airport. This Class D airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Issued in College Park, Georgia, on September 7, 2010.

Myron A. Jenkins,

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

[FR Doc. 2010–23399 Filed 9–20–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0393; Airspace Docket No. 10–ANM–2]

Establishment of Class E Airspace and Amendment to Class D Airspace; Troutdale, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will establish Class E airspace and amend existing Class D airspace at Troutdale, OR, to accommodate aircraft using Non-directional Radio Beacon (NDB) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) at Portland-Troutdale Airport. This will improve the safety and management of Instrument Flight Rules (IFR) operations at the airport. This action also amends the geographic coordinates of the Class D airspace area at the airport.

DATES: Effective date, 0901 UTC, November 18, 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: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

History

On June 14, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend controlled airspace at Troutdale, OR (75 FR 33557). 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 and Class E airspace designations are published in paragraph 5000 and 6002, respectively, of FAA Order 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E surface airspace at Portland-Troutdale Airport, to accommodate IFR aircraft executing NDB (GPS) SIAPs at the airport. This action is necessary for the safety and management of IFR operations. The geographic coordinates of the existing Class D airspace will be updated to coincide with the FAA's National Aeronautical Navigation Services.

The FAA has determined 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 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 discusses 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 establishes additional controlled airspace at Portland-Troutdale Airport, Troutdale, OR.

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 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010 is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ANM OR D Portland-Troutdale, OR [Amended]

Portland-Troutdale Airport, Troutdale, OR (Lat. 45°32′58″ N., long. 122°24′05″ W.)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4-mile radius of the Portland-Troutdale Airport, excluding the portion within the Portland International Airport, OR, Class C airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ANM OR E2 Portland-Troutdale, OR [New]

Portland-Troutdale Airport, Troutdale, OR (Lat. 45°32′58″ N., long. 122°24′05″ W.)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4-mile radius of the Portland-Troutdale Airport, excluding the portion within the Portland International Airport, OR, Class C airspace area.

Issued in Seattle, Washington, on August 30, 2010.

John Warner,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2010–23397 Filed 9–20–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–1248; Airspace Docket No. 09–ANM–31]

Establishment of Class E Airspace; Fillmore, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will establish Class E airspace at Fillmore, UT, to accommodate aircraft using a new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) at Fillmore Municipal Airport. This will improve

the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Effective date, 0901 UTC, November 18, 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: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

History

On June 14, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish controlled airspace at Fillmore, UT (75 FR 33560). 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 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class E airspace extending upward from 700 feet above the surface, at Fillmore Municipal Airport, to accommodate IFR aircraft executing new RNAV GPS SIAP at the airport. This action is necessary for the safety and management of IFR operations.

The FAA has determined 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 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 discusses 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 establishes controlled airspace at Fillmore Municipal Airport, Fillmore, UT.

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 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010 is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM UT E5 Fillmore, UT [New]

Fillmore Municipal Airport, UT
(Lat. 38°57′29″ N., long. 112°21′47″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Fillmore Municipal Airport, and within 2 miles each side of the 039° bearing extending from the 6.5-mile radius to 11.2 miles northeast of the Airport.

Issued in Seattle, Washington, on August 30, 2010.

John Warner,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2010–23387 Filed 9–20–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–1189; Airspace Docket No. 09–ANM–28]

Establishment of Class E Airspace; Toledo, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will establish Class E airspace at Toledo, WA, to accommodate aircraft using a new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) at Ed Carlson Memorial Field-South Lewis County Airport. This will improve the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Effective date, 0901 UTC, November 18, 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: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA, 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

History

On June 14, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend controlled airspace at Toledo, WA (75 FR 33559). 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 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace extending upward from 700 feet above the surface, at Ed Carlson Memorial Field-South Lewis County Airport, to accommodate IFR aircraft executing new RNAV (GPS)

SIAP at the airport. This action is necessary for the safety and management of IFR operations.

The FAA has determined 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 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 discusses 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 establishes additional controlled airspace at Ed Carlson Memorial Field-South Lewis County Airport, Toledo, WA.

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 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010 is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM WA, E5 Toledo, WA [New]

Ed Carlson Memorial Field-South Lewis County Airport, WA
(Lat. 46°28′38″ N., long. 122°48′23″ W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of the Ed Carlson Memorial Field-South Lewis County Airport, and within 1 mile each side of the 074° bearing from the Airport, extending from the 6.9-mile radius to 7.9 miles northeast of the airport.

Issued in Seattle, Washington, on August 30, 2010.

John Warner,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2010–23392 Filed 9–20–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0347; Airspace Docket No. 07–AWA–2]

RIN 2120–AA66

Modification of Class B Airspace; Chicago, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Chicago, IL, Class B airspace area by expanding the existing airspace area to ensure containment of Instrument Flight Rules (IFR) aircraft conducting instrument approach procedures within Class B airspace, and segregating IFR aircraft arriving/departing Chicago O'Hare International Airport (ORD) and Visual Flight Rules (VFR) aircraft operating in the vicinity of the Chicago Class B airspace area. The additional Class B airspace will support simultaneous instrument approach procedure operations to ORD's triple parallel runways today, as well as the three additional parallel runways (six total) planned for the near future. This action enhances safety, improves the flow of air traffic, and reduces the potential for midair collision in the Chicago terminal area, further supporting the FAA's national airspace redesign goal of optimizing terminal and en route airspace areas to reduce aircraft delays and improve safety and efficiency of the National Airspace System (NAS).

DATES: *Effective Date:* 0901 UTC, October 21, 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:

Background

On May 14, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to modify the Chicago, IL, Class B airspace area (75 FR 27229). The FAA proposed this action to ensure containment of turbo-jet IFR aircraft conducting instrument approaches to ORD within the confines of Class B airspace and better segregate IFR aircraft arriving/departing ORD and non-participating VFR aircraft operating in the vicinity of the Chicago Class B airspace area.

Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. In response to the NPRM, the FAA received 82 written comment submissions; of which, 7 were duplicate documents submitted by 4 commenters. Many of the commenters identified themselves as pilots who operate within, or through, the local area. All comments received were considered before making a determination on the final rule. An analysis of the comments received and the FAA's responses are contained in the "Discussion of Comments" section below.

Subsequent to the NPRM publication, the geographic coordinates in the aeronautical database for the ORD airport reference point (ARP), the Chicago Midway International Airport ARP, and the intersection of U.S. Highway 294 and the railroad tracks identified in Area B changed. The correct coordinates for the above have been incorporated into the Chicago Class B airspace area legal description contained in this final rule.

Class B airspace designations are published in paragraph 3000 of FAA Order 7400.9U, dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class B airspace designations

listed in this document will be subsequently published in the Order.

Discussion of Comments

Six commenters expressed general opposition to the proposal stating they thought it was unnecessary.

The FAA does not agree. As stated in the NPRM, the current Chicago Class B airspace area was established in 1993. Since then, ORD has experienced a significant increase in the number of aircraft operations and a substantial change in the fleet mix, with no change to the airspace configuration. The City of Chicago has completed airport infrastructure projects in recent years that enable simultaneous instrument approaches to three parallel runways that run west to east. Ongoing planned runway construction projects for the near future include building three additional parallel runways running west to east; transforming the operational flow of ORD to a West/East flow with six parallel runways when completed.

FAA guidance requires air traffic controllers to vector IFR arrival aircraft to remain within Class B airspace once they've entered it. Today, turbo-jet aircraft flying simultaneous triple instrument approach procedures to ORD exceed the Class B airspace area boundaries; routinely entering, exiting, and re-entering the Class B airspace during their arrival. The procedural requirements associated with establishing arrival aircraft on simultaneous instrument approaches to three parallel runways result in aircraft exceeding the Class B airspace lateral boundaries by up to ten nautical miles (NM) during moderate traffic levels. As the additional runways planned for construction at ORD become operational and expected airport capacity increases, the number of aircraft exiting the Class B airspace during arrivals is also expected to increase; resulting in IFR turbo-jet air carrier arrivals flying in the very airspace that non-participating VFR general aviation and glider aircraft are also operating.

Due to the existing and forecasted traffic volume, fleet mix, and operational complexity for controlling arrivals and departures at ORD and the immediate vicinity, the FAA has determined changing air traffic procedures alone will not retain IFR turbo-jet arrivals to ORD within the existing outdated Chicago Class B airspace configuration. The proposed airspace modification is the minimum needed to reasonably accommodate current and future aircraft operations at ORD and necessary to ensure flight safety and efficiency of operations at and in the vicinity of ORD for all users of the airspace.

Sixty-six commenters, including the Aircraft Owners and Pilot Association and multiple Soaring Clubs in the area, requested that the floor of Area F be raised to 5,000 feet mean sea level (MSL).

The FAA has determined it is not possible to raise the floor of Area F from 4,000 feet MSL to 5,000 feet MSL. Aircraft conducting triple simultaneous approaches at ORD cannot be assigned the same altitude during turn-on to the final approach course; they must be assigned an altitude that differs by at least 1,000 feet from the altitude of the other two aircraft conducting simultaneous approaches.

Specifically, when conducting triple simultaneous instrument approaches during an east flow, aircraft will be turned onto and established on final approach courses at 4,000 feet MSL for runway 9L (the northern most runway), 7,000 feet MSL or above for runway 9R (the center runway), and 5,000 feet MSL and 6,000 feet MSL for runway 10 (the southernmost runway currently). When runway 10C becomes operational, it will be used as the southernmost arrival runway and mark the time when ORD will transition to become primarily a west flow or east flow operation.

Traffic must be established on the respective localizers in a manner which allows for standard IFR (1,000 feet vertical) separation to be maintained until the aircraft is switched to the parallel monitor frequency. In reality, this means that the minimum point that the 4,000 feet MSL traffic (north runway) needs to be established is 3 NM from the point that the adjoining final's aircraft descend below 5,000 feet MSL. The traffic that turns on at 5,000 feet MSL or 6,000 feet MSL (south runway) needs to be established 3 NM from the point that the adjoining final's aircraft descend below 7,000 feet MSL. These minimum "turn on points" are located about 20 NM west of ORD for east flow operations. The base legs for aircraft flying to the north and south runways will need to be an additional few miles west of those points to meet their "turn on" requirements. Additionally, for both north and south runways, air traffic controllers will be sequencing aircraft from two or more arrival streams, necessitating the use of multiple altitudes in the arrival descent areas, until lateral separation is established. Under some projected traffic scenarios, multiple altitude downwind patterns will be utilized, with traffic "layered" by altitude and worked by separate controllers. During periods of heavy arrival demand, it is expected that the length of finals will extend to 25–30 NM routinely, as is the case today during west flow operations.

The described scenario addresses triple simultaneous Instrument Landing System approaches. When runway 10R opens and becomes operational, the situation will become compounded as the Chicago TRACON begins conducting "quad" operations. The procedures for controlling quad approaches are in the early planning stages.

Sixty commenters stated that a floor of 4,000 feet MSL for Area F would adversely affect safety. The safety factors cited included ill effects due to compression, decreased possibility of safe landing during in-flight emergencies, inability to avoid the Class B airspace, and inability for gliders to maintain sufficient altitude during departure and arrival.

The FAA acknowledges that some compression will occur. Non-participating VFR general aviation and glider aircraft will have their choice of flying either above or below the Class B airspace, or circumnavigating it five to ten NM further west to remain clear should they decide not to contact Chicago TRACON (C90) to receive Class B services. However, this is necessary to contain arriving IFR turbo-jet aircraft flying instrument approaches to ORD within Class B airspace once they've entered it, and will enhance flight safety to all by segregating the large turbo-jet aircraft and the non-participating VFR aircraft operating in the vicinity of the Chicago Class B airspace area.

The FAA notes that the proposal will affect glider operations. While the Area F Class B airspace extension proposed to the west of ORD brings Class B airspace closer to the airfields where gliders operate, the original airspace extension to the west was reduced in size as much as possible in response to concerns expressed by the glider community during the ad hoc committee meetings and included in their final report. Subsequently, Area F was designed to ensure it does not encompass or overlay the airfields where the Sky Soaring Glider Club (Hampshire, IL) and the Windy City Soaring Association (Hinkley, IL) operations are located; as well as the Chicago Glider Club (Minooka, IL) which lies well south of any proposed Chicago Class B airspace area modifications.

Based on the dimensions of Area F having been reduced at the recommendation and request of the glider community, the FAA feels the success for a safe landing would be no different than it would be in other areas of the present day Class B airspace

where the floor is 4,000 feet MSL or less.

The FAA does not agree that non-participating pilots will have difficulty avoiding the Area F Class B airspace extension. The legal description of the airspace area includes a mixture of prominent visual landmark references, geographic coordinates, and arcs defined off distance measuring equipment (DME) navigation aids. The FAA believes this mix of descriptors should be sufficient and effective in assisting pilots to identify the lateral limits of Area F.

Lastly, the FAA acknowledges the concerns of the glider community during departure and arrival phases of flight should they continue to fly in the Class E airspace under the Area F Class B airspace extension and resist seeking alternative airspace that may allow them to climb to higher altitudes on departure and during sustained flights. Great effort was taken to ensure the Class B airspace extension was minimized to the absolute essential dimensions and to ensure it does not encompass or overlay airfields that gliders routinely operate from to minimize impacts to their flight operations.

The four factors cited above, however, do not negate the need for the project. At the present time, large turbo-jet air carriers, general aviation, and glider aircraft are flying simultaneously in the airspace proposed to become Area F due to the outdated design of the Chicago Class B airspace area. Moving forward with the Class B airspace modification will enhance flight safety for all operators flying within, through, or near the Chicago Class B airspace area.

Twenty-two commenters stated that proposed Area F with a floor of 4,000 feet MSL would have negative effects to general aviation aircraft such as delays, or would have negative effects overall on glider operations. The negative effects included difficulty of training new glider pilots and diminished livelihood for instructors and tow pilots.

The FAA notes that similar concerns of adverse impact were raised by commenters responding to the informal airspace meetings and offers the following, also addressed in the NPRM. The proposed Area F Class B airspace extension extending west of ORD incorporates a portion of Class E airspace that currently lies to the west of the boundary of the existing Area F, which currently has a 4,000 feet MSL floor, of the Chicago Class B airspace area. It is understandable that users of that Class E airspace view the establishment of Class B airspace there as an encroachment; however, in the interest of flight safety, the FAA has determined that the proposed Area F airspace extension to the west of ORD is necessary. The extension will contain IFR arrival aircraft flying triple simultaneous instrument approaches to ORD within Class B airspace throughout their approach, segregate IFR aircraft arriving to and departing from ORD and non-participating VFR aircraft in the vicinity of ORD from one another, and ensure a safer flying environment for all airspace users in the busy terminal airspace around ORD.

The Area F Class B airspace extension was limited to include only the volume of airspace necessary to support triple simultaneous instrument approaches. Although Area F brings Class B airspace closer to the airfields where gliders operate, the original airspace extension to the west was reduced in size as much as possible in response to concerns expressed by the glider community during the ad hoc committee meeting process. Additionally, as noted above, Area F was designed to ensure it does not encompass or overlay the airfields where the Sky Soaring Glider Club and the Windy City Soaring Association operations are located; the Chicago Glider Club lies well south of any proposed Class B airspace modifications.

The FAA maintains it is necessary to separate the large turbo-jet aircraft arriving and departing ORD and the non-participating VFR aircraft to ensure flight safety for all flying within, through, or near the Chicago Class B airspace area.

One commenter suggested VFR corridors be established northwest/southeast and northeast/southwest directly over ORD at 1,500 feet MSL to 2,000 feet MSL. Another commenter offered that the proposal would adversely affect the VFR flyway along the Fox River and a third commenter stated additional VFR flyways should be established to the east, the west, and directly over the airspace, and that they should be northbound or southbound only.

The FAA does not agree. Establishing VFR corridors at 1,500 feet MSL to 2,000 feet MSL directly over ORD through the Class B airspace surface area are not feasible. VFR corridors provide general aviation flight paths for pilots planning flights into, out of, or through complex terminal airspace so as to avoid Class B airspace. ORD fans departures off the airport covering as much as 270 degrees around the compass using a combination of parallel and diagonal runways. Depending upon the runway configuration in use, establishing low altitude corridors as suggested would conflict with the over 1,300 departures daily, on average, and force departures to be restricted below the corridor altitude until clear of the corridor. Additionally, IFR aircraft arriving and departing ORD, as well as departing Chicago Midway, Aurora, DuPage, and Milwaukee Mitchell airports, commonly occupy this airspace area.

The FAA also does not agree that the VFR flyway along the Fox River would be affected by the proposed modification. VFR flyways are not addressed in regulatory airspace proposals or determinations, but in accordance with FAA Order 7210.3, Facility Administration and Procedures, processing requirements. However, the FAA notes that the floor of the existing Class B airspace area over the Fox River is 4,000 feet MSL and remains the same in the proposed modification. The existing suggested altitude for the VFR flyway along the Fox River is charted at or below 3,500 feet MSL. The VFR flyway along the Fox River is unaffected by existing Class B airspace and will remain unaffected by the Chicago Class B airspace area modification.

Currently, there are three VFR flyways, that run north and south, west of ORD and one flyway that runs north and south, east of ORD. The flyways to the west utilize a river, roads, and railroad tracks, whereas the flyway to the east utilizes the Lake Michigan shoreline. The FAA believes the existing three VFR flyways are sufficient to support non-participating aircraft flying in the vicinity of ORD.

Two commenters requested that the floor of the Class B airspace over Lake Michigan be raised from 3,000 feet MSL (Area C) and 3,600 feet MSL (Area D) to 4,000 feet MSL or 4,500 feet MSL, citing safety as the reason. One of the commenters stated that raising the floor would increase options for pilots.

The FAA has determined it is not possible to raise the floor altitude for Areas C and D, as requested. No modifications were proposed for these areas as the existing airspace structure was deemed sufficient to continue supporting and protecting IFR aircraft flying triple simultaneous instrument approaches during west flow operations and non-participating VFR aircraft flying along the Lake Michigan shoreline. Although the commenters cited safety reasons as the basis for their suggestion, there are no known safety issues for that airspace today. The FAA recognizes that raising the Area C and D Class B airspace floors would increase options (additional transit altitudes and airspace over Lake Michigan) for non-participating VFR pilots operating east of ORD; however, the Class B airspace in Areas C and D protects the

instrument approaches flown to runways 22L and 27R, specifically.

Two commenters stated that the airspace contained in Area F below 5,000 feet MSL is unusable for instrument approaches. One of those commenters also stated that the FAA has indicated that the altitudes below 6,000 feet MSL are unusable in Area F on the west side of the Class B airspace due to traffic from satellite airports.

The FAA does not agree. These statements are incorrect. In fact, IFR aircraft flying instrument approach procedures to ORD today operate below 6,000 feet MSL in the airspace proposed to be Area F. As mentioned previously in response to the public's comments to raise the floor of Area F to 5,000 feet MSL, when conducting triple simultaneous instrument approaches during an east flow, aircraft will be turned onto and established on final approach courses at 4,000 feet MSL for runway 9L (the northern most runway), 7,000 feet MSL or above for runway 9R (the center runway), and 5,000 feet MSL and 6,000 feet MSL for runway 10 (the southernmost runway currently). When runway 10C becomes operational, it will be used as the southernmost arrival runway and mark the time when ORD will transition to become primarily a west flow or east flow operation.

Traffic must be established on the respective localizers in a manner that allows for standard IFR (1,000 feet vertical) separation to be maintained until the aircraft is switched to the parallel monitor frequency. This means that the minimum point that the 4,000 feet MSL traffic (north runway) needs to be established is 3 NM from the point that the adjoining final's aircraft descend below 5,000 feet MSL. The traffic that turns on at 5,000 feet MSL or 6,000 feet MSL (south runway) needs to be established 3 NM from the point that the adjoining final's aircraft descend below 7,000 feet MSL. These minimum "turn on points" are located about 20 NM west of ORD for east flow operations. Additionally, for both north and south runways, air traffic controllers will be sequencing aircraft from two or more arrival streams, necessitating the use of multiple altitudes in the arrival descent areas, until lateral separation is established. Under some projected traffic scenarios, multiple altitude downwind patterns will be utilized, with traffic "layered" by altitude, including the airspace between 4,000 feet MSL and 6,000 feet MSL.

Thirty-one commenters thought the railroad tracks near Hampshire, IL, should be used as a visual landmark to define the northern boundary of Area F between the 25 NM and 30 NM arcs. Thirty of those commenters thought that doing so would increase safety with regard to gliders avoiding the Class B airspace area.

The FAA does not agree. As stated in the NPRM, the FAA finds this suggestion impractical. The resultant dimension of the Area F extension would be insufficient laterally between the runway 9L centerline extended and the northern boundary of the area to safely ensure separation between aircraft flying in the runways 9L, 9R, and 10 downwind traffic patterns and aircraft flying along the Area F boundary and final approach courses. Additionally, issues associated with establishing Area F with an insufficient amount of airspace dimensionally will only be compounded when the three additional parallel runways that are planned become operational.

The FAA also notes that a second set of railroad tracks parallel to the railroad tracks near the town of Hampshire, IL, run approximately three NM to the south. Although commenters believed that using the visually identifiable railroad tracks near Hampshire, IL, would increase safety with regard to gliders avoiding the Chicago Class B airspace area, the opportunity for a pilot to misidentify the correct set of railroad tracks defining the boundary challenges that perspective. A pilot unfamiliar with the local area, encountering weather, or confused in flight for any number of reasons could misidentify the railroad tracks near Hampshire, IL, with those railroad tracks running parallel approximately three NM south near Burlington, IL, and unintentionally intrude into the Chicago Class B airspace area.

Two commenters stated that Area F was not necessary because departure aircraft from ORD did not conflict with instrument approach traffic in that area.

The FAA agrees that aircraft departing ORD do not conflict with aircraft flying instrument approaches in that area. However, the FAA does not agree that Area F is not necessary. Area F is intended to contain IFR turbo-jet aircraft flying instrument approach procedures to runways 9L, 9R, and 10 within Class B airspace. It also will segregate IFR turbo-jet aircraft from non-participating GA and glider aircraft from operating within the same volume of airspace. This will ensure a safe flying environment for all aircraft flying in or near Area F.

One commenter stated that aircraft are more fuel efficient at higher altitudes and, consequently, the proposal would increase fuel consumption for air transport aircraft. Another stated that the proposal would increase fuel consumption for general aviation aircraft.

The FAA does not agree that the Class B airspace area modification will increase fuel consumption for air transport aircraft. The FAA is taking action to modify the existing Class B airspace to contain IFR arrival aircraft flying instrument approach procedures within Class B airspace based on operational procedures today. This action aims to overcome IFR arrival aircraft entering, exiting, and reentering the Chicago Class B airspace area during arrival. This modification represents the minimum airspace needed to reasonably accommodate current operations and flight tracks at ORD. Since air traffic control will continue using existing approach procedures, altitudes, and flight tracks for the same fleet mix it is serving today, fuel consumption for air transport aircraft being controlled today is expected to remain the same in the future. Finally, as the existing flight tracks, altitude use, and approach procedures will not change as a result of modification to the Class B, this modification is not expected to have any fuel consumption impact on air transport aircraft.

The FAA recognizes that the Class B airspace modification could increase fuel burn for non-participating VFR aircraft. Areas E and F are the new Class B airspace areas that could affect non-participating VFR aircraft. In order to remain clear of the Chicago Class B airspace area, non-participating VFR pilots who decide not to contact the Chicago TRACON for Class B services will either have to fly lower or further east or west of ORD. However, this is necessary to separate them and the large turbo-jet aircraft being contained within the Class B airspace area. While some aircraft would need to fly additional distances or at different altitudes, the FAA believes any increase use of fuel would be minimal and be justified by the increase in overall safety.

One commenter stated that the floor of Area D over Joliet was too low, the airspace proposal would adversely affect Chicago Midway Airport (MDW) traffic, and that aircraft on approach to MDW should be at a higher altitude.

The FAA does not agree. The Joliet Regional Airport lies outside the Chicago Mode C veil (30 NM from ORD) in an area unaffected by the Chicago Class B airspace modification. Area D in the existing Chicago Class B airspace area is unchanged in the modification of the Chicago Class B airspace and continues to be over 5 NM away from Joliet Regional Airport. Since there are no proposed changes to Area D, the FAA does not believe there will be any

adverse affects to IFR arrival and departure operations to and from MDW. Additionally, the FAA considers the approach procedures to MDW to be safe, appropriate, and supportive of operations there; therefore, the approach procedures will not change as a result of this action.

Two commenters stated that the proposal would have noise impacts because arrival aircraft would be flying at lower altitudes. Additionally, one of those commenters asked if an environmental impact study or noise study had been done and if the FAA had notified communities that aircraft would be flying over them at lower altitudes.

The FAA does not agree. In accordance with FAA Order 1050.1, Environmental Impacts: Policies and Procedures, paragraph 311a, rulemaking actions that modify Class B airspace are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement. The FAA determined that there were no extraordinary circumstances that would have necessitated further environmental review. The location of present day flight tracks and altitude use will not change as a result of modification to the Class B airspace area. Jet aircraft will continue to fly the same flight tracks and patterns in the same locations that they fly today. There will be no adverse effects on any of the environmental impact categories required to be analyzed in accordance with FAA Order 1050.1; neither will there be any cumulative impacts. Moreover, the FAA prepared an environmental impact statement in July of 2005, and a record of decision in September of 2005, for construction and operation of the new runways at ORD. As such, there is no requirement for a noise study or public notification.

One commenter thought that undue priority was given to the safety needs of IFR aircraft destined for ORD and MDW; second priority was given to separation between IFR and VFR traffic; and last priority was given to uncontrolled aircraft. This commenter added that positive separation could not realistically occur for uncontrolled aircraft and thought policymakers should not favor one group over another.

The FAA does not agree that priority is given to the safety needs of IFR over VFR aircraft. Title 49 of U.S. Code, Section 40103, Sovereignty and use of airspace, charges the FAA to develop plans and policy for the use of the navigable airspace and assign by regulation or order the use of the airspace necessary to ensure the safety of all aircraft and the efficient use of airspace. This action, once established, will ensure containment of turbo-jet IFR aircraft conducting instrument approaches to ORD within the confines of Class B airspace and better segregate IFR aircraft arriving/departing ORD and non-participating VFR aircraft operating in the vicinity of the Chicago Class B airspace area. The containment of the IFR turbo-jet arrivals into ORD within Class B airspace enables the segregation of those aircraft from non-participating VFR aircraft and enhances safety system for all aircraft (IFR and VFR) equally.

The FAA agrees that positive separation cannot be provided for aircraft not in communication with air traffic control. FAA Order 7110.65, Air Traffic Control, prescribes the separation standards between IFR aircraft and between VFR/IFR aircraft that air traffic controllers must apply to IFR aircraft they are controlling. This action is aimed at ensuring the safety of all aircraft, IFR and VFR equally, that will be operating in and around the Chicago Class B airspace area.

The Rule

The FAA is amending Title 14 of the Code of Federal Regulations (14 CFR) part 71 to modify the Chicago Class B airspace area. This action (depicted on the attached chart) modifies several areas within the existing Chicago Class B airspace area and establishes two Class B airspace extensions; one to the east and a second to the west to provide necessary airspace for containment of turbo-jet IFR aircraft conducting approach operations within the confines of Class B airspace once they have entered it and to better segregate the IFR aircraft arriving/departing ORD and the non-participating VFR aircraft operating in the vicinity of the Chicago Class B airspace area. The modifications to the Chicago Class B airspace area are discussed below.

Area A. The northern boundary of Area A is modified by incorporating the airspace east of U.S. Highway 12 between the 6 NM and 5 NM arcs of the Chicago O'Hare VOR/DME antenna, from 2,500 feet MSL to and including 10,000 feet MSL, as part of Area G. The airspace east of U.S. Highway 12 between the 6 NM and 5 NM arcs of the Chicago O'Hare VOR/DME antenna, below 2,500 feet MSL, are returned to the NAS. This modification of Area A raises the floor of the Class B airspace in the affected segment from the surface to 2,500 feet MSL to provide additional airspace to accommodate aircraft on the downwind traffic pattern and circling approaches to Runway 34 at Chicago Executive Airport, without entering Chicago Class B airspace.

Area B. The northeast boundary of Area B is redefined using visually identifiable railroad tracks that run from U.S. Highway 294 to Willow Road (slightly east of the existing Area B, Area C, and current Area E shared boundary). Additionally, Area B is expanded to incorporate a portion of existing Class B airspace contained in the current Area E (specifically, the airspace contained east of the railroad tracks and south of Willow Road within the current Area E) and lowers the floor of that affected airspace to 1,900 feet MSL. This modification of Area B raises the floor of the Class B airspace west of the railroad tracks westward to the existing shared boundary noted above to 3,000 feet MSL, but lowers the floor of the Class B airspace in the affected segment of the current Area E to 1,900 feet MSL. This modification incorporates only that airspace deemed necessary from the current Area E to ensure IFR arrival aircraft flying instrument approaches to ORD Runway 22R are contained within the confines of Class B airspace throughout the approach, and ensures segregation of IFR arrival aircraft from VFR aircraft flying near the boundary of Class B airspace. Additionally, this modification better defines the northeast boundary of Area B using visual references.

Area C. Area C is expanded by incorporating portions of existing Class B airspace (Areas B and E), from 3,000 feet MSL to and including 10,000 feet MSL, commensurately. As described in the Areas B and H modification paragraphs (above and below), the new shared boundary follows railroad tracks that run northeast from U.S. Highway 294 to the 10 NM arc of the Chicago O'Hare VOR/DME antenna. Other than re-defining the shared boundary of the new Areas B, C, and H using a visual reference for pilots flying in the vicinity of the Chicago Class B airspace, there is no effect to IFR or VFR aircraft operations from this modification.

Area D. Area D is unchanged.

Area E. Area E is a newly established airspace extension to the east of the existing Chicago Class B airspace area over Lake Michigan. This establishment extends Class B airspace from the existing Area D boundary defined by the 25 NM arc of the Chicago O'Hare VOR/DME antenna to the 30 NM arc of the Chicago O'Hare VOR/DME antenna. The northern boundary is defined by latitude/longitude points that lay along Federal airways V–100/V–526, and the southern boundary is defined by latitude/longitude points that lay along Federal airways V–6/V–10. This new

Area E extends upward from 4,000 feet MSL to and including a ceiling of 10,000 feet MSL to ensure IFR arrival aircraft flying simultaneous instrument approaches to the existing runways 27R, 27L, and 28, as well as the three additional parallel runways planned for the near future, are contained within the confines of Class B airspace throughout their approach; ensure segregation of IFR aircraft arriving ORD and non-participating VFR aircraft operating in the vicinity of the Chicago Class B airspace area; and provide navigable airspace below and above for VFR aircraft operations.

Area F. Area F is expanded to the west of ORD to establish an airspace extension to the west of the existing Chicago Class B airspace area, similar to Area E to the east. Specifically, this modification extends the western boundary of the current Area F to a uniform 25 NM arc of the Chicago O'Hare VOR/DME antenna and then further extends a portion of the western boundary to include the airspace between the 25 NM and 30 NM arcs of the Chicago O'Hare VOR/DME antenna. The northern boundary of the extension to the 30 NM arc is defined by the intersection of Interstate 90 and the 25 NM arc of the Chicago O'Hare VOR/DME antenna, then due west to lat. 42°07′21″ N., long. 88°33′05″ W., on the 30 NM arc of the Chicago O'Hare VOR/DME antenna; and the southern boundary of the extension to the 30 NM arc is defined by Illinois State Route 10 between the 25 NM and 30 NM arcs of the Chicago O'Hare VOR/DME antenna. This new Area F extends upward from 4,000 feet MSL to and including 10,000 feet MSL to ensure IFR arrival aircraft flying simultaneous instrument approaches to the existing runways 9L, 9R, and 10, as well as the three additional parallel runways planned for the near future, are contained within the confines of Class B airspace throughout their approach; to ensure segregation of IFR aircraft arriving ORD and non-participating VFR aircraft operating in the vicinity of the Chicago Class B airspace area; and to provide navigable airspace below and above for VFR aircraft operations.

Area G. The southern boundary of Area G is modified by incorporating the airspace contained in Area A that lies east of U.S. Highway 12 between the 6 NM and 5 NM arcs of the Chicago O'Hare VOR/DME antenna, extending upward from 2,500 feet MSL to and including 10,000 feet MSL. This modification of Area G raises the floor of the Class B airspace in the affected segment from the surface to 2,500 feet MSL to provide additional airspace to accommodate aircraft on the downwind traffic pattern and circling approaches to Runway 34 at Chicago Executive Airport, without entering Chicago Class B airspace.

Area H. Area H is established from the existing northern portion of the current Area E. This new area is bordered by the 10 NM arc of the Chicago O'Hare VOR/DME antenna on the east, Willow Road on the south, and the railroad tracks (located slightly east of the existing Area B, Area C, and Area E shared boundary) that run from U.S. Highway 294 to the 10 NM arc of the Chicago O'Hare VOR/DME antenna on the west. This new area extends upward from 2,500 feet MSL to and including 10,000 feet MSL.

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: Policies 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.

Paperwork Reduction Act

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

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

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

This final rule enhances safety by containing all instrument approach procedures and associated traffic patterns within the confines of Class B airspace. The requirements support increased operations and capacity to the current and planned parallel runways while better segregating aircraft that will be operating in the affected airspace.

As stated in the NPRM, we are aware that this final rule might require small adjustments to existing VFR flyway planning charts and perhaps some increased general aviation fuel consumption. After consultation with a diverse cross-section of stakeholders that participated in the ad hoc committee, and as we received no adverse comments regarding the economic analysis, we have determined that this final rule will result in minimal cost.

This final rule will enhance safety, reduce the potential for a midair collision in the Chicago terminal area, and will improve the flow of air traffic. As such, we estimate a minimal impact with substantial positive net benefits. The FAA has, therefore, determined that this final rule is not a "significant regulatory action" as defined in section 3(f) of Executive Order 12866, and is not "significant" as defined in DOT's Regulatory Policies and Procedures.

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and

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

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

Our initial determination was that the rule would not have a significant economic impact on a substantial number of small entities. We received no public comments regarding our initial determination. As such, this final rule will not have a significant economic impact on a substantial number of small entities because the economic impact is expected to be minimal.

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

International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the effect of this final rule and determined that it will enhance safety and is not considered an unnecessary obstacle to trade.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of $143.1 million in lieu of $100 million. This final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Rule

■ 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 Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010, is amended as follows:

Paragraph 3000 Subpart B—Class B Airspace.

* * * * *

AGL IL B Chicago, IL

Chicago O'Hare International Airport (Primary Airport)
(Lat. 41°58′54″ N., long. 87°54′24″ W.)
Chicago Midway Airport
(Lat. 41°47′10″ N., long. 87°45′09″ W.)
Chicago O'Hare VOR/DME
(Lat. 41°59′16″ N., long. 87°54′17″ W.)

Boundaries.

Area A. That airspace extending upward from the surface to and including 10,000 feet MSL within an area bounded by a line beginning at lat. 42°04′10″ N., long. 87°55′31″ W.; thence clockwise along the 5 NM arc of the Chicago O'Hare VOR/DME to lat. 41°59′15″ N., long. 87°47′35″ W.; thence east to lat. 41°59′15″ N., long. 87°46′15″ W.; thence clockwise along the 6 NM arc of the Chicago O'Hare VOR/DME to Interstate Highway 290 (lat. 41°57′12″ N., long. 88°01′56″ W.); thence north along Interstate Highway 290 to the 6 NM arc of the Chicago O'Hare VOR/DME (lat. 42°01′20″ N., long. 88°01′51″ W.); thence clockwise along the 6 NM arc of the Chicago O'Hare VOR/DME to U.S. Highway 12 (lat. 42°05′03″ N., long. 87°56′26″ W.); thence southeast along U.S. Highway 12 to the point of beginning.

Area B. That airspace extending upward from 1,900 feet MSL to and including 10,000 feet MSL within an area bounded by a line beginning at the intersection of U.S. Highway 294 and railroad tracks at lat. 42°03′58″ N., long. 87°51′58″ W.; thence northeast along the railroad tracks to Willow Road (lat. 42°06′20″ N., long. 87°49′38″ W.); thence east along Willow Road to the 10 NM arc of the Chicago O'Hare VOR/DME (lat. 42°06′04″ N., long. 87°44′28″ W.); thence clockwise along the 10 NM arc of the Chicago O'Hare VOR/DME to the 5 NM radius of Chicago Midway Airport (lat. 41°49′34″ N., long. 87°51′00″ W.); thence counterclockwise along the 5 NM radius of the Chicago Midway Airport to the 10.5 NM arc of the Chicago O'Hare VOR/DME (lat. 41°48′59″ N., long. 87°51′22″ W.); thence clockwise along the 10.5 NM arc of the Chicago O'Hare VOR/DME to the 10 NM radius of the Chicago Midway Airport (lat. 41°49′11″ N., long. 87°58′14″ W.); thence clockwise along the 10 NM radius of Chicago Midway Airport to the 10 NM arc of the Chicago O'Hare VOR/DME (lat. 41°49′40″ N., long. 87°58′05″ W.); thence clockwise along the 10 NM arc of the Chicago O'Hare VOR/DME to U.S. Highway 12 (lat. 42°08′02″ N., long. 88°00′44″ W.); thence southeast along U.S. Highway 12 to the 5 NM arc of the Chicago O'Hare VOR/DME (lat. 42°04′10″ N., long. 87°55′31″ W.); thence clockwise along the 5 NM arc of the Chicago O'Hare VOR/DME to the point of beginning, excluding that airspace designated as Area A.

Area C. That airspace extending upward from 3,000 feet MSL to and including 10,000 feet MSL within an area bounded by the 15 NM arc of the Chicago O'Hare VOR/DME, excluding that airspace designated as Area A, Area B, Area G, and Area H.

Area D. That airspace extending upward from 3,600 feet MSL to and including 10,000 feet MSL within an area bounded by a line beginning at lat. 42°07′52″ N., long. 88°10′47″ W.; thence northwest to the 25 NM arc of the Chicago O'Hare VOR/DME (lat. 42°15′40″ N., long. 88°19′39″ W.); thence clockwise along the 25 NM arc of the Chicago O'Hare VOR/DME to lat. 41°42′03″ N., long. 88°18′34″ W.; thence northeast to the 15 NM arc of the Chicago O'Hare VOR/DME (lat. 41°49′53″ N., long. 88°09′59″ W.); thence clockwise along the 15 NM arc of the Chicago O'Hare VOR/DME to the point of beginning, excluding that airspace designated as Area A, Area B, Area C, Area G, and Area H.

Area E. That airspace extending upward from 4,000 feet MSL to and including 10,000 feet MSL within an area bounded by a line beginning at lat. 42°11′11″ N., long. 87°24′46″ W.; thence east to the 30 NM arc of the Chicago O'Hare VOR/DME (lat. 42°10′39″ N., long. 87°17′01″ W.); thence clockwise along the 30 NM arc of the Chicago O'Hare VOR/

DME to lat. 41°46′38″ N., long. 87°17′51″ W.; thence west to the 25 NM arc of the Chicago O'Hare VOR/DME (lat. 41°46′40″ N., long. 87°25′22″ W.); thence counterclockwise along the 25 NM arc of the Chicago O'Hare VOR/DME to the point of beginning.

Area F. That airspace extending upward from 4,000 feet MSL to and including 10,000 feet MSL within an area bounded by a line beginning at lat. 42°07′52″ N., long. 88°10′47″ W.; thence northwest to the 25 NM arc of the Chicago O'Hare VOR/DME (lat. 42°15′40″ N., long. 88°19′39″ W.); thence counterclockwise along the 25 NM arc of the Chicago O'Hare VOR/DME to Interstate 90 (lat. 42°07′22″ N., long. 88°26′01″ W.); thence west to the 30 NM arc of the Chicago O'Hare VOR/DME (lat. 42°07′21″ N., long. 88°33′05″ W.); thence counterclockwise along the 30 NM arc of the Chicago O'Hare VOR/DME to Illinois State Route 10 (lat. 41°49′49″ N., long. 88°32′27″ W.); thence east along Illinois State Route 10 to the 25 NM arc of the Chicago O'Hare VOR/DME (lat. 41°50′40″ N., long. 88°25′44″ W.); thence counterclockwise along the 25 NM arc of the Chicago O'Hare VOR/DME to lat. 41°42′03″ N., long. 88°18′34″ W.; thence northeast to the 15 NM arc of the Chicago O'Hare VOR/DME (lat. 41°49′53″ N., long. 88°09′59″ W.); thence clockwise along the 15 NM arc of the Chicago O'Hare VOR/DME to the point of beginning.

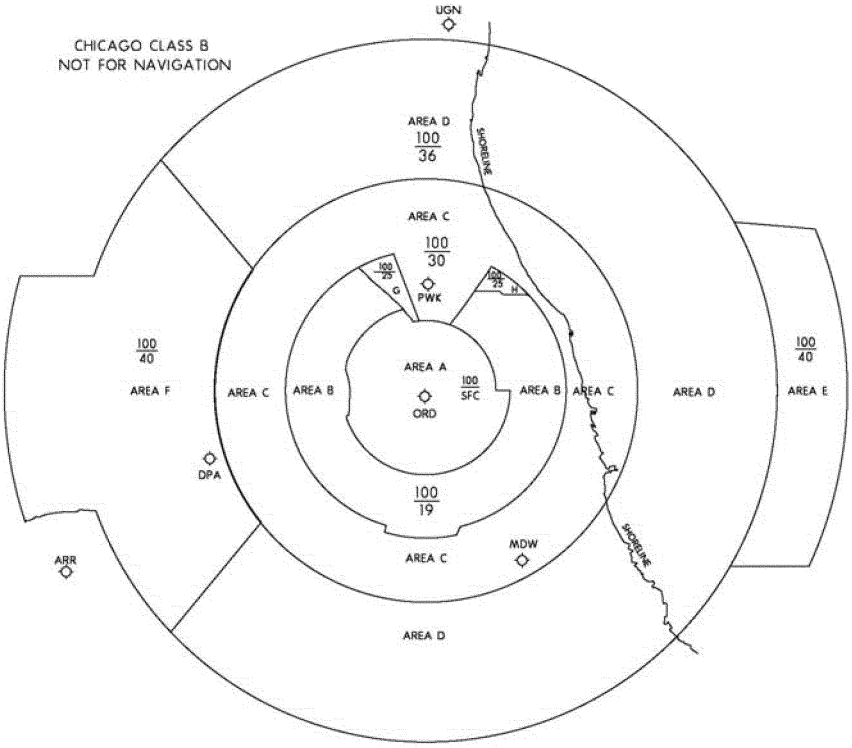
Area G. That airspace extending upward from 2,500 feet MSL to and including 10,000 feet MSL within an area bounded by a line beginning at lat. 42°04′14″ N., long. 87°54′56″ W.; thence northwest to the 10 NM arc of the Chicago O'Hare VOR/DME (lat. 42°09′00″ N., long. 87°57′22″ W.); thence counterclockwise along the 10 NM arc of the Chicago O'Hare VOR/DME to U.S. Highway 12 (lat. 42°08′02″ N., long. 88°00′44″ W.); thence southeast along U.S. Highway 12 to the 5 NM arc of the Chicago O'Hare VOR/DME (lat. 42°04′10″ N., long. 87°55′31″ W.); thence clockwise along the 5 NM arc of the Chicago O'Hare VOR/DME to the point of beginning.

Area H. That airspace extending upward from 2,500 feet MSL to and including 10,000 feet MSL within an area bounded by a line beginning at the intersection of Willow Road and railroad tracks at lat. 42°06′20″ N., long. 87°49′38″ W.; thence northeast along the railroad tracks to the 10 NM arc of the Chicago O'Hare VOR/DME (lat. 42°08′06″ N., long. 87°48′02″ W.); thence clockwise along the 10 NM arc of the Chicago O'Hare VOR/DME to Willow Road (lat. 42°06′04″ N., long. 87°44′28″ W.); thence west along Willow Road to the point of beginning.

Issued in Washington, DC, on September 15, 2010.

Edith V. Parish,

Manager, Airspace and Rules Group.



[FR Doc. 2010–23470 Filed 9–20–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0325; Airspace Docket No. 10–AWP–2]

Modification of Class E Airspace; Willcox, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will amend existing Class E airspace at Willcox, AZ, to accommodate aircraft using a new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) at Cochise County Airport. This will improve the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Effective date, 0901 UTC, November 18, 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: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

History

On June, 14, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend controlled airspace at Willcox, AZ (75 FR 33561). 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 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class E airspace extending upward from 700 feet above the surface, at Cochise County Airport, to accommodate IFR aircraft executing new RNAV (GPS) SIAPs at the airport. This action is necessary for the safety and management of IFR operations.

The FAA has determined 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 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 discusses 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 establishes additional controlled airspace at Cochise County Airport, Willcox, AZ.

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 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010 is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP AZ E5 Willcox, AZ [Modified]

Cochise County Airport, AZ
(Lat. 32°14′44″ N., long. 109°53′41″ W.)

That airspace extending upward from 700 feet above the surface within 6.5-mile radius of the Cochise County Airport and within 5 miles each side of the 225° bearing from the Cochise County Airport extending from the 6.5-mile radius to 14.5 miles southwest of the Cochise County Airport, and within 5.5 miles southeast and 4.5 miles northwest of the 055° bearing from the Cochise County Airport extending from the 6.5-mile radius to 14.5 miles northeast of the Cochise County Airport; that airspace extending upward from 1,200 feet above the surface bounded on the north by lat. 32°22′40″ N., long. 109°25′00″ W.; to lat. 32°14′30″ N., long. 109°28′00″ W.; to lat. 32°21′20″ N., long. 109°58′00″ W.; to lat. 32°30′00″ N., long. 109°54′00″ W.; thence to point of beginning.

Issued in Seattle, Washington, on August 30, 2010.

John Warner,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2010–23394 Filed 9–20–10; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 201

[Release No. 34–62921]

Rescission of Rules Pertaining to the Payment of Bounties for Information Leading to the Recovery of Civil Penalties for Insider Trading

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") [1] repealed former Section 21A(e) of the Securities Exchange Act of 1934, which had authorized the Securities and Exchange Commission ("Commission") to make monetary awards to persons who provided information leading to the recovery of civil penalties for insider trading violations. Because the statutory basis for the insider trading bounty program has been removed, the Commission is rescinding rules promulgated to administer the program.

DATES: *Effective Date:* September 21, 2010.

FOR FURTHER INFORMATION CONTACT: Kenneth H. Hall, Assistant Chief Counsel, (202) 551–4936, Office of Chief Counsel, Division of Enforcement, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–6553.

SUPPLEMENTARY INFORMATION: The Insider Trading and Securities Fraud Enforcement Act of 1988 authorized the Commission to award bounties to persons who provided information leading to the recovery of civil penalties for insider trading violations; the bounty provision was codified as former Section 21A(e) of the Securities Exchange Act of 1934 ("Exchange Act"). In 1989, the Commission adopted procedural rules to administer the insider trading bounty program. *See Applications for Bounty Awards on Civil Penalties Imposed in Insider Trading Litigation,* Exchange Act Release No. 26994 (June 30, 1989).

The Dodd-Frank Act created a new and broader program for making monetary awards to whistleblowers, codified as Section 21F of the Exchange Act.[2] Under the new whistleblower program, the Commission is authorized to make awards to persons who voluntarily provide the Commission

[1] Public Law 111–203, 124 Stat. 1376 (July 21, 2010).

[2] Section 922 of the Dodd-Frank Act.

with "original information" about a violation of the Federal securities laws that leads to the successful enforcement of a "covered judicial or administrative action," or a "related action," as those terms are defined by the Dodd-Frank Act. Unlike the insider trading bounty program, awards may be paid in connection with original information concerning any violation of the Federal securities laws. Awards may range from 10 to 30 percent of the amounts collected as monetary sanctions imposed in the covered judicial or administrative action or related actions.

In connection with enactment of the new whistleblower provision, Congress repealed Section 21A(e).[3] Because that statutory provision is no longer available as a basis for awarding bounties in insider trading cases, the Commission is rescinding its rules for administration of the insider trading bounty program.

Procedural and Other Matters

The Administrative Procedure Act ("APA") generally requires an agency to publish notice of a proposed rulemaking in the **Federal Register**.[4] This requirement does not apply, however, if the agency "for good cause" finds * * * that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest."[5] Because the statutory authority for the insider trading bounty program has been repealed, the Commission is removing the rules administering the program from the **Federal Register**. These rules no longer have any practical effect, and their continued inclusion in the **Federal Register** might lead to public confusion. For these reasons, the Commission finds that good cause exists to dispense with public notice and comment because notice and comment would be unnecessary, impracticable and contrary to the public interest.[6] For similar reasons the Commission finds good cause for this action to be effective immediately.[7]

Section 23(a)(2) of the Exchange Act requires the Commission to consider the competitive effects of rulemaking under the Exchange Act. Further, Section 3(f) of the Exchange Act requires us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. Because Congress has repealed the insider trading bounty program, our removal of the procedural rules related to that program will not create any competitive advantages or disadvantages, or affect efficiency, competition, and capital formation.

Statutory Authority and Text of Amendments

The Commission is removing regulations pursuant to authority provided by Section 23(a) of the Exchange Act.

List of Subjects in 17 CFR Part 201

Administrative practice and procedure.

Text of Amendments

■ For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 201—RULES OF PRACTICE

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

Authority: 15 U.S.C. 77s, 77sss, 78w, 78x, 80a–37, and 80b–11; 5 U.S.C. 504(c)(1).

Subpart C—[Removed and Reserved]

■ 2. Remove and reserve Subpart C.

Dated: September 15, 2010.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–23457 Filed 9–20–10; 8:45 am]

BILLING CODE 8010–01–P

[3] Section 923(b) of the Dodd-Frank Act.

[4] *See* 5 U.S.C. 553(b).

[5] 5 U.S.C. 553(b).

[6] Similarly, the amendments do not require analysis under the Regulatory Flexibility Act. *See* 5 U.S.C. 601(2) and 603(a) (for purposes of Regulatory Flexibility Act analysis, the term "rule" means any rule for which the agency publishes a general notice of proposed rulemaking).

[7] Additionally, this finding satisfies the requirements for immediate effectiveness under the Small Business Regulatory Enforcement Fairness Act. *See* 5 U.S.C. 808(2); *see also* 5 U.S.C. 801(a)(4).

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 229, and 249

[Release Nos. 33–9142; 34–62914]

Internal Control Over Financial Reporting in Exchange Act Periodic Reports of Non-Accelerated Filers

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission ("Commission") is adopting amendments to its rules and forms to conform them to Section 404(c) of the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act"), as added by Section 989G of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"). Section 404(c) provides that Section 404(b) of the Sarbanes-Oxley Act shall not apply with respect to any audit report prepared for an issuer that is neither an accelerated filer nor a large accelerated filer as defined in Rule 12b–2 under the Securities Exchange Act of 1934 (the "Exchange Act").

DATES: *Effective Date:* September 21, 2010.

FOR FURTHER INFORMATION CONTACT: Steven G. Hearne, Special Counsel, Office of Rulemaking, Division of Corporation Finance, at (202) 551–3430, Steven Jacobs, Associate Chief Accountant, Division of Corporation Finance, at (202) 551–3400, or John Offenbacher, Senior Associate Chief Accountant, or Annemarie Ettinger, Senior Special Counsel, Office of the Chief Accountant, at (202) 551–5300, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are adopting conforming amendments to Rule 2–02[1] of Regulation S–X,[2] Item 308[3] of Regulation S–K,[4] Item 15 of Form 20–F,[5] and General Instruction B.(6) of Form 40–F.[6]

I. Description of Amendments

The Commission is adopting amendments to its rules and forms to conform them to new Section 404(c) of the Sarbanes-Oxley Act,[7] as added by Section 989G of the Dodd-Frank Act.[8] Section 404(c) provides that Section 404(b) of the Sarbanes-Oxley Act shall not apply with respect to any audit report prepared for an issuer that is neither an accelerated filer nor a large accelerated filer as defined in Rule 12b–2[9] under the Exchange Act.[10] Prior to enactment of the Dodd-Frank Act, a non-accelerated filer[11] would have been

[1] 17 CFR 210.2–02.

[2] 17 CFR part 210.

[3] 17 CFR 229.308.

[4] 17 CFR part 229.

[5] 17 CFR 249.220f.

[6] 17 CFR 249.240f.

[7] 15 U.S.C. 7201 *et seq.*

[8] Public Law 111–203 (July 21, 2010).

[9] 17 CFR 240.12b–2.

[10] 15 U.S.C. 78a *et seq.*

[11] Although the term "non-accelerated filer" is not defined in Commission rules, we use it throughout this release to refer to a reporting company that does not meet the definition of either an "accelerated filer" or a "large accelerated filer" under Exchange Act Rule 12b–2. Under Exchange Act Rule 12b–2, an accelerated filer is an issuer that "had an aggregate worldwide market value of the voting and non-voting common equity held by its

Continued

required, under existing Commission rules, to include an attestation report of its registered public accounting firm on internal control over financial reporting in the filer's annual report filed with the Commission for fiscal years ending on or after June 15, 2010.[12]

To conform the Commission's rules to Section 404(c) of the Sarbanes-Oxley Act, these amendments remove the requirement for a non-accelerated filer to include in its annual report an attestation report of the filer's registered public accounting firm.[13] We are also adopting a conforming change to our rules concerning management's disclosure in the annual report regarding inclusion of an attestation report to provide that the disclosure only applies if an attestation report is included.[14] Lastly, we are making a conforming change to Rule 2–02(f) of Regulation S–X to clarify that an auditor of a non-accelerated filer need not include in its audit report an assessment of the issuer's internal control over financial reporting.

All issuers, including non-accelerated filers, continue to be subject to the requirements of Section 404(a) of the Sarbanes-Oxley Act. Section 404(a) and its implementing rules require that an issuer's annual report include a report of management on the issuer's internal control over financial reporting.[15]

II. Procedural and Other Matters

Under the Administrative Procedure Act, a notice of proposed rulemaking is not required when the agency, for good cause, finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest.[16] These amendments merely conform certain rules and forms to a newly enacted statute, Section 404(c) of the Sarbanes-Oxley Act, as amended by the Dodd-Frank Act, so the Commission finds that it is unnecessary to publish notice of these amendments.[17] These amendments revise the Commission's rules and forms to make them consistent with the internal control reporting requirements for non-accelerated filers in the Sarbanes-Oxley Act, as amended by the Dodd-Frank Act, and should therefore minimize potential confusion of issuers and investors.

The Administrative Procedure Act also requires publication of a rule at least 30 days before its effective date unless the agency finds otherwise for good cause.[18] The Commission finds there is good cause for the amendments to take effect on September 21, 2010 because the Commission's current applicable rules and forms do not conform to Section 404(c) of the Sarbanes-Oxley Act.

The Commission is taking this action to implement the Dodd-Frank Act. Thus, any costs and benefits to the economy resulting from these amendments are mandated by the Dodd-Frank Act. Section 23(a)(2) of the Exchange Act requires the Commission, in adopting rules under the Exchange Act, to consider the competitive effects of such rules, if any, and to refrain from adopting a rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.[19] Section 3(f) of the Exchange Act requires the Commission, whenever it engages in rulemaking and must consider or determine if an action is necessary or appropriate in the public interest, to consider if the action will promote efficiency, competition, and capital formation.[20] We do not anticipate any competitive or capital formation effects from these amendments as they merely conform certain rules and forms to new Section 404(c) of the Sarbanes-Oxley Act. We do not anticipate that these conforming amendments will impose any costs, and they may promote efficiency by eliminating potential confusion that may otherwise result from a discrepancy between our rules and the statute.

New Section 404(c) of the Sarbanes-Oxley Act will have an effect on the "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995.[21] The current burden estimates for the relevant forms include 0.5 hours for approximately 4,700 non-accelerated filers attributable to the burden of filing the auditor attestation report and related disclosure, but not the audit work. As a result of the statutory change, those non-accelerated filers no longer are required to include that attestation.[22]

III. Statutory Basis and Text of Amendments

The amendments described in this release are made under the authority set forth in Section 19 of the Securities Act, Sections 3, 12, 13, 15, and 23 of the Exchange Act, and Sections 3(a) and 404 of the Sarbanes-Oxley Act.

List of Subjects

17 CFR Part 210

Accountants, Accounting, Reporting and recordkeeping requirements, Securities.

17 CFR Parts 229 and 249

Reporting and recordkeeping requirements, Securities.

Text of Amendments

■ In accordance with the foregoing, the Commission is amending Title 17,

non-affiliates of $75 million or more, but less than $700 million, as of the last business day of the issuer's most recently completed second fiscal quarter" and a large accelerated filer is an issuer that "had an aggregate worldwide market value of the voting and non-voting common equity held by its non-affiliates of $700 million or more, as of the last business day of the issuer's most recently completed second fiscal quarter". In addition, for both definitions, the issuer needs to have been subject to reporting requirements for at least twelve calendar months, have filed at least one annual report, and not be eligible to use the requirements for smaller reporting companies for its annual and quarterly reports.

[12] *See* Release No. 33–9072 (Oct. 13, 2009) [74 FR 53628]. Consistent with Sections 404(a) and 404(b) of the Sarbanes-Oxley Act, on June 5, 2003, the Commission adopted initial amendments to its rules and forms requiring companies, other than registered investment companies, to include in their annual reports filed with the Commission a report of management and an accompanying auditor's attestation report on the effectiveness of the company's internal control over financial reporting. *See* Release No. 33–8238 (June 5, 2003) [68 FR 36636]. Subsequent to the adoption of those rules, the Commission postponed the Section 404(b) auditor attestation requirement for non-accelerated filers, such that the auditor's attestation report for these filers would have first been required for annual reports filed with the Commission for fiscal years ending on or after June 15, 2010. The amendments in this Release will not affect the transition rules applicable for non-accelerated filers with fiscal years ending prior to June 15, 2010.

[13] An issuer that is an accelerated filer or a large accelerated filer continues to be subject to the requirements of Section 404(b) of the Sarbanes-Oxley Act.

[14] *See* new Item 308(a)(4) of Regulation S–K.

[15] *See* 17 CFR 229.308(a). For further guidance on management's report, *see* Commission Guidance Regarding Management's Report on Internal Control Over Financial Reporting Under Section 13(a) or 15(d) of the Securities Exchange Act of 1934, Release No. 33–8810 (June 20, 2007) [72 FR 35324]. All such reports for non-accelerated filers for fiscal years ending on or after June 15, 2010 will be considered "filed" under the Exchange Act. Although there are many different ways to conduct an evaluation of the effectiveness of internal control over financial reporting, an evaluation that is conducted in accordance with this interpretive guidance is one way to satisfy the requirements for the evaluation.

[16] 5 U.S.C. 553(b).

[17] This finding also satisfies the requirements of 5 U.S.C. 808(2), allowing the rule amendment to become effective notwithstanding the requirement of 5 U.S.C. 801 (if a Federal agency finds that notice and public comment are "impractical, unnecessary or contrary to the public interest," a rule "shall take effect at such time as the federal agency promulgating the rule determines"). For similar reasons, the amendments do not require analysis under the Regulatory Flexibility Act. *See* 5 U.S.C. 601(2) (for purposes of Regulatory Flexibility Act analysis, the term "rule" means "any rule for which the agency publishes a general notice of proposed rulemaking").

[18] *See* 5 U.S.C. 553(d)(3).

[19] 15 U.S.C. 78w(a)(2).

[20] 15 U.S.C. 78c(f).

[21] 44 U.S.C. 3501 *et seq.*

[22] We are issuing a separate notice regarding the impact of this change on paperwork burdens.

Chapter II of the Code of Federal Regulations as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, INVESTMENT ADVISERS ACT OF 1940 AND ENERGY POLICY AND CONSERVATION ACT OF 1975

■ 1. The authority citation for part 210 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z-2, 77z-3, 77aa(25), 77aa(26), 77nn(25), 77nn(26), 78c, 78j–1, 78*l,* 78m, 78n, 78o(d), 78q, 78u–5, 78w, 78*ll,* 78mm, 80a–8, 80a–20, 80a–29, 80a–30, 80a–31, 80a–37(a), 80b–3, 80b–11, 7202, and 7262, unless otherwise noted.

* * * * *

■ 2. Section 210.2–02 is amended by revising paragraph (f) to read as follows:

§ 210.2–02 Accountants' reports and attestation reports.

* * * * *

(f) *Attestation report on internal control over financial reporting.* (1) Every registered public accounting firm that issues or prepares an accountant's report for a registrant, other than a registrant that is neither an accelerated filer nor a large accelerated filer (as defined in § 240.12b–2 of this chapter) or an investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8), that is included in an annual report required by section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) containing an assessment by management of the effectiveness of the registrant's internal control over financial reporting must include an attestation report on internal control over financial reporting.

(2) If an attestation report on internal control over financial reporting is included in an annual report required by section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), it shall clearly state the opinion of the accountant, either unqualified or adverse, as to whether the registrant maintained, in all material respects, effective internal control over financial reporting, except in the rare circumstance of a scope limitation that cannot be overcome by the registrant or the registered public accounting firm which would result in the accounting firm disclaiming an opinion. The attestation report on internal control over financial reporting shall be dated, signed manually, identify the period covered by the report and indicate that the accountant has audited the effectiveness of internal control over financial reporting. The attestation report on internal control over financial reporting may be separate from the accountant's report.

* * * * *

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

■ 3. The authority citation for part 229 continues to read, in part, as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l,* 78m, 78n, 78o, 78u–5, 78w, 78*ll,* 78mm, 80a–8, 80a–9, 80a–20, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), 80a–39, 80b–11, and 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 4. Section 229.308 is amended by revising paragraphs (a)(4) and (b) to read as follows:

§ 229.308 (Item 308) Internal control over financial reporting.

(a) * * *

(4) If the registrant is an accelerated filer or a large accelerated filer (as defined in § 240.12b–2 of this chapter), or otherwise includes in its annual report a registered public accounting firm's attestation report on internal control over financial reporting, a statement that the registered public accounting firm that audited the financial statements included in the annual report containing the disclosure required by this Item has issued an attestation report on the registrant's internal control over financial reporting.

(b) *Attestation report of the registered public accounting firm.* If the registrant is an accelerated filer or a large accelerated filer (as defined in § 240.12b–2 of this chapter), provide the registered public accounting firm's attestation report on the registrant's internal control over financial reporting in the registrant's annual report containing the disclosure required by this Item.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 5. The authority citation for part 249 continues to read, in part, as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 6. Form 20–F (referenced in § 249.220f) is amended by revising paragraphs (b)(4) and (c) of Item 15 to read as follows:

Note: The text of Form 20–F does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM 20–F

* * * * *

PART II

* * * * *

Item 15. Controls and Procedures.

* * * * *

(b) * * *

(4) If an issuer is an accelerated filer or a large accelerated filer (as defined in § 240.12b–2 of this chapter), or otherwise includes in its annual report a registered public accounting firm's attestation report on internal control over financial reporting, a statement that the registered public accounting firm that audited the financial statements included in the annual report containing the disclosure required by this Item has issued an attestation report on management's assessment of the issuer's internal control over financial reporting.

(c) *Attestation report of the registered public accounting firm.* If an issuer is an accelerated filer or a large accelerated filer (as defined in § 240.12b–2 of this chapter), and where the Form is being used as an annual report filed under Section 13(a) or 15(d) of the Exchange Act, provide the registered public accounting firm's attestation report on management's assessment of the issuer's internal control over financial reporting in the issuer's annual report containing the disclosure required by this Item.

* * * * *

■ 7. Form 40–F (referenced in § 249.240f) is amended by revising paragraphs (c)(4) and (d) in General Instruction B.(6) to read as follows:

Note: The text of Form 40–F does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM 40–F

* * * * *

GENERAL INSTRUCTIONS

* * * * *

B. Information To Be Filed on this Form

* * * * *

(6) * * *

(c)(4) If an issuer is an accelerated filer or a large accelerated filer (as defined in 17 CFR 240.12b–2), or otherwise includes in its annual report a registered public accounting firm's attestation report on internal control over financial reporting, a statement that the registered public accounting firm that audited the financial statements included in the annual report containing the disclosure required by this Item has issued an attestation report on management's assessment of the issuer's internal control over financial reporting.

(d) *Attestation report of the registered public accounting firm.* If an issuer is an accelerated filer or a large accelerated filer (as defined in § 240.12b–2 of this chapter), and where the Form is being used as an annual report filed under Section 13(a) or 15(d) of the Exchange Act, provide the registered public accounting firm's attestation report on management's assessment of the issuer's internal control over financial reporting in the issuer's annual report containing the disclosure required by this Item.

* * * * *

By the Commission.

Dated: September 15, 2010.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–23492 Filed 9–20–10; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2010–0383]

RIN 1625–AA08

Special Local Regulations for Marine Events; Patuxent River, Solomons, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing special local regulations during the "Chesapeake Challenge" power boat races, a marine event to be held on the waters of the Patuxent River, near Solomons, MD on October 1, 2010 and October 3, 2010. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to temporarily restrict vessel traffic in a portion of the Patuxent River during the event.

DATES: This rule is effective from 10 a.m. on October 1, 2010 until 6 p.m. on October 3, 2010.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2010–0383 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0383 in the "Keyword" box, and then clicking "Search." This material is 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 Mr. Ronald Houck, U.S. Coast Guard Sector, Baltimore, MD; telephone 410–576–2674, e-mail *Ronald.L.Houck@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

On June 10, 2010, we published a notice of proposed rulemaking (NPRM) entitled "Special Local Regulations for Marine Events; Patuxent River, Solomons, MD" in the **Federal Register** (75 FR 32866). Additionally, on July 19, 2010, we published a supplemental notice of proposed rulemaking (SNPRM) entitled "Special Local Regulations for Marine Events; Patuxent River, Solomons, MD" in the **Federal Register** (75 FR 41789). We received no comments on the proposed rules. No public meeting was requested, and none was held.

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**. Due to the need for immediate action, the restriction of vessel traffic is necessary to protect life, property and the environment against the hazards associated with high-speed offshore power boat races on confined navigable waters. Such hazards include damages and injuries caused by collisions with other vessels and navigational obstructions and hazards caused by vessel sinkings. In addition, with no changes from the information provided in the SNPRM and no comments received, the public has been aware of the scheduled date since July 19, 2010. Therefore, a 30-day notice is contrary to the public interest. Delaying the effective date would be contrary to the regulated area's intended objectives of protecting persons and vessels involved in the event, and enhancing public and maritime safety.

Basis and Purpose

On October 1, 2010 and October 3, 2010, the Chesapeake Bay Power Boat Association will sponsor power boat races on the Patuxent River near Solomons, MD. The event consists of offshore power boats racing in a counter-clockwise direction on a racetrack-type course located between the Governor Thomas Johnson Memorial (SR–4) Bridge and the U.S. Naval Air Station Patuxent River, MD. The start and finish lines will be located near the Solomon's Pier. A large spectator fleet is expected during the event. Due to the need for vessel control during the event, the Coast Guard will temporarily restrict vessel traffic in the event area to provide for the safety of participants, spectators and other transiting vessels.

Discussion of Comments and Changes

The Coast Guard received no comments in response to the NPRM and SNPRM. No public meeting was requested and none was held. The regulation proposed in the SNPRM is the regulation being added.

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.

Although this regulation will prevent traffic from transiting a portion of the Patuxent River during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners and marine information broadcasts, so mariners can adjust their plans accordingly. Additionally, the regulated area has been narrowly tailored to impose the least impact on general navigation yet provide the level

of safety deemed necessary. Vessel traffic will be able to transit safely through a portion regulated area, westward and southward of the spectator fleet area.

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 will not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in the affected portions of the Patuxent River during the event.

Although this regulation prevents traffic from transiting a portion of the Patuxent River at Solomons, MD during the event, this rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule would be in effect for only a limited period. Though the regulated area extends across the entire width of the river, vessel traffic will be able to transit safely around the spectator fleet and race course areas within the regulated area in a northerly or southerly direction westward of the spectator area, taking action to avoid a close-quarters situation with spectators, until finally past and clear of the regulated area. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), in the NPRM we offered to assist small entities in understanding the rule so that they could 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 that do not individually or cumulatively have a significant effect on the human

environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction. This rule involves implementation of regulations within 33 CFR Part 100 applicable to organized marine events on the navigable waters of the United States that could negatively impact the safety of waterway users and shore side activities in the event area. The category of water activities includes but is not limited to sail boat regattas, boat parades, power boat racing, swimming events, crew racing, canoe and sail board racing. 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 100

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

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Add a temporary section, § 100.35T05–0383, to read as follows:

§ 100.35T05–0383 Special Local Regulations for Marine Events; Patuxent River, Solomons, MD.

(a) *Regulated area.* The following location is a regulated area: All waters of the Patuxent River, within lines connecting the following positions: from latitude 38°19′45″ N., longitude 076°28′06″ W., thence to latitude 38°19′24″ N., longitude 076°28′30″ W., thence to latitude 38°18′32″ N., longitude 076°28′14″ W.; and from latitude 38°17′38″ N., longitude 076°27′26″ W., thence to latitude 38°18′00″ N., longitude 076°26′41″ W., thence to latitude 38°18′59″ N., longitude 076°27′20″ W., located at Solomons, Maryland. All coordinates reference Datum NAD 1983.

(b) *Definitions:* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Commander, Coast Guard Sector Baltimore.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Participant* means all vessels participating in the Chesapeake Challenge under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector Baltimore.

(4) *Spectator* means all persons and vessels not registered with the event sponsor as participants or official patrol.

(c) *Special local regulations:* (1) The Coast Guard Patrol Commander may forbid and control the movement of all vessels in the regulated area. When hailed or signaled by an official patrol vessel, a vessel in the regulated area shall immediately comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(2) The Coast Guard Patrol Commander may terminate the event, or the operation of any vessel participating in the event, at any time it is deemed necessary for the protection of life or property.

(3) All vessel traffic not involved with the event will be allowed to transit the regulated area and shall proceed in a northerly or southerly direction westward of the spectator area, taking action to avoid a close-quarters situation with spectators, until finally past and clear of the regulated area.

(4) All Coast Guard vessels enforcing this regulated area can be contacted on marine band radio VHF–FM channel 16 (156.8 MHz).

(5) Only participants and official patrol are allowed to enter the race course area.

(6) Spectators are allowed inside the regulated area only if they remain within the designated spectator area. Spectators will be permitted to anchor within the designated spectator area. No vessel may anchor within the regulated area outside the designated spectator area. Spectators may contact the Coast Guard Patrol Commander to request permission to pass through the regulated area. If permission is granted, spectators must pass directly through the regulated area outside the race course and spectator areas at a safe speed and without loitering.

(7) Designated Spectator Fleet Area. The spectator fleet area is located within a line connecting the following positions: latitude 38°19′14″ N., longitude 076°28′16″ W., thence to latitude 38°18′00″ N., longitude 076°27′26″ W., thence to latitude 38°18′02″ N., longitude 076°27′20″ W., thence to latitude 38°19′16″ N., longitude 076°28′10″ W., thence to the point of origin at latitude 38°19′14″ N., longitude 076°28′16″ W. All coordinates reference datum NAD 1983.

(8) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue marine information broadcast on VHF–FM marine band radio announcing specific event date and times.

(d) Enforcement periods: This section will be enforced from 10 a.m. to 6 p.m. on October 1, 2010 and from 10 a.m. until 6 p.m. on October 3, 2010.

Dated: August 30, 2010.

Brian W. Roche,

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

[FR Doc. 2010–23477 Filed 9–20–10; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2010–0289–201018(a); FRL–9203–9]

Approval and Promulgation of Implementation Plans; Alabama: Volatile Organic Compounds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the Alabama State Implementation Plan (SIP) submitted by the Alabama Department of Environmental Management (ADEM) on March 3, 2010. The revision modifies the definition of "volatile organic compounds" (VOCs) found at Alabama Administrative Code (AAC) section 335–3–1–.02(gggg). Specifically, the revision adds two compounds (propylene carbonate and dimethyl carbonate) to the list of those excluded from the VOC definition on the basis that these compounds make a negligible contribution to tropospheric ozone formation. ADEM is updating its SIP to be consistent with the EPA rule finalized on January 21, 2009, which excludes these compounds from the regulatory VOC definition. This action is being taken pursuant to Section 110 of the Clean Air Act (CAA).

DATES: This rule is effective on November 22, 2010 without further notice, unless EPA receives relevant adverse comment by October 21, 2010. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2010–0289, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *E-mail: benjamin.lynorae@epa.gov.*

3. *Fax:* (404) 562–9019.

4. *Mail:* "EPA–R04–OAR–2010–0289," Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

5. *Hand Delivery or Courier:* Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. 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–R04–OAR–2010–0289." EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment 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 electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Zuri Farngalo, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Zuri Farngalo may be reached by phone at (404) 562–9152 or by electronic mail address *farngalo.zuri@epa.gov.*

SUPPLEMENTARY INFORMATION:

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II. Analysis of the State's Submittal
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I. Background

Tropospheric ozone, commonly known as smog, occurs when VOCs and nitrogen oxides (NO_X) react in the atmosphere. Because of the harmful health effects of ozone, EPA limits the amount of VOCs and NO_X that can be released into the atmosphere. VOCs are those compounds of carbon (excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate) that form ozone through atmospheric photochemical reactions. Compounds of carbon (or organic compounds) have different levels of reactivity; they do not react at the same speed, or do not form ozone to the same extent.

It has been EPA's policy that compounds of carbon with negligible reactivity need not be regulated to reduce ozone. See 42 FR 35314, July 8, 1977. EPA determines whether a given carbon compound has "negligible" reactivity by comparing the compound's reactivity to the reactivity of ethane. EPA lists these compounds in its regulations at 40 CFR 51.100(s) and excludes them from the definition of VOC. The chemicals on this list are often called "negligibly reactive." EPA may periodically revise the list of negligibly reactive compounds to add or delete compounds.

On January 21, 2009, EPA issued a final rule approving the addition of propylene carbonate and dimethyl carbonate to the list of those compounds excluded from the regulatory definition of VOC. See 74 FR 3437. ADEM is updating its SIP to be consistent with Federal regulations.

II. Analysis of the State's Submittal

On March 3, 2010, ADEM submitted a proposed SIP revision to EPA for review and approval. The revision modifies the definition of VOCs found at AAC section 335–3–1–.02(gggg). Specifically, the revision adds two compounds (propylene and dimethyl carbonate) to the list of those excluded from the VOC definition on the basis that these compounds make a negligible contribution to tropospheric ozone formation.

EPA is approving revisions to the Alabama SIP submitted on March 3, 2010. This action amends Rule 335–3–1–.02(gggg) to update the definition of VOC to be consistent with EPA regulations. These changes are consistent with the CAA, 42 U.S.C. 7401 *et seq.*

III. Final Action

Pursuant to section 110 of the CAA, EPA is approving the revision to the Alabama SIP revising the VOC definition. EPA has evaluated Alabama's March 3, 2010 submittal and has determined that it meets the applicable requirements of the CAA and EPA regulations and is consistent with EPA policy. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective November 22, 2010 without further notice unless the Agency receives adverse comments by October 21, 2010. If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule

will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on November 22, 2010 and no further action will be taken on the proposed rule.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et 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 CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 22, 2010. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. *See* CAA § 307(b)(2), 42 U.S.C. 7607(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Incorporation by reference, Ozone, Nitrogen dioxides, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 3, 2010.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart B—Alabama

■ 2. Section 52.50(c) is amended by revising the entry for "Section 335–3–1–.02" to read as follows:

§ 52.50 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED ALABAMA REGULATIONS

State citation	Title/Subject	State effective date	EPA approval date	Explanation
Chapter 335–3–1 General Provisions				
*	*	*	*	*
Section 335–3–1–.02	Definitions	03/30/10	09/21/10 [Insert citation of publication].	Exclusion of propylene carbonate and dimethyl carbonate from VOC definition.
*	*	*	*	*

* * * * *

[FR Doc. 2010–23534 Filed 9–20–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 393

[Docket No. FMCSA–2010–0186]

RIN–2126–AB27

Parts and Accessories Necessary for Safe Operation: Antilock Brake Systems

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: The FMCSA makes permanent the existing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that trailers with antilock brake systems (ABS) be equipped with an external malfunction indicator lamp. The existing indicator lamp requirement was originally scheduled to sunset on March 1, 2009, but the National Highway Traffic Safety Administration (NHTSA) published a final rule on August 25, 2009, that made permanent the requirement in the Federal Motor Vehicle Safety Standards (FMVSSs) that manufacturers equip trailers with ABS and an external antilock malfunction indicator lamp. As the requirement for an exterior ABS malfunction indicator lamp on trailers of the FMCSRs cross-references the requirements of the FMVSSs, this direct final rule makes the FMCSRs consistent with the August 2009 NHTSA final rule.

DATES: This rule is effective November 22, 2010, unless an adverse comment, or notice of intent to submit an adverse comment, is either submitted to our online docket via *http://www.regulations.gov* on or before October 21, 2010 or reaches the Docket Management Facility by that date. If an adverse comment, or notice of intent to submit an adverse comment, is received by October 21, 2010, we will withdraw this direct final rule and publish a timely notice of withdrawal in the **Federal Register.**

ADDRESSES: You may submit comments identified by docket number FMCSA–2010–0186 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand Delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. *See* the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Huntley, Chief, Vehicle and Roadside Operations Division (MC–PSV), Office of Bus and Truck Standards and Operations, phone (202) 366–4325, e-mail *michael.huntley@dot.gov.*

SUPPLEMENTARY INFORMATION:

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I. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (FMCSA–2010–0186), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. As a reminder, FMCSA will only consider adverse comments as defined in 49 CFR 389.39(b).

To submit your comment online, go to *http://www.regulations.gov,* click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "FMCSA–2010–0186" in the "Keyword" box. Click "Search," then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

B. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "FMCSA 2010–0186" and click "Search." Click the "Open Docket Folder" in the "Actions" column. If you do not have access to the Internet, you may also view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

C. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

II. Abbreviations

ABS Anti-lock Braking Systems
CMV Commercial Motor Vehicle
CVSA Commercial Vehicle Safety Alliance

DFR Direct Final Rule
FMCSA Federal Motor Carrier Safety Administration
FMCSR Federal Motor Carrier Safety Regulation
FMVSS Federal Motor Vehicle Safety Standard
FR Federal Register
FHWA Federal Highway Administration
NHTSA National Highway Traffic Safety Administration
NPRM Notice of Proposed Rulemaking

III. Regulatory Information

We are publishing this direct final rule under 49 CFR 389.11 and 389.39 because we believe the rule is a routine, non-controversial amendment to 49 CFR 393. The rule would ensure consistency between 49 CFR Part 393 and NHTSA's 49 CFR 571.121. The FMCSA does not expect adverse comments. If no adverse comments or notices of intent to submit an adverse comment are received by October 21, 2010, this rule will become effective as stated in the **DATES** section. In that case, approximately 30 days before the effective date, we will publish a document in the **Federal Register** stating that no adverse comments were received and confirming that this rule will become effective as scheduled. However, if we receive any adverse comments or notices of intent to submit an adverse comment, we will publish a document in the **Federal Register** announcing the withdrawal of all or part of this direct final rule. If an adverse comment applies only to part of this rule (*e.g.,* to an amendment, a paragraph, or a section) and it is possible to remove that part without defeating the purpose of this rule, we may adopt, as final, those parts of this rule on which no adverse comments were received. We will withdraw the part of this rule that was the subject of an adverse comment. If we decide to proceed with a rulemaking following receipt of any adverse comments, we will publish a separate notice of proposed rulemaking (NPRM) and provide a new opportunity for comment.

A comment is considered "adverse" if the comment explains why this rule or a part of this rule would be inappropriate, including a challenge to its underlying premise or approach, or would be ineffective or unacceptable without a change.

IV. Background

NHTSA published a final rule requiring ABS on truck tractors, other air-braked heavy vehicles including trailers, and hydraulic-braked trucks in the **Federal Register** (on March 10, 1995 60 FR 13216). As amended by that final rule, FMVSS No. 121, *Air Brake Systems,* required two separate in-cab ABS malfunction indicator lamps for each truck tractor, one for the tractor's ABS (effective March 1, 1997) and the other for the trailer's ABS (effective March 1, 2001). The final rule also required air-braked trailers to be equipped with an externally mounted ABS malfunction lamp (effective March 1, 1998) so that the driver of a non-ABS equipped tractor or an ABS-equipped tractor manufactured prior to March 1, 2001, towing an ABS-equipped trailer would be alerted in the event of a malfunction in the trailer ABS.

On March 10, 1995, the Federal Highway Administration (FHWA) published a notice of intent to initiate a rulemaking concerning requirements of ABS on commercial motor vehicles (CMV) operating in interstate commerce (60 FR 13306). On July 12, 1996, FHWA published a notice of proposed rulemaking (NPRM) that proposed requiring motor carriers to maintain the ABS on CMVs manufactured on or after the effective date of the NHTSA requirements (61 FR 36691). The FHWA subsequently published a final rule on May 4, 1998, amending the FMCSRs to require that air-braked truck tractors manufactured on or after March 1, 1997, and air-braked single-unit trucks, buses, trailers, and converter dollies manufactured on or after March 1, 1998, be equipped with ABS that meet the requirements of FMVSS No. 121 (63 FR 24454). In addition, FHWA required motor carriers to maintain the ABS on these vehicles. Specifically with respect to the exterior ABS malfunction warning lamp for trailers, the amendments to section 393.55(e) of the FMCSRs incorporated by reference—without modification—the requirements of S5.2.3.3 of FMVSS No. 121.

The requirement for the trailer-mounted ABS malfunction indicator lamp was originally scheduled to expire on March 1, 2009. NHTSA established this sunset date based on the assumption that after this eight-year period, many of the pre-2001 tractors that did not have the dedicated trailer ABS malfunction indicator lamp would no longer be in long-haul service. NHTSA based its decision on the belief that the typical tractor life was five to seven years and therefore decided on an eight-year period for the external ABS malfunction indicator lamp requirement. NHTSA further stated its belief that there would be no need for a redundant ABS malfunction lamp mounted on the trailer after the vast majority of tractors were equipped with an in-cab ABS malfunction indicator lamp for the trailer.

Before the trailer-mounted ABS malfunction indicator lamp requirement expired, NHTSA received two petitions from the Commercial Vehicle Safety Alliance (CVSA). CVSA is an international not-for-profit organization comprised of Federal, State, provincial, territorial, and local motor carrier safety officials and industry representatives from the United States, Canada, and Mexico. On October 22, 2007, CVSA petitioned NHTSA to make the trailer-mounted external antilock malfunction indicator lamp permanent instead of allowing it to expire. CVSA included in its petition suggested regulatory text along with its rationale for why the extension should be permanent.

The CVSA rationale included four points. The first point was many pre-2001 tractors were still expected to be in use when the malfunction indicator lamp requirement was set to expire (at the time, March 1, 2009). These tractors do not have the in-cab trailer ABS malfunction indicator lamp that was believed to render the external lamp redundant. Second, CVSA argued that for double and triple trailer applications, it would not be possible to determine, from an in-cab lamp alone, which trailer ABS is malfunctioning without external lamps. Third, CVSA stated that many trailer repair shops rely on the external lamp to quickly diagnose the operational status of the trailer's ABS without having to couple a post-2001 tractor to the trailer. With an external indicator lamp, a tractor of any age can be used, making inspection significantly easier. Fourth, the petition argued that without the external lamp, the signal from the in-cab lamp may be confusing, as it may indicate either a malfunctioning in-cab bulb, a functioning pre-1998 trailer (with no ABS), a problem with the communication circuit between the trailer and tractor, or a malfunctioning ABS. The external lamp helps to diagnose the situation.

On October 15, 2008, CVSA again petitioned NHTSA to amend FMVSS No. 121, by requesting that the agency issue a stay of the sunset date of March 1, 2009 for the external ABS malfunction indicator lamp. CVSA stated that a stay would prevent a time gap in the regulation, while NHTSA continued to evaluate CVSA's 2007 petition. CVSA stated that the vehicle inspection process has already been complicated by the ABS and ABS malfunction indicator lamp requirements, and a time gap would further complicate the inspection

process and cause additional confusion for drivers and maintenance personnel.

On March 3, 2009, NHTSA concurrently published an interim final rule extending the sunset date for the requirement by six months, to September 1, 2009 (74 FR 9173), and an NPRM to extend the requirement to March 1, 2011 (74 FR 9202). In the NPRM, NHTSA explained that it expected to be able to fully analyze and address the issues raised by the CVSA petitions prior to March 1, 2011. NHTSA also indicated that if it was able to fully resolve the outstanding issues it could make the requirement permanent in a final rule based on the NPRM.

NHTSA determined in a final rule published on August 25, 2009 (74 FR 42781) that the external lamp provides information that assists maintenance personnel and roadside inspectors, conveys important diagnostic data and supplies functional details critical for multiple trailer operations. NHTSA eliminated the sunset date and made the requirement for the external lamp permanent.

NHTSA concluded that trailer maintenance operations would be more difficult if technicians had to couple a trailer to a post-2001 tractor or use additional specialized equipment in order to diagnose the state of a trailer's ABS, when a standardized trailer-mounted lamp already provides the same information. This inconvenience could diminish the effectiveness of some maintenance operations. Furthermore, the external lamp provides both drivers and roadside inspectors information about multiple trailer combinations that is otherwise unavailable. Without it, the in-cab information can only indicate the existence of a malfunctioning trailer ABS. The external lamp, however, can pinpoint which trailer's ABS is malfunctioning, allowing drivers or inspectors to take the appropriate remedial action.

NHTSA noted that since it was making the requirement permanent because of the benefits the external lamp provides even when coupled with an in-cab trailer ABS indicator present on all tractors built after March 1, 2001, it was unnecessary to address the numbers of pre-2001 tractors that are still in use.

NHTSA noted that in making the existing requirement permanent, it was not implying that this issue could not be readdressed in future rulemaking, if new developments made the requirement unnecessary. In its comments to the March 2009 NPRM, the American Trucking Associations stated that in the future, wireless transmissions of the vehicle fault messages will be the means of inspection, making external malfunction lamps obsolete. NHTSA noted that it would take appropriate action if future designs and new inspection and maintenance practices eliminated the need for external malfunction lamps. NHTSA found good cause to make its August 25, 2009 rule effective on August 31, one day before the 6-month extension of the requirement for an external malfunction indicator lamp expired. This effective date forestalled a time gap in the regulatory standard but did not result in any new burdens, since trailer manufacturers were already required to install the indicator lamp.

V. Discussion of the Rule

The FMCSA is using a direct final rule to promulgate this requirement because no adverse comments are expected. NHTSA found good cause to make the requirement for a malfunction indicator lamp permanent and FMCSA finds good cause to incorporate the same standard, as it is not expected to be controversial. This rule simply requires trailer operators to maintain in good order the malfunction indicator lamp NHTSA requires manufacturers to install.

VI. Regulatory Analysis

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.

A. 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 the rule.

B. 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 FMCSA certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. Comments submitted in response to this finding will be evaluated under the criteria in the "Regulatory Information" section of this preamble.

C. 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).

D. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if the rule 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 federalism implications.

E. Unfunded Mandates Reform Act

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

F. Taking of Private Property

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

G. 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.

H. 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.

I. 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.

J. 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.

K. 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.

L. Environment

We have analyzed this rule under the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f) and FMCSA's NEPA Implementing Procedures and Policy for Considering Environmental Impacts (FMCSA Order 5610.1) paragraph 6.bb of Appendix 2, and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. A Categorical Exclusion Determination is available for inspection or copying in the regulations.gov Web site listed under **ADDRESSES**.

List of Subjects in 49 CFR Part 393

Highway safety, Motor Carriers, Motor vehicle safety.

■ For the reasons set forth in the preamble, FMCSA amends 49 CFR part 393 as follows:

PART 393—[AMENDED]

■ 1. The authority citation for part 393 continues to read as follows:

Authority: 49 U.S.C. 322, 31136, 31151 and 31502; sec. 1041(b), Pub. L. 102–240, 105 Stat. 1914, 1993 (1991); and 49 CFR 1.73.

■ 2. Amend § 393.55 by revising paragraph (e) to read as follows:

§ 393.55 Antilock brake systems.

* * * * *

(e) *Exterior ABS malfunction indicator lamps for trailers.* Each trailer (including a trailer converter dolly) manufactured on or after March 1, 1998, and subject to the requirements of paragraph (c)(2) of this section, shall be equipped with an ABS malfunction indicator lamp which meets the requirements of FMVSS No. 121 (49 CFR 571.121, S5.2.3.3).

Anne S. Ferro,

Administrator.

[FR Doc. 2010–23479 Filed 9–20–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 593

[Docket No. NHTSA–2010–0125]

List of Nonconforming Vehicles Decided To Be Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This document revises the list of vehicles not originally manufactured to conform to the Federal Motor Vehicle Safety Standards (FMVSS) that NHTSA has decided to be eligible for importation. This list is published in an appendix to the agency's regulations that prescribe procedures for import eligibility decisions. The list has been revised to add all vehicles that NHTSA has decided to be eligible for importation since October 1, 2009, and to remove all previously listed vehicles that are now more than 25 years old and need no longer comply with all applicable FMVSS to be lawfully imported. NHTSA is required by statute to publish this list annually in the **Federal Register**.

DATES: The revised list of import eligible vehicles is effective on September 21, 2010.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA, (202) 366–3151.

SUPPLEMENTARY INFORMATION: Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS. Where there is no substantially similar U.S.-certified motor vehicle, 49 U.S.C. 30141(a)(1)(B) permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable FMVSS based on destructive test data or such other evidence as the Secretary of Transportation decides to be adequate.

Under 49 U.S.C. 30141(a)(1), import eligibility decisions may be made "on the initiative of the Secretary of Transportation or on petition of a manufacturer or importer registered under [49 U.S.C. 30141(c)]." The Secretary's authority to make these decisions has been delegated to NHTSA. The agency publishes notices of eligibility decisions as they are made.

Under 49 U.S.C. 30141(b)(2), a list of all vehicles for which import eligibility decisions have been made must be published annually in the **Federal Register**. On October 1, 1996, NHTSA added the list as an appendix to 49 CFR part 593, the regulations that establish procedures for import eligibility decisions (61 FR 51242). As described in the notice, NHTSA took that action to ensure that the list is more widely disseminated to government personnel who oversee vehicle imports and to interested members of the public. *See* 61 FR 51242–43. In the notice, NHTSA expressed its intention to annually revise the list as published in the appendix to include any additional vehicles decided by the agency to be eligible for importation since the list was last published. *See* 61 FR 51243. The agency stated that issuance of the document announcing these revisions will fulfill the annual publication

requirements of 49 U.S.C. 30141(b)(2). *Ibid.*

Regulatory Analyses and Notices

A. Executive Order 12866, Regulatory Planning and Review

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), provides for making determinations about whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Executive Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affects in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. This rule will not have any of these effects and was not reviewed under Executive Order 12866. It is not significant within the meaning of the DOT Regulatory Policies and Procedures. The effect of this rule is not to impose new requirements. Instead it provides a summary compilation of decisions on import eligibility that have already been made and does not involve new decisions. This rule will not impose any additional burden on any person. Accordingly, the agency believes that the preparation of a regulatory evaluation is not warranted for this rule.

B. Environmental Impacts

We have not conducted an evaluation of the impacts of this rule under the National Environmental Policy Act. This rule does not impose any change that would result in any impacts to the quality of the human environment. Accordingly, no environmental assessment is required.

C. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, we have considered the impacts of this rule on small entities (5 U.S.C. 601 *et seq.*). I certify that this rule will not have a significant economic impact upon a substantial number of small entities within the context of the Regulatory Flexibility Act. The following is our statement providing the factual basis for the certification (5 U.S.C. 605(b)). This rule will not have any significant economic impact on a substantial number of small businesses because the rule merely furnishes information by revising the list in the Code of Federal Regulations of vehicles for which import eligibility decisions have previously been made. Accordingly, we have not prepared a Final Regulatory Flexibility Analysis.

D. Executive Order 13132, Federalism

Executive Order 13132 requires NHTSA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." Executive Order 13132 defines the term "Policies that have federalism implications" to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, NHTSA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or NHTSA consults with State and local officials early in the process of developing the regulation.

This rule will have no 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 as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. The Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. This rule will not result in additional expenditures by State, local or tribal governments or by any members of the private sector. Therefore, the agency has not prepared an economic assessment pursuant to the Unfunded Mandates Reform Act.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This rule does not impose any new collection of information requirements for which a 5 CFR part 1320 clearance must be obtained. DOT previously submitted to OMB and OMB approved the collection of information associated with the vehicle importation program in OMB Clearance No. 2127–0002.

G. Civil Justice Reform

Pursuant to Executive Order 12988, "Civil Justice Reform," we have considered whether this rule has any retroactive effect. We conclude that it will not have such an effect.

H. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

—Have we organized the material to suit the public's needs?

—Are the requirements in the rule clearly stated?

—Does the rule contain technical language or jargon that is not clear?

—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?

—Would more (but shorter) sections be better?

—Could we improve clarity by adding tables, lists, or diagrams?

—What else could we do to make the rule easier to understand?

If you wish to do so, please comment on the extent to which this final rule effectively uses plain language principles.

I. National Technology Transfer and Advancement Act

Under the National Technology and Transfer and Advancement Act of 1995 (Pub. L. 104–113), "all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments." This rule does not require the use of any technical standards.

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).

K. Executive Order 13045, Economically Significant Rules Disproportionately Affecting Children

This rule is not subject to Executive Order 13045 because it is not "economically significant" as defined under Executive Order 12866, and does not concern an environmental, health, or safety risk that NHTSA has reason to believe may have a disproportionate effect on children.

L. Notice and Comment

NHTSA finds that prior notice and opportunity for comment are unnecessary under 5 U.S.C. 553(b)(3)(B) because this action does not impose any regulatory requirements. This rule merely revises the list of vehicles not originally manufactured to conform to the FMVSS that NHTSA has decided to be eligible for importation into the United States since the last list was published in September, 2009.

In addition, so that the list of vehicles for which import eligibility decisions have been made may be included in the next edition of 49 CFR parts 572 to 599, which is due for revision on October 1, 2010, good cause exists to dispense with the requirement in 5 U.S.C. 553(d) for the effective date of the rule to be delayed for at least 30 days following its publication.

List of Subjects in 49 CFR Part 593

Imports, Motor vehicle safety, Motor vehicles.

■ In consideration of the foregoing, part 593 of title 49 of the Code of Federal Regulations, *Determinations that a vehicle not originally manufactured to conform to the Federal motor vehicle safety standards is eligible for importation,* is amended as follows:

PART 593—[AMENDED]

■ 1. The authority citation for part 593 continues to read as follows:

Authority: 49 U.S.C. 322 and 30141(b); delegation of authority at 49 CFR 1.50.

■ 2. Appendix A to part 593 is revised to read as follows:

Appendix A to Part 593—List of Vehicles Determined To Be Eligible for Importation

(a) Each vehicle on the following list is preceded by a vehicle eligibility number. The importer of a vehicle admissible under any eligibility decision must enter that number on the HS–7 Declaration Form accompanying entry to indicate that the vehicle is eligible for importation.

(1) "VSA" eligibility numbers are assigned to all vehicles that are decided to be eligible for importation on the initiative of the Administrator under § 593.8.

(2) "VSP" eligibility numbers are assigned to vehicles that are decided to be eligible under § 593.7(f), based on a petition from a manufacturer or registered importer submitted under § 593.5(a)(1), which establishes that a substantially similar U.S.-certified vehicle exists.

(3) "VCP" eligibility numbers are assigned to vehicles that are decided to be eligible under § 593.7(f), based on a petition from a manufacturer or registered importer submitted under § 593.5(a)(2), which establishes that the vehicle has safety features that comply with, or are capable of being altered to comply with, all applicable FMVSS.

(b) Vehicles for which eligibility decisions have been made are listed alphabetically, first by make and then by model.

(c) All hyphens used in the Model Year column mean "through" (for example, "1988–1990" means "1988 through 1990").

(d) The initials "MC" used in the Make column mean "Motorcycle."

(e) The initials "SWB" used in the Model Type column mean "Short Wheel Base."

(f) The initials "LWB" used in the Model Type column mean "Long Wheel Base."

(g) For vehicles with a European country of origin, the term "Model Year" ordinarily means calendar year in which the vehicle was produced.

(h) All vehicles are left-hand-drive (LHD) vehicles unless noted as RHD. The initials "RHD" used in the Model Type column mean "Right-Hand-Drive."

VEHICLES CERTIFIED BY THEIR ORIGINAL MANUFACTURER AS COMPLYING WITH ALL APPLICABLE CANADIAN MOTOR VEHICLE SAFETY STANDARDS

VSA–80 ...	(a) All passenger cars less than 25 years old that were manufactured before September 1, 1989;
	(b) All passenger cars manufactured on or after September 1, 1989, and before September 1, 1996, that, as originally manufactured, are equipped with an automatic restraint system that complies with Federal Motor Vehicle Safety Standard (FMVSS) No. 208;
	(c) All passenger cars manufactured on or after September 1, 1996, and before September 1, 2002, that, as originally manufactured, are equipped with an automatic restraint system that complies with FMVSS No. 208, and that comply with FMVSS No. 214;
	(d) All passenger cars manufactured on or after September 1, 2002, and before September 1, 2007, that, as originally manufactured, are equipped with an automatic restraint system that complies with FMVSS No. 208, and that comply with FMVSS Nos. 201, 214, 225, and 401;
	(e) All passenger cars manufactured on or after September 1, 2007, and before September 1, 2008, that, as originally manufactured, comply with FMVSS Nos. 110, 118, 138, 201, 208, 213, 214, 225, and 401;
	(f) All passenger cars manufactured on or after September 1, 2008 and before September 1, 2011 that, as originally manufactured, comply with FMVSS Nos. 110, 118, 138, 201, 202a, 206, 208, 213, 214, 225, and 401;
	(g) All passenger cars manufactured on or after September 1, 2011 and before September 1, 2012 that, as originally manufactured, comply with FMVSS Nos. 110, 118, 126, 138, 201, 202a, 206, 208, 213, 214, 225, and 401.
VSA–81 ...	(a) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less that are less than 25 years old and that were manufactured before September 1, 1991;
	(b) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less that were manufactured on and after September 1, 1991, and before September 1, 1993 and that, as originally manufactured, comply with FMVSS Nos. 202 and 208;
VSA–81 ...	(c) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less that were manufactured on or after September 1, 1993, and before September 1, 1998, and that, as originally manufactured, comply with FMVSS Nos. 202, 208, and 216;
	(d) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less that were manufactured on or after September 1, 1998, and before September 1, 2002, and that, as originally manufactured, comply with FMVSS Nos. 202, 208, 214, and 216;

VEHICLES CERTIFIED BY THEIR ORIGINAL MANUFACTURER AS COMPLYING WITH ALL APPLICABLE CANADIAN MOTOR VEHICLE SAFETY STANDARDS—Continued

	(e) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less that were manufactured on or after September 1, 2002, and before September 1, 2007, and that, as originally manufactured, comply with FMVSS Nos. 201, 202, 208, 214, and 216, and, insofar as it is applicable, with FMVSS No. 225; (f) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less manufactured on or after September 1, 2007 and before September 1, 2008, that, as originally manufactured, comply with FMVSS Nos. 110, 118, 201, 202, 208, 213, 214, and 216, and insofar as they are applicable, with FMVSS Nos. 138 and 225; (g) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less manufactured on or after September 1, 2008 and before September 1, 2011, that, as originally manufactured, comply with FMVSS Nos. 110, 118, 201, 202a, 206, 208, 213, 214, and 216, and insofar as they are applicable, with FMVSS Nos. 138 and 225; (h) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less manufactured on or after September 1, 2011 and before September 1, 2012, that, as originally manufactured, comply with FMVSS Nos. 110, 118, 126, 201, 202a, 206, 208, 213, 214, and 216, and insofar as they are applicable, with FMVSS Nos. 138 and 225.
VSA–82 ...	All multipurpose passenger vehicles, trucks, and buses with a GVWR greater than 4,536 kg (10,000 lb) that are less than 25 years old.
VSA–83 ...	All trailers and motorcycles less than 25 years old.

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET

Make	Model type(s)	Body	Model year(s)	VSP	VSA	VCP
Acura	Legend		1988	51		
Acura	Legend		1988	51		
Acura	Legend		1989	77		
Acura	Legend		1990–1992	305		
AL–Spaw	EMA Mobile Stage Trailer		2009			42
Alfa Romeo	164		1989	196		
Alfa Romeo	164		1991	76		
Alfa Romeo	164		1994	156		
Alfa Romeo	Spider		1987	70		
Alfa Romeo	Spyder		1992	503		
Alpina	B12 5.0	Sedan	1988–1994			41
Aston Martin	Vanquish		2002–2004	430		
Audi	80		1988–1989	223		
Audi	100		1989	93		
Audi	100		1993	244		
Audi	100		1990–1992	317		
Audi	A4		1996–2000	352		
Audi	A4, RS4, S4	8D	2000–2001	400		
Audi	A6		1998–1999	332		
Audi	A8		2000	424		
Audi	A8		1997–2000	337		
Audi	A8 Avant Quattro		1996	238		
Audi	RS6 & RS6 Avant		2003	443		
Audi	S6		1996	428		
Audi	S8		2000	424		
Audi	TT		2000–2001	364		
Bentley	Arnage (manufactured 1/1/01–12/31/01)		2001	473		
Bentley	Azure (LHD & RHD)		1998	485		
Bimota (MC)	DB4		2000	397		
Bimota (MC)	SB8		1999–2000	397		
Bimota (MC)	SB6		1994–1999	523		
BMW	316		1986	25		
BMW	3 Series		1998	462		
BMW	3 Series		1999	379		
BMW	3 Series		2000	356		
BMW	3 Series		2001	379		
BMW	3 Series		1995–1997	248		
BMW	3 Series		2003–2004	487		
BMW	318i, 318iA		1986		23	
BMW	318i, 318iA		1987–1989		23	
BMW	320i		1990–1991	283		
BMW	325, 325i, 325iA, 325E		1986		30	
BMW	325e, 325eA		1986–1987		24	
BMW	325i		1991	96		
BMW	325i		1992–1996	197		
BMW	325i, 325iA		1987–1989		30	
BMW	325iS, 325iSA		1987–1989		31	
BMW	325iX		1990	205		
BMW	325iX, 325iXA		1988–1989		33	
BMW	5 Series		2000	345		
BMW	5 Series		1990–1995	194		
BMW	5 Series		1995–1997	249		

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Make	Model type(s)	Body	Model year(s)	VSP	VSA	VCP
BMW	5 Series		1998–1999	314		
BMW	5 Series		2000–2002	414		
BMW	5 Series		2003–2004	450		
BMW	518i		1986	4		
BMW	520iA		1989	9		
BMW	524tdA		1986		26	
BMW	525i		1989	5		
BMW	528e, 528eA		1986–1988		21	
BMW	535i, 535iA		1986–1989		25	
BMW	635CSi, 635CSiA		1986–1989		27	
BMW	7 Series		1992	232		
BMW	7 Series		1990–1991	299		
BMW	7 Series		1993–1994	299		
BMW	7 Series		1995–1999	313		
BMW	7 Series		1999–2001	366		
BMW	728i		1986	14		
BMW	730iA		1988	6		
BMW	735i, 735iA		1986–1989		28	
BMW	745i		1986		73	
BMW	8 Series		1991–1995	361		
BMW	850 Series		1997	396		
BMW	850i		1990	10		
BMW	All other passenger car models except those in the M1 and Z1 series..		1986–1989		78	
BMW	L7		1986–1987		29	
BMW	M3		1988–1989		35	
BMW	M3 (manufactured prior to 9/1/06)		2006	520		
BMW	M5		1988		34	
BMW	M6		1987–1988		32	
BMW	X5 (manufactured 1/1/03–12/31/04)		2003–2004	459		
BMW	Z3		1996–1998	260		
BMW	Z3 (European market)		1999	483		
BMW	Z8		2002	406		
BMW	Z8		2000–2001	350		
BMW (MC)	C1		2000–2003			40
BMW (MC)	K1		1990–1993	228		
BMW (MC)	K100		1986–1992	285		
BMW (MC)	K1100, K1200		1993–1998	303		
BMW (MC)	K75		1996			36
BMW (MC)	K75S		1987–1995	229		
BMW (MC)	R1100		1994–1997	231		
BMW (MC)	R1100		1998–2001	368		
BMW (MC)	R1100RS		1994	177		
BMW (MC)	R1150GS		2000	453		
BMW (MC)	R1200C		1998–2001	359		
BMW (MC)	R80, R100		1986–1995	295		
Buell (MC)	All Models		1995–2002	399		
Cadillac	DeVille		1994–1999	300		
Cadillac	DeVille (manufactured 8/1/99–12/31/00)		2000	448		
Cadillac	Seville		1991	375		
Cagiva (MC)	Gran Canyon 900		1999	444		
Carrocerias	Cimarron trailer		2006–2007			37
Chevrolet	400SS		1995	150		
Chevrolet	Astro Van		1997	298		
Chevrolet	Blazer		1986	405		
Chevrolet	Blazer (plant code of “K” or “2” in the 11th position of the VIN).		1997	349		
Chevrolet	Blazer (plant code of “K” or “2” in the 11th position of the VIN).		2001	461		
Chevrolet	Camaro		1999	435		
Chevrolet	Cavalier		1997	369		
Chevrolet	Corvette		1992	365		
Chevrolet	Corvette	Coupe	1999	419		
Chevrolet	Suburban		1989–1991	242		
Chevrolet	Tahoe		2000	504		
Chevrolet	Tahoe		2001	501		
Chevrolet	Trailblazer (manufactured prior to 9/1/07) originally sold in the Kuwaiti market.		2007	514		
Chrysler	Daytona		1992	344		
Chrysler	Grand Voyager		1998	373		
Chrysler	LHS (Mexican market)		1996	276		
Chrysler	Shadow (Middle Eastern market)		1989	216		

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Make	Model type(s)	Body	Model year(s)	VSP	VSA	VCP
Chrysler	Town and Country		1993	273		
Citroen	XM		1990–1992			1
Dodge	Ram		1994–1995	135		
Ducati (MC)	748		1999–2003	421		
Ducati (MC)	851		1988	498		
Ducati (MC)	888		1993	500		
Ducati (MC)	900		2001	452		
Ducati (MC)	916		1999–2003	421		
Ducati (MC)	600SS		1992–1996	241		
Ducati (MC)	748 Biposto		1996–1997	220		
Ducati (MC)	900SS		1991–1996	201		
Ducati (MC)	996 Biposto		1999–2001	475		
Ducati (MC)	996R		2001–2002	398		
Ducati (MC)	MH900E		2001–2002	524		
Ducati (MC)	Monster 600		2001	407		
Ducati (MC)	ST4S		1999–2005	474		
Eagle	Vision		1994	323		
Ferrari	360		2001	376		
Ferrari	456		1995	256		
Ferrari	550		2001	377		
Ferrari	575		2002–2003	415		
Ferrari	575		2004–2005	507		
Ferrari	208, 208 Turbo	all models	1986–1988		76	
Ferrari	328	all models	1988–1989		37	
Ferrari	328 GTS		1986–1987		37	
Ferrari	348 TB		1992	86		
Ferrari	348 TS		1992	161		
Ferrari	360 (manufactured after 9/31/02)		2002	433		
Ferrari	360 (manufactured before 9/1/02)		2002	402		
Ferrari	360 Modena		1999–2000	327		
Ferrari	360 Series		2004	446		
Ferrari	360	Spider & Coupe	2003	410		
Ferrari	456 GT & GTA		1999	445		
Ferrari	456 GT & GTA		1997–1998	408		
Ferrari	512 TR		1993	173		
Ferrari	550 Marinello		1997–1999	292		
Ferrari	599 (manufactured prior to 9/1/06)		2006	518		
Ferrari	Enzo		2003–2004	436		
Ferrari	F355		1995	259		
Ferrari	F355		1999	391		
Ferrari	F355		1996–1998	355		
Ferrari	F430 (manufactured prior to 9/1/06)		2005–2006	479		
Ferrari	F50		1995	226		
Ferrari	Mondial (all models)		1986–1989		74	
Ferrari	Testarossa		1989		39	
Ferrari	Testarossa		1987–1988		39	
Ford	Bronco (manufactured in Venezuela)		1995–1996	265		
Ford	Escort (Nicaraguan market)		1996	322		
Ford	Escort RS Cosworth		1994–1995			9
Ford	Explorer (manufactured in Venezuela)		1991–1998	268		
Ford	F150		2000	425		
Ford	Mustang		1993	367		
Ford	Mustang		1997	471		
Ford	Windstar		1995–1998	250		
Freightliner	FLD12064ST		1991–1996	179		
Freightliner	FTLD112064SD		1991–1996	178		
GMC	Suburban		1992–1994	134		
Harley Davidson (MC)	FX, FL, XL Series		1998	253		
Harley Davidson (MC)	FX, FL, XL Series		1999	281		
Harley Davidson (MC)	FX, FL, XL Series		2000	321		
Harley Davidson (MC)	FX, FL, XL Series		2001	362		
Harley Davidson (MC)	FX, FL, XL Series		2002	372		
Harley Davidson (MC)	FX, FL, XL Series		2003	393		
Harley Davidson (MC)	FX, FL, XL Series		2004	422		
Harley Davidson (MC)	FX, FL, XL Series		2005	472		
Harley Davidson (MC)	FX, FL, XL Series		2006	491		
Harley Davidson (MC)	FX, FL, XL Series		1986–1997	202		
Harley Davidson (MC)	FX, FL, XL & VR Series		2007	506		
Harley Davidson (MC)	FXSTC Soft Tail Custom		2007	499		
Harley Davidson (MC)	FX, FL, XL & VR Series		2008	517		
Harley Davidson (MC)	FX, FL, XL & VR Series		2009	522		
Harley Davidson (MC)	VRSCA		2002	374		

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Make	Model type(s)	Body	Model year(s)	VSP	VSA	VCP
Harley Davidson (MC)	VRSCA		2003	394		
Harley Davidson (MC)	VRSCA		2004	422		
Hatty	45 ft double axle trailer		1999–2000			38
Heku	750 KG boat trailer		2005			33
Hobby	Exclusive 650 KMFE Trailer		2002–2003			29
Honda	Accord		1991	280		
Honda	Accord		1992–1999	319		
Honda	Accord (RHD)	Sedan & Wagon	1994–1997	451		
Honda	Civic DX	Hatchback	1989	128		
Honda	CRV		2002	447		
Honda	CR–V		2005	489		
Honda	Prelude		1989	191		
Honda	Prelude		1994–1997	309		
Honda (MC)	CB 750 (CB750F2T)		1996	440		
Honda (MC)	CB1000F		1988	106		
Honda (MC)	CBR250		1989–1994			22
Honda (MC)	CMX250C		1986–1987	348		
Honda (MC)	CP450SC		1986	174		
Honda (MC)	RVF 400		1994–2000	358		
Honda (MC)	VF750		1994–1998	290		
Honda (MC)	VFR 400		1994–2000	358		
Honda (MC)	VFR 400, RVF 400		1989–1993			24
Honda (MC)	VFR750		1990	34		
Honda (MC)	VFR750		1991–1997	315		
Honda (MC)	VFR800		1998–1999	315		
Honda (MC)	VT600		1991–1998	294		
Hyundai	Elantra		1992–1995	269		
Hyundai	XG350		2004	494		
Jaguar	Sovereign		1993	78		
Jaguar	S–Type		2000–2002	411		
Jaguar	XJ6		1987	47		
Jaguar	XJ6		1986		41	
Jaguar	XJ6 Sovereign		1988	215		
Jaguar	XJS		1991	175		
Jaguar	XJS		1992	129		
Jaguar	XJS		1986–1987		40	
Jaguar	XJS		1994–1996	195		
Jaguar	XJS, XJ6		1988–1990	336		
Jaguar	XK–8		1998	330		
Jeep	Cherokee		1993	254		
Jeep	Cherokee (European market)		1991	211		
Jeep	Cherokee (LHD & RHD)		1994	493		
Jeep	Cherokee (LHD & RHD)		1995	180		
Jeep	Cherokee (LHD & RHD)		1996	493		
Jeep	Cherokee (LHD & RHD)		1997–1998	516		
Jeep	Cherokee (LHD & RHD)		1997–2001	515		
Jeep	Cherokee (Venezuelan market)		1992	164		
Jeep	Grand Cherokee		1994	404		
Jeep	Grand Cherokee		1997	431		
Jeep	Grand Cherokee		2001	382		
Jeep	Grand Cherokee (LHD—Japanese market)		1997	389		
Jeep	Liberty		2002	466		
Jeep	Liberty		2005	505		
Jeep	Liberty (Mexican market)		2004	457		
Jeep	Wrangler		1993	217		
Jeep	Wrangler		1995	255		
Jeep	Wrangler		1998	341		
Kawasaki (MC)	EL250		1992–1994	233		
Kawasaki (MC)	VN1500–P1/P2 series		2003	492		
Kawasaki (MC)	ZX1000–B1		1988	182		
Kawasaki (MC)	ZX400		1987–1997	222		
Kawasaki (MC)	ZX6, ZX7, ZX9, ZX10, ZX11		1987–1999	312		
Kawasaki (MC)	ZX600		1986–1998	288		
Kawasaki (MC)	ZZR1100		1993–1998	247		
Ken-Mex	T800		1990–1996	187		
Kenworth	T800		1992	115		
Komet	Standard, Classic & Eurolite trailer		2000–2005	477		
KTM (MC)	Duke II		1995–2000	363		
Lamborghini	Diablo (except 1997 Coupe)		1996–1997	416		
Lamborghini	Diablo	Coupe	1997			26
Lamborghini	Gallardo (manufactured 1/1/04–12/31/04)		2004	458		
Lamborghini	Gallardo (manufactured 1/1/06–8/31/06)		2006	508		

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Make	Model type(s)	Body	Model year(s)	VSP	VSA	VCP
Lamborghini	Murcielago	Roadster	2005	476		
Land Rover	Defender 110		1993	212		
Land Rover	Defender 90	VIN & Body Limited	1994–1995	512		
Land Rover	Defender 90 (manufactured before 9/1/97) and VIN "SALDV224*VA" or "SALDV324*VA".		1997	432		
Land Rover	Discovery		1994–1998	338		
Land Rover	Discovery (II)		2000	437		
Land Rover	Range Rover		2004	509		
Lexus	GS300		1998	460		
Lexus	GS300		1993–1996	293		
Lexus	RX300		1998–1999	307		
Lexus	SC300		1991–1996	225		
Lexus	SC400		1991–1996	225		
Lincoln	Mark VII		1992	144		
Magni (MC)	Australia, Sfida		1996–1999	264		
Mazda	MPV		2000	413		
Mazda	MX–5 Miata		1990–1993	184		
Mazda	RX–7		1986	199		
Mazda	RX–7		1987–1995	279		
Mazda	Xedos 9		1995–2000	351		
Mercedes Benz	190 D	201.126	1986–1989		54	
Mercedes Benz	190 D (2.2)	201.122	1986–1989		54	
Mercedes Benz	190 E	201.029	1986		54	
Mercedes Benz	190 E	201.028	1990	22		
Mercedes Benz	190 E	201.036	1990	104		
Mercedes Benz	190 E	201.024	1991	45		
Mercedes Benz	190 E	201.028	1992	71		
Mercedes Benz	190 E	201.018	1992	126		
Mercedes Benz	190 E		1993	454		
Mercedes Benz	190 E	201.028	1986–1989		54	
Mercedes Benz	190 E (2.3)	201.024	1986–1989		54	
Mercedes Benz	190 E (2.6)	201.029	1987–1989		54	
Mercedes Benz	190 E (2.6) 16	201.034	1986–1989		54	
Mercedes Benz	200 D	124.120	1986	17		
Mercedes Benz	200 E	124.021	1989	11		
Mercedes Benz	200 E	124.012	1991	109		
Mercedes Benz	200 E	124.019	1993	75		
Mercedes Benz	200 TE	124.081	1989	3		
Mercedes Benz	220 E		1993	168		
Mercedes Benz	220 TE	Station Wagon	1993–1996	167		
Mercedes Benz	230 CE	124.043	1991	84		
Mercedes Benz	230 CE	123.043	1992	203		
Mercedes Benz	230 E	124.023	1988	1		
Mercedes Benz	230 E	124.023	1989	20		
Mercedes Benz	230 E	124.023	1990	19		
Mercedes Benz	230 E	124.023	1991	74		
Mercedes Benz	230 E	124.023	1993	127		
Mercedes Benz	230 E	124.023	1986–1987		55	
Mercedes Benz	230 TE	124.083	1989	2		
Mercedes Benz	250 D		1992	172		
Mercedes Benz	250 E		1990–1993	245		
Mercedes Benz	260 E	124.026	1986		55	
Mercedes Benz	260 E	124.026	1992	105		
Mercedes Benz	260 E	124.026	1987–1989		55	
Mercedes Benz	260 SE	126.020	1986	18		
Mercedes Benz	260 SE	126.020	1989	28		
Mercedes Benz	280 E		1993	166		
Mercedes Benz	280 SE	116.024	1986–1988		51	
Mercedes Benz	300 CE	124.051	1990	64		
Mercedes Benz	300 CE	124.051	1991	83		
Mercedes Benz	300 CE	124.050	1992	117		
Mercedes Benz	300 CE	124.061	1993	94		
Mercedes Benz	300 CE	124.050	1988–1989		55	
Mercedes Benz	300 D	124.130	1986		55	
Mercedes Benz	300 D Turbo	124.193	1986		55	
Mercedes Benz	300 D Turbo	124.193	1987–1989		55	
Mercedes Benz	300 DT	124.133	1986–1989		55	
Mercedes Benz	300 E	124.031	1992	114		
Mercedes Benz	300 E	124.030	1986–1989		55	
Mercedes Benz	300 E 4–Matic		1990–1993	192		
Mercedes Benz	300 SD	126.120	1986–1989		53	
Mercedes Benz	300 SE	126.024	1990	68		

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Make	Model type(s)	Body	Model year(s)	VSP	VSA	VCP
Mercedes Benz	300 SE	126.024	1986–1987		53	
Mercedes Benz	300 SE	126.024	1988–1989		53	
Mercedes Benz	300 SEL	126.025	1986		53	
Mercedes Benz	300 SEL	126.025	1987		53	
Mercedes Benz	300 SEL	126.025	1990	21		
Mercedes Benz	300 SEL	126.025	1988–1989		53	
Mercedes Benz	300 SL	107.041	1989	7		
Mercedes Benz	300 SL	129.006	1992	54		
Mercedes Benz	300 SL	107.041	1986–1988		44	
Mercedes Benz	300 TE	124.090	1990	40		
Mercedes Benz	300 TE		1992	193		
Mercedes Benz	300 TE	124.090	1986–1989		55	
Mercedes Benz	320 CE		1993	310		
Mercedes Benz	320 SL		1992–1993	142		
Mercedes Benz	380 SE	126.043	1986–1989		53	
Mercedes Benz	380 SE	126.032	1986–1989		53	
Mercedes Benz	380 SEL	126.033	1986–1989		53	
Mercedes Benz	380 SL	107.045	1986–1989		44	
Mercedes Benz	380 SLC	107.025	1986–1989		44	
Mercedes Benz	400 SE		1992–1994	296		
Mercedes Benz	420 E		1993	169		
Mercedes Benz	420 SE	126.034	1986		53	
Mercedes Benz	420 SE	126.034	1987–1989		53	
Mercedes Benz	420 SE		1990–1991	230		
Mercedes Benz	420 SEC		1990	209		
Mercedes Benz	420 SEL	126.035	1990	48		
Mercedes Benz	420 SEL	126.035	1986–1989		53	
Mercedes Benz	420 SL	107.047	1986		44	
Mercedes Benz	450 SEL	116.033	1986–1988		51	
Mercedes Benz	450 SEL (6.9)	116.036	1986–1988		51	
Mercedes Benz	450 SL	107.044	1986–1989		44	
Mercedes Benz	450 SLC	107.024	1986–1989		44	
Mercedes Benz	500 E	124.036	1991	56		
Mercedes Benz	500 SE	126.036	1988	35		
Mercedes Benz	500 SE		1990	154		
Mercedes Benz	500 SE	140.050	1991	26		
Mercedes Benz	500 SE	126.036	1986		53	
Mercedes Benz	500 SEC	126.044	1990	66		
Mercedes Benz	500 SEC	126.044	1986–1989		53	
Mercedes Benz	500 SEL		1990	153		
Mercedes Benz	500 SEL	126.037	1991	63		
Mercedes Benz	500 SEL	126.037	1986–1989		53	
Mercedes Benz	500 SL	129.066	1989	23		
Mercedes Benz	500 SL	126.066	1991	33		
Mercedes Benz	500 SL	129.006	1992	60		
Mercedes Benz	500 SL	107.046	1986–1989		44	
Mercedes Benz	560 SEC	126.045	1990	141		
Mercedes Benz	560 SEC		1991	333		
Mercedes Benz	560 SEC	126.045	1986–1989		53	
Mercedes Benz	560 SEL	126.039	1990	89		
Mercedes Benz	560 SEL	140	1991	469		
Mercedes Benz	560 SEL	126.039	1986–1989		53	
Mercedes Benz	560 SL	107.048	1986–1989		44	
Mercedes Benz	600 SEC	Coupe	1993	185		
Mercedes Benz	600 SEL	140.057	1993–1998	271		
Mercedes Benz	600 SL	129.076	1992	121		
Mercedes Benz	All other passenger car models except Model ID 114 and 115 with sales designations “long,” “station wagon,” or “ambulance”.		1986–1989		77	
Mercedes Benz	C 320	203	2001–2002	441		
Mercedes Benz	C Class		1994–1999	331		
Mercedes Benz	C Class	203	2000–2001	456		
Mercedes Benz	C Class	221	2003–2006	521		
Mercedes Benz	CL 500		1998	277		
Mercedes Benz	CL 500		1999–2001	370		
Mercedes Benz	CL 600		1999–2001	370		
Mercedes Benz	CLK 320		1998	357		
Mercedes Benz	CLK Class		1999–2001	380		
Mercedes Benz	CLK–Class	209	2002–2005	478		
Mercedes Benz	E 200		1994	207		
Mercedes Benz	E 200		1995–1998	278		
Mercedes Benz	E 220		1994–1996	168		

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Make	Model type(s)	Body	Model year(s)	VSP	VSA	VCP
Mercedes Benz	E 250		1994–1995	245		
Mercedes Benz	E 280		1994–1996	166		
Mercedes Benz	E 320		1994–1998	240		
Mercedes Benz	E 320	211	2002–2003	418		
Mercedes Benz	E 320	Station Wagon	1994–1999	318		
Mercedes Benz	E 420		1994–1996	169		
Mercedes Benz	E 500		1994	163		
Mercedes Benz	E 500		1995–1997	304		
Mercedes Benz	E Class	W210	1996–2002	401		
Mercedes Benz	E Class	211	2003–2004	429		
Mercedes Benz	E Series		1991–1995	354		
Mercedes Benz	G-Wagon	463	1996			11
Mercedes Benz	G-Wagon	463	1997			15
Mercedes Benz	G-Wagon	463	1998			16
Mercedes Benz	G-Wagon	463	1999–2000			18
Mercedes Benz	G-Wagon 300	463.228	1993			3
Mercedes Benz	G-Wagon 300	463.228	1994			5
Mercedes Benz	G-Wagon 300	463.228	1990–1992			5
Mercedes Benz	G-Wagon 320 LWB	463	1995			6
Mercedes Benz	G-Wagon 5 DR LWB	463	2001			21
Mercedes Benz	G-Wagon 5 DR LWB	463	2002	392		
Mercedes Benz	G-Wagon 5 DR LWB		2006–2007	527		
Mercedes Benz	G-Wagon LWB V–8	463	1992–1996			13
Mercedes Benz	G-Wagon SWB	463	2005			31
Mercedes Benz	G-Wagon SWB	463	1990–1996			14
Mercedes Benz	G-Wagon SWB Cabriolet & 3DR	463	2004			28
Mercedes Benz	G-Wagon SWB Cabriolet & 3DR	463	2001–2003			25
Mercedes Benz	G-Wagon SWB Cabriolet & 3DR (manufactured before 9/1/06).	463	2006			35
Mercedes Benz	Maybach		2004	486		
Mercedes Benz	S 280	140.028	1994	85		
Mercedes Benz	S 320		1994–1998	236		
Mercedes Benz	S 420		1994–1997	267		
Mercedes Benz	S 500		1994–1997	235		
Mercedes Benz	S 500		2000–2001	371		
Mercedes Benz	S 600		1995–1999	297		
Mercedes Benz	S 600		2000–2001	371		
Mercedes Benz	S 600	Coupe	1994	185		
Mercedes Benz	S 600L		1994	214		
Mercedes Benz	S Class		1993	395		
Mercedes Benz	S Class	140	1991–1994	423		
Mercedes Benz	S Class		1995–1998	342		
Mercedes Benz	S Class		1998–1999	325		
Mercedes Benz	S Class	W220	1999–2002	387		
Mercedes Benz	S Class	220	2002–2004	442		
Mercedes Benz	S Class (manufactured before 9/1/06)		2005–2006	525		
Mercedes Benz	SE Class		1992–1994	343		
Mercedes Benz	SEL Class	140	1992–1994	343		
Mercedes Benz	SL Class		1993–1996	329		
Mercedes Benz	SL Class	W129	1997–2000	386		
Mercedes Benz	SL Class	R230	2001–2002			19
Mercedes Benz	SL-Class (European market)	230	2003–2005	470		
Mercedes Benz	SLK		1997–1998	257		
Mercedes Benz	SLK		2000–2001	381		
Mercedes Benz	SLK Class (manufactured between 8/31/04 and 8/31/06).	171	2005–2006	511		
Mercedes Benz (truck)	Sprinter		2001–2005	468		
Mini	Cooper (European market)	Convertible	2005	482		
Mitsubishi	Galant Super Salon		1989	13		
Mitsubishi	Galant VX		1988	8		
Moto Guzzi (MC)	California		2000–2001	495		
Moto Guzzi (MC)	California EV		2002	403		
Moto Guzzi (MC)	Daytona		1993	118		
Moto Guzzi (MC)	Daytona RS		1996–1999	264		
MV Agusta (MC)	F4		2000	420		
Nissan	240SX		1988	162		
Nissan	GTS & GTR(RHD) a.k.a. “Skyline” manufactured 1/96–6/98.	R33	1996–1998			32
Nissan	Maxima		1989	138		
Nissan	Pathfinder		2002	412		
Nissan	Pathfinder		1987–1995	316		
Nissan	Stanza		1987	139		

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Make	Model type(s)	Body	Model year(s)	VSP	VSA	VCP
Peugeot	405		1989	65		
Plymouth	Voyager		1996	353		
Pontiac	Firebird Trans Am		1995	481		
Pontiac (MPV)	Trans Sport		1993	189		
Porsche	911 Series		1991	526		
Porsche	911		1997–2000	346		
Porsche	928		1991–1996	266		
Porsche	928		1993–1998	272		
Porsche	911 Carrera	996	2002–2004	439		
Porsche	911 (996) GT3		2004	438		
Porsche	911 C4		1990	29		
Porsche	911 Cabriolet		1986–1989		56	
Porsche	911 Carrera		1993	165		
Porsche	911 Carrera		1994	103		
Porsche	911 Carrera		1986–1989		56	
Porsche	911 Carrera		1995–1996	165		
Porsche	911 Carrera 2 & Carrera 4		1992	52		
Porsche	911 Carrera Cabriolet (manufactured prior to 9/1/06).		2005–2006	513		
Porsche	911	Coupe	1986–1989		56	
Porsche	911 Targa		1986–1989		56	
Porsche	911 Turbo		1992	125		
Porsche	911 Turbo		2001	347		
Porsche	911 Turbo		1986–1989		56	
Porsche	924	Coupe	1986–1989		59	
Porsche	924 S		1987–1989		59	
Porsche	924 Turbo	Coupe	1986–1989		59	
Porsche	928	Coupe	1986–1989		60	
Porsche	928 GT		1986–1989		60	
Porsche	928 S	Coupe	1986–1989		60	
Porsche	928 S4		1990	210		
Porsche	928 S4		1986–1989		60	
Porsche	944	Coupe	1986–1989		61	
Porsche	944 S	Cabriolet	1990	97		
Porsche	944 S	Coupe	1987–1989		61	
Porsche	944 S2 (2-door Hatchback)		1990	152		
Porsche	944 Turbo	Coupe	1986–1989		61	
Porsche	946 Turbo		1994	116		
Porsche	All other passenger car models except Model 959.		1986–1989		79	
Porsche	Boxster		1997–2001	390		
Porsche	Boxster (manufactured before 9/1/02)		2002	390		
Porsche	Carrera GT		2004–2005	463		
Porsche	Cayenne		2003–2004	464		
Porsche	Cayenne (manufactured prior to 9/1/06)		2006	519		
Porsche	GT2		2001			20
Porsche	GT2		2002	388		
Rolls Royce	Bentley		1987–1989	340		
Rolls Royce	Bentley Brooklands		1993	186		
Rolls Royce	Bentley Continental R		1990–1993	258		
Rolls Royce	Bentley Turbo		1986	53		
Rolls Royce	Bentley Turbo R		1995	243		
Rolls Royce	Bentley Turbo R		1992–1993	291		
Rolls Royce	Phantom		2004	455		
Saab	9.3		2003	426		
Saab	9000		1988	59		
Saab	9000		1994	334		
Saab	900 S		1987–1989	270		
Saab	900 SE		1995	213		
Saab	900 SE		1990–1994	219		
Saab	900 SE		1996–1997	219		
Smart Car	Fortwo (incl. trim levels passion, pulse, & pure)	Coupe & Cabriolet	2005			30
Smart Car	Fortwo (incl. trim levels passion, pulse, & pure)	Coupe & Cabriolet	2002–2004			27
Smart Car	Fortwo (incl. trim levels passion, pulse, & pure) manufactured before 9/1/06.	Coupe & Cabriolet	2006			34
Smart Car	Fortwo (incl. trim levels passion, pulse, & pure) manufactured before 9/1/06.	Coupe & Cabriolet	2007			39
Subaru	Forester		2006–2007	510		
Suzuki (MC)	GSF 750		1996–1998	287		
Suzuki (MC)	GSX1300R a.k.a. “Hayabusa“		1999–2006	484		
Suzuki (MC)	GSX–R 1100		1986–1997	227		
Suzuki (MC)	GSX–R 750		1986–1998	275		

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Make	Model type(s)	Body	Model year(s)	VSP	VSA	VCP
Suzuki (MC)	GSX–R 750		1999–2003	417		
Toyota	4-Runner		1998	449		
Toyota	Avalon		1995–1998	308		
Toyota	Camry		1989	39		
Toyota	Camry		1987–1988		63	
Toyota	Celica		1987–1988		64	
Toyota	Corolla		1987–1988		65	
Toyota	Land Cruiser		1989	101		
Toyota	Land Cruiser		1986–1988	252		
Toyota	Land Cruiser		1990–1996	218		
Toyota	MR2		1990–1991	324		
Toyota	Previa		1991–1992	326		
Toyota	Previa		1993–1997	302		
Toyota	RAV4		1996	328		
Toyota	RAV4		2005	480		
Toyota	Van		1987–1988	200		
Triumph (MC)	Thunderbird		1995–1999	311		
Vespa (MC)	ET2, ET4		2001–2002	378		
Vespa (MC)	LX and PX		2004–2005	496		
Volkswagen	Eurovan		1993–1994	306		
Volkswagen	Golf		1987	159		
Volkswagen	Golf		1988	80		
Volkswagen	Golf		2005	502		
Volkswagen	Golf III		1993	92		
Volkswagen	Golf Rallye		1988	73		
Volkswagen	Golf Rallye		1989	467		
Volkswagen	GTI (Canadian market)		1991	149		
Volkswagen	Jetta		1994–1996	274		
Volkswagen	Passat	Wagon & Sedan	2004	488		
Volkswagen	Passat 4-door	Sedan	1992	148		
Volkswagen	Scirocco		1986	42		
Volkswagen	Transporter		1990	251		
Volkswagen	Transporter		1986–1987	490		
Volkswagen	Transporter		1988–1989	284		
Volvo	740 GL		1992	137		
Volvo	740	Sedan	1988	87		
Volvo	850 Turbo		1995–1998	286		
Volvo	940 GL		1992	137		
Volvo	940 GL		1993	95		
Volvo	945 GL	Wagon	1994	132		
Volvo	960	Sedan & Wagon	1994	176		
Volvo	C70		2000	434		
Volvo	S70		1998–2000	335		
Yamaha (MC)	Drag Star 1100		1999–2007	497		
Yamaha (MC)	FJ1200 (4 CR)		1991	113		
Yamaha (MC)	FJR1300		2002			23
Yamaha (MC)	R1		2000	360		
Yamaha (MC)	Virago		1990–1998	301		

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Marilena Amoni,

Associate Administrator for the National Center for Statistics and Analysis.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 100315147–0403–02]

RIN 0648–XV31

Atlantic Highly Migratory Species; North and South Atlantic Swordfish Quotas

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

ACTION: Final rule.

SUMMARY: This final rule adjusts the North and South Atlantic swordfish quotas for the 2010 fishing year (January 1, 2010, through December 31, 2010) to account for 2009 underharvest and implement International Commission for the Conservation of Atlantic Tunas (ICCAT) Recommendations 09–02 and 09–03, which maintain the U.S. allocation of the international total allowable catch (TAC). This rule could affect commercial and recreational fishing for swordfish in the Atlantic Ocean, including the Caribbean Sea and Gulf of Mexico, by establishing annual quotas, although generally the levels of fishing effort and quota are expected to be similar to those previously published for the years 2008 through 2010.

DATES: This rule is effective from October 21, 2010, through December 31, 2010.

ADDRESSES: Copies of the supporting documents—including the 2007 Environmental Assessment (EA), Regulatory Impact Review (RIR), Final Regulatory Flexibility Analysis (FRFA), and the 2006 Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP)—are available from the HMS Web site at *http://www.nmfs.noaa.gov/sfa/hms/.*

FOR FURTHER INFORMATION CONTACT: Delisse Ortiz or Karyl Brewster-Geisz by phone: 301–713–2347 or by fax: 301–713–1917.

SUPPLEMENTARY INFORMATION: The U.S. Atlantic swordfish fishery is managed under the 2006 Consolidated HMS FMP. Implementing regulations at 50 CFR part 635 are issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.,* and the Atlantic Tunas Convention Act (ATCA), 16 U.S.C. 971 *et seq.* Regulations issued under the authority of ATCA carry out the recommendations of ICCAT as necessary and appropriate.

Information on the specific measures laid out in the proposed rule can be found in 75 FR 35432 (June 22, 2010) and are not repeated here. A brief summary of the actions in this final rule can be found below.

North Atlantic Swordfish Quota

This final rule adjusts the total available quota for the 2010 fishing year (January 1, 2010, through December 31, 2010) to account for 2009 underharvest and transfers 18.8 metric tons (mt) dressed weight (dw) to Canada from the reserve category in the North Atlantic in conformance with ICCAT Recommendation 09–02, which extended the provisions of ICCAT Recommendation 6–02 through 2010.

The 2010 North Atlantic swordfish baseline quota is 2,937.6 mt dw. The total North Atlantic swordfish underharvest for 2009 was 2,524.2 mt dw, which exceeds the maximum carryover cap of 1,468.8 mt dw, established in ICCAT Recommendation 06–02 and extended by ICCAT Recommendation. Therefore, NMFS is carrying forward the amount allowed by the recommendation. Thus, the baseline quota plus the underharvest carryover maximum of 1,468.8 mt dw equals an adjusted quota of 4,406.4 mt dw for the 2010 fishing year (Table 1).

South Atlantic Swordfish Quota

The 2010 South Atlantic swordfish baseline quota is 75.2 mt dw. The total South Atlantic swordfish underharvest for 2009 was 150.4 mt dw, which exceeds the maximum carryover cap of 75.2 mt dw, established in ICCAT Recommendation 06–03 and extended by ICCAT Recommendation 09–02. In addition, under ICCAT Recommendation 09–03, 100 mt ww (75.2 mt dw) of U.S. quota for 2010 was transferred to other countries. Therefore, NMFS is carrying over the capped amount and transferring the 75.2 mt dw from the available underharvest in the South Atlantic swordfish quota to other countries per the ICCAT recommendation. As a result, the baseline quota plus the underharvest carryover maximum of 75.2 mt dw, substracted by the transfer of 100 mt ww (75.2 mt dw) to other countries equal an adjusted quota of 75.2 mt dw for the 2010 fishing year (Table 1).

Response to Comments

NMFS received two comments on the proposed rule which are summarized below, together with NMFS's responses.

Comment: NMFS received one comment in opposition to the establishment of North and South Atlantic commercial swordfish quotas. The first comment, made anonymously, expressed general opposition to the establishment of quotas for this fishery. The second comment, made by the Mid-Atlantic Fishery Management Council, supports the proposed rule.

Response: The establishment of annual swordfish quotas is necessary to comply with ICCAT Recommendation 06–02 (extended via ICCAT Recommendation 09–02) and 06–03 (extended via ICCAT Recommendation 09–03). Under ATCA, the United States is obligated to implement the ICCAT-approved recommendations as necessary and appropriate to achieve domestic management objectives under the Magnuson-Stevens Act.

Changes From the Proposed Rule

The final rule is not substantially changed from the proposed rule.

TABLE 1—LANDINGS AND QUOTAS FOR THE ATLANTIC U.S. SWORDFISH FISHERIES (2005–2010)

North Atlantic Swordfish Quota (mt dw)	2005	2006	2007	2008	2009	2010
Baseline Quota	2,937.6	2,937.6	2,937.6	2,937.6	2,937.6	2,937.6
Quota Carried Over	3,359.1	4,691.2	1,468.8	1,468.8	1,468.8	1,468.8
Adjusted quota	6,296.7	7,628.8	4,406.4	4,406.4	4,406.4	4,406.4
Quota Allocation:						
Directed Category	5,895.2	7,246.1	3,601.9	3,620.7	3,639.5	3,658.3
Incidental Category	300.0	300.0	300.0	300.0	300.0	300.0
Reserve Category	101.5	82.7	504.5	485.7	466.9	448.1
Utilized Quota:						
Landings	1,471.8	1,291.5	1,167.5	1,695.7	1,863.4	TBD
Reserve Transfer to Canada	18.8	18.8	18.8	18.8	18.8	18.8
Total Underharvest	4,806.1	6,318.5	3,220.1	2,691.9	2,524.20	TBD
Dead Discards	114.9	154.9	149.2	149.8	TBD	TBD
Carryover Available +	4,691.2	1,468.8	1,468.8	1,468.8	1,468.8	TBD

South Atlantic Swordfish Quota (mt dw)	2005	2006	2007	2008	2009	2010
Baseline Quota	75.2	90.2	75.2	75.2	75.2	75.2
Quota Carried Over	319.3	394.5	75.2	75.2	75.2	0.0
Adjusted quota	394.5	484.7	150.4	150.4	150.4	75.2
Landings	0.0	0.0	0.0	0.0	0.0	TBD
Carryover Available	394.5	75.2	75.2	75.2	*0.0	TBD

+ Under harvest is capped at 50 percent of the baseline quota allocation for the North Atlantic and 100 mt ww (75.2 dw) for the South Atlantic.
* Under 09–03, 100 mt ww of the U.S. underharvest was transferred to Namibia (50 mt ww, 37.6 mt dw), Cote d' Ivore (25 mt ww, 18.8 mt dw), and Belize (25 mt ww, 18.8 mt dw).

Classification

The Assistant Administrator for Fisheries has determined that this final rule is necessary for the conservation and management of Atlantic swordfish and that it is consistent with the 2006 Consolidated HMS FMP, the Magnuson-Stevens Act, ATCA, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

Authority: 16 U.S.C. 1801 *et seq.* and 16 U.S.C. 971 *et seq.*

Dated: September 15, 2010.

Samuel D. Rauch III,

Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2010–23528 Filed 9–20–10; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 75, No. 182

Tuesday, September 21, 2010

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

DEPARTMENT OF ENERGY

10 CFR Parts 429, 430, and 431

[Docket No. EERE–2010–BT–CE–0014]

RIN 1904–AC23

Energy Conservation Program: Certification, Compliance, and Enforcement for Consumer Products and Commercial and Industrial Equipment; Correction

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

ACTION: Notice of proposed rulemaking and public meeting; correction.

SUMMARY: This document corrects the **DATES** section to a notice of proposed rulemaking and public meeting which published in the **Federal Register** on September 16, 2010, regarding the Energy Conservation Program: Certification, Compliance, and Enforcement for Consumer Products and Commercial and Industrial Equipment. This correction revises the dates relating to a public meeting.

FOR FURTHER INFORMATION CONTACT: Ashley Armstrong, 202–586–6590, e-mail: *Ashley.Armstrong@ee.doe.gov,* or Celia Sher, Esq., 202–287–6122, e-mail: *Celia.Sher@hq.doe.gov.*

Correction:

In proposed rule document FR 2010–22353 appearing on page 56796, in the issue of Thursday, September 16, 2010, the following correction should be made:

On page 56796, in the first column, the first paragraph in the **DATES** section is corrected to the following:

DATES: DOE will hold a public meeting on Thursday, September 30, 2010, from 9 a.m. to 4 p.m., in Washington, DC. DOE must receive requests to speak at the public meeting before 4 p.m., Thursday, September 23, 2010. Additionally, DOE plans to conduct the public meeting via webinar. To participate via Webinar, DOE must be notified by no later than Thursday, September 23, 2010. Participants seeking to present statements in person during the meeting must submit to DOE a signed original and an electronic copy of statements to be given at the public meeting before 4 p.m., Thursday, September 23, 2010.

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

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 2010–23586 Filed 9–16–10; 4:15 pm]

BILLING CODE 6450–01–P

POSTAL SERVICE

39 CFR Part 111

Address Correction Notices for Letters and Flats Qualifying for Full-Service Intelligent Mail and Changes to Move Update Standards

AGENCY: Postal Service.™

ACTION: Proposed rule.

SUMMARY: The Postal Service is proposing to revise *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) to change the number of days that mailers may receive additional notices for the same unique change-of-address or nixie record through Full-Service Intelligent Mail® at no charge. The Postal Service also proposes to add new Move Update standards, regarding change-of-address orders.

DATES: We must receive your comments on or before October 21, 2010.

ADDRESSES: Mail or deliver written comments to the Manager, Mailing Standards, U.S. Postal Service, 475 L'Enfant Plaza, SW., Room 4446, Washington, DC 20260–5015. You may inspect and photocopy all written comments at USPS® Headquarters Library, 475 L'Enfant Plaza, SW., 11th Floor N, Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday. Comments containing the name and address of the commenter may be sent by e-mail to: *MailingStandards@usps.gov,* with a subject line of "Address Correction Notice and Move Update comments." Faxed comments are not accepted.

FOR FURTHER INFORMATION CONTACT: Jim Wilson at 901–681–4600, or Bill Chatfield at 202–268–7278.

SUPPLEMENTARY INFORMATION: The Postal Service proposes to change the timeframe for providing address correction and nixie notices without charge for First-Class Mail®, Standard Mail®, and Bound Printed Matter (BPM) pieces that are eligible for Full-Service Intelligent Mail prices, and that also meet the applicable standards. Notices would be provided, without charge, for no longer than 95 days after the first notice is made available for a specific change-of-address or nixie notification for eligible Full-Service pieces mailed at First-Class Mail, Standard Mail, or BPM prices. This change will coincide with the current Move Update standard timeframe that applies to First-Class Mail and Standard Mail pieces. The Postal Service would retain the current 60 day timeframe for Periodicals pieces.

This proposed rule also announces that the online publication, *Guide to Move Update,* is the appropriate source for additional information about the policies and procedures for meeting the Move Update requirements. We describe a policy clarification to indicate that all changes of address, whether filed by customers or postal employees, are subject to Move Update requirements, but temporarily exempt certain types of change of address orders from Move Update verifications.

Address Correction Notices

The Postal Service provides address correction notices, without charge, to mailers participating in Full-Service Intelligent Mail. For Full-Service First-Class Mail eligible pieces, mailers currently receive subsequent notices indefinitely without charge. For Standard Mail and Bound Printed Matter eligible pieces, the first notice for a particular change of address is provided without charge, and subsequent notices are provided without charge for 30 days. This proposed rule would standardize the timeframe at 95 days after the first notice for a specific change of address or nixie notification is provided, during which mailers would obtain subsequent notices without charge for Full-Service First-Class Mail, Standard Mail, and BPM full-service pieces.

Prices for notices provided after this timeframe for eligible full-service pieces would be the prices listed in the Notice 123, *Price List* under "ADDRESS CORRECTION SERVICE" as "per

automated notice issued" for First-Class Mail and Standard Mail automation letters, and prices listed as "per electronic notice issued" for all other eligible full-service pieces.

Guide to Move Update

The online USPS publication *Guide to Move Update* (available at *ribbs.usps.gov*) was established to provide general information about each authorized Move Update method. The publication was recently revised to provide more information on the general policies and procedures for complying with the Move Update standards, as well as specific information on the procedures and proper use of the authorized methods available for meeting the Move Update standards. It describes in detail the four primary and the two alternative Move Update methods available for updating mailing lists.

Change-of-Address Orders

The Postal Service clarifies that the Move Update standards are met by updating address records from customer-filed change-of-address (COA) orders and from postal-carrier-supplied COA orders. There are occasions when customers move or allow their PO Box™ service to expire without providing a new address to redirect their mail. In these instances, the customer no longer receives mail at that address, and the postal carrier files either a "Moved Left No Address" (MLNA) or a "Box Closed No Order" (BCNO) COA order. These two types of COAs are included in all of the address change databases the Postal Service maintains. In order to comply with the Move Update standards, mailers must refrain from mailing to these undeliverable addresses once the effective date of the COA is older than 95 days.

The Postal Service understands that some mailers may have difficulty isolating MLNAs and BCNOs in their mailing processes. Therefore, to allow mailers sufficient time to modify their mailing systems to properly handle MLNA and BCNO occurrences, MLNAs and BCNOs with effective dates older than 95 days will, temporarily, not be classified as failures to update a COA by Performance Based Verification (PBV) Move Update verifications. Mailers will have one year from the date of this notice to make needed modifications to their mail processing systems. After the one-year grace period, MLNA/BCNO addresses with effective dates between 95 days and 18 months would be graded by PBV verifications for commercial mailings of First-Class Mail and Standard Mail pieces as failures to update a COA.

Although we are exempt from the notice and comment requirements of the Administrative Procedure Act [5 U.S.C. 553(b), (c)] regarding proposed rulemaking by 39 U.S.C. 410 (a), we invite public comments on the following proposed revisions to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations. *See* 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR part 111 is proposed to be amended as follows:

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

2. Revise the following sections of *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), as follows:

Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)

* * * * *

200 Commercial Letters and Cards

* * * * *

230 First-Class Mail

233 Prices and Eligibility

* * * * *

3.0 Basic Standards for First-Class Mail Letters

* * * * *

3.5 Move Update Standard

3.5.1 Basic Standards

[Revise the introductory paragraph of 3.5.1 to read as follows:]

The Move Update standard is a means of reducing the number of mailpieces in a mailing that require forwarding or return by the periodic matching of a mailer's address records with change-of-address orders received and maintained by the USPS. For the purposes of this standard, address means a specific address associated with a specific occupant name. The online USPS *Guide to Move Update* (available at *ribbs.usps.gov*) contains more detailed information on the procedures and methods for meeting this standard. Addresses subject to the Move Update standard must meet these requirements:

* * * * *

240 Standard Mail

243 Prices and Eligibility

* * * * *

3.0 Basic Standards for Standard Mail Letters

* * * * *

3.9 Move Update Standards

3.9.1 Basic Standards

[Revise the introductory paragraph of 3.9.1 to read as follows:]

The Move Update standard is a means of reducing the number of mailpieces in a mailing that require forwarding or return by the periodic matching of a mailer's address records with change-of-address orders received and maintained by the USPS. For the purposes of this standard, address means a specific address associated with a specific occupant name. The online USPS *Guide to Move Update* (available at *ribbs.usps.gov*) contains more detailed information on the procedures and methods for meeting this standard. Addresses subject to the Move Update standard must meet these requirements:

* * * * *

300 Commercial Flats

* * * * *

330 First-Class Mail

333 Prices and Eligibility

* * * * *

3.0 Eligibility Standards for First-Class Mail Flats

* * * * *

3.5 Move Update Standards

3.5.1 Basic Standards

[Revise the introductory paragraph of 3.5.1 to read as follows:]

The Move Update standard is a means of reducing the number of mailpieces in a mailing that require forwarding or return by the periodic matching of a mailer's address records with change-of-address orders received and maintained by the USPS. For the purposes of this standard, address means a specific address associated with a specific occupant name. The online USPS *Guide to Move Update* (available at *ribbs.usps.gov*) contains more detailed information on the procedures and methods for meeting this standard. Addresses subject to the Move Update standard must meet these requirements:

* * * * *

340 Standard Mail

343 Prices and Eligibility

* * * * *

3.0 Basic Standards for Standard Mail Flats

* * * * *

3.9 Move Update Standard

3.9.1 Basic Standards

[Revise the introductory paragraph of 3.9.1 to read as follows:]

The Move Update standard is a means of reducing the number of mailpieces in a mailing that require forwarding or return by the periodic matching of a mailer's address records with change-of-address orders received and maintained by the USPS. For the purposes of this standard, address means a specific address associated with a specific occupant name. The online USPS *Guide to Move Update* (available at *ribbs.usps.gov*) contains more detailed information on the procedures and methods for meeting this standard. Addresses subject to the Move Update standard must meet these requirements:

* * * * *

400 Commercial Parcels

* * * * *

430 First-Class Mail

433 Prices and Eligibility

* * * * *

3.0 Basic Standards for First-Class Mail Parcels

* * * * *

3.5 Move Update Standard

3.5.1 Basic Standards

[Revise the introductory paragraph of 3.5.1 to read as follows:]

The Move Update standard is a means of reducing the number of mailpieces in a mailing that require forwarding or return by the periodic matching of a mailer's address records with change-of-address orders received and maintained by the USPS. For the purposes of this standard, address means a specific address associated with a specific occupant name. The online USPS *Guide to Move Update* (available at *ribbs.usps.gov*) contains more detailed information on the procedures and methods for meeting this standard. Addresses subject to the Move Update standard must meet these requirements:

* * * * *

440 Standard Mail

443 Prices and Eligibility

* * * * *

3.0 Basic Standards for Standard Mail Parcels

* * * * *

3.9 Move Update Standards

3.9.1 Basic Standards

[Revise the introductory paragraph of 3.9.1 to read as follows:]

The Move Update standard is a means of reducing the number of mailpieces in a mailing that require forwarding or return by the periodic matching of a mailer's address records with change-of-address orders received and maintained by the USPS. For the purposes of this standard, address means a specific address associated with a specific occupant name. The online USPS *Guide to Move Update* (available at *ribbs.usps.gov*) contains more detailed information on the procedures and methods for meeting this standard. Addresses subject to the Move Update standard must meet these requirements:

* * * * *

700 Special Standards

* * * * *

705 Advanced Preparation and Special Postage Payment Systems

* * * * *

22.0 Full-Service Automation Option

* * * * *

22.4 Additional Standards

* * * * *

22.4.2 Address Correction Notices

[Revise the introductory paragraph of 22.4.2 to read as follows:]

Mailers presenting letters and flats (except for those noted below) that qualify for the full-service Intelligent Mail option will receive address correction notices when the pieces are encoded with Intelligent Mail barcodes with "Address Service Requested" or "Change Service Requested" under standards for the Intelligent Mail barcode and under the following conditions:

* * * * *

c. * * * Address correction notices for mailpieces in full-service mailings are available for:

[Revise the text of items c1 and c3 to read as follows:]

1. First-Class Mail letters and flats, provided at no charge up to 95 days from first notice (printed endorsement not required for letters).

* * * * *

3. Standard Mail letters and flats and BPM flats, provided at no charge up to 95 days from first notice. *See* Notice 123—*Price List* for charges after 95 days. Standard Mail and BPM pieces must include a printed on-piece endorsement in addition to encoding the ancillary service request into the Intelligent Mail barcode. *See* 507.4.2 for additional standards.

* * * * *

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes if our proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 2010–23578 Filed 9–20–10; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2010–0289–201018(b); FRL–9203–8]

Approval and Promulgation of Implementation Plans Alabama: Volatile Organic Compounds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the Alabama State Implementation Plan (SIP) submitted by the Alabama Department of Environmental Management (ADEM) on March 3, 2010. The proposed revision would modify the definition of "volatile organic compounds" (VOCs) found at Alabama Administrative Code section 335–3–1–.02(gggg). Specifically, the revision would add two compounds (propylene carbonate and dimethyl carbonate) to the list of those excluded from the VOC definition on the basis that these compounds make a negligible contribution to tropospheric ozone formation. ADEM is seeking to update its SIP to be consistent with the federal rule finalized by EPA on January 21, 2009, which excludes these compounds from the regulatory definition of VOC. This action is being taken pursuant to Section 110 of the Clean Air Act.

DATES: Written comments must be received on or before October 21, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2010–0289, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: benjamin.lynorae@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* EPA–R04–OAR–2010–0289, Regulatory Development Section, Air

Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

5. *Hand Delivery or Courier:* Ms. Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. 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.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Mr. Zuri Farngalo, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Mr. Farngalo may be reached at (404) 562–9152, or *farngalo.zuri@epa.gov.*

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules Section of this **Federal Register.** In the Final Rules Section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If EPA receives no adverse comments in response to this notice, no further activity is contemplated. If EPA receives adverse comments, EPA will withdraw the direct final rule and will address all public comments received in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

Dated: September 3, 2010.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2010–23536 Filed 9–20–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 10, 13, 21, and 22

[FWS–R9–MB–2008–0103]
[91200–1231–9BPP]

RIN 1018–AI97

Migratory Bird Permits; Possession and Educational Use

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service ("we" or "the Service") is proposing a permit regulation to authorize the possession and use of migratory birds in educational programs and exhibits. The proposed rule also would revise existing regulations authorizing public exhibition of eagles. In addition, it would remove the permit exemption for some public institutions for possession of live migratory birds and migratory bird specimens, and clarify that birds held under the exemption must be used for conservation education. For specimens such as feathers, parts, carcasses, nonviable eggs, and nests, the regulations would be updated and clarified to more accurately reflect the types of institutions that may hold specimens for public educational purposes. The regulations would allow exempt institutions to transfer migratory birds to individuals and entities authorized by permit to possess them. Sale and purchase by permittees and exempt institutions would be restricted to properly-marked, captive-bred birds.

DATES: Submit written comments on or before December 20, 2010, to the address below.

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

- Federal eRulemaking Portal: *http://www.regulations.gov. Follow the instructions* for submitting comments.
- U. S. mail or hand-delivery: Public Comments Processing, Attn: RIN 1018–AI97; Division of Policy and Directives Management; U. S. Fish and Wildlife Service; 4401 North Fairfax Drive, Suite 222; Arlington, VA 22203–1610.

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

FOR FURTHER INFORMATION CONTACT: Eliza Savage, Division of Migratory Bird Management, U. S. Fish and Wildlife Service, 4401 North Fairfax Drive, Mailstop 4107, Arlington, VA 22203–1610; or 703–358–2329.

SUPPLEMENTARY INFORMATION:

Public Comments

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. Please note that we may not consider comments we receive after the date specified in the DATES section in our final determination.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that we will post your entire comment—including your personal identifying information—on *http://www.regulations.gov.* While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov, or by appointment, during normal business hours, at the U.S.* Fish and Wildlife Service, Division of Migratory Bird Management, 4501 North Fairfax Drive, 4th Floor, Arlington, VA 22203–1610; telephone 703–358–2329.

Background

The Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 *et seq.*) prohibits possession of any bird protected by treaties between the United States and Canada, Mexico, Japan, and Russia unless the possession is authorized under regulation and/or by permit. Birds protected by the MBTA are referred to as "migratory birds." The Service regulates the use of migratory birds through regulations at parts 20 and 21 of title 50 of the Code of Federal Regulations (CFR). Unless exempt under regulations at 50 CFR 21.12, you must obtain a permit from the Service to possess a migratory bird for use in educational programs. Because there are currently no specific educational-use permit regulations, we authorize educational activities that involve migratory birds using Special Purpose permits issued under 50 CFR 21.27, which provides for permits for activities not specifically authorized by an existing permit category. In the absence of specific regulations addressing educational activities using migratory birds, the terms and requirements governing this activity are currently set forth in a list of standard conditions issued with each permit.

Through this rulemaking, we propose to establish educational-use permit regulations to hold live nonreleasable or captive-bred migratory birds and nonliving specimens thereof for use in teaching people about migratory bird conservation and ecology. The public input we receive in response to this proposed rule will help us develop final regulations that will provide consistency and clarity in the administration of permits for migratory bird educational activities nationwide, and ensure that migratory birds are used humanely and in a manner consistent with the protections afforded by the MBTA.

We drafted this proposed regulation with the benefit of public comment received in response to an advance notice of proposed rulemaking published in the **Federal Register** on October 13, 2005 (70 FR 59710). In that notice, we solicited public input on facilities standards, experience criteria, and commercialization, among other issues associated with use of migratory birds for educational purposes. We received more than 200 comments, most of which were quite detailed and substantive, and were integral to crafting this proposed regulation.

The primary purpose of the proposed permit is to authorize conservation education programs. Each program would have to provide a message about migratory bird conservation, natural history, biology, or ecology. As one commenter suggested, the permit's purpose is to "instill in a person memorable information that benefits birds or the natural world." The message does not necessarily need to be spoken to be conveyed; creating an attitude can be as important as imparting information. As long as the program addresses conservation, natural history, biology, and/or ecology, it may also contain additional educational content on other topics such as Native American cultural heritage or falconry. The requirement to have a conservation message does not preclude presentations with migratory birds from being entertaining. As another commenter put it, "laughter and amusement open pathways for receptive learning. The goal is to inspire." However, this permit would not allow use of a migratory bird in a presentation in which the bird is induced to perform tricks or imitate human or other behavior unnatural for the species.

Under no circumstance would we authorize the use of migratory birds to endorse or promote any product or service, other than the conservation objectives of a sponsor, the permit holder, or the U.S. Fish and Wildlife Service. As long as this condition is met, migratory birds may be used in conservation education programs at commercial venues. We believe that commercial venues can provide opportunities to bring conservation messages to large numbers of people who may not otherwise be exposed to this type of educational program.

The permit would require permittees to conduct a minimum of 12 public educational programs per year that are open to the general public or presented at an accredited public or private school with the birds held under the permit. A facility such as a zoo, in which birds are displayed in permanent enclosures and not presented in demonstrations or programs, must be open to the general public at least 400 hours per year. The requirement that displays or programs be open to the general public or presented in a formal educational setting is integral to the purpose of the permit, because migratory birds are a public resource, and because it is the Service's mission to further their conservation. We would issue educational permits only when the public would benefit by gaining a greater understanding of the wild nature and conservation status of migratory birds.

Being open to the general public does not mean that presentations conducted under this permit must be free of charge. For migratory bird permits, we define "open to the general public" as "available to the general public and not restricted to any individual or set of individuals, whether or not a fee is charged." Therefore, the required programs cannot be limited to specific audiences; all members of the public would have to be eligible to attend the programs. The exception would be classrooms in accredited schools (because most accredited schools are open to the public, even though specific classes may be closed to a wider audience). To illustrate what is meant by "open to public," a wedding reception limited to guests who received a wedding invitation is not open to the general public, whereas, an educational program offered at a national park is. As another example, Disneyland is open to the general public because anyone who is willing to pay the admission fee may be admitted.

Provided that the conservation education component is a prominent element within the presentation, the programs are open to the general public, no product is endorsed, and all the conditions for possessing birds under the permit are satisfied, this permit would be available to for-profit institutions.

As long as the permittee satisfies the requirements for being open to the general public, he or she can also present programs for private or invitation-only gatherings, provided that the required conservation message is presented and all the other conditions of the permit are met.

We recognize that the requirement that each bird be used in a minimum of 12 public educational programs per year could be hard on old or ailing birds. If it would no longer be humane to use a bird for educational programs, the educator could request an exception from their permit office from using that bird in the required 12 programs.

We propose to use two publications as guidance for evaluating facilities and experience for the housing and care of migratory birds and eagles held under this permit. For raptors, we would use the housing recommendations of the University of Minnesota Raptor Center's *Raptors in Captivity: Guidelines for Care and Management* (2007). For other migratory birds, we would use the National Wildlife Rehabilitator's Association's *Wildlife in Education: A Guide for the Care and Use of Program Animals* (2004). The recommendations in the two publications would serve as guidance for the issuing office; we could authorize variation from the standards where doing so would be reasonable and necessary to accommodate a particular educator's circumstances, and would not adversely affect any bird held by the educator. The proposed rule contains a "grandfather clause," which states, in part: "If your facilities have already been approved by the Service on the basis of photographs and diagrams, and authorized under a § 21.27 Special Purpose-Education permit or § 22.21 Eagle Exhibition permit, then they are authorized under your new permit issued under this section, unless those facilities have materially diminished in size or quality from what was authorized when you last renewed your permit, or unless you wish to expand the authorizations granted by your permit (e.g., the number or types of birds you hold)."

Similar to the provisions of the migratory bird rehabilitation regulations, this proposed rule would require subpermittees to be at least 18 years old. This requirement does not prevent a permittee from allowing younger persons to participate in the activities authorized by permit; a volunteer is not required to be a subpermittee if he or she is supervised by the permittee or a subpermittee, and this would apply to persons under 18 years of age.

This rule would limit the sale and purchase of birds held under the permit to the following categories: (1) raptors bred under a Raptor Propagation permit and marked with a seamless metal band provided by the Service, (2) waterfowl bred under a Waterfowl Sale and Disposal permit and marked in accordance with 50 CFR 21.13, and (3) game birds bred under a Special Purpose Game Bird permit and marked in accordance with 50 CFR 21.13. Permittees would be authorized to sell and purchase such birds to and from one another and to and from holders of other types of permits that authorize purchase and sale of such birds. Transfer of other migratory birds held under the permit would be allowed by donation only. Permittees would not be authorized to breed birds held under the permit.

The proposed rule contains guidance we would use to evaluate applicants' experience to determine what species they are qualified to hold. The table addresses only the more commonly-used raptors, as well as corvids, because those are the species for which we have some information on which to base our criteria, including recommendations from the publications noted above and from commenters responding to our 2005 notice regarding this proposed rulemaking. In response to commenters, we placed the more commonly-used species into four experience categories, according to the skill and experience needed to handle them. Some species of migratory birds not listed in the table may be suitable for educational use, but we would need more information to assess their suitability and the experience needed to handle and care for them. Accordingly, we are specifically soliciting input from persons with some knowledge of and/or experience with the 30 MBTA-protected raptor species not listed in the table, as well as other species of migratory birds, regarding temperament and other physical and behavioral traits that could affect their suitability for educational use.

To clarify terms used in this rulemaking, we propose several new regulatory definitions that would apply to migratory bird permits. The terms we propose to define are "nonreleasable bird," "open to the general public," "public institution," "public museum," and "public zoological park." We also propose to amend the definition of "public" in 50 CFR part 10.12 to remove its application to migratory bird and eagle permits, since we are clarifying how it applies to migratory bird permits through the above definitions and to eagle permits through definitions we propose under part 22 (see below).

Eagle Educational Use

This proposed rule would also revise regulations governing possession and use of bald eagles (*Haliaeetus leucocephalus*) and golden eagles (*Aquila chrysaetos*) for educational purposes. Currently, regulations governing the use of eagles for exhibition purposes are at 50 CFR 22.21. The existing eagle exhibition permit regulations are combined with eagle scientific permit regulations and addressed in the same section at 50 CFR 22.21. This proposed rule separates the two activities to create stand-alone eagle exhibition (educational-use) regulations.

These proposed eagle educational-use regulations largely incorporate by reference the regulations proposed herein for possessing other MBTA-protected birds for educational purposes. They differ only in a few aspects. First, all live eagles held under the regulation would have to be nonreleasable (whereas permits for other migratory bird species would authorize possession of captive-bred, as well as nonreleasable, birds). Second, as mandated by the Bald and Golden Eagle Protection Act (Eagle Act) (16 U.S.C. 668 *et seq.*), only public museums, public scientific societies, and public zoological parks are allowed under the Eagle Act to obtain permits to exhibit eagles. The rule proposes regulatory definitions for "public museum," "public scientific society," and "public zoological park" to remove ambiguity about who may qualify to receive eagle educational use permits. The new definitions are intended to be as broad as possible within the intent of the Eagle Act so as not to unnecessarily restrict placement of eagles for educational use with otherwise qualified individuals and organizations. See our October 13, 2005, **Federal Register** notice at 70 FR 59712, for more discussion of this issue.

Third, differences between the MBTA and the Eagle Act necessitate different requirements for international transport of eagle specimens than for other migratory bird specimens. The Eagle Act and implementing regulations at 50 CFR 22.12(a) prohibit permanent export or import of bald eagles. Thus, the proposed eagle regulations differ from the proposed migratory bird regulations because they incorporate existing regulations for exhibitions of eagle specimens that are taken out of and returned to the United States. Except for re-formatting and the addition of a three-year maximum permit duration, the eagle transport regulations would be unchanged.

Fourth, under the proposed eagle educational-use regulations, permits would authorize possession of non-living eagle specimens only if they were lawfully acquired prior to March 30, 1994, with very limited exceptions. That is the date that the Service began implementing Director's Order 69, which requires Service employees to ensure that all eagle specimens are sent to the National Eagle Repository, the Service's distribution center for eagle parts and feathers for Native American religious use. Consequently, these regulations provide that we may permit transfer and possession only of specimens that were already lawfully possessed prior to that date, unless the specimen lacks ceremonial value due to poor condition or some other reason. As provided in Director's Order 69, the Regional Director may make exceptions for important resource needs.

Finally, the eagle educational-use regulations, in keeping with Director's Order 69, would require all carcasses and feathers that are not needed for imping (feather replacement) purposes for other live eagles to be sent to the National Eagle Repository.

Please note that although eagle scientific permit regulations are included in this proposed rulemaking, we are not making any revisions to those regulations at this time, except (1) as is necessary to separate the exhibition regulations from them (such as removing the phrases "and exhibition" and "or exhibition" throughout the regulation), and (2) changing the name of the permits from "Scientific collecting purposes" to "Scientific purpose," since those permits do not always authorize collection of specimens from the wild. To remove the references to "exhibition" from § 22.21, it was necessary to publish the text of the entire section, but we are not proposing any other revisions to it at this time.

Adding the definitions of "public museum," "public scientific society," and "public zoological park" to the part 22 eagle regulations could affect scientific permitting by clarifying eligibility of applicants. However, the new definitions are not intended to change the provisions of the eagle scientific permit regulations; we propose them here simply to clarify existing provisions for all eagle permits.

In separating the permit regulations for eagle exhibition from eagle scientific collecting, "take" of eagles would no longer be authorized under the exhibition regulations. This "revision" actually maintains the status quo: the only take of eagles that we have permitted under the existing eagle exhibition/scientific regulations was for

scientific collecting. The proposed regulations continue our policy of not issuing permits to take eagles from the wild for exhibition purposes.

The current eagle exhibition/scientific permit regulations are silent as to whether eagles used under the permit must be nonreleasable. Nevertheless, in keeping with the Eagle Act's requirement that the Secretary of the Interior shall issue permits to take and possess eagles only when "it is compatible with the preservation of the bald eagle or the golden eagle" (16 U.S.C. 668a), we have issued permits for eagle exhibition only for nonreleasable eagles. Taking eagles from the wild is necessary for some scientific research and other purposes, but it is not required for educational use because sufficient numbers of nonreleasable eagles are available for use in educational programs. Therefore, the proposed eagle educational-use regulations codify our policy of authorizing possession of nonreleasable eagles only.

Fees and Permit Tenure

We propose an application processing fee of $100 for the educational use permit. This is $25 more than the $75 fee we currently assess for processing the Special Purpose permit and the Eagle Exhibition permit. However, the term of the proposed educational use permit would be five years, instead of the current three years, reducing the average cost per year. We propose to implement a $50 amendment fee for substantive permit amendments, such as a change in the location and housing for the birds, increasing the number or species of birds, or adding new species to be held under the permit. Amendments for these types of permits are generally time-consuming and the $50 amendment fee will help us recoup a larger portion of the costs of administering these types of permits. To prevent an undue burden on the permittee and unnecessary workload for the Service, permits would authorize the maximum number of birds—and species—for which the permittee qualifies, based on (1) facilities and caging, (2) the nature of the educational programs, and (3) the permittee's experience in handling and caring for birds and presenting programs. Authorizing the upper limit of birds and species will limit the need for amendments to situations where the permittee substantially modifies his or her facilities, experience, and/or educational programs.

Transition of Current Permittees to Permits under New Regulations

Current Special Purpose-Education permit holders and current Eagle Exhibition permit holders need not take any special action as a result of the new rule, if promulgated as proposed. When it is time to renew their permits, they should apply for renewal using the Service permit renewal form mailed to them by their Regional Permit Office. The permits will be renewed under the new permit categories created by this rule.

Application and Annual Reporting Requirements

This proposed rule does not specify what information an applicant must submit to apply for an educational-use permit or to file an annual report, other than that he or she must submit a completed application form, including any required attachments, to apply for a permit; and for annual reporting, the permittee must submit all the information required on the report form. By avoiding codification of application and reporting requirements, we can revise application and reporting requirements without undergoing the time-consuming rulemaking process. However, the public will have the opportunity to provide input on the content of these forms. All forms must be approved by the Office of Management and Budget every three years, and as part of that process, all new forms and all changes to forms are subject to public review via a series of notices in the **Federal Register**. We are not proposing any substantive changes to the existing application and report forms at this time. We will continue to use FWS Form 3–200–10c as the application form for a permit to possess live birds for educational use, FWS Form 3–200–10d to apply for possession of dead migratory bird specimens for educational use, and FWS Form 3–200–14 for possession of eagles and eagle specimens for educational use.

Revisions to Migratory Bird Permit Exceptions

This rule also proposes to amend regulations governing general migratory bird permit exceptions under § 21.12. Some entities (such as municipal game farms) exempted under current regulations for possession of specimens such as feathers, mounts, bones, nests, and nonviable eggs would no longer be exempted from the permit requirement, generally because those entities do not provide conservation education. The rule clarifies what entities qualify under the remaining exemptions and specifies that the exemption is only for purposes of public conservation education and scientific research. Exempt institutions would be allowed to transfer migratory bird specimens to other exempt entities or to persons authorized by permit to possess such birds. The intent of the language within current regulations at § 21.12(b)(1) regarding to whom exempt institutions may donate birds is unclear and has been interpreted to limit transfer of birds only to other exempt entities.

The rule would limit the permit exception for possession of live birds to institutions accredited by the Association of Zoos and Aquariums (AZA). All other individuals and entities that keep live birds for education purposes would be required to obtain an educational use permit within one year after the final rule becomes effective. The permit-exempt AZA institutions would be required to comply with the husbandry standards and several other conditions that apply to permittees. These revisions would ensure that all entities that hold live birds for educational use are held to the same standards. Sale and purchase between exempt institutions and permittees and among exempt institutions would be restricted to captive-bred migratory birds. The rule would not allow exempt institutions to take birds from the wild; to do that, a scientific-purpose permit must be obtained.

Entities that were previously exempted from the permit requirement would be allowed to retain any migratory live birds and dead specimens already in their possession on the date the rule becomes effective without a permit. However, a permit would be required to acquire and possess any additional live migratory bird, including progeny, or migratory bird specimen after that date without first obtaining the appropriate permit. Nor would such "grandfathered" holders be allowed to sell or transfer live birds or dead specimens without a permit. Live birds must be held under the husbandry standards of 21.32(b)(1)(i) though (vii) and 21.32(b)(2).

Entities that remain exempt from the permit requirement to hold dead specimens would be allowed to accept such specimens from members of the public who, without a permit, pick them up. Those persons would be exempt from the permit requirement for such one-time salvage provided they promptly donate the specimens to a person or institution authorized to possess the specimens by permit or permit exception.

We also propose new permit exemptions to allow Federal, State, tribal, or local natural resource agencies to collect and hold birds in the course of official duty. Finally, employees and agents of the National Oceanic and Atmospheric Administration's National Marine Fisheries Service, U.S. Department of Commerce, who monitor bycatch on fishing trawlers would not need a permit to possess migratory birds when carrying out those duties.

Minor Revisions to Rehabilitation Permit Regulations

We propose three minor amendments to regulations governing permits for migratory bird rehabilitation at 50 CFR 21.31 because both changes have some relation to the use of birds held for educational use. First, we propose limited conditions under which birds undergoing rehabilitation for release to the wild can be intermingled with birds held under other types of permits. They could be housed with birds held under another type of permit only for fostering purposes, and only if the fostering bird continues to be used according to the purposes and conditions of the permit under which it is held.

Second, we propose to allow nonreleasable birds to be kept indefinitely under the rehabilitation permit for purposes of foster parenting. Currently, the rehabilitation permit regulations require that all nonreleasable birds be transferred to other types of permits, such as educational use. However, the educational use permit authorizes possession only of birds used for educational purposes, and in some cases, a bird not suitable for educational use may make a good foster parent for orphaned young or juveniles undergoing rehabilitation. This amendment to the rehabilitation permit regulations would allow a suitable nonreleasable bird to be held under the rehabilitation permit indefinitely for foster parenting purposes if authorized by the regional migratory bird permit office.

Finally, we are adding the requirement that the rehabilitator receive approval from the permit office before transferring a releasable wild raptor to a permitted falconer authorized to hold eagles under his or her falconry permit.

Required Determinations

Responsibilities of Federal Agencies To Protect Migratory Birds (Executive Order 13186). This proposed rule has been evaluated for impacts to migratory birds, with emphasis on species of management concern, and is in accordance with the guidance in E.O. 13186.

Regulatory Planning and Review (E. O. 12866). The Office of Management and Budget (OMB) has determined that this rule is not significant and has not reviewed this rule under Executive Order 12866 (E. O. 12866). OMB bases its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act. Under the Regulatory Flexibility Act (5 U. S. C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must either certify that the rule will not have a significant economic impact on a substantial number of small entities (small business, small organizations, and small governmental jurisdictions), or prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities.

We have examined this proposed rule's potential effects on small entities as required by the Regulatory Flexibility Act. We estimate the proposed revisions to permit exemptions would require a permit to be obtained by about 400 institutions that are currently exempt from the permit requirement. Because approximately half of those institutions are governmentally funded and/or operated, they would not need to pay an application fee. Thus, if this proposal is adopted in full, we could expect about 200 institutions to pay a permit application fee that did not need to do so prior to this rulemaking, for a total cost of $20,000 (200 x $100 per application).

Some institutions that were previously exempt would incur costs in upgrading facilities to the standards required of permittees. However, we do not expect those costs to be high because many of these institutions already have suitable facilities.

Some permittees who need substantive amendments made to their permits would be assessed a $50 amendment fee if this rule is adopted. We estimate approximately 100 permittees per year would pay this fee, totaling $5,000. Fees for new permits and permit renewals would increase by $25 (from $75 to $100). We currently receive approximately 150 new permit applications and 200 renewals for migratory bird Special Purpose education and Eagle Exhibition permits per year. Were that to continue, the total permit application fee revenue increase would be $8,750 per year. However, this permit regulation would also extend the permit term from three years to five years, reducing total renewal fees by 40 percent ($20,000 x .4 = $8,000) per year, resulting in an overall fee increase of approximately $750 ($8,750 - $8,000) per year if the number of permittees were to remain unchanged. However, since this rule would likely result in about 200 new permittees who would be subject to application and renewal fees (as discussed above), averaging 40 new renewals ($4,000) per year, the net cost to permittees from this rulemaking will be $4,750 per year ($4,000 + $750). Therefore, we certify that this action would not have a significant economic impact on a substantial number of small entities. A final Regulatory Flexibility Analysis is not required.

Small Business Regulatory Enforcement Fairness Act (SBREFA). This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule would not have an annual effect on the economy of $100 million or more. It would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This rule would not have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U. S. -based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act. In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*):

a. This rule would not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. We have determined and certified pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking would not impose a cost of $100 million or more in any given year on local or State government or private entities.

b. This rule would not produce a Federal mandate of $100 million or greater in any year. It is not a

"significant regulatory action" under the Unfunded Mandates Reform Act.

Takings. In accordance with Executive Order 12630, the rule does not have significant takings implications. This rule would not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. A takings implication assessment is not required.

Federalism. In accordance with Executive Order 13132, and based on the discussions in the *Regulatory Planning and Review* section above, this rule does not have significant Federalism effects. A Federalism assessment is not required. Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. This rule does not have a substantial effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration.

Civil Justice Reform. In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act. This proposed rule does not contain new or revised information collection for which Office of Management and Budget approval is required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Information collection associated with migratory bird permit programs is covered by existing OMB Control No. 1018–0022, which expires on November 30, 2010. The Service may not conduct or sponsor, nor is a person required to respond to, a collection of information unless it displays a current valid OMB control number.

National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*). We have determined that this rule is categorically excluded under the Department's NEPA procedures in 516 DM 8.5(A)(1) because this rule codifies policies the Service is already implementing under a different regulation with changes that have "no or minor potential environmental impact." The rule also is categorically excluded under 516 DM 2.3(A)(9) because it is a regulation that is legal and procedural in nature with environmental effects that are too speculative to lend themselves to meaningful analysis and will later be subject to the NEPA process on a case-by-case basis. Although each permit issued under these proposed regulations would be subject to the NEPA process, we expect most if not all permits we issue to be categorically excluded under 516 DM 8.5(C)(1) because they will cause no environmental disturbance.

Government-to-Government Relationship with Tribes. In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), E.O. 13175, and 512 DM 2, the Service did not consult with tribal authorities because this rule will have no effect on federally-recognized Indian tribes.

Energy Effects—Executive Order 13211. On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule is not a significant regulatory action under Executive Order 12866, and it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Clarity of This Proposed Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Literature Cited

Arent, Lori, R. 2007. Raptors in Captivity: Guidelines for Care and Management. The Raptor Center, College of Veterinary Medicine at the University of Minnesota, St. Paul, Minnesota.

Buhl, Gail and Lisa Borgia. 2004. Wildlife in Education: A Guide for the Care and Use of Program Animals. National Wildlife Rehabilitators Association, St. Cloud, Minnesota.

List of Subjects in 50 CFR Part 10

Exports, Fish, Imports, Law enforcement, Plants, Transportation, Wildlife.

List of Subjects in 50 CFR Part 13

Administrative practice and procedure, Exports, Fish, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

List of Subjects in 50 CFR Part 21

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

List of Subjects in 50 CFR Part 22

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

For the reasons set forth in this preamble, we propose to amend title 50, chapter I, subchapter B of the CFR as follows:

PART 10 – GENERAL PROVISIONS

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

Authority: 18 U.S.C. 42; 16 U.S.C. 703–712; 16 U.S.C. 668a–d; 19 U.S.C. 1202; 16 U.S.C. 1531–1544; 16 U.S.C. 1361–1384, 1401–1407; 16 U.S.C. 742a–742j-1; 16 U.S.C. 3371–3378.

2. Amend § 10.12 by revising the definition of "Public" as set forth below:

§ 10.12 Definitions.

* * * * *

Public as used in referring to museums, zoological parks, and scientific or educational institutions, refers to those that are open to the general public and are either established, maintained, and operated as a governmental service or are privately endowed and organized but not operated for profit. This definition does not apply to the term "public" as used in migratory bird and eagle permit regulations. With reference to migratory bird and eagle permits, see definitions under § 21.3 and § 22.3 of this subchapter.

* * * * *

PART 13 – GENERAL PERMIT PROCEDURES

3. The authority citation for part 13 continues to read as follows:

Authority: 16 U.S.C. 668a, 704, 712, 742j–1, 1374(g), 1382, 1538(d), 1539, 1540(f), 3374, 4901–4916; 18 U.S.C. 42; 19 U.S.C. 1202; 31 U.S.C. 9701.

4. Amend the table in § 13.11(d)(4) as follows:

a. Under the heading "Migratory Bird Treaty Act," remove the entry for "Migratory Bird Special Purpose/ Education;"

b. Under the heading "Migratory Bird Treaty Act," add an entry for "Educational Use" immediately following the entry for "Migratory Bird Rehabilitation" to read as set forth below;

c. Under the heading "Bald and Golden Eagle Protection Act," remove the entries for "Eagle Scientific Collecting" and "Eagle Exhibition";

d. Under the heading "Bald and Golden Eagle Protection Act," add an entry for "Eagle Scientific Purpose" as the first entry to read as set forth below; and

e. Under the heading "Bald and Golden Eagle Protection Act," add an entry for "Eagle Educational Use" immediately following the entry for "Golden Eagle Nest Take" to read as set forth below.

§ 13.11 Application procedures.

* * * * *

(d) * * *

(4) *User fees.* * * *

Type of Permit	CFR Citation	Fee	Amendment Fee
MIGRATORY BIRD TREATY ACT			
* * * * * * *			
Educational Use	50 CFR 21	100	50
* * * * * * *			
BALD AND GOLDEN EAGLE PROTECTION ACT			
Eagle Scientific Purpose	50 CFR 22	100	50
* * * * * * *			
Eagle Educational Use	50 CFR 22	100	50
* * * * * * *			

* * * * *

5. Amend the table in § 13.12(b) as follows:

a. Add one entry in numerical order by section number under "Migratory Bird permits" for "Educational use" to read as follows;

b. Remove the entry for "Scientific or exhibition" under "Eagle permits;"

c. Add two entries in numerical order by section number under "Eagle permits" for "Eagle scientific purpose" and "Eagle educational use" to read as set forth below.

§13.12 General information requirements on applications for permits.

* * * * *

(b) * * *

Type of permit	Section
* * * * *	
Migratory bird permits:	
* * * * *	
Educational use	21. 32
* * * * *	
Eagle permits:	
Eagle scientific purpose	22.21
* * * * *	
Eagle educational use	22.29
* * * * *	

PART 21—MIGRATORY BIRD PERMITS

6. The authority citation for part 21 continues to read as follows:

Authority: Migratory Bird Treaty Act, 40 Stat. 755 (16 U.S.C. 703); Public Law 95–616, 92 Stat. 3112 (16 U. S. C. 712(2)); Public Law 106–108, 113 Stat. 1491, Note Following 16 U.S.C 703.

Subpart A—**INTRODUCTION**

7. Amend § 21.2 by revising paragraph (b) to read as follows:

§ 21.2 Scope of regulations.

* * * * *

(b) This part, except for § 21.12(a), (b)(3), and (c) (general permit exceptions); § 21.22 (banding or marking); § 21.29 (Federal falconry standards); § 21.31 (rehabilitation); and § 21.32 (educational use), does not apply to the bald eagle (*Haliaeetus leucocephalus*) or the golden eagle (*Aquila chrysaetos*), for which regulations are provided in part 22 of this subchapter.

* * * * *

8. Amend § 21.3 by revising the introductory text and adding the definitions "Nonreleasable bird", "Open to the general public", "Public institution", "Public museum", and "Public zoological park" in alphabetical order to read as follows:

§ 21.3 Definitions.

The following definitions are in addition to those contained in part 10 of this chapter, and, unless the context of a section provides otherwise, apply within this part:

* * * * *

Nonreleasable bird means a migratory bird that has sustained injuries that will likely prevent it from surviving in the wild even after medical treatment and/ or rehabilitation, or a migratory bird that has been imprinted or habituated to human presence and has lost instincts necessary to survive in the wild.

Open to the general public means available to the general public and not restricted to any individual or set of individuals, whether or not a fee is charged.

* * * * *

Public institution means a public museum; public zoological park; or a facility that is open to the general public, provides education through exhibits or regular programs, and is maintained and/or operated by a Federal, State, tribal, or local government agency, such as a State

university, municipal zoo, or county-run nature center.

Public museum means a facility accredited by the American Association of Museums that houses collections of objects and artifacts of cultural or scientific interest for purposes of scientific research or public exhibition, and which is open to the general public at least 400 hours per year on a schedule of regular, publicized hours.

Public zoological park means a facility that is either accredited or certified as a Related Facility by the Association of Zoos and Aquariums. The facility must contain permanent collections of live animals, and must either be open to the general public on a regular basis at least 400 hours per year, or must conduct at least 12 educational programs each year about ecology and wildlife conservation that are open to the general public.

* * * * *

Subpart B—General Requirements and Exceptions

9. Amend § 21.12 as follows:

a. By revising the introductory text and paragraph (a), the introductory text of paragraph (b), and paragraph (b)(1) as set forth below;

b. By redesignating paragraph (b)(2) as paragraph (b)(3);

c. By adding a new paragraph (b)(2) to read as set forth below; and

d. By adding a new paragraph (e) to read as set forth below.

§ 21.12 General exceptions to permit requirements.

The following exceptions to the permit requirements of § 21.11 are authorized:

(a) *Law Enforcement personnel of the Department of the Interior (DOI), tribes, and States:* If authorized to enforce the provisions of the Migratory Bird Treaty Act, DOI employees and commissioned law enforcement officers of State agencies (including the District of Columbia, and the territories of the United States) and tribal agencies, may, without a permit, take or otherwise acquire, hold in custody, transport, or dispose of migratory birds (alive or dead, including parts, nests, and eggs) as necessary in performing official duties.

(b) *Employees and agents of Federal, State, tribal, and local agencies:*

(1) Any employee or agent of the Service, any other Federal land management agency, the U.S. Geological Survey, the National Marine Fisheries Service, or a State, tribal, or local natural resource agency, who is designated by his or her agency for such purposes may, in the course of official duties, take and possess migratory birds from the wild without a permit if such action is necessary to aid sick, injured, or orphaned birds; dispose of dead birds or eggs; or salvage and possess bird specimens, parts, nests, or eggs for scientific purposes. This exemption to salvage migratory birds does not apply to carcasses for which there is reasonable evidence to indicate the bird was killed as the result of criminal activity, including, but not limited to, unauthorized shooting, electrocution, or collision with wind turbines.

(2) Any person on a vessel who provides observer services required by the National Marine Fisheries Service (NMFS) under authority of the Magnuson-Stevens Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801 *et seq.*); the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 *et seq.*); the Atlantic Tunas Convention Act of 1975 (ATCA; 16 U.S.C. 971 *et seq.*); the South Pacific Tuna Act of 1988 (16 U.S.C. 973 *et seq.*); and/or the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), and who is either employed by NMFS, employed by a NMFS-approved observer service provider, or certified by NMFS and employed directly by a fishery participant, may, without a permit, possess and transport dead migratory birds or parts found during the performance of their official duties as observers, including the proper disposition of such birds or parts, provided that:

(i) Possession and transportation of such migratory birds or parts is for identification purposes or disposition with the Service or NMFS; and

(ii) The observer submits species samples and identification along with any other required data to the appropriate NMFS observer program.

* * * * *

(e) *Public and educational institutions:*

(1) Public institutions, and accredited public and private schools (elementary through postgraduate) may possess nonliving migratory bird specimens, except those of bald eagles and golden eagles, including nonviable eggs, parts, and nests, for scientific or conservation educational purposes without a permit. Employees or agents of such institutions and schools may salvage nonliving migratory bird specimens, except bald eagles and golden eagles, provided the specimens will be used for the conservation education purposes of the institution or school, and provided that:

(i) The institutions and schools dispose of and acquire such specimens, by donation only, to and from one another; to and from Federal, State, or tribal officials authorized to place such specimens; and to and from holders of valid permits authorizing possession of them.

(ii) The institutions may acquire nonliving migratory bird specimens, except bald eagles and golden eagles, from persons who do not have permits to collect or possess the specimens but who salvaged them. For such one-time salvage activity, the individual will be exempt from the permit requirement for collection and possession, provided the specimen is promptly donated to an exempt or permitted entity for scientific or educational purposes.

(iii) The institutions keep accurate and complete records of all migratory bird specimens in their possession and their source, including the name and address of all donors and transferees, for 5 calendar years following the end of the calendar year covered by the records.

(2) Accredited institutional members of the American Zoo and Aquarium Association do not need a permit to possess live, nonreleasable or captive-bred migratory birds, including captive-bred eggs, for use in education, research, or propagation. Accredited AZA institutions may acquire such birds or eggs from or transfer such birds or eggs to other accredited institutional members of the American Zoo and Aquarium Association (AZA) by donation, sale, purchase, or barter solely for use in education, research, or propagation. Accredited AZA institutions may, by donation only, transfer birds to Federal and State officials authorized to place such birds, or anyone with a valid Federal permit to possess such birds. All birds possessed under this permit exemption must be housed and cared for in accordance with the husbandry requirements set forth in § 21.32(b) of this Subchapter. Nothing in this section authorizes such institutions to take live migratory birds, parts, nests, or eggs from the wild.

(3) Entities that hold live migratory birds and/or nonliving migratory bird specimens and that were previously exempt from the permit requirement before [*insert date 30 days after the date of the final rule's publication in the* **Federal Register**], and which are no longer exempt may retain any migratory birds, live or dead, already in their possession on [*insert date 30 days after the date of the final rule's publication in the* **Federal Register**] without a permit. Live birds must be held under the husbandry standards of 21.32(b)(1)(i) through (vii) and 21.32(b)(2). A permit is required to

acquire and possess any additional live migratory bird, including progeny, or migratory bird specimen after that date or to sell or otherwise transfer any lawfully possessed migratory bird without first obtaining a permit under this part.

* * * * *

Subpart C—Specific Permit Provisions

10. Amend § 21.31 as follows:

a. By revising paragraphs (a), (b)(1)(i), and (e)(1)(v) as set forth below;

b. By adding a new sentence immediately after the first sentence of paragraph (e)(4)(ii) as set forth below; and

c. By adding a new sentence immediately after the first sentence of paragraph (e)(4)(v) to read as set forth below.

§ 21.31 Rehabilitation permits.

(a) *What is the permit requirement?* Except as provided in § 21.12, a rehabilitation permit is required to take, possess, or transport a migratory bird for rehabilitation purposes. However, any person who finds a sick, injured, or orphaned migratory bird may, without a permit, take possession of the bird in order to immediately transport it to a permitted rehabilitator.

(b) * * *

(1) * * *

(i) Take from the wild or receive from another person sick, injured, or orphaned migratory birds and to possess them and provide rehabilitative care for them for up to 180 days, and for over 180 days for foster parenting purposes, with authorization from the regional migratory bird permit office.

* * * * *

(e) * * *

(1) * * *

(v) Birds must be housed only with compatible migratory bird species, and only with other birds held for rehabilitation purposes, except that, for foster parenting purposes, juveniles and orphaned birds may be housed with birds held under another type of permit, provided that the fostering bird continues to be used according to the purposes and conditions of the permit under which it is held.

* * * * *

(4) * * *

(ii) * * * Prior to transferring a live bird, you must submit a FWS Form 3–202–12 to your migratory bird permit issuing office and receive authorization for the transfer. * * *

* * * * *

(v) * * * With such approval, you may retain a nonreleasable bird under your rehabilitation permit on a continuing basis for foster parenting purposes.

* * * * *

11. Add a new § 21.32 to subpart C to read as follows:

§ 21.32 Educational-use permits.

(a) *Purpose and scope.*

(1) The migratory bird educational-use permit authorizes possession of migratory birds for use in public educational programs and exhibits in which migratory bird conservation, natural history, biology, and/or ecology is a primary component of the program or exhibit. The permit may authorize possession of live nonreleasable or captive-bred birds, nonliving specimens, or both. The permit may also authorize salvage of nonliving migratory bird specimens for educational use.

(2) All live birds you hold under this permit must be nonreleasable or captive-bred individuals of a species your permit authorizes you to possess. You may not possess more birds than is specified on the face of your permit.

(b) *Husbandry requirements for keeping live birds for educational use.*

(1) Caging requirements.

(i) Cages must allow sufficient movement to accommodate feeding, roosting, and maintenance behaviors without harm to the bird or damage to its feathers. The approximate cage size will vary with the size of your bird, whether it is flighted (capable of flying) or nonflighted (incapable of flying), the number of birds occupying the cage, and the traits of the particular species.

(ii) The design of your caging must take into account the natural history of the species you are housing, as well as the special needs of individual birds.

(iii) The caging must be made of a material that will not entangle or cause injury to the type of bird that will be housed within. The floors must not be abrasive to the birds' feet.

(iv) Cages must be secure and provide protection from predators, domestic animals, undue noise, human disturbance, sun, wind, and inclement weather.

(v) Cages must be well-drained and kept clean.

(vi) You must provide adequate numbers of appropriately-sized perches for birds under your care.

(vii) You may house birds only with nonaggressive individuals of compatible species.

(viii) Cages for all birds except raptors must approximate the dimensions and design recommended by the National Wildlife Rehabilitators Association's *Wildlife in Education: A Guide for the Care and Use of Program Animals* (2004), except for variations that are reasonable and necessary to accommodate particular circumstances and are approved by your regional migratory bird permit office based on a showing by you that the variance will not adversely affect migratory birds.

(ix) Cages for raptors must approximate the dimensions and design recommended by the University of Minnesota Raptor Center's *Raptors in Captivity: Guidelines for Care and Management* (2007), except for variations that are reasonable and necessary to accommodate particular circumstances, and are approved by the regional migratory bird permit office based on a showing by you that the variance will not adversely affect migratory birds.

(x) Recommended cage dimensions for program raptors are shown in the following table:

Species		Length feet (meters)	Width feet (meters)	Height feet (meters)
Sharp-shinned hawk American kestrel Merlin Boreal owl Burrowing owl Eastern screech owl Northern saw-whet owl Pygmy owl Western screech owl	Fully flighted	5 (1.5)	5 (1.5)	7 (2.1)
	Nonflighted or tethered	3 (0.9)	3 (0.9)	3 (0.9)

Species		Length feet (meters)	Width feet (meters)	Height feet (meters)
Cooper's hawk Northern goshawk Northern harrier	Fully flighted or display only	14 (4.3)	6 (1.8)	7 (2.1)
	Nonflighted or tethered	6 (1.8)	6 (1.8)	7 (2.1)
Broad-winged hawk Mississippi kite Peregrine falcon Prairie falcon Common barn owl Long-eared owl Short-eared owl	Fully flighted	10 (3.0)	8 (2.4)	7 (2.1)
	Nonflighted or tethered	6 (1.8)	6 (1.8)	7 (2.1)
Ferruginous hawk Harris's hawk Red-shouldered hawk Red-tailed hawk Rough-legged hawk Swainson's hawk Swallow-tailed kite Crested caracara Barred owl Great grey owl Great horned owl Snowy owl	Fully flighted	12 (3.6)	8 (2.4)	7 (2.1)
	Nonflighted or tethered	8 (2.4)	8 (2.4)	7 (2.1)
Osprey Bald Eagle Golden Eagle Black vulture Turkey vulture	Fully flighted (display only)	40 (12.2)	10 (3.0)	9 (2.7)
	Nonflighted, tethered, or fully flighted free-lofted program bird	12 (3.6)	10 (3.0)	9 (2.7)

(xi) If your facilities have already been approved by the Service on the basis of photographs and diagrams, and authorized under a § 21.27 Special Purpose-Education permit or § 22.21 Eagle Exhibition permit, then they are authorized under your new permit issued under this section, unless those facilities have materially diminished in size or quality from what was authorized when you last renewed your permit, or unless you wish to expand the authorizations granted by your permit (e.g., the number or types of birds you hold).

(2) Dietary requirements. You must feed birds held under this permit a diet that imitates its natural diet as closely as possible. This requirement includes providing the type, as well as the variety, of foods they are likely to naturally consume in the wild. We will use the dietary recommendations provided in the publications designated in paragraphs (b)(1)(viii) and (b)(1)(ix) of this section to evaluate whether birds are fed appropriately.

(c) *What additional conditions apply to educational use permits?* In addition to the husbandry requirements of paragraph (b) of this section and the conditions set forth in part 13 of this subchapter, which govern permit renewal, amendment, transfer, suspension, revocation, and other procedures and requirements for all permits issued by the Service, your authorization is subject to the following additional conditions:

(1) You must present a minimum of 12 programs that are open to the general public each year with each bird or specimen held under the permit; or if your facility is open to the public and the birds and/or specimens are displayed, but not used in programs, your facility must be open to the public at least 400 hours per year according to a regular, publicized schedule. Live birds that have become unsuitable for educational use due to age or infirmity may be exempted from the 12-program requirement with authorization from the migratory bird permit issuing office.

(2) All live birds held under this permit must be nonreleasable or captive-bred.

(3) You may transfer birds and specimens to other permittees authorized to receive them and acquire birds and specimens from permittees authorized to possess and transfer them, provided the number and species of birds held by each permittee are consistent with the authorizations provided by his or her permit, and the transfer is in accordance with the following conditions:

(i) Prior to acquiring or transferring a live bird, you must submit a FWS Form 3–202–12 to your migratory bird permit issuing office and receive authorization for the transfer.

(ii) You may transfer live birds and nonliving specimens held under your permit only by donation, except that you may purchase and sell the following categories of live birds: captive-bred migratory raptors marked with a seamless metal band provided by the Service; captive-bred waterfowl marked in accordance with 50 CFR 21.13(b); and captive-bred game birds marked in accordance with 50 CFR 21.13(b). You are authorized to sell, purchase, or barter such birds to and from other permittees who are authorized to purchase, sell or barter them.

(iii) You may acquire nonliving migratory bird specimens, except eagles, from and transfer such specimens to exempt public institutions and accredited schools, by donation only. Transfer of live eagles and nonliving eagle specimens must be in accordance with the provisions of 50 CFR 22.29.

(4) You may not propagate birds held under this permit.

(5) You may not acquire or possess any bird that has sustained injuries requiring amputation of a wing at the elbow (humero-ulnar joint) or above, a leg or a foot, and/or is blind, unless:

(i) A licensed veterinarian submits a written analysis of why the bird is not expected to experience the injuries and/or ailments that typically occur in birds

with these injuries and a commitment (from the veterinarian) to provide medical care for the bird for the duration of its life, including complete examinations at least once a year; and

(ii) The issuing office specifically authorizes you to possess the bird for educational use.

(6) You must report the death or escape of any bird to your migratory bird permit issuing office within 5 business days by submitting a completed FWS Form 3–202–12.

(7) You may not release any live, captive-bred bird to the wild.

(8) You may donate the carcass or individual parts and feathers of a bird that dies to persons authorized by permit or regulation to possess them or, if your permit authorizes possession of nonliving specimens, you may retain them for educational purposes. Specimens not retained by you or donated must be promptly incinerated or buried.

(9) You may retain molted feathers needed for imping purposes. If your permit authorizes possession of nonliving specimens, you may retain additional molted feathers for educational and scientific use, except for bald and golden eagle feathers (see 50 CFR 22.29). Except for eagle feathers, you may donate molted feathers to persons authorized by permit or regulation to possess such items without authorization from the Service.

(10) You may allow photography, filming, or other such uses of the birds held under your permit for the purpose of providing public education about migratory bird conservation, biology, or ecology. You may not exhibit the birds held under this permit in any manner that implies personal use or promotion or endorsement of any product, merchandise, goods, services, business, or organization except your own educational activities.

(11) Whenever you exhibit the birds held under this permit, you must include either a written or verbal statement that your possession and exhibition of the bird is by permission of the U.S. Fish and Wildlife Service.

(12) Your subpermittees must be at least 18 years of age and be designated as subpermittees in your records. All staff or volunteers who handle the birds held under your permit must be subpermittees, or must be directly supervised by you or a subpermittee when handling the bird(s). You are legally responsible for ensuring that your subpermittees, staff, and volunteers adhere to the terms of your permit.

(13) Suitable birds held under this permit may be used for foster parenting of birds held under a rehabilitation permit, as long as the fostering birds continue to be used for the required 12 programs per year.

(14) If your permit authorizes salvage, you may salvage and possess carcasses, feathers, and parts, unoccupied nests, and nonviable eggs of migratory birds, except for bald eagles and golden eagles.

(i) You may not salvage, and should immediately report to U.S. Fish and Wildlife Service Law Enforcement, any live or dead birds that appear to have been poisoned, shot, or injured as the result of criminal activity.

(ii) You may not salvage specimens on lands managed by Federal, State, tribal or local agencies without prior written authorization from the applicable agency, unless the agency's policies or regulations allow salvage of specimens.

(iii) You may not salvage specimens on private property without prior written permission or permits from the landowner or the landowner's custodian.

(iv) If you encounter a bird with a Federal band issued by the U.S. Geological Survey, Bird Banding Laboratory, report the band number to 1–800–327–BAND or *www.reportband.gov.*

(15) You must maintain records of live birds and nonliving specimens in your possession; the dates you acquired, transferred, or disposed of them; the programs in which they were used or, if the birds are displayed in their daily enclosures, the days your facility was open to the public.

(16) You must submit an annual report for the preceding calendar year to your migratory bird permit issuing office by the date required on your permit. You may complete FWS Form 3–202–5 or a report from a database you maintain, provided your report contains all, and only, the information required by FWS Form 3–202–5.

(17) Acceptance of this permit authorizes inspection of your records and facilities in accordance with 50 CFR 13.47.

(d) *Application procedures.* Apply for a migratory bird educational-use permit to the appropriate Regional Director – Attention Migratory Bird Permit Office. You can find addresses for the appropriate Regional Director in § 2.2 of subchapter A of this chapter. Your application package must consist of the following:

(1) A completed application, including any required attachments. Use FWS Form 3–200–10c for live birds of species other than eagles, FWS Form 3–200–10d for nonliving specimens of species other than eagles, and FWS Form 3–200–14 for eagles and eagle specimens.

(2) A check or money order made payable to the "U. S. Fish and Wildlife Service" in the amount of the application fee listed on the application form and in § 13.11 of this chapter.

(e) *Issuance criteria.*

(1) For possession of nonliving migratory bird specimens, we may issue a permit to you if your presentations or facilities will be open to the public and include, as a primary component, education about migratory bird conservation, natural history, biology, and/or ecology.

(2) For possession of live migratory birds, we will consider the criteria in paragraph (e)(1) and whether you have adequate experience caring for and working with migratory birds and adequate facilities for them.

(i) In evaluating an applicant's experience handling raptors and corvids, the Service will use the criteria in the following table as guidance. Although hands-on experience with the species for which the applicant is applying is most valuable, hands-on experience with any species in a category will help qualify an applicant or permittee for other species in that category.

Species	Static Display	On-the-Glove	Flight Demonstration
Category 1 Harris's hawk American kestrel Eastern screech owl Northern saw-whet owl Western screech owl	100 hours over at least 1 year, including husbandry and a minimum of 20 hours of conducting educational programs.	140 hours over at least 1 year, including husbandry and a minimum of 40 hours conducting educational programs on the glove.	300 hours over at least 1 year, including husbandry and a minimum of 80 hours of educational programs and 50 hours of free-flying under supervision of an experienced permittee.

Species	Static Display	On-the-Glove	Flight Demonstration
Category 2 Broad-winged hawk Mississippi kite Red-shouldered hawk Red-tailed hawk Rough-legged hawk Swallow-tailed kite Barred owl Boreal owl Burrowing owl Common barn owl Great horned owl Corvids	160 hours over at least 1 year, including husbandry and a minimum of 40 hours of conducting educational programs. At least half the time requirement should be with birds in this category.	200 hours over at least 1 year, including husbandry and a minimum educational programs of 60 hours conducting on the glove. At least half the timerequirement should be with birds in this category.	500 hours over at least 1 year, including husbandry and a minimum of 100 hours of educational programs and 50 hours of free-flying under supervision of an experienced permittee. At least half the time requirement should be with birds in this category.
Category 3 Northern harrier Swainson's hawk Merlin Peregrine falcon Prairie falcon Great grey owl Long-eared owl Pygmy owl Short-eared owl Black vulture Turkey vulture	200 hours over at least 1 year, including husbandry and a minimum of 60 hours of conducting educationalprograms. At least half the timerequirement should be with birdsin this category.	240 hours over at least 1 year, including husbandry and a minimum of 80 hours conducting educational programs on the glove. At least half the time requirement should be with birds in this category.	700 hours over at least 2 years, including husbandry and a minimum of 160 hours of educational programs (80 with birds in programs this category), and 50 hours of free-flying birds in this category under supervision of an experienced permittee.
Category 4 Osprey Bald eagle Cooper's hawk Ferruginous hawk Golden eagle Northern goshawk Sharp-shinned hawk Crested caracara Snowy owl	300 hours over at least 1 year, including husbandry and a minimum of 80 hours of conducting educational programs. At least half the time requirement should be with the particular species.	500 hours over at least 1 year, including husbandry and a minimum of 100 hours conducting educational programs on the glove. At least half the time requirement must be with the particular species.	1000 hours over at least 2 years, including husbandry and a minimum of 200 hours of educational programs (100 hours with birds in this category), and 50 hours of free-flying the particular species under the supervision of an experienced permittee.

(ii) For applications to possess migratory birds other than raptors and corvids for static display, we will evaluate your experience based on the Static Display criteria for Category 1 in the table in paragraph (e)(2)(i) of this section. For applications to use such birds for program use, we will use the recommendations of National Wildlife Rehabilitators Association's *Wildlife in Education: A Guide for the Care and Use of Program Animals* (2004) to determine the suitability of the species for educational program use and the level of experience required.

(iii) Your facilities must properly house the species of migratory birds that you are applying to hold. Enclosure dimensions and design must meet the husbandry standards set forth in paragraph (b)(1) of this section.

(iv) We will determine the migratory bird species and the number of birds you are authorized to hold under your permit, based on your experience, facilities, and the nature of the educational programs you intend to present.

(f) *State and tribal authorization.* If your State or tribe requires a license or permit to hold migratory birds for education, your Federal permit is not valid unless you possess and adhere to the terms of the State, tribal, or territorial authorization.

(g) *Permit tenure.* The tenure of each educational use permit is specified on the face of the permit, and in no case will be longer than 5 years.

PART 22 - EAGLE PERMITS

12. The authority citation for part 22 continues to read as follows:

Authority: 16 U.S.C. 668a; 16 U. S. C. 703–712; 16 U.S.C. 1531–1544.

13. Amend § 22.2 by revising the section heading and paragraph (a)(2) to read as follows:

§ 22.2 To what activities does this part apply?

(a) * * *

(2) You may not transport into or out of the United States, import, export, purchase, sell, trade, barter, or offer for purchase, sale, trade, or barter bald eagles or golden eagles, or their parts, nests, or eggs of these lawfully-acquired pre-act birds. However, you may transport into or out of the United States any lawfully acquired, nonliving bald eagle or golden eagle specimens if you acquire a permit issued under §§ 22.21, 22.22, or 22.29 of this part and obtain the CITES export authorization through the procedures set forth under §§ 22.21, 22.22, and 22.29.

* * * * *

14. Amend § 22.3 by revising the section heading and the introductory text and by adding the definitions "Nonreleasable eagle", "Open to the general public", "Public museum", "Public scientific society", and "Public zoological park" in alphabetical order to read as follows:

§ 22.3 What definitions do you need to know?

The following definitions are in addition to those contained in part 10 of this chapter, and, unless the context of a section provides otherwise, are used for purposes of this part.

* * * * *

Nonreleasable eagle means a bald or golden eagle that has sustained injuries that will likely prevent it from surviving in the wild even after medical treatment and/or rehabilitation, or a bald or golden eagle that has been imprinted or habituated to human presence and has

lost instincts necessary to survive in the wild.

Open to the general public means available to the general public and not restricted to any individual or set of individuals, whether or not a fee is charged.

* * * * *

Public museum means a facility accredited by the American Association of Museums that houses collections of objects and artifacts of cultural or scientific interest for scientific research or public exhibition, and which is open to the general public at least 400 hours per year on a schedule of regular, publicized hours.

Public scientific society means an entity that conducts research in the field of wildlife conservation, ecology, ornithology, or other natural science, and makes the findings of such research available to the public; or promotes public knowledge about science, biology, ecology, and/or wildlife conservation and either is open to the general public on a regular basis at least 400 hours per year or conducts at least 12 educational programs per year that are open to the general public.

Public zoological park means a facility that is either accredited or certified as a Related Facility by the Association of Zoos and Aquariums. The facility must contain permanent collections of live animals, and must either be open to the general public on a regular basis at least 400 hours per year, or must conduct at least 12 educational programs each year about ecology and wildlife conservation that are open to the general public.

* * * * *

Subpart C – Eagle Permits

15. Revise § 22.21 to read as follows:

§ 22.21 What are the requirements concerning scientific-purpose permits?

We may, under the provisions of this section, issue a permit authorizing the taking, possession, transportation within the United States, or transportation into or out of the United States of lawfully possessed bald eagles or golden eagles, or their parts, nests, or eggs for the scientific purposes of public museums, public scientific societies, or public zoological parks. We will not issue a permit under this section that authorizes the transportation into or out of the United States of any live bald or golden eagles, or any viable eggs of these birds.

(a) *How do I apply if I want a permit for scientific purposes?* (1) You must submit applications for permits to take, possess, or transport within the United States lawfully acquired live or dead bald or golden eagles, or their parts, nests, or eggs for scientific purposes to the appropriate Regional Director – Attention: Migratory Bird Permit Office. You can find addresses for the Regional Directors in 50 CFR 2.2.

(2) If you want a permit to transport into or out of the United States any lawfully acquired dead bald or golden eagles or their parts, nests, or nonviable eggs for scientific purposes, you must submit your application to the Division of Management Authority. Your application must contain all the information necessary for the issuance of a CITES permit. You must also comply with all the requirements in part 23 of this subchapter before international travel. Mail should be addressed to: Division of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 212, Arlington, VA, 22203-1610.

(3) Your application for any permit under this section must also contain the information required under this section, § 13.12(a) of this subchapter, and the following information:

(i) Species of eagle and number of such birds, nests, or eggs proposed to be taken, possessed, or transported;

(ii) Specific locality in which taking is proposed, if any;

(iii) Method of taking proposed, if any;

(iv) If not taken, the source of eagles and other circumstances surrounding the proposed acquisition or transportation;

(v) Name and address of the public museum, public scientific societies, or public zoological park for which they are intended; and

(vi) Complete explanation and justification of request, nature of project or study, and other appropriate explanations.

(b) *What are the conditions?* In addition to the general conditions in part 13 of this subchapter B, permits to take, possess, transport within the United States, or transport into or out of the United States bald or golden eagles, or their parts, nests, or eggs for scientific purposes, are also subject to the following condition: In addition to any reporting requirement specifically noted in the permit, you must submit a report of activities conducted under the permit to the Regional Director - Attention: Migratory Bird Permit Office, within 30 days after the permit expires.

(c) *How do we evaluate your application for a permit?* We will conduct an investigation and will issue a permit to take, possess, transport within the United States, or transport into or out of the United States bald or golden eagles, or their parts, nests, or eggs for scientific purposes only when we determine that the taking, possession, or transportation is compatible with the preservation of the bald eagle and golden eagle. In making this determination, we will consider, among other criteria, the following:

(1) The direct or indirect effect that issuing such permit would be likely to have upon the wild populations of bald and golden eagles;

(2) Whether the expertise, facilities, or other resources available to the applicant appear adequate to successfully accomplish the objectives stated in the application;

(3) Whether the justification of the purpose for which the permit is being requested is adequate to justify the removal of the eagle from the wild or otherwise change its status; and

(4) Whether the applicant has demonstrated that the permit is being requested for *bona fide* scientific purposes of a public museum, public scientific society, or public zoological park.

(d) *Tenure of permits.* The tenure of permits to take bald or golden eagles for scientific purposes will be that shown on the face of the permit.

16. Add a new § 22.29 to subpart C to read as follows:

§ 22.29 Permits for possession and educational use of eagles.

(a) *Purpose and scope.* The eagle educational-use permit authorizes possession of nonreleasable bald eagles and/or golden eagles for use in public educational programs and exhibits in which eagle conservation, natural history, biology, or ecology is a primary component of the program or exhibit.

(b) *Conditions and provisions.* Except as provided in this part and in § 21.32 of this subchapter (migratory bird educational-use permits), all of the provisions of § 21.32 apply to eagle educational-use permits.

(1) We may issue eagle educational-use permits only to public museums, public scientific societies, and public zoological parks. Permittees must either have facilities that are open to the general public according to a schedule of regular, publicized hours amounting to at least 400 hours per year, or must conduct at least 12 educational programs per year that are open to the general public or presented at an accredited school.

(2) You may not allow physical contact between a live eagle held under this permit and the public.

(3) Live eagles possessed under this permit must be nonreleasable.

(4) Except for specimens that are in poor condition or are otherwise deemed

unacceptable for distribution by the National Eagle Repository, or those that the National Eagle Repository does not typically distribute to Native Americans for religious ceremonial purposes (such as some skeletal parts), all nonliving eagle specimens possessed under this permit must have been lawfully acquired before March 30, 1994. The Regional Director for the Region where the applicant resides may authorize exceptions on a case-by-case basis for important resource needs with compelling justification.

(5) Prior to acquiring or transferring any eagle or specimen thereof, you must submit a FWS Form 3–202–12 to your migratory bird permit issuing office and receive authorization from the office for the transfer.

(6) To transport nonliving eagle specimens out of or into the United States for educational purposes, you must submit your application for a transport permit to the Division of Management Authority. Your application must contain all the information necessary for the issuance of a CITES permit. You must also comply with all the requirements in part 23 of this subchapter before undertaking international travel. Mail should be addressed to the Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203–1610.

(i) Eagle specimens may be transported out of or into the United States on a temporary basis only. You must return the permitted specimens to the originating country within the timeframe specified on the face of the permit, not to exceed 3 years.

(ii) We will not issue a permit under this section that authorizes the transportation out of or into the United States of any live bald eagle or golden eagle or viable egg of these species.

(7) You must send all bald eagle and golden eagle carcasses of eagles that die in your possession, and all molted eagle primary and secondary feathers and retrices (tail feathers) not needed for imping (replacing a damaged feather with a molted feather) to the U. S. Fish and Wildlife Service, National Eagle Repository, Building 128, Rocky Mountain Arsenal, Commerce City, CO 80022. You can contact the Repository at 303–287–2110.

(8) You must submit an annual report for the preceding calendar year to your migratory bird permit issuing office by the date specified on your permit. You may complete FWS Form 3–202–13 or a report from a database you maintain, provided your report contains all, and only, the information required by FWS Form 3–202–13.

Dated: July 1, 2010.

Thomas L. Strickland,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2010–23342 Filed 9–20–10; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2010–0067; 92220–1113–0000–C5]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To Reclassify the U.S. Breeding Population of Wood Storks From Endangered to Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to reclassify the United States (U.S.) breeding population of the wood stork (*Mycteria americana*) from endangered to threatened under the Endangered Species Act of 1973, as amended (Act). Based on our review, we find that the petition presents substantial scientific or commercial information indicating that reclassifying the U.S. breeding population of the wood stork to threatened may be warranted. Therefore, with the publication of this notice, we are initiating a review of the species' status to determine if reclassification is warranted. To ensure that this status review is comprehensive, we are requesting scientific and commercial data and other information regarding the U.S. breeding population of this species. Based on the status review, we will issue a 12-month finding on the petition, which will address whether the petitioned action is warranted, as provided in section 4(b)(3)(B) of the Act.

DATES: To allow us adequate time to conduct this review, we request that we receive information on or before November 22, 2010. After this date, you must submit information directly to the Jacksonville Ecological Services Field Office (*see* **FOR FURTHER INFORMATION CONTACT** section below). Please note that if you are using the Federal eRulemaking Portal (**SEE ADDRESSES** section, below), the deadline for submitting an electronic comment is Eastern Standard Time on this date. We may not be able to address or incorporate information that we receive after this date.

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

- *Federal eRulemaking Portal: http://www.regulations.gov.* In the Keyword box, enter Docket No FWS–R4–ES–2010–0067, which is the docket number for this action. Then, in the Search panel on the left side of the screen under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on "Send a Comment or Submission."
- *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, *Attn:* FWS–R4–ES–2010–0067; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

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

FOR FURTHER INFORMATION CONTACT: David L. Hankla, Field Supervisor, Jacksonville Ecological Services Field Office, 7915 Baymeadows Way, Suite 200, Jacksonville, FL 32256, by telephone (904) 731–3336, or by facsimile (904) 731–3045. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Request for Information

When we make a finding that a petition presents substantial information indicating that reclassifying a species may be warranted, we are required to promptly review the status of the species (status review). For the status review to be complete and based on the best available scientific and commercial information, we request information from governmental agencies, Native American Tribes, the scientific community, industry, and any other interested parties concerning the status of the U.S. breeding population of the wood stork and other populations of wood storks breeding in Central and South America. We seek information on:

(1) The historical and current status and distribution of the wood stork, its biology and ecology, and ongoing conservation measures for the species and its habitat;

(2) The five factors that are the basis for making a listing/delisting/

downlisting determination for a species under section 4(a) of the Act (16 U.S.C. 1531 *et seq.*), which are:

(a) The present or threatened destruction, modification, or curtailment of the species' habitat or range;

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

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

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

(3) The genetics and taxonomy of the wood stork throughout its entire range, including the range of the federally listed U.S. breeding population of the wood stork; and

(4) Discreteness and significance of the wood stork in the southeastern United States in light of our distinct population segment (DPS) policy (61 FR 4722; February 7, 1996).

(5) Discreteness, significance, and status of the wood stork in other portions of its range.

(6) Differences or similarities in regulatory protection for the wood stork outside of the southeastern United States.

(7) Whether or not climate change is a threat to the species, what regional climate change models are available, and whether they are reliable and credible to use as step-down models for assessing the effect of climate change on the species and its habitat.

(8) Anything else that would assist us in determining whether the wood stork is in danger of extinction throughout all or a significant portion of its range, or likely to become endangered within the foreseeable future throughout all or a significant portion of its range.

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

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is a threatened or endangered species must be made "solely on the basis of the best scientific and commercial data available."

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

Information and supporting documentation that we received and used in preparing this finding, will be available for public inspection at *http://www.regulations.gov/,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Jacksonville Ecological Services Field Office (*see* **FOR FURTHER INFORMATION CONTACT**).

Background

Section 4(b)(3)(A) of the Act (16 U.S.C. 1533(b)(3)(A)) requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition, and publish our notice of the finding promptly in the **Federal Register**.

Our standard for "substantial scientific or commercial information" within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted" (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, we are required to promptly commence a review of the status of the species, which is subsequently summarized in our 12-month finding.

Petition History

On May 28, 2009, we received a petition, dated May 27, 2009, from the Pacific Legal Foundation on behalf of the Florida Homebuilders Association, requesting that the southeastern U.S. population of the wood stork be reclassified as threatened under the Act as recommended in our 2007 5-year status review. The petition clearly identified itself as such and included the requisite identification information for the petitioner, as required by 50 CFR 424.14(a).

The petition presented, as sole supporting evidence, the 2007 5-year status review as its supporting information. The petition incorporated the status review by reference and summarized the five-factor analysis contained in the status review. On July 9, 2009, we sent a letter to the Pacific Legal Foundation informing them that we received the petition.

On July 8, 2010, we received a letter, dated July 1, 2010, from the Pacific Legal Foundation, notifying the Service of the Pacific Legal Foundation's intent to commence civil litigation after 60 days if we did not respond to the petition. This notice constitutes our initial finding on the petition.

Previous Federal Actions

On February 28, 1984, we published a final rule in the **Federal Register** listing the U.S. breeding population of the wood stork as endangered under the Act due primarily to the loss of suitable feeding habitat, particularly in south Florida (49 FR 7332). The endangered status covered wood storks in the States of Alabama, Florida, Georgia, and South Carolina, the breeding range of the species at that time. At the time of listing, critical habitat was considered but not designated for this species (49 FR 7332). We developed a September 9, 1986, recovery plan for the U.S. breeding population. The recovery plan was revised on January 27, 1997, and addressed new threats and species' needs.

On November 6, 1991 (56 FR 56882), we published a notice in the **Federal Register** that we were conducting a 5-year review for all endangered and threatened species listed before January 1, 1991, including the wood stork. In this review, we simultaneously evaluated the status of many species, with no in-depth assessment of the five threat factors under section 4(a)(1) of the Act as they pertain to the individual species. The notice stated that we were seeking any new or additional information reflecting the necessity of a change in the status of any of the species under review. The notice indicated that if significant data were available warranting a change in a species' classification, we would propose a rule to modify the species' status. We did not find a change in the wood stork's listing classification under the Act to be warranted at that time.

On September 27, 2006 (71 FR 56545), we published a notice in the **Federal Register** that we were initiating a 5-year status review of 37 southeastern U.S. species, including the wood stork. We

solicited information from the public concerning the status of the species, including the status and trends of species threats under section 4(a)(1) of the Act. We completed the 5-year status review for the wood stork on September 27, 2007. The 5-year status review, completed in accordance with section 4(c)(2) of the Act, contains a detailed description of the species' natural history and status, including information on distribution and movements, behavior, population status and trends, and factors contributing to the status of the U.S. breeding population. It also presents a detailed analysis of the five factors that are the basis for determination of a species' status under section 4(a) of the Act. A copy of the 5-year status review is available on our Web site at *http://www.fws.gov/ecos/ajax/docs/five_year_review/doc1115.pdf.*

Species Information

The wood stork is a large, long-legged wading bird, with a head-to-tail length of 85–115 centimeters (cm) (33–45 inches (in)) and a wingspread of 150–165 cm (59–65 in). The plumage is white, except for iridescent black primary and secondary wing feathers and a short black tail. Storks fly with their necks and legs extended. On adults, the rough, scaly skin of the head and neck is unfeathered and blackish in color, the legs are dark, and the feet are dull pink. The bill color is also blackish. Immature storks, up to the age of about 3 years, differ from adults in that their bills are yellowish or strap colored and there are varying amounts of dusky feathers on the head and neck. During courtship and early nesting season, adults have pale salmon coloring under the wings, fluffy undertail coverts that are longer than the tail, and toes that brighten to a vivid pink.

Wood storks feed almost entirely on fish between 2 and 25 cm (1 and 10 in) in length (Kahl 1964, pp.107–108; Ogden *et al.* 1976, pp. 325–327). They also occasionally consume crustaceans, amphibians, reptiles, mammals, birds, and arthropods. Fish populations reach high numbers during the wet season, but become concentrated in increasingly restricted habitats as drying occurs. Consumers such as the wood stork are able to exploit high concentrations of fish in drying ponds and sloughs.

Mating and Reproduction

Wood storks are seasonally monogamous, probably forming a new pair bond every season. There is documented first breeding at 3 and 4 years old, but the average age at first breeding is unknown. Nest initiation varies geographically. Wood storks lay eggs as early as October and as late as June in Florida (Rodgers 1990, pp. 48–51). In general, earlier nesting occurs in the southern portion of Florida (< 27 °N). Wood storks in Georgia and South Carolina initiate nesting on a seasonal basis regardless of environmental conditions. They lay eggs from March to late May, with fledging occurring in July and August. In response to deteriorating habitat conditions in south Florida, wood storks nesting in Everglades National Park and in the Big Cypress region of Florida delayed initiation of nesting to February or March in most years since the 1970s. Colonies that start after January in south Florida risk having young in the nests when May–June rains flood marshes and disperse fish.

Females lay a single clutch of two to five eggs per breeding season, but the average is three eggs. Females sometimes lay a second clutch if nest failure occurs early in the season (Coulter *et al.* 1999, p.11). Average clutch size may increase during years of favorable water levels and food resources. Incubation requires about 30 days, and begins after the female lays the first one or two eggs; the eggs therefore hatch at different times and young nestlings in a single nest vary in size. Nestlings require about 9 weeks for fledging, but the young return to the nest for an additional 3 to 4 weeks to be fed. Actual colony production measurements are difficult to determine because of the prolonged fledging period, during which time the young return daily to the colony to be fed. It appears that colonies experience considerable variation in production among years and locations, apparently in response to differences in food availability.

Range and Distribution

The wood stork is one of 17 species of storks occurring worldwide, and is the only stork regularly occurring in the United States. It occurs from northern Argentina, eastern Peru, and western Ecuador, north to Central America, Mexico, Cuba, Hispaniola, and the southeastern United States. The breeding range of the species extends from the southeastern United States south through Mexico and Central America, Cuba and Hispaniola, and through South America to western Ecuador, eastern Peru, Bolivia, and northern Argentina (Coulter *et al.* 1999, p. 2). The species uses a variety of freshwater and estuarine wetlands for nesting, feeding, and roosting. Throughout its range in the southeastern United States, the wood stork is dependent upon wetlands for breeding and foraging. Winter foraging habitat is also important to the recovery of the species, as it may determine the carrying capacity of the U.S. breeding population.

Wood storks select patches of medium-to-tall trees as nesting sites, which are located either in standing water such as swamps, or on islands surrounded by relatively broad expanses of open water (Ogden 1991, p. 43). Colony sites located in standing water must remain inundated throughout the nesting cycle to protect against predation and nest abandonment. A wood stork tends to use the same colony site over many years, as long as the site remains undisturbed, and sufficient feeding habitat remains in the surrounding wetlands. Wood storks may abandon traditional wetland sites once local or regional drainage schemes remove surface water from beneath the colony trees.

Population Demographics

Alterations in the quality and amount of foraging habitats in the Florida Everglades and extensive drainage and land conversions throughout South Florida led to the initial decline of the wood stork nesting population. Since listing under the Act, wood stork nesting has increased in South Florida and the Everglades, but the timing and location of nesting have changed in response to alterations in hydrology and habitat. The overall distribution of the breeding population of wood storks is also in transition. The wood stork appears to have adapted to changes in habitat in South Florida in part by expanding its breeding range north into Georgia, South Carolina, and North Carolina.

The estimated total population of nesting wood storks throughout the southeastern United States declined from 15,000–20,000 pairs during the 1930s, to about 10,000 pairs in 1960, to a low of 4,500–5,700 pairs in most years during the period between 1977–1980 (Ogden *et al.* 1987, p. 752). In the 23-year period from the time of listing (1984) to 2006, 13 surveys of the entire breeding range were completed. Eight of those resulted in counts exceeding 6,000 pairs. Five of those higher counts occurred during the past 8 years. In summary, annual nest counts have increased significantly, from 6,245 pairs to 11,279 pairs in 2006 (Brooks and Dean, 2008, pp. 53–54), indicating the population is stable or increasing across the southeastern United States (Borkhataria *et al.* 2008, p. 48).

The recovery plan's population objectives are 6,000 nesting pairs

(calculated over a 3-year average) for consideration to reclassify from endangered to threatened. The 1993–1995 surveys averaged 6,783 nesting pairs. The 3-year averages from 2001 through 2006 also exceeded 6,000 pairs for all combined years.

Three-year averages calculated from nesting data from 2001 through 2006 indicate that the total nesting population has been consistently above the threshold of 6,000 nesting pairs and productivity of 1.5 chicks per nest per year (2004–2006) required before the species can be reclassified to threatened. The average number of nesting pairs has ranged from 7,400 to over 8,700. The first wood stork colony in North Carolina was documented in 2005, with 32 nesting pairs. In 2006, the same North Carolina colony increased to 132 nesting pairs.

The 2006 nesting totals indicated that the wood stork population reached over 11,000 nesting pairs documented in Florida, Georgia, South Carolina, and North Carolina during the 2006 breeding season. Information in our files indicates that fewer than 6,000 nesting pairs were documented in 2007 and 2008. These lower nesting numbers were likely related to severe drought conditions in Florida. In 2009, the number of nesting pairs once again surpassed 10,000, with over 12,000 nesting pairs recorded.

Since the time that the species was listed as endangered under the Act, the number of nesting pairs in the United States is increasing overall, the number of nesting colonies in the United States is increasing, and the nesting range in the United States is growing.

Evaluation of Listable Entities

Under section 3(16) of the Act, we may consider for listing any species, including subspecies, of fish, wildlife, or plants, or any DPS of vertebrate fish or wildlife that interbreeds when mature (16 U.S.C. 1532(16)). Such entities are considered eligible for listing under the Act (and, therefore, are referred to as listable entities), should we determine that they meet the definition of an endangered or threatened species.

Distinct Vertebrate Population Segment

The Service and the National Marine Fisheries Service (National Oceanic and Atmospheric Administration—Fisheries) developed a joint policy that addresses the recognition of DPSes of vertebrate species for potential listing actions (61 FR 4722, February 7, 1996). To determine whether a population qualifies as a DPS; this requires a finding that the population is both: (1) Discrete in relation to the remainder of the species to which it belongs; and (2) biologically and ecologically significant to the species to which it belongs. If the population meets these criteria, we then proceed to evaluate the population segment's conservation status in relation to the Act's standards for listing as an endangered or threatened species. These three elements are applied similarly for additions to or removals from the Federal Lists of Endangered and Threatened Wildlife and Plants.

Our evaluation of significance is made in light of Congressional guidance (*see* Senate Report 151 of the 96th Congress, 1st Session) that the authority to list DPSes be used "sparingly," while encouraging the conservation of genetic diversity. If we determine that a population segment meets the discreteness and significance standards, then the level of threat to that population segment is evaluated based on the five listing factors established by the Act to determine whether listing the DPS as either endangered or threatened is warranted.

In this case, the petitioners attached our 5-year status review of the species, and incorporated it by reference into the petition. The U.S. breeding population of the wood stork was listed in 1984 under the Act, 12 years prior to the DPS policy. The 5-year status review did not include a DPS analysis. However, it indicates that we believe the original listing of the U.S. breeding population of wood storks likely meets the current standards of the DPS policy for the following reasons: The population is physically separated from the adjacent populations that breed in southern Mexico. The loss of the U.S. breeding population would result in a significant gap in the range of the species, as there would no longer be wood storks breeding in the United States. As applied to information contained in the petition and available in our files, we will conduct a DPS analysis for the wood stork as part of the status review process initiated under this 90-day petition finding.

Evaluation of Information for This Finding

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations at 50 CFR 424 set forth the procedures for adding a species to, or removing a species from, the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act:

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

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

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

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

In making this 90-day finding, we evaluated whether information regarding threats to the southeastern U.S. population of the wood stork, as presented in the petition and other information available in our files, is substantial, thereby indicating that the petitioned action may be warranted. Our evaluation of this information is presented below. On pp. 2–3 of the petition, the petitioner summarized the five-factor analysis contained in our 2007 5-year review of the species, which was also included as an attachment to the petition.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

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

Factor A. is discussed on p. 2 of the petition and on pp. 14–16 in our 5-year review of the species. Please refer to the 5-year review document for additional information.

The petition and our 5-year review of the species presented information regarding the threats to the wood stork from the loss, fragmentation, and modification of wetland habitats. We found the petition and information in our files presented substantial information that activities that destroy or modify wetland habitat continue to threaten the wood stork. Habitat loss, fragmentation, and modification are known to impact the species, but the significance of these threats cannot be quantified. The overall threat to the species is reduced, not necessarily because of habitat conservation programs, but rather due to an increase in wood storks and expansion of the range of the species. Historically, the core of the wood stork breeding population in the southeastern United States was located in the Everglades of south Florida. Populations there had diminished because of deterioration of the habitat. However, the breeding range has now almost doubled in extent and shifted northward along the Atlantic coast as far as southeastern North Carolina. Therefore, dependence of

wood storks on any specific wetland complex has been reduced.

In summary, we evaluated the petition and information in our files and find that substantial information has been presented in the petition or is available in our files to indicate that reclassifying the U.S. breeding population of the wood stork to threatened may be warranted due to the present or threatened destruction, modification, or curtailment of the species' habitat or range.

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

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

Factor B. is discussed on p. 2 of the petition and on pp. 16–17 in our 5-year review of the species. Please refer to the 5-year review document for additional information.

As described in our 5-year review, a small number of scientific research permits with potential to harm individual wood storks have been issued. This level of take/harm is not expected to adversely impact wood stork recovery. Wading birds can impact production at fish farms. To minimize the impacts, the Service issues depredation permits to aquaculture facilities for herons, egrets and other water bird species. It is likely that wood stork take at aquaculture facilities occurs. To what extent this type of take occurs is unknown.

After a review of information in our files and in the petition, we do not find substantial information to indicate that overutilization for commercial, recreational, scientific, or educational purposes is a threat to the wood stork.

C. Disease or Predation

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

Factor C. is discussed on p. 3 of the petition and on pp. 17–18 in our 5-year review of the species. Please refer to the 5-year review document for additional information.

Colonies with adequate water levels under nesting trees or surrounding nesting islands deter raccoon predation. If the water level remains too low or alligators are removed from the nesting site, this could facilitate raccoon predation. Human disturbance may cause adults to leave nests, exposing eggs and nestlings to predators. A breeding population of Burmese pythons has been documented in the Florida Everglades. If this snake becomes established, it could pose a threat to nesting water bird populations, including the wood stork. However, there has been limited documentation of predation and disease in wood storks.

After a review of information in our files and in the petition, we find substantial information to indicate that disease or predation is a threat to the wood stork, but that the threat is localized and not occurring at significant levels.

D. The Inadequacy of Existing Regulatory Mechanisms

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

Factor D. is discussed on p. 3 of the petition and on pp. 18–19 in our 5-year review of the species. Please refer to the 5-year review document for additional information.

There are a number of regulatory mechanisms implemented by Federal and State agencies to protect wood storks and conserve their habitat. Recent trends indicate that the range of the wood stork is expanding and breeding populations have increased, suggesting that the current conservation measures are sufficient to allow population growth.

We evaluated the petition and information in our files and find that substantial information has been presented in the petition or is available in our files to indicate that the existing regulatory mechanisms appear to be adequate based on the increasing number of nesting pairs and nesting colonies in the United States, and the expanding nesting range in the United States. However, we cannot determine whether regulatory mechanisms are adequate until the habitat base is shown to be either sufficient or insufficient to minimize risk of extinction in all or a significant portion of the range of wood storks in the southeastern United States.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

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

Factor E. is discussed on p. 3 of the petition and on pp. 19–21 in our 5-year review of the species. Please refer to the 5-year review document for additional information.

The Intergovernmental Panel on Climate Change (IPCC) concluded that evidence of warming of the climate system is unequivocal (IPCC 2007a, p. 30). Numerous long-term changes have been observed, including changes in arctic temperatures and ice, widespread changes in precipitation amounts, ocean salinity, wind patterns, and aspects of extreme weather, including droughts, heavy precipitation, heat waves, and the intensity of tropical cyclones (IPCC 2007b, p. 7). Species that are dependent on specialized habitat types, are limited in distribution, or are located in the extreme periphery of their range will be most susceptible to the impacts of climate change. Such species would currently be found at high elevations, extreme northern/southern latitudes, or are dependent on delicate ecological interactions or sensitive to nonnative competitors. While continued change is certain, the magnitude and rate of change is unknown in many cases.

The petition did not present specific information on whether global climate change has affected or is likely to affect the wood stork. Additionally, information on the subject of climate change in our files is not specific to the wood stork. While predictions of increased drought frequency, intensity, and duration suggest that nestling survival could be a limiting factor for the wood stork due to increased predation, the species possesses other biological traits (*i.e.,* adaptability to changing habitat conditions) to provide resilience to this threat. We have no evidence that climate changes observed to date have had any adverse impact on the wood stork or its habitat. Without additional information, the effect of long-term climate change on the wood stork is unclear. However, we will seek additional information regarding any potential effects of climate change during the status review process initiated under this 90-day petition finding.

Contaminants, harmful algal blooms such as red tide events, electrocution mortalities from power lines, road kill, invasion of exotic plants and animals, human disturbance, and stochastic events such as severe thunderstorms and hurricanes may affect the wood stork, but are not significant.

After a review of information in our files and in the petition, we find substantial information to indicate that other natural or manmade factors are a threat to the wood stork, but that the threat is not significant, except that without additional information, the effect of long-term climate change on the wood stork is unclear. However, we will seek additional information regarding any potential effects of climate change during the status review process.

Finding

The petition and supporting information in our files presents

substantial information on several factors affecting wood storks in the southeastern United States, including: Impacts of habitat modification and disruption of water regimes (Factor A); predation (Factor C); and contaminants, harmful algal blooms such as red tide events, electrocution mortalities from power lines, road kill, invasion of exotic plants and animals, human disturbance, and stochastic events (Factor E).

Of the five listing factors, Factor A (habitat destruction and modification) continues to be the leading threat to wood stork recovery. However, magnitude of this threat may be reduced due to the increase in wood storks and expansion of the breeding range from Florida into Georgia, South Carolina, and North Carolina. There are a number of regulatory mechanisms implemented by Federal and State agencies to protect wood storks and conserve their habitat. Whether habitat protection and conservation regulatory mechanisms are inadequate can only be assessed in terms of the wood stork population, and recent trends indicate that the range is still expanding and the breeding population has increased, suggesting that current conservation measures are sufficient to allow population growth. Other threats such as disease and predation and other natural or man-made factors (*i.e.,* contaminants, electrocution, road kill, invasion of exotic plants and animals, disturbance, and stochastic events) are known to occur but are not significant. We believe that the conclusions of the 5-year review regarding the listing factors and the recommended change in status of the species from endangered to threatened, as presented in the petition and as modified by any information in our files, still apply.

In considering what factors might constitute threats, we must look beyond the mere exposure of the species to the factor to determine whether the species responds to the factor in a way that causes actual impacts to the species. If there is exposure to a factor, but no response, or only a positive response, that factor is not a threat. If there is exposure to a factor and the species responds negatively, the factor may be a threat and we then attempt to determine how significant a threat it is. If the threat is significant, it may drive or contribute to the risk of extinction of the species such that the species may warrant listing as threatened or endangered as those terms are defined by the Act. This does not necessarily require empirical proof of a threat. The combination of exposure and some corroborating evidence of how the species is likely impacted could suffice. The mere identification of factors that could impact a species negatively may not be sufficient to compel a finding that listing may be warranted. The information must contain evidence sufficient to suggest that these factors may be operative threats that act on the species to the point that the species may meet the definition of threatened or endangered under the Act.

Because we have found that the petition, as well as other information in our files, presents substantial scientific or commercial information indicating that reclassifying the wood stork in the southeastern United States to threatened may be warranted, we are initiating a status review to determine whether reclassifying the wood stork in the southeastern United States to threatened under the Act is warranted. We will issue a 12-month finding as to whether the petitioned action is warranted. As part of our status review, we will examine newly available information on the threats to the species and make a final determination on a 12-month finding on whether the species should be listed as endangered or threatened under the Act. To ensure the status review is complete, we are requesting scientific and commercial information regarding the wood stork throughout its entire range (as described under the Request for Information section).

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

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the U.S. Fish and Wildlife Service, Jacksonville Ecological Services Field Office (*see* **FOR FURTHER INFORMATION CONTACT**).

Author

The primary authors of this notice are staff of the Jacksonville Ecological Services Field Office (*see* **FOR FURTHER INFORMATION CONTACT**).

Authority

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

Dated: August 23, 2010.

Wendi Weber,

Acting Deputy Director, Fish and Wildlife Service.

[FR Doc. 2010–23138 Filed 9–20–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No. 100903415–04–02]

RIN 0648–XW96

Listing Endangered and Threatened Wildlife and Plants; 90–Day Finding on a Petition to List Atlantic Bluefin Tuna as Threatened or Endangered under the Endangered Species Act

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

ACTION: 90–day petition finding; request for information.

SUMMARY: We, NMFS, announce a 90–day finding for a petition to list Atlantic bluefin tuna (*Thunnus thynnus*) as endangered or threatened under the Endangered Species Act (ESA) and to designate critical habitat concurrently with a listing. We find that the petition presents substantial scientific information indicating the petitioned action may be warranted. We will conduct a status review of Atlantic bluefin tuna to determine if the petitioned action is warranted. To ensure that the review is comprehensive, we solicit information pertaining to this species from any interested party.

DATES: Information related to this petition finding must be received by November 22, 2010.

ADDRESSES: You may submit comments, identified by RIN 0648–XW96, by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal http//www.regulations.gov. Follow the instructions for submitting comments.
- Mail or hand-delivery: Assistant Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930.

All comments received are a part of the public record and will generally be

posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

The petition and other pertinent information are also available electronically at the NMFS website at *http://www.nero.noaa.gov/prot_res/CandidateSpeciesProgram/csr.htm*.

FOR FURTHER INFORMATION CONTACT: Kim Damon-Randall, NMFS, Northeast Regional Office (978) 282–8485 or Marta Nammack, NMFS, Office of Protected Resources (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Background

On May 24, 2010, we received a petition from the Center for Biological Diversity (CBD) to list Atlantic bluefin tuna (*Thunnus thynnus*) as threatened or endangered under the ESA and designate critical habitat concurrently with its listing. The petition contains information on the species, including the taxonomy, historical and current distribution, physical and biological characteristics of its habitat and ecosystem relationships, population status and trends, and factors contributing to the species' decline. In its petition, CBD references information contained in the proposal prepared by Monaco for the 15th Conference of the Parties (CoP15) to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) to list Atlantic bluefin tuna under Appendix I. This document is referenced in this finding as "CITES, 2010." CBD contends that "Atlantic bluefin tuna suffers from mismanagement by an ineffective international organization, rampant illegal fishing as a consequence of extraordinary market demand, complicated and poorly understood population dynamics, and a diversity of habitat threats." The petitioner presents information in the petition regarding the declining trend of both the eastern Atlantic/Mediterranean and western Atlantic stocks and what it characterizes as the lack of management measures both nationally and internationally to fully address and reverse the declines. The petitioner presents genetic information and life history information, asserting that at least two distinct population segments (DPS) of Atlantic bluefin tuna exist. CBD also contends that the Deepwater Horizon/BP oil spill in the Gulf of Mexico occurred during spawning in the only known spawning grounds of the western Atlantic stock and is likely to have significant long-term effects on bluefin tuna, possibly having the potential to "devastate the population."

ESA Statutory Provisions and Policy Considerations

Section 4(b)(3)(A) of the ESA (16 U.S.C. 1533(b)(3)(A)) requires that we make a finding as to whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating the petitioned action may be warranted. ESA implementing regulations define substantial information as the amount of information that would lead a reasonable person to believe the measure proposed in the petition may be warranted (50 CFR 424.14(b)(1)). In determining whether substantial information exists for a petition to list a species, we take into account several factors, including information submitted with, and referenced in, the petition and all other information readily available in our files. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition (16 U.S.C. 1533(b)(3)(A)), and the finding is to be published promptly in the **Federal Register**. If we find that a petition presents substantial information indicating that the requested action may be warranted, section 4(b)(3)(A) of the ESA requires the Secretary of Commerce (Secretary) to conduct a status review of the species. Section 4(b)(3)(B) requires the Secretary to make a finding as to whether or not the petitioned action is warranted within 12 months of the receipt of the petition. The Secretary has delegated the authority for these actions to the NOAA Assistant Administrator for Fisheries.

The ESA defines an endangered species as "any species which is in danger of extinction throughout all or a significant portion of its range" (ESA section 3(6)). A threatened species is defined as a species that is "likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range" (ESA section 3(19)). Under the ESA, a listing determination can address a species, subspecies, or a DPS of a vertebrate species (16 U.S.C. 1532 (16)). Under section 4(a)(1) of the ESA, a species may be determined to be threatened or endangered as a result of any one of the following factors: (A) present or threatened destruction, modification, or curtailment of habitat or range; (B) over-utilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. Listing determinations are made solely on the basis of the best scientific and commercial data available, after conducting a review of the status of the species and taking into account efforts made by any state or foreign nation to protect such species.

Life History of the Atlantic Bluefin Tuna

Atlantic bluefin tuna are found throughout the North Atlantic Ocean and adjacent seas, including the Mediterranean Sea. They are pelagic, highly migratory species occupying coastal and open ocean areas up to depths of 200 meters (m) (SCRS, 2008). Based on reproductive isolation due to the existence of separate spawning grounds and the absence of spawning in the middle of the North Atlantic, associated genetic differentiation, and differing ages at maturity, the International Commission for the Conservation of Atlantic Tunas (ICCAT) manages this highly migratory species as two separate stocks the eastern Atlantic and western Atlantic (SCRS, 2008).

The Atlantic bluefin tuna is the largest of the tuna species. Maximum lengths can exceed 4 meters (m) (13.1 feet), and weights of up to 900 kilograms (kg) (1,984.2 lb) have been reported in various fisheries in the western Atlantic and Mediterranean Sea (SCRS, 2008). As large predators, bluefin tuna play an important role in pelagic ecosystems (Rooker *et al.*, 2007). Juveniles prey primarily on fish, crustaceans, and cephalopods, and adults feed primarily on fish such as herring, anchovy, sand lance, sardine, sprat, bluefish, and mackerel (Fromentin, 2006).

The western Atlantic stock is believed to reach maturity at 8 or more years of age while the eastern Atlantic stock is believed to mature at 4 to 6 years of age (Medina *et al.*, 2002 cited in Fromentin and Powers, 2005). The western Atlantic stock spawns in the Gulf of Mexico from March through May, while in the Mediterranean spawning occurs from May to June in the eastern portion and June to July in the central and western portions (Nishikawa *et al.*, 1985; Mather *et al.*, 1995; Schaefer, 2001, cited in Fromentin and Powers, 2005). Bluefin tuna are oviparous (i.e., lay eggs) and iteroparous (i.e., spawn regularly), and are multiple batch spawners (Schaefer, 2001, cited in Fromentin and Powers,

2005). According to Teo *et al.* (2007), bluefin tuna appear to spawn in consecutive years. Fecundity (i.e., the number of eggs produced) is size dependent. Fromentin (2006) determined that fertilization takes place directly in the water column, and hatching occurs without parental care after 2 days. Larvae are pelagic and resorb the yolk sac within a few days (Fromentin and Powers, 2005).

Analysis of Petition and Information Readily Available in NMFS Files

In the following sections, we use the information presented in the petition and in our files to: (1) describe the distribution of Atlantic bluefin tuna; (2) determine whether Atlantic bluefin tuna populations may meet the criteria for being identified as DPSs; and, (3) evaluate whether Atlantic bluefin tuna populations proposed by the petitioners are at abundance levels that would lead a reasonable person to conclude that listing under the ESA may be warranted due to any of the factors listed under section 4(a)(1) of the ESA.

Analysis of DPS Information

To be considered for listing under the ESA, a group of organisms must constitute a "species." A "species" is defined in section 3 of the ESA to include "any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature." On February 7, 1996, NMFS and the U.S. Fish and Wildlife Service (collectively, the "Services") adopted a policy to clarify their interpretation of the phrase "distinct population segment of any species of vertebrate fish or wildlife" (61 FR 4722). The joint DPS policy describes two criteria that must be considered when identifying DPSs: (1) the discreteness of the population segment in relation to the remainder of the species (or subspecies) to which it belongs; and (2) the significance of the population segment to the remainder of the species (or subspecies) to which it belongs. As further stated in the joint policy, if a population segment is discrete and significant (i.e., it is a DPS), its evaluation for endangered or threatened status will be based on the ESA's definition of those terms and a review of the five factors enumerated in section 4(a)(1) of the ESA.

Under the DPS policy, a population segment may be determined to be discrete if: (1) it is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological or behavioral factors; and/or (2) the population is delimited by international boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the ESA. As noted previously in the petition, CBD presents information to support its claim that there are at least two DPSs of Atlantic bluefin tuna. CBD contends that Atlantic bluefin tuna meet at least one, if not both, of the discreteness criteria. The spawning grounds of the eastern and western stocks are separated (e.g., Gulf of Mexico and Mediterranean Sea), and there are significant genetic differences and unique ages of maturity (markedly separated from other populations of the same taxon). Bluefin tuna in the Mediterranean mature at considerably younger ages (e.g., 4 to 6 years) than fish from the Gulf of Mexico, which were described to mature at age 8 or older and at much larger sizes (SCRS, 2008). Fromentin *et al.* (2005) and several other authors have confirmed that bluefin tuna exhibits a strong homing behavior and strong spawning site fidelity. ICCAT manages the species as two separate stocks with separate Total Allowable Catch (TAC) levels for the western stock and eastern stock (which are delimited by international boundaries within which there are significant management differences).

The DPS policy also cites examples of potential considerations indicating significance, including: (1) persistence of the discrete population segment in an ecological setting unusual or unique for the taxon; (2) evidence that loss of the discrete population segment would result in a significant gap in the range of the taxon; (3) evidence that the DPS represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; or, (4) evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

CBD presents information to support its claim that the two discrete populations are significant, including evidence that: (1) they persist in ecological settings that are unusual or unique for the taxon; (2) loss of a population would result in a significant gap in the range of the species; and (3) there are significant genetic differences between the two stocks. CBD notes that the habitat in the Gulf of Mexico is unique from that found in the Mediterranean. Carlsson *et al.* (2007) provide information on trans-Atlantic migrations of the species as well as genetic evidence indicating that the two populations are genetically diverse. According to CBD, the genetic differentiation between the two stocks supports the assertion that, if one population were to be lost, this would result in the significant loss of genetic diversity and, therefore, a significant gap in the range of the taxon. Based on the information in the petition, and on information readily available in our files prior to receipt of the petition, there is evidence that the eastern and western Atlantic stocks of Atlantic bluefin tuna may be discrete and significant. Thus, a full DPS analysis will be undertaken.

Abundance

CBD asserts that the eastern Atlantic bluefin tuna population is critically imperiled and faces imminent risk of extinction, basing this contention on information which suggests that the population has declined more than 80 percent since 1970 (CITES, 2010). CBD cites a stock assessment conducted in 2008 by SCRS who determined that the spawning stock biomass (SSB) for the eastern Atlantic stock in 2007 was 78,724 tonnes (t). This contrasts with the biomass peak of 305,136 t in 1958 and 201,479 t in 1997 (CITES, 2010). As noted in the petition, CITES (2010) indicates that the absolute extent of decline over the 50–year historical period from 1957 to 2007 is estimated to be 74.2 percent, and the majority of that decline occurred in the last 10 years.

CBD also contends that the western Atlantic bluefin tuna population is at imminent risk of extinction. According to the petition, a history of intense fishing pressure has resulted in declines of over 80 percent since 1970 (CITES, 2010). The SSB for the western Atlantic stock was estimated in 2007 to be 8,693 t, declining from 49,482 t in 1970 (SCRS, 2009). This represents an 82.4 percent decline over the 38–year historical period (SCRS, 2009). Since the early 1990s, the SSB has remained relatively stable at approximately 15–18 percent of its pre-exploitation biomass (SCRS, 2009).

CBD notes that at the 2010 CITES Conference of the Parties (CoP15), the Principality of Monaco proposed to include the Atlantic bluefin tuna in Appendix I (CBD, 2010). According to the CITES definitions, Appendix I lists species that "are the most endangered among CITES-listed animals and plants. They are threatened with extinction, and CITES prohibits the international trade in specimens of these species except when the purpose of the import is not commercial, for instance for scientific research." The listing proposal did not receive the votes that it needed

to be adopted at CoP15. While the United States voted in favor of Monaco's proposal, its support was based on problems with compliance in the eastern Atlantic and Mediterranean fishery, as well as the fact that the 2010 quota level adopted by ICCAT for this stock was not as low as the United States believed was necessary. Without improvement in these areas, the United States had concerns about the long-term viability of the bluefin tuna stock and fishery. A ban on the international commercial trade of bluefin tuna offered an additional tool to reduce fishing pressure and improve control of the eastern stock in order to enhance its conservation in order to meet ICCAT objectives (K. Blankenbeker, NMFS, personal communication, 2010).

Also, as noted in the petition, the International Union for Conservation of Nature (IUCN) has listed western Atlantic bluefin tuna as critically endangered with an extremely high risk of extinction in the wild in the immediate future. According to IUCN, the population meets the critically endangered criteria of having declined in excess of 80 percent over the last 10 years or 3 generations. Eastern Atlantic bluefin tuna are classified by IUCN as endangered, meaning that this population is at very high risk of extinction in the wild in the near future based on a reduction of at least 50 percent over the last 10 years or 3 generations. While the criteria for listing species under a CITES appendix or under IUCN are different from those used under the ESA, the information used to make these decisions may be informative and will be considered during the development of the status review where appropriate.

ESA Section 4(a)(1) Factors

Present or Threatened Destruction, Modification, or Curtailment of Habitat or Range

In the petition, CBD states that worldwide habitat loss and degradation is one of the primary causes of the decline of Atlantic bluefin tuna. It indicates that threats to habitat from pollution and ocean climate change are having significant impacts globally. CBD cites information from the NMFS Highly Migratory Species (HMS) Essential Fish Habitat (EFH) assessment in which it is stated that habitat for these species is comprised of open ocean environments occurring over broad geographic ranges, and "large-scale impacts such as global climate change that affect ocean temperatures, currents, and potentially food chain dynamics, are most likely to have an impact and pose the greatest threat to HMS EFH" (NMFS, 2009). CBD indicates that effects from climate change are already impacting the North Atlantic Ocean with increasing water temperatures and sea levels, increased acidification, and changes in circulation patterns and nutrient supplies (Bindoff *et al.* 2007; Beaugrand, 2009). It asserts that changing ocean conditions as a result of climate change and ocean acidification may result in species shifts and ecosystem changes that may negatively affect Atlantic bluefin tuna. CBD states that climate change could impact Atlantic bluefin tuna prey availability, behavior, and water quality. According to CBD, ocean acidification may also decrease the sound absorption in seawater, which could affect spawning habitat, resulting in physiological or anatomical effects to the auditory systems, potential behavioral alterations, and auditory masking.

The petitioners contend that oil and gas activities in the Gulf of Mexico pose a significant threat to the only known spawning grounds for the western Atlantic bluefin tuna population. According to CBD, the Deepwater Horizon/BP oil spill in the Gulf of Mexico occurred during spawning in the only known spawning grounds of the western Atlantic stock and is, therefore, likely to have significant long-term effects on bluefin tuna, possibly having the potential to devastate the population. In response to the oil spill, NMFS is examining, among other things, the historical distributions of spawners and larvae, as well as the distributions expected this year based on maps of optimal larval habitat, to determine the overlap of the oil spill with spawning bluefin tuna and their progeny (C. Porch, NMFS, personal communication, 2010). It is not known how long the oil will remain in the Gulf and what the long-term effects to fish exposed to non-lethal concentrations of oil may be; however, the best available information on the effects from the oil spill to Atlantic bluefin tuna will need to be considered during the status review, including the results of current research and analyses being undertaken by NMFS.

Overutilization for Commercial, Recreational, Scientific or Education Purposes

In 2008, the ICCAT Standing Committee on Research and Statistics (SCRS) advised that, unless fishing mortality rates on the eastern Atlantic and Mediterranean stock of bluefin tuna were substantially reduced in the future, further reduction of SSB was likely, which could lead to a risk of fisheries and stock collapse (SCRS, 2009). For the eastern Atlantic bluefin tuna population, CBD notes that the SCRS indicated that continued fishing mortality rates at the 2007 levels were expected to drive the SSB to very low levels (approximately 18 percent of the SSB in 1970 and 6 percent of the unfished SSB). CBD cites MacKenzie *et al.* (2009) who predicted that the adult eastern bluefin tuna population in 2011 will be 75 percent lower than in 2005 and that the fishing quotas will permit the capture of all remaining adult fish. These authors noted that, at these low population sizes, reproduction of eastern Atlantic bluefin tuna is increasingly uncertain and could be limited by spawner biomass (MacKenzie *et al.*, 2009). They conclude that the population is at risk of collapse in the next few years, which translates to a 90 percent decline in adult biomass within 3 generations (MacKenzie *et al.*, 2009). It is important to note that MacKenzie *et al.* (2009) made population projections based on the TAC levels ICCAT established for 2008 through 2010 (22,000 t, 19,950 t, and 18,500 t, respectively). However, the TAC for 2010 has been reduced to 13,500 t; therefore, the projections that were made may not reflect the current fishing pressure on the stock and may be overly pessimistic (G. Diaz, NMFS, personal communication, 2010).

CBD asserts that the western Atlantic bluefin tuna population is also in imminent danger of extinction due to severe declines and ongoing fishing pressures. As stated previously, according to CBD, this stock has declined over 80 percent since 1970 due primarily to overfishing (CITES, 2010). The SSB has declined approximately 82.4 percent over the 38–year historical period; however, since the early 1990s, it has remained relatively stable at approximately 15–18 percent of its pre-exploitation biomass (SCRS, 2009). In 2008, the SCRS determined that the western Atlantic stock has been below the level required to produce the maximum sustainable yield (MSY) since the mid–1970s, and fishing mortality rates have been above that which would produce MSY throughout the time series used in the stock assessment (which started in 1970). The SCRS also determined that 10 years after ICCAT adopted a rebuilding program (half way through the 20–year rebuilding period), the 2007 SSB was estimated to be 7 percent below the level of the rebuilding plan's first year (SCRS, 2008). Since 1998, the stock has generally stabilized, increasing in some years and decreasing in others (G. Diaz, NMFS, personal

communication, 2010). According to CITES (2010), there is also great uncertainty regarding potential recruitment of the western Atlantic stock. In addition, Safina and Klinger (2008) suggest that the western Atlantic stock is currently in danger of extinction and that a moratorium on fishing this stock should be implemented.

According to the last ICCAT stock assessment (2008), the most pessimistic recruitment scenario indicates that even a closure of the fishery would not achieve rebuilding of the stock by 2019. However, under different assumptions of recruitment, recovery is projected to occur within this timeframe (SCRS, 2009). Fishing mortality of large western Atlantic bluefin tuna has declined recently, and the TAC was not taken for several years primarily because of U.S. underharvest, which ranged from 40 to 80 percent of its national quota in 2006–2008 (SCRS, 2009). SCRS has indicated that there are two plausible explanations for this: (1) the availability of fish to the U.S. fishery has been abnormally low due to a change in the spatial distribution of the stock; and/or (2) the overall size of the population in the Western Atlantic declined substantially from the level of recent years (SCRS, 2009). It is important to note that U.S. catches have steadily increased since 2006, and in 2009, the United States caught its entire base quota.

Predation and Disease

According to CBD, emerging environmental stress on Atlantic bluefin tuna may make them more vulnerable to disease, and tuna ranching may also increase the prevalence and spread of disease. CBD asserts that confined or escaped fish present a threat to wild fish from the spread of disease and parasites, as confined fish are particularly vulnerable to disease. It also notes that diseases in confined fish that are controlled through the use of antibiotics can result in more virulent strains of disease that are then resistant to antibiotics. While it presents some information in the petition regarding disease, CBD does state that disease and predation are not primary threats responsible for the decline of the species.

Inadequacy of Existing Regulatory Mechanisms

CBD states that existing regulatory mechanisms for Atlantic bluefin tuna are inadequate. The petition indicates that the responsibility for overfishing and the poor status of Atlantic bluefin tuna stocks falls on ICCAT and its member countries, and CBD asserts that there is consensus that the ICCAT process is failing the species.

In the petition, CBD states that in 2008, ICCAT failed to adopt the measures suggested by ICCAT scientists for eastern Atlantic and Mediterranean bluefin tuna. Based on the 2008 stock assessment, SCRS had advised that the maximum TAC for the eastern Atlantic stock be set on the order of 15,000 t or less. SCRS also advised that a time and area closure during the spawning months could greatly facilitate the implementation and monitoring of rebuilding. Additionally, SCRS indicated that a moratorium over the East Atlantic and Mediterranean Sea during 1, 3, or 5 years followed by an F0.1 management strategy would increase the probability of rebuilding the stock by 2023 (SCRS, 2009). In 2008, ICCAT established TACs for eastern bluefin tuna that declined annually for the years 2009 through 2011 (22,000 t, 19,950 t, and 18,500 t, respectively). However, in the petition, CBD did not recognize that, in 2009, ICCAT adopted new 2010 TAC levels for eastern bluefin tuna of 13,500 t, which is within the range of scientific advice, and agreed that, at its 2010 meeting, it would establish TACs for 2011–2013 with the goal of achieving biomass at maximum sustainable yield (Bmsy) through 2022 (the end of the eastern/Mediterranean bluefin tuna recovery period) with at least 60 percent probability, on the basis of 2010 SCRS advice (ICCAT, 2009). CBD also presents information regarding an independent review that ICCAT initiated in 2008 in response to concerns expressed at the United Nations and other international fora about the sustainable management of high seas fisheries. According to CBD, although the review covered all species within ICCAT's management jurisdiction, the Executive Summary of the final report noted that ICCAT's international reputation "will be based largely on how ICCAT manages fisheries on bluefin tuna." They cite that Hurry *et al.* (2008) stated that "ICCAT's members' performance in managing fisheries on bluefin tuna particularly in the eastern Atlantic and Mediterranean Sea is widely regarded as an international disgrace." The petition indicates that the independent review panel concluded that the ICCAT Convention Objectives were not met for either of the two bluefin tuna stocks. The petition goes on to state that the panel recommended that ICCAT suspend fishing on bluefin tuna in the eastern Atlantic and Mediterranean until ICCAT members fully comply with ICCAT recommendations on this stock of bluefin tuna, and also that ICCAT consider an immediate closure of all known bluefin tuna spawning grounds at least during known spawning periods. According to CBD, ICCAT did not follow these recommendations.

CBD states that ICCAT's management performance for the western Atlantic bluefin tuna stock is also poor. According to the petition, in 2008, it was concluded that the 20–year rebuilding plan that was initiated in 1998 has not resulted in the rebuilding that was projected. CBD notes that the review panel attributed the slow rebuilding of the stock to two potential causes: (1) ICCAT's adoption of quotas at levels that fail to meet rebuilding goals, and (2) the rate of mixing between the two stocks. The SCRS (2008) noted that mixing rates are important as even a small amount of mixing between the larger eastern stock and the smaller western stock could have significant effects on the recovery of the latter.

CBD also cites the lack of data as a significant problem plaguing the management of the eastern bluefin tuna stock. It notes that reported catches from the mid 1970s to 2007 were inaccurate, often underestimating the actual catch. Therefore, according to CBD, the extent of the Atlantic bluefin tuna decline is underestimated. According to the petition, this then leads to overfishing and severe population decline because quotas are not based on the high catch that actually occurred, and there are no fishery independent data that would better characterize the decline.

CBD contends that U.S. fishery management also fails to meet its domestic legal obligation to manage fisheries in order to attain optimum yield. It states that the U.S. management measures for western Atlantic bluefin tuna in the Consolidated Atlantic Highly Migratory Species Fishery Management Plan (HMS FMP) are ineffective at maintaining stocks and meeting the requirements to rebuild the population to healthy levels as mandated by the Magnuson Stevens Act. The petition also references a proposed rule that NMFS recently published to increase the maximum daily retention limit and lengthen the season of the General category fishery and increase the Harpoon category daily incidental retention limit (74 FR 57128; November 4, 2009), and indicates that these proposals were made despite the lack of success of recovery efforts for the western Atlantic bluefin tuna stock. It is important to note, however, that the information available in our files indicates that western bluefin tuna biomass levels are not in decline at this time and have remained stable, at low

levels, since the 1990s. It is also important to note that although NMFS' November 4, 2009, proposed rule was intended to more thoroughly utilize the available U.S. bluefin tuna quota established under the 20–year rebuilding program as, in accordance with the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*), the United States cannot increase or decrease its bluefin tuna quota established by ICCAT. To date, the rule has not been finalized.

Finally, the petition claims that there are no habitat protections for the western Atlantic bluefin tuna stock. It notes that NMFS designated an area of the Gulf of Mexico as a Habitat Area of Particular Concern and identified bluefin tuna spawning grounds as needing special protection. However, it states that NMFS did not implement any measures that would actually protect the habitat, and, thus, this designation has done little to protect the species.

Other Natural or Manmade Factors Affecting Its Existence

Chemical contaminants, such as endocrine disrupting chemicals (EDCs) and mercury, and offshore aquaculture in the Gulf of Mexico are presented by CBD as potential threats to Atlantic bluefin tuna. CBD cites Storelli *et al.* (2008) and Fossi *et al.* (2002) who warned that EDCs have the potential to result in reproductive alterations in bluefin tuna as a result of bioaccumulation. Storelli *et al.* (2008) concluded that exposure to EDCs over a long lifetime might "create the prerequisite for the development of pathological conditions" in Atlantic bluefin tuna in the Mediterranean. CBD also states that mercury may accumulate in the food chain due to low pH resulting from climate change induced ocean acidification, which will result in increased bioaccumulation in Atlantic bluefin tuna.

The petitioner also suggests that offshore aquaculture in the Gulf of Mexico is an emerging threat to Atlantic bluefin tuna. CBD cites NMFS (2009), stating that potential impacts from offshore aquaculture include increased nutrient loading, habitat degradation, fish escapement, competition with wild Atlantic bluefin tuna, and spread of pathogens. CBD concludes that offshore aquaculture will affect Atlantic bluefin tuna.

Petition Finding

Based on the above information and the criteria specified in 50 CFR 424.14(b)(2), we find that the petition presents substantial scientific and commercial information indicating that the petitioned action concerning Atlantic bluefin tuna may be warranted. Under section 4(b)(3)(A) of the ESA, this positive 90–day finding requires NMFS to commence a status review of the species. During our status review, we will consider whether there are multiple DPSs within the species' range, whether these are threatened or endangered, and whether the species is in danger of extinction throughout all or a significant portion of its range or likely to become so in the foreseeable future. We now initiate this review, and thus, the Atlantic bluefin tuna is now considered to be a candidate species (69 FR 19976; April 15, 2004). Within 12 months of the receipt of the petition (May 24, 2011), we will make a finding as to whether listing Atlantic bluefin tuna or DPSs of Atlantic bluefin tuna as endangered or threatened is warranted, as required by section 4(b)(3)(B) of the ESA. If warranted, we will publish a proposed rule and solicit public comments before developing and publishing a final determination.

References Cited

A complete list of the references used in this finding is available upon request (see **ADDRESSES**).

Information Solicited

To ensure the status review is based on the best available scientific and commercial data, we solicit information pertaining to Atlantic bluefin tuna. Specifically, we solicit information in the following areas: (1) historical and current distribution and abundance of this species throughout its range; (2) historical and current condition; (3) population status and trends; (4) any current or planned activities that may adversely impact the species, especially as related to the five factors specified in section 4(a)(1) of the ESA and listed above; (5) ongoing efforts to protect and restore the species and its habitat; (6) genetic data or other information that would help us determine whether any population segments of Atlantic bluefin tuna meet the DPS policy criteria of discreteness and significance; and (7) whether any particular portions of the range of the Atlantic bluefin tuna constitute significant portions of the range of the species or of any potential DPSs that may exist. We request that all information be accompanied by: (1) supporting documentation such as maps, bibliographic references, or reprints of pertinent publications; and (2) the submitter's name, address, and any association, institution, or business that the person represents.

Peer Review

On July 1, 1994, NMFS, jointly with the U.S. Fish and Wildlife Service, published a series of policies regarding listings under the ESA, including a policy for peer review of scientific data (59 FR 34270). The intent of the peer review policy is to ensure listings are based on the best scientific and commercial data available. We solicit the names of recognized experts in the field that could take part in the peer review process for this status review. Independent peer reviewers will be selected from the academic and scientific community, tribal and other Native American groups, Federal and state agencies, the private sector, and public interest groups.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: September 14, 2010.

Eric C. Schwaab,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–23486 Filed 9–16–10; 11:15 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 75, No. 182

Tuesday, September 21, 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

Submission for OMB Review; Comment Request

September 16, 2010.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Research Service

Title: Food Safety Education and Training Materials Sharing Form.

OMB Control Number: 0518—NEW.

Summary of Collection: The USDA National Agricultural Library (NAL) has a Food Safety Education and Training Materials Database. The Database is a centralized gateway to access consumer-centric materials for educators and others interested in food safety education. The collection of information is necessary to (1) Ensure resources are not duplicated (*i.e.* extension agents creating previously available education materials) (2) provide a central gateway to access the education materials (3) create a systematic and efficient method of collecting data from USDA grantees and (4) promote awareness of food safety education materials available for a variety of audiences. Materials that will be collected using the "Food Safety Education and Training Materials Sharing Form" will help the Food Safety Information Center (FSIC) staff identify food safety education and training resources for review and inclusion into the Education and Training Materials Database much faster and more efficiently. The authority for NAL to collect this information is contained in CFR, Title 7, Volume 1, Part 2, Subpart K, Sec. 2.65(92).

Need and Use of the Information: FSIS staff members will use information collected by the Sharing Form to build and constantly enhance the Food Safety Education and Training Materials Database. Food safety educators access and use this database to identify and obtain curricula, lesson plans, training tools and participant materials. Vital information about these resources, such as a description of the resources, its creator, publishing and ordering information can be collected in a more standardized and efficient manner using the Sharing Form. Failure to collect this information would significantly inhibit the ability to provide up-to-date information on existing food safety education and training materials that are appropriate for food safety educators, consumers and others interested in food safety education.

Description of Respondents: Individuals or households; Business or other for-profit.

Number of Respondents: 35.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 7.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2010–23531 Filed 9–20–10; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Forest Service

Saguache County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Saguache County Resource Advisory Committee will meet in Saguache, Colorado. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose is to review and recommend project proposals to be funded with Title II money.

DATES: The meeting will be held on October 6, 2010, and will begin at 10 a.m.

ADDRESSES: The meeting will be held at the Saguache Community Building, 525 7th Street, Saguache, Colorado. Written comments should be sent to Mike Blakeman, San Luis Valley Public Lands Center, 1803 West U.S. Highway 160, Monte Vista, CO 81144. Comments may also be sent via e-mail to *mblakeman@fs.fed.us,* or via facsimile to 719–852–6250.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the San Luis Valley Public Lands Center, 1803 West U.S. Highway 160, Monte Vista, CO 81144.

FOR FURTHER INFORMATION CONTACT: Mike Blakeman, RAC coordinator, USDA, San Luis Valley Public Lands Center, 1803 West U.S. Highway 160, Monte Vista, CO 81144; 719–852–6212; E-mail *mblakeman@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information

Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: (1) Introductions of all committee members, replacement members and Forest Service personnel; (2) Develop criteria to evaluate project proposals; (3) Review, evaluate and recommend project proposals to be funded with Title II money; (4) Create a timeline to receive and review new project proposals and schedule the next meeting; and (5) Public Comment. Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting.

Dated: September 10, 2010.

Dan S. Dallas,

Forest Supervisor.

[FR Doc. 2010–23236 Filed 9–20–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Chippewa National Forest Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Chippewa National Forest Resource Advisory Committee will meet in Grand Rapids, Minnesota. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose of the meeting is to orient the new Chippewa National Forest Resource Advisory Committee members on their roles and responsibilities.

DATES: The meeting will be held on Thursday, October 7, 2010, at 9:45 a.m.

ADDRESSES: The meeting will be held at the Minnesota Interagency Fire Center, Training Room, 402 11th Street, SE., Grand Rapids, Minnesota 55744. Written comments should be sent to Chippewa National Forest RAC, 200 Ash Avenue, NW., Cass Lake, MN 56633. Comments may also be sent via e-mail to *kgetting@fs.fed.us,* or via facsimile to 218–335–8637.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Chippewa National Forest Supervisors Office. Visitors are encouraged to call ahead to 218–335–8600 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Kay K. Getting, Public Affairs Team Leader, Chippewa National Forest Supervisors Office, 218–335–8600.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: Overview of the roles and responsbilities of the Chippewa National Forest Resource Advisory Committee members; Election of officers, Development of rules and operational guidelines; Public forum on when and how to submit project proposals. The agenda and any applicable documents may be previewed at *http://fs.usda.gov/chippewa.* Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by October 1, 2010 will have the opportunity to address the Comittee at those sessions.

Dated: September 9, 2010.

Robert N. Schmal,

Acting Chippewa National Forest Supervisor.

[FR Doc. 2010–23566 Filed 9–20–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Industry and Security (BIS).

Title: International Import Certificate.

OMB Control Number: 0694–0017.

Form Number(s): BIS–645P.

Type of Request: Regular submission (extension of a currently approved information collection).

Burden Hours: 52.

Number of Respondents: 195.

Average Hours per Response: 15 minutes to complete BIS–645P; and 1 minute for the recordkeeping requirement.

Needs and Uses: The United States and several other countries have undertaken to increase the effectiveness of their respective controls over international trade in strategic commodities by means of an Import Certificate procedure. For the U.S. importer, this procedure provides that, where required by the exporting country with respect to a specific transaction, the importer certifies to the U.S. Government that he/she will import specific commodities into the United States and will not reexport such commodities except in accordance with the export control regulations of the United States. The U.S. Government, in turn, certifies that such representations have been made.

Affected Public: Business and other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Jasmeet Seehra, (202) 395–3123.

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 Jasmeet Seehra, *Jasmeet_K._Seehra@omb.eop.gov,* or by fax to (202) 395–5167.

Dated: September 15, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–23432 Filed 9–17–10; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Natural Resource Damage Assessment Restoration Project Information Sheet.

OMB Control Number: 0648–0497.

Form Number(s): NA.

Type of Request: Regular submission (extension of a currently approved information collection).

Number of Respondents: 66.

Average Hours per Response: 20 minutes.

Burden Hours: 55.

Needs and Uses: The purpose of the collection of this information is to assist state and federal Natural Resource Trustees in more efficiently carrying out the restoration planning phase of Natural Resource Damage Assessments (NRDA), in compliance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321–4370d; 40 CFR 1500–1500 and other federal and local statutes and regulations as applicable. The NRDA Restoration Project Information Sheets are designed to facilitate the collection of information on existing, planned, or proposed restoration projects. This information will be used by the Natural Resource Trustees to develop potential restoration alternatives for natural resource injuries and service losses requiring restoration during the restoration planning phase of the NRDA process.

Affected Public: State, local or tribal government; business or other for-profit; non-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: *OIRA_Submission@omb.eop.gov.*

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: September 15, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–23434 Filed 9–20–10; 8:45 am]

BILLING CODE 3510–22–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: Bureau of Industry and Security (BIS).

Title: Delivery Verification Certificate and Procedure.

OMB Control Number: 0694–0016.

Form Number(s): BIS–647P.

Type of Request: Regular submission (extension of a currently approved information collection).

Burden Hours: 56.

Number of Respondents: 100.

Average Hours per Response: 30 minutes to complete BIS–647P; 1 minute for recordkeeping requirement; and 4 hours for a special circumstance.

Needs and Uses: The Delivery Verification Certificate is the result of an agreement between the United States and a number of other countries to increase the effectiveness of their respective controls over international trade in strategic commodities. The form is issued and certified by the government of the country of ultimate destination, at the request of the U.S. government (BIS). Supplement No. 5 to Part 748 of the current Export Administration Regulations covers three special circumstances in which the usual procedure for the Delivery Verification Certificate would require clarification.

Affected Public: Business or other for-profit organizations; not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Jasmeet Seehra, (202) 395–3123.

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 Jasmeet Seehra, *Jasmeet_K._Seehra@omb.eop.gov,* or by fax to (202) 395–5167.

Dated: September 15, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–23431 Filed 9–20–10; 8:45 am]

BILLING CODE 3510–33–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: Bureau of Industry and Security (BIS).

Title: Application for NATO International Competitive Bidding.

OMB Control Number: 0694–0128.

Form Number(s): BIS–4023P.

Type of Request: Regular submission (extension of a currently approved information collection).

Burden Hours: 40.

Number of Respondents: 40.

Average Hours per Response: 1 hour.

Needs and Uses: All U.S. firms desiring to participate in the NATO International Competitive Bidding (ICB) process under the NATO Security Investment Program (NSIP) must be certified as technically, financially and professionally competent. The U.S. Department of Commerce is the agency that provides the Statement of Eligibility which certifies these firms. Any such firm seeking certification is required to submit a completed Form BIS–4023P along with a current annual financial report and a resume of past projects in order to become certified and placed on the Consolidated List of Eligible Bidders.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Jasmeet Seehra, (202) 395–3123.

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 Jasmeet Seehra, *Jasmeet_K._Seehra@omb.eop.gov,* or by fax to (202) 395–5167.

Dated: September 16, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–23494 Filed 9–20–10; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Performance Review Board Membership

AGENCY: Economics and Statistics Administration, Commerce.

ACTION: Notice.

SUMMARY: Below is a listing of individuals who are eligible to serve on the Performance Review Board in accordance with the Economics and Statistics Administration's Senior Executive Service and Senior Professional Performance Management Systems:

William G. Bostic, Jr.,
Brian Callahan,
Nancy M. Gordon,
Howard R. Hogan,
Arnold A. Jackson,
Theodore A. Johnson,
Steven J. Jost,
J. Steven Landefeld,
Jennifer Madans,
Marilia Matos,
Brian E. McGrath,
Thomas L. Mesenbourg,
Brent R. Moulton,
Brian C. Moyer,
Joel D. Platt,
Nancy A. Potok,
Obie G. Whichard,
James K. White.

FOR FURTHER INFORMATION CONTACT: Latasha Ellis, 301–763–3727.

Dated: September 9, 2010.

James K. White,

Associate Under Secretary for Management, Chair, Performance Review Board.

[FR Doc. 2010–23433 Filed 9–20–10; 8:45 am]

BILLING CODE 3510–BS–P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; Survey of Income and Program Participation (SIPP) Wave 9 of the 2008 Panel

AGENCY: U.S. Census Bureau.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: To ensure consideration, written comments must be submitted on or before November 22, 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: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Patrick J. Benton, Census Bureau, Room HQ–6H045, Washington, DC 20233–8400, (301) 763–4618.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau conducts the SIPP, which is a household-based survey designed as a continuous series of national panels. New panels are introduced every few years with each panel usually having durations of one to four years. Respondents are interviewed at 4-month intervals or "waves" over the life of the panel. The survey is molded around a central "core" of labor force and income questions that remain fixed throughout the life of the panel. The core is supplemented with questions designed to address specific needs, such as obtaining information on household members' participation in government programs as well as prior labor force patterns of household members. These supplemental questions are included with the core and are referred to as "topical modules."

The SIPP represents a source of information for a wide variety of topics and allows information for separate topics to be integrated to form a single, unified database so that the interaction between tax, transfer, and other government and private policies can be examined. Government domestic-policy formulators depend heavily upon the SIPP information concerning the distribution of income received directly as money or indirectly as in-kind benefits and the effect of tax and transfer programs on this distribution. They also need improved and expanded data on the income and general economic and financial situation of the U.S. population. The SIPP has provided these kinds of data on a continuing basis since 1983 permitting levels of economic well-being and changes in these levels to be measured over time.

The 2008 panel is currently scheduled for 4 years and will include 13 waves of interviewing beginning September 2008. Approximately 65,300 households were selected for the 2008 panel, of which 42,032 households were interviewed. We estimate that each household contains 2.1 people, yielding 88,267 person-level interviews in Wave 1 and subsequent waves. Interviews take 30 minutes on average. Three waves will occur in the 2008 SIPP Panel during FY 2011. The total annual burden for 2008 Panel SIPP interviews would be 132,400 hours in FY 2011.

The topical modules for the 2008 Panel Wave 9 collect information about:

- Adult Well-being
- Informal Care-giving

Wave 8 interviews will be conducted from May 1, 2011 through August 31, 2011.

A 10-minute reinterview of 3,100 people is conducted at each wave to ensure accuracy of responses. Reinterviews require an additional 1,553 burden hours in FY 2011.

II. Method of Collection

The SIPP is designed as a continuing series of national panels of interviewed households that are introduced every few years with each panel having durations of 1 to 4 years. All household members 15 years old or over are interviewed using regular proxy-respondent rules. During the 2008 panel, respondents are interviewed a total of 13 times (13 waves) at 4-month intervals making the SIPP a longitudinal survey. Sample people (all household members present at the time of the first interview) who move within the country and reasonably close to a SIPP primary sampling unit will be followed and interviewed at their new address. Individuals 15 years old or over who enter the household after Wave 1 will be interviewed; however, if these individuals move, they are not followed unless they happen to move along with a Wave 1 sample individual.

III. Data

OMB Control Number: 0607–0944.

Form Number: SIPP/CAPI Automated Instrument.

Type of Review: Regular submission.

Affected Public: Individuals or households.

Estimated Number of Respondents: 88,267 people per wave.

Estimated Time per Response: 30 minutes per person on average.

Estimated Total Annual Burden Hours: 133,953.[1]

Estimated Total Annual Cost: The only cost to respondents is their time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Section 182.

[1] (88,267 × .5 hr × 3 waves + 3,100 × .167 hr × 3 waves)

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 cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 15, 2010.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–23453 Filed 9–20–10; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–968]

Aluminum Extrusions From the People's Republic of China: Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is aligning the final determination in the countervailing duty investigation of aluminum extrusions from the People's Republic of China (PRC) with the final determination in the companion antidumping duty investigation.

DATES: *Effective Date:* September 21, 2010.

FOR FURTHER INFORMATION CONTACT: John Conniff, AD/CVD Operations, Office 3, Import Administration, U.S. Department of Commerce, Room 4014, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1009.

Background

On April 20, 2010, the Department initiated the countervailing and antidumping duty investigations on aluminum extrusions from the PRC. *See Aluminum Extrusions from the People's Republic of China: Initiation of Countervailing Duty Investigation,* 75 FR 22114 (April 27, 2010) (*Initiation*), and accompanying Initiation Checklist [1] and *Aluminum Extrusions from the People's Republic of China: Initiation of Antidumping Duty Investigation,* 75 FR 22108 (April 27, 2010). The countervailing and antidumping duty investigations have the same scope with regard to the subject merchandise covered. On September 7, 2010, the Department published the preliminary affirmative countervailing duty determination pertaining to aluminum extrusions from the PRC. *See Aluminum Extrusions From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination,* 75 FR 54302 (September 7, 2010).

On September 7, 2010, the petitioners [2] submitted a letter, pursuant to 19 CFR 351.210(b)(4)(i), requesting alignment of the final countervailing duty determination with the final determination in the companion antidumping duty investigation of aluminum extrusions from the PRC.

Therefore, in accordance with section 705(a)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.210(b)(4), we are aligning the final countervailing duty determination on aluminum extrusions from the PRC with the final determination in the companion antidumping duty investigation of aluminum extrusions from the PRC. The final countervailing duty determination will be issued on the same date as the final antidumping duty determination, currently scheduled for January 10, 2011.

This notice is issued and published pursuant to section 705(a)(1) of the Act.

Dated: September 15, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–23552 Filed 9–20–10; 8:45 am]

BILLING CODE 3510–DS–P

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[1] Public and business proprietary versions of Departmental memoranda referenced in this Notice are on file in the Central Records Unit (CRU), Room 7046 in the main building of the Commerce Department.

[2] The petitioners are: Aluminum Extrusion Fair Trade Committee: Aerolite Extrusion Company; Alexandria Extrusions Company; Beneda Aluminum of Florida, Inc.; William L. Bonnell Company, Inc.; Frontier Aluminum Corporation; Futura Industries Corporation; Hydro Aluminum North American Inc.; Kaiser Aluminum Corporation; Profile Extrusion Company; Sapa Extrusions, Inc.; Western Extrusions Corporation; and the United Steel, Paper, and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Hawaiian Islands Humpback Whale National Marine Sanctuary Advisory Council

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

ACTION: Notice and request for applications.

SUMMARY: The ONMS is seeking applications for the following vacant seats on the Hawaiian Islands Humpback Whale National Marine Sanctuary Advisory Council: Commercial Shipping, Whale Watching, Ocean Recreation, Business/Commerce, Citizen-at-Large, Conservation, Tourism, Lanaʻi Island Representative, and Molokaʻi Island Representative. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the sanctuary. Applicants who are chosen as members should expect to serve two-year terms, pursuant to the council's charter.

DATES: Applications are due by 1 December 2010.

ADDRESSES: Application kits may be obtained from Joseph Paulin, 6600 Kalanianaole Hwy, Suite 301, Honolulu, HI 96825 or *Joseph.Paulin@noaa.gov.* Completed applications should be sent to the same address. Applications are also available on line at *http://hawaiihumpbackwhale.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Joseph Paulin, 6600 Kalanianaole Hwy, Suite 301, Honolulu, HI 96825 or *Joseph.Paulin@noaa.gov* or 808.397.2651 × 257.

SUPPLEMENTARY INFORMATION: The HIHWNMS Advisory Council was established in March 1996 to assure continued public participation in the management of the sanctuary. Since its establishment, the council has played a vital role in the decisions affecting the Sanctuary surrounding the main Hawaiian Islands.

The council's seventeen voting members represent a variety of local user groups, as well as the general public.

The council is supported by four committees: an Executive Committee

chaired by the Sanctuary Advisory Council Chair, a Research Committee chaired by the Research Representative, an Education Committee chaired by the Education Representative, and a Conservation Committee chaired by the Conservation Representative, each respectively dealing with matters concerning research, education and resource protection.

The council represents the coordination link between the sanctuary and the state and federal management agencies, user groups, researchers, educators, policy makers, and other various groups that help to focus efforts and attention on the humpback whale and its habitat around the main Hawaiian Islands.

The council functions in an advisory capacity to the sanctuary management and is instrumental in helping to develop policies and program goals, and to identify education, outreach, research, long-term monitoring, resource protection and revenue enhancement priorities. The council works in concert with the sanctuary management by keeping him or her informed about issues of concern throughout the sanctuary, offering recommendations on specific issues, and aiding in achieving the goals of the sanctuary within the context of marine programs and policies of Hawai'i.

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

(Federal Domestic Assistance catalog Number 11.429 Marine Sanctuary Program)

Dated: September 13, 2010.

Daniel J. Basta,

Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2010–23448 Filed 9–20–10; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Fagatele Bay National Marine Sanctuary Advisory Council

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

ACTION: Notice and request for applications.

SUMMARY: The ONMS is seeking applications for the following vacant seats on the Fagatele Bay National Marine Sanctuary Advisory Council: Business/Industry, Tourism, Community-at-Large: Tutuila East Side, and Youth. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the sanctuary. Applicants who are chosen as members should expect to serve 3-year terms, pursuant to the council's charter.

DATES: Applications are due by Friday, October 29, 2010.

ADDRESSES: Application kits may be obtained from Emily Gaskin in the Department of Commerce Office in the Executive Office Building. Completed applications should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Emily Gaskin, Department of Commerce Office, Executive Office Building, Utulei, American Samoa, 684–633–5155 ext. 271, *emily.gaskin@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Fagatele Bay National Marine Sanctuary Advisory Council was established in 1986 pursuant to Federal law to ensure continued public participation in the management of the sanctuary. The Sanctuary Advisory Council brings members of a diverse community together to provide advice to the Sanctuary Manager (delegated from the Secretary of Commerce and the Under Secretary for Oceans and Atmosphere) on the management and protection of the Sanctuary, or to assist the National Marine Sanctuary Program in guiding a proposed site through the designation or the periodic management plan review process.

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

(Federal Domestic Assistance catalog Number 11.429 Marine Sanctuary Program)

Dated: September 13, 2010.

Daniel J. Basta,

Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2010–23447 Filed 9–20–10; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–955]

Certain Magnesia Carbon Bricks from the People's Republic of China: Countervailing Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (the Department) and the U.S. International Trade Commission (the ITC), the Department is issuing a countervailing duty order on certain magnesia carbon bricks (MCBs) from the People's Republic of China (PRC). On September 8, 2010, the ITC notified the Department of its affirmative determinations of material injury to a U.S. industry with respect to imports of MCBs from the PRC and Mexico. *See Certain Magnesia Carbon Bricks from China and Mexico* (Investigation Nos. 701–TA–468 and 731–TA–1166–1167 (Final), USITC Publication 4076, September 2010).

EFFECTIVE DATE: September 21, 2010.

FOR FURTHER INFORMATION CONTACT: Summer Avery or Toni Page, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4052 or (202) 482–1398, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 2, 2010, the Department published its affirmative final determination in the countervailing duty investigation of MCBs from the PRC. *See Certain Magnesia Carbon Bricks from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 45472 (August 2, 2010) (*Final Determination*). On September 8, 2010, the ITC notified the Department of its final determination pursuant to section 705(b)(1)(A)(i) of the Tariff Act of 1930, as amended (the Act), that an industry in the United States is materially injured by reason of imports of merchandise from the PRC found to be subsidized by the Department's final determination. *See* section 705(a)(1) of the Act; *see also Final Determination*. In addition, the ITC notified the Department of its final determination that critical circumstances do not exist with respect to imports of subject merchandise from the PRC that are

subject to the Department's affirmative critical circumstances finding. Pursuant to section 706(a) of the Act, the Department is publishing a countervailing duty order on the subject merchandise.

Scope of the Order

The scope of this order includes certain chemically–bonded (resin or pitch), magnesia carbon bricks with a magnesia component of at least 70 percent magnesia ("MgO") by weight, regardless of the source of raw materials for the MgO, with carbon levels ranging from trace amounts to 30 percent by weight, regardless of enhancements (for example, magnesia carbon bricks can be enhanced with coating, grinding, tar impregnation or coking, high temperature heat treatments, anti–slip treatments or metal casing) and regardless of whether or not antioxidants are present (for example, antioxidants can be added to the mix from trace amounts to 15 percent by weight as various metals, metal alloys, and metal carbides). Certain magnesia carbon bricks that are the subject of this order are currently classifiable under subheadings 6902.10.1000, 6902.10.5000, 6815.91.0000, 6815.99.2000 and 6815.99.4000 of the Harmonized Tariff Schedule of the United States ("HTSUS"). While HTSUS subheadings are provided for convenience and customs purposes, the written description is dispositive.

Countervailing Duty Order

On September 8, 2010, the ITC notified the Department of its final determination, pursuant to section 705(b)(1)(A)(i) of the Act, that an industry in the United States is materially injured as a result of subsidized imports of MCBs from the PRC.[1]

As a result of the Department's negative preliminary determination and subsequent affirmative final determination, liquidation was suspended effective the publication date of the *Final Determination. See Final Determination*, 75 FR at 45474.

In accordance with section 706 of the Act, CBP will continue suspension of liquidation for MCBs from the PRC, and will assess, upon further advice by the Department pursuant to section 706(a)(1) of the Act, countervailing duties for each entry of subject merchandise in an amount based on the net countervailable subsidy rates for the subject merchandise.

On or after the date of publication of the ITC's final injury determination in the **Federal Register**, CBP must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the rates noted below:

Exporter/Manufacturer	Net Countervailable Subsidy Rate
RHI (RHI Refractories Liaoning Co., Ltd. and RHI Refractories (Dalian) Co., Ltd.)	24.24 % ad valorem
Mayerton (Liaoning Mayerton Refractories and Dalian Mayerton Refractories Co. Ltd.)	253.87 % ad valorem
All Others	24.24 % ad valorem

With regard to the ITC's negative critical circumstances determination on imports of the subject merchandise from the PRC, as noted above, we did not instruct CBP to suspend entries and collect a cash deposit, bond or other security until publication of our *Final Determination* on August 2, 2010. Accordingly, with respect to countervailing duties, there are no entries prior to March 12, 2010, for which CBP should lift suspension and release any bond or other security pursuant to the ITC's negative critical circumstances determination.

This notice constitutes the countervailing duty order with respect to MCBs from the PRC pursuant to section 706(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room 1117 of the main Commerce building, for copies of an updated list of countervailing duty orders currently in effect.

This notice is issued and published in accordance with sections 705(c)(2), 706(a) and 777(i)(1) of the Act, and 19 CFR 351.211.

Dated: September 15, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–23550 Filed 9–20–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China; Extension of Time Limit for the Final Results of the 2008–2009 Administrative Review of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Brendan Quinn or Trisha Tran, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, *telephone:* (202) 482–5848 or (202) 482–4852, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 29, 2009, the Department of Commerce ("Department") initiated the administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished or unfinished ("TRBs"), from the People's Republic of China ("PRC") for the period June 1, 2008, through May 31, 2009. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Deferral of Administrative Review,* 74 FR 37690 (July 29, 2009). On July 15, 2010, the Department published its preliminary results of the administrative review of the antidumping order on TRBs from the PRC. *See Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People's Republic of China: Preliminary Results of the 2008–2009 Administrative Review of the Antidumping Duty Order,* 75 FR 41148 (July 15, 2010). The final results of this administrative review are currently due no later than November 12, 2010.

[1] Because the vote of the ITC with respect to imports of MCBs from the PRC was evenly divided between a determination of material injury and a determination of threat of material injury, the Department is treating this vote, for purposes of duty assessment, as an affirmative finding of material injury consistent with section 771(11) of the Act.

Extension of Time Limit for Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), requires the Department to issue the final results in an administrative review within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time period to a maximum of 180 days.

We determine that it is not practicable to complete the final results of this review within the original time limit because the Department requires additional time to analyze: (a) Issues raised in post-preliminary results supplemental questionnaire responses; (b) issues raised in recent surrogate value submissions; and (c) the anticipated complexity of arguments in the upcoming case and rebuttal briefs due to surrogate valuation, successor-in-interest, and scope issues with regard to the respondents. Therefore, given the complexity of issues in this case, we are extending the time limit for completion of the final results by 30 days.

An extension of 30 days from the current deadline of November 12, 2010, would result in a new deadline of December 12, 2010. However, since December 12, 2010, falls on a Sunday, a non-business day, the final results will now be due no later than December 13, 2010, the next business day.

This notice is published pursuant to sections 751(a) and 777(i) of the Act.

Dated: September 15, 2010.

Susan H. Kuhbach,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–23551 Filed 9–20–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Extension of Application Period for Seats for the Stellwagen Bank National Marine Sanctuary Advisory Council

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

ACTION: Notice of extension for application period and request for applications.

SUMMARY: The ONMS is extending the deadline and seeking applications for the following vacant seats on the Stellwagen Bank National Marine Sanctuary Advisory Council:

Advisory Council: for member and alternate seats for Conservation; and alternates seats for Whalewatching, Education, At-Large and Mobile Gear Commercial Fishing.

Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the sanctuary. Applicants who are chosen as members should expect to serve two- to three-year terms, pursuant to the council's Charter.

DATES: Applications are due by 11 October, 2010 (COB: close of business day).

ADDRESSES: Application kits may be obtained at *http://www.stellwagen.noaa.gov/sac/news.html.* Completed applications should be sent to *Elizasbeth.stokes@noaa.gov* or faxed to 781–545–8036.

FOR FURTHER INFORMATION CONTACT: Nathalie Ward, Stellwagen Bank National Marine Sanctuary, 175 Edward Foster Road, Scituate, MA 02066, 781–545–8026 X206, *nathalie.ward@noa.gov.*

SUPPLEMENTARY INFORMATION: The Stellwagen Bank National Marine Sanctuary Advisory Council was established in March 2001 to assure continued public participation in the management of the Sanctuary. The Advisory Council's 17 voting members represent a variety of local user groups, as well as the general public, plus 6 local, state and Federal government agencies. Since its establishment, the Council has played a vital role in advising the Sanctuary and NOAA on critical issues.

The Stellwagen Bank National Marine Sanctuary encompasses 842 square miles of ocean, stretching between Cape Ann and Cape Cod. Renowned for its scenic beauty and remarkable productivity, the sanctuary supports a rich diversity of marine life including 22 species of marine mammals, more than 30 species of seabirds, over 60 species of fishes, and hundreds of marine invertebrates and plants.

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

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: September 3, 2010.

Daniel J. Basta,

Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2010–23450 Filed 9–20–10; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–957]

Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the "Department") has determined that countervailable subsidies are being provided to producers and exporters of seamless carbon and alloy steel standard, line, and pressure pipe ("seamless pipe") from the People's Republic of China ("PRC"). For information on the estimated countervailing duty rates, please see the "Suspension of Liquidation" section, below.

DATES: *Effective Date:* September 21, 2010.

FOR FURTHER INFORMATION CONTACT: Shane Subler, Joseph Shuler, and Matthew Jordan, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0189, (202) 482–1293, and (202) 482–1540, respectively.

Period of Investigation

The period for which we are measuring subsidies, or period of investigation, is January 1, 2008, through December 31, 2008.

Case History

The following events have occurred since our preliminary determination. *See Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination,* 75 FR 9163 (March 1, 2010) ("*Preliminary Determination*").

On February 23, 2010, the Department received supplemental questionnaire

responses from Hengyang Steel Tube Group International Trading, Inc. ("Hengyang Trading"), Hengyang Valin Steel Tube Co., Ltd. ("Hengyang Valin"), Hengyang Valin MPM Tube Co., Ltd. ("Hengyang MPM"), Xigang Seamless Steel Tube Co., Ltd. ("Xigang Seamless"), Wuxi Seamless Special Pipe Co., Ltd. ("Special Pipe"), Jiangsu Xigang Group Co., Ltd. ("Xigang Group"), and Wuxi Resources Steel Making Co., Ltd. ("Resources Steel"), as well as responses from Hunan Valin Xiangtan Iron & Steel Co., Ltd. ("Valin Xiangtan"), Wuxi Sifang Steel Tube Co., Ltd. ("Sifang"), Hunan Valin Steel Co., Ltd. ("Hunan Valin"), and Hunan Valin Iron & Steel Group Co., Ltd. ("Valin Group"), (collectively, "Hengyang").

On March 3, 2010, and March 8, 2010, the Department issued questionnaires regarding new subsidy allegations to Tianjin Pipe (Group) Corp., Tianjin Pipe Iron Manufacturing Co., Ltd., Tianguan Yuantong Pipe Product Co., Ltd., Tianjin Pipe International Economic and Trading Co., Ltd., TPCO Charging Development Co., Ltd. (collectively, "TPCO"), and Hengyang. The Department received a response from TPCO on March 10, 2010. The Department received a response from Hengyang on March 23, 2010. The Department issued a supplemental questionnaire to Hengyang on March 29, 2010, and received a response on April 13, 2010. The Department issued a letter on April 5, 2010, to the Government of China ("GOC") asking for an update of its initial questionnaire response with respect to coking coal purchase information supplied to the GOC by Hengyang. The Department received a response to this letter on May 4, 2010. The Department issued a supplemental questionnaire regarding export restrictions to the GOC on April 13, 2010 and received a response on April 20, 2010. The Department issued a letter on April 16, 2010, to the GOC regarding CRC China, a company identified by Hengyang as the ultimate owner of subsidiary companies that held ownership stakes in the responding Hengyang companies since December 11, 2001.[1] The Department received a response on April 30, 2010. The Department sent a letter to the GOC on May 5, 2010, regarding the GOC's April 30 response on CRC China. The Department received a response on May 12, 2010. The Department issued a supplemental questionnaire to the GOC on May 18, 2010, and received a response on May 25, 2010.

On March 1, 2010, Petitioners[2] requested alignment of the final countervailing duty determination with the final determination in the companion antidumping duty investigation of seamless pipe from the PRC, in accordance with section 705(a)(1) of the Tariff Act of 1930, as amended ("the Act"), and 19 CFR 351.210(b)(4). On March 15, 2010, the Department announced the alignment of the final countervailing duty determination of seamless pipe from the PRC with the final determination in the companion antidumping duty investigation of seamless pipe from the PRC. *See Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination,* 75 FR 13255 (March 19, 2010).

On April 14, 2010, U.S. Steel filed an uncreditworthy allegation with respect to Xigang Group, Xigang Seamless, Special Pipe, and Resources Steel. On May 12, 2010, the Department announced it would not investigate the uncreditworthiness allegation. *See* Memorandum from Joseph Shuler and Shane Subler, International Trade Compliance Analysts, to Susan Kuhbach, Director, Office 1, Import Administration, entitled "Uncreditworthy Allegation," (May 12, 2010).

On May 12, 2010, the Department received a response from U.S. Steel regarding the GOC's April 20, 2010, export restrictions response.

From June 7, 2010, to June 18, 2010, we conducted verification of the questionnaire responses submitted by Hengyang and TPCO. *See* Memorandum from Shane Subler and Matthew Jordan, International Trade Compliance Analysts, Office 1, to Susan H. Kuhbach, Office Director, AD/CVD Operations, Office 1, entitled "Verification Report: Hengyang Steel Tube Group International Trading, Inc. ("Hengyang Trading"), Hengyang Valin Steel Tube Co., Ltd. ("Hengyang Valin"), Hengyang Valin MPM Tube Co., Ltd. ("Hengyang MPM"), Xigang Seamless Steel Tube Co., Ltd. ("Xigang Seamless"), Wuxi Seamless Special Pipe Co., Ltd. ("Special Pipe"), Jiangsu Xigang Group Co., Ltd. ("Xigang Group"), Wuxi Resources Steel Making Co., Ltd. ("Resources Steel"), Hunan Valin Xiangtan Iron & Steel Co., Ltd. ("Valin Xiangtan"), Wuxi Sifang Steel Tube Co., Ltd. ("Sifang"), Hunan Valin Steel Co., Ltd. ("Hunan Valin"), and Hunan Valin Iron & Steel Group Co., Ltd. ("Valin Group") (collectively, "Hengyang")" (July 16, 2010); and Memorandum from Scott Holland and Joseph Shuler, International Trade Compliance Analysts, Office 1, to Susan H. Kuhbach, Office Director, AD/CVD Operations, Office 1, entitled "Verification Report: Tianjin Pipe (Group) Corporation ("TPCO Group"), Tianjin Pipe Iron Manufacturing Co., Ltd. ("TPCO Iron"), Tianguan Yuantong Pipe Product Co., Ltd. ("Yuantong"), Tianjin Pipe International Economic and Trading Co., Ltd. ("TPCO International"), and TPCO Charging Development Co., Ltd. ("Charging") (collectively, "TPCO") (August 9, 2010).

On August 13, 2010, the Department issued its Hengyang Post-Preliminary Analysis and TPCO Post-Preliminary Analysis.[3] We received case briefs from the GOC, TPCO, Hengyang, U.S. Steel, Toyota Tsusho American Inc. ("TAI"), and Salem Steel North America, LLC ("Salem Steel") on August 26, 2010. We returned the case brief of Hengyang on August 26, 2010, as it appeared to contain new factual information not on the record of this case. Hengyang resubmitted its case brief on August 30, 2010. The GOC, TPCO, Hengyang, and U.S. Steel submitted rebuttal briefs on September 1, 2010.

The GOC, TPCO, and Petitioners requested a hearing. The same parties later withdrew their requests. Therefore, no hearing was held. Hengyang and U.S. Steel requested a meeting. A meeting with Hengyang was held on September

[1] *See* Volume 5, page 5 of Hengyang's January 4, 2010, questionnaire response.

[2] Petitioners in this investigation are United States Steel Corporation ("U.S. Steel"); TMK IPSCO; V&M Star L.P.; and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO–CLC (collectively, "Petitioners").

[3] *See* Memorandum from Susan H. Kuhbach, Office Director, AD/CVD Operations, Office 1, to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, dated August 13, 2010, "Countervailing Duty Investigation of Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Post-Preliminary Analysis and Calculation Memorandum for: Hengyang Steel Tube Group International Trading, Inc. ("Hengyang Trading"), Hengyang Valin Steel Tube Co., Ltd. ("Hengyang Valin"), Hengyang Valin MPM Tube Co., Ltd. ("Hengyang MPM"), Xigang Seamless Steel Tube Co., Ltd. ("Xigang Seamless"), Wuxi Seamless Special Pipe Co., Ltd. ("Special Pipe"), Jiangsu Xigang Group Co., Ltd. ("Xigang Group"), Wuxi Resources Steel Making Co., Ltd. ("Resources Steel"), Hunan Valin Xiangtan Iron & Steel Co., Ltd. ("Valin Xiangtan"), Wuxi Sifang Steel Tube Co., Ltd. ("Sifang"), Hunan Valin Steel Co., Ltd. ("Hunan Valin"), Hunan Valin Iron & Steel Group Co., Ltd. ("Valin Group") (collectively "Hengyang") (August 13, 2010) ("Hengyang Post-Preliminary Analysis"); and Memorandum from Edward Yang to Ronald Lorentzen, "Countervailing Duty Investigation of Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Post-Preliminary Analysis and Calculation Memorandum for (TPCO)" (August 13, 2010) ("TPCO Post-Preliminary Analysis").

2, 2010. A meeting with U.S. Steel was held on September 3, 2010.

Scope of the Investigation

The scope of this investigation consists of certain seamless carbon and alloy steel (other than stainless steel) pipes and redraw hollows, less than or equal to 16 inches (406.4 mm) in outside diameter, regardless of wall-thickness, manufacturing process (*e.g.,* hot-finished or cold-drawn), end finish (*e.g.,* plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish (*e.g.,* bare, lacquered or coated). Redraw hollows are any unfinished carbon or alloy steel (other than stainless steel) pipe or "hollow profiles" suitable for cold finishing operations, such as cold drawing, to meet the American Society for Testing and Materials ("ASTM") or American Petroleum Institute ("API") specifications referenced below, or comparable specifications. Specifically included within the scope are seamless carbon and alloy steel (other than stainless steel) standard, line, and pressure pipes produced to the ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–589, ASTM A–795, ASTM A–1024, and the API 5L specifications, or comparable specifications, and meeting the physical parameters described above, regardless of application, with the exception of the exclusion discussed below.

Specifically excluded from the scope of the investigation are: (1) All pipes meeting aerospace, hydraulic, and bearing tubing specifications; (2) all pipes meeting the chemical requirements of ASTM A–335, whether finished or unfinished; and (3) unattached couplings. Also excluded from the scope of the investigation are all mechanical, boiler, condenser and heat exchange tubing, except when such products conform to the dimensional requirements, i.e., outside diameter and wall thickness of ASTM A–53, ASTM A–106 or API 5L specifications.

The merchandise covered by the investigation is currently classified in the Harmonized Tariff Schedule of the United States ("HTSUS") under item numbers: 7304.19.1020, 7304.19.1030, 7304.19.1045, 7304.19.1060, 7304.19.5020, 7304.19.5050, 7304.31.6050, 7304.39.0016, 7304.39.0020, 7304.39.0024, 7304.39.0028, 7304.39.0032, 7304.39.0036, 7304.39.0040, 7304.39.0044, 7304.39.0048, 7304.39.0052, 7304.39.0056, 7304.39.0062, 7304.39.0068, 7304.39.0072, 7304.51.5005, 7304.51.5060, 7304.59.6000, 7304.59.8010, 7304.59.8015, 7304.59.8020, 7304.59.8025, 7304.59.8030, 7304.59.8035, 7304.59.8040, 7304.59.8045, 7304.59.8050, 7304.59.8055, 7304.59.8060, 7304.59.8065, and 7304.59.8070.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the merchandise subject to this scope is dispositive.

Scope Comments

On May 26, 2010, Salem Steel, a U.S. importer of cold drawn seamless mechanical tubing, submitted comments on the scope of this investigation. Salem requested that the Department amend the scope of this investigation to exclude CD Mechanical Tubing from the scope of the investigation. On June 4, 2010, Salem Steel submitted proposed scope language to exclude CD mechanical tubing from the scope of the investigation. On June 8, 2010, TAI submitted comments supporting Salem's proposed scope exclusion language. On June 23, 2010, the Department issued a proposed scope modification via letter and requested comments. *See* Letter to Interested Parties, Regarding the "Antidumping Duty Investigation of Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China," dated June 23, 2010. Specifically, the Department's proposed scope modification language excluded "all mechanical, boiler, condenser and heat exchange tubing, except when such products conform to the dimensional requirements, *i.e.,* outside diameter and wall thickness of ASTM A–53, ASTM A–106 or APL 5L specifications." *Id.* On June 30, 2010, TAI and Salem Steel submitted comments that both supported the Department's proposed scope modifications, as well as language that suggested additional modifications to the scope of the investigation. On July 2, 2010, Petitioners also submitted comments that both supported the Department's proposed scope modification, as well as language that suggested additional modifications to the scope of the investigation. On August 20, 2010, the Department issued a proposed scope modification via memorandum and requested comments. On August 23, 2010, TAI submitted comments supporting the Department's proposed scope modification language. After considering parties' comments, the Department has determined to remove ASTM A–335 from the list of covered specifications included within the scope of this investigation, and include the following exclusion language in the scope:

Specifically excluded from the scope of these investigations are: (1) All pipes meeting aerospace, hydraulic, and bearing tubing specifications; (2) all pipes meeting the chemical requirements of ASTM A–335, whether finished or unfinished; and (3) unattached couplings. Also excluded from the scope of these investigations are all mechanical, boiler, condenser and heat exchange tubing, except when such products conform to the dimensional requirements, i.e., outside diameter and wall thickness of ASTM A–53, ASTM A–106 or API 5L specifications.

See Comment 5 of the accompanying Issues and Decision Memorandum for additional information.

Injury Test

Because the PRC is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the U.S. International Trade Commission ("ITC") must determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to a U.S. industry. On November 2, 2009, the ITC issued its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of allegedly subsidized imports of seamless pipe from the PRC. *See Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From China,* 74 FR 57521 (November 6, 2009) and *Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from China: Investigation Nos. 701–TA–469 and 731–TA–1168 (Preliminary)* (November 2009).

Critical Circumstances

In the *Preliminary Determination,* the Department concluded that critical circumstances did not exist with respect to imports of seamless pipe from the PRC from TPCO, in accordance with 703(e)(1) of the Act, because TPCO's shipments did not reach the threshold for a finding that there have been massive imports of the subject merchandise over a relatively short period.[4] However, in the *Preliminary Determination,* the Department concluded that critical circumstances do exist with respect to imports of seamless pipe from the PRC from Hengyang, in accordance with 703(e)(1)(B) of the Act. For "all other" exporters, we determined that critical circumstances do exist with respect to imports of seamless pipe from the PRC from "all other" exporters, in

[4] *See* 75 FR at 9165.

accordance with section 703(e)(1)(B) of the Act.[5]

We have not received any information since the *Preliminary Determination* that would lead us to change our preliminary finding. Therefore, in accordance with 705(a)(2) of the Act, we continue to find that critical circumstances exist with respect to imports of subject merchandise from the PRC from Hengyang and "all other" exporters, but not for imports from TPCO.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the Memorandum from Susan H. Kuhbach, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Acting Deputy Assistant Secretary for Import Administration, entitled "*Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe ("Seamless Pipe") from the People's Republic of China*" (September 10, 2010) (hereafter "Decision Memorandum"), which is hereby adopted by this notice. Attached to this notice as an Appendix is a list of the issues that parties have raised and to which we have responded in the Decision Memorandum. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, Room 1117 in the main building of the Commerce Department. In addition, a complete version of the Decision Memorandum can be accessed directly on the Internet at *http://ia.ita.doc.gov/frn/*. The paper copy and electronic version of the Decision Memorandum are identical in content.

Use of Adverse Facts Available

For purposes of this final determination, we have continued to rely on facts available and to draw an adverse inference, in accordance with sections 776(a) and (b) of the Act, to determine that the GOC's dominance of the market in the PRC for steel round billets supports the reasonable conclusion that this market is significantly distorted. Consequently, we are not relying on domestic prices in the PRC in determining whether a benefit was conferred through the GOC's provision of steel round billets to the mandatory respondents. Similarly, we have continued to apply AFA to determine that all of the steel round billets were provided by government authorities.

The Department continues to find that the use of "facts otherwise available" is warranted with regard to the GOC's provision of electricity to the mandatory respondents. Specifically, the Department requested that the GOC explain how electricity cost increases are reflected in retail price increases. The GOC responded that it was gathering this information, but it did not request an extension from the Department for submitting this information after the original questionnaire deadline date. Because the GOC did not provide the requested information, we determine that necessary information is not on the record. Accordingly, the use of facts otherwise available under section 776(a) of the Act is appropriate. By not responding to our questionnaire, the GOC has failed to act to the best of its ability. Accordingly, we find that an adverse inference is warranted, pursuant to section 776(b) of the Act. Specifically, we find that the GOC's provision of electricity constitutes a financial contribution within the meaning of section 771(5)(D) of the Act and is specific within the meaning of section 771(5A) of the Act. We have also relied on an adverse inference in selecting a benchmark for determining the existence and amount of the benefit.

The Department continues to find that the use of "facts otherwise available" is warranted with regard to TPCO's reported receipt of countervailable grants. The Department requested that the GOC provide information about these grants in the initial questionnaire and a supplemental questionnaire. The GOC did not provide the requested information, asserting that it needed more time to gather the data. Although the GOC responded that it was gathering this information, it did not request an extension from the Department for submitting this information after the supplemental questionnaire deadline date. Because the GOC did not provide the requested information concerning these grants, we determine that necessary information is not on the record and that the GOC did not provide requested information by the submission deadline. Accordingly, the use of facts otherwise available pursuant to section 776(a) of the Act is appropriate. Also, we determine that the GOC has failed to cooperate by not acting to the best of its ability to comply with our request for information as it did not respond by the deadline dates, nor did it explain why it is unable to provide the requested information, with the result that an adverse inference pursuant to section 776(b) of the Act is warranted in the application of facts available. We find that these subsidies are a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act, providing a benefit in the amount of the grant. See 19 CFR 351.504(a). We determine, in the absence of a response from the GOC, that the subsidies received under this program are limited to TPCO. Hence, we find that these subsidies are specific under section 771(5A)(D)(i) of the Act.

In a departure from the *Preliminary Determination,* the Department now finds that the use of "facts otherwise available" pursuant to section 776(a) of the Act is warranted with regard to the provision of coking coal for less than adequate remuneration ("LTAR"). In the *Preliminary Determination,* based on the information on the record at that time, the Department found that none of the mandatory respondents received benefits under the program.[6] At that time, Hengyang was scheduled to provide a supplemental questionnaire response on behalf of certain cross-owned affiliates. Accordingly, the Department stated, "We intend to address {Hengyang's supplemental} response in a post-preliminary determination."[7] In Hengyang's February 23, 2010 supplemental questionnaire response, Hengyang indicated that a cross-owned affiliate used coking coal. Accordingly, subsequent to the *Preliminary Determination,* the Department investigated the allegation concerning coking coal provided for LTAR. In the context of its investigation, the Department requested information from the GOC about the coking coal suppliers and the coking coal industry within the PRC. The GOC did not provide the requested information. Because the GOC did not provide the requested information concerning the coking coal industry within the PRC, we determine that necessary information is not on the record. Accordingly, the use of facts otherwise available pursuant to section 776(a) of the Act is appropriate. Also, we determine that the GOC has failed to cooperate by not acting to the best of its ability to comply with our request for information, with the result that an adverse inference pursuant to section 776(b) of the Act is warranted in the application of facts available. Consequently, we have applied AFA to

[5] *See* 75 FR at 9165.

[6] *See* 75 FR at 9180.

[7] *See* 75 FR at 9170.

determine that all of the coking coal was provided by government authorities.

In a departure from the *Preliminary Determination,* the Department now finds that the use of "facts otherwise available" is warranted with regard to export restrictions on coke. In the *Preliminary Determination,* the Department found the program to be not countervailable.[8] After the *Preliminary Determination,* we requested additional information on this program from the GOC. The GOC failed to answer certain questions from the supplemental questionnaires, which we described in the TPCO Post-Preliminary Analysis and Hengyang Post-Preliminary Analysis.[9] Because the GOC did not provide the requested information concerning the coke industry within the PRC, we determine that necessary information is not on the record. Accordingly, the use of facts otherwise available pursuant to section 776(a) of the Act is appropriate. Also, we determine that the GOC has failed to cooperate by not acting to the best of its ability to comply with our request for information, with the result that an adverse inference pursuant to section 776(b) of the Act is warranted in the application of facts available. In drawing an adverse inference, we determine that the GOC's export restraints on coke constitute a financial contribution (*i.e.,* provision of goods) to PRC producers of downstream goods that incorporate coke within the meaning of sections 771(5)(B) and (D)(ii) of the Act. Moreover, as an adverse inference, we find that GOC's export restraints on coke are specific to producers of seamless pipe in the PRC within the meaning of section 771(5A) of the Act. Accordingly, we determine that, through these export restraints, the GOC is providing inputs to downstream producers of seamless pipe.

The Department also now finds that the use of "facts otherwise available" is warranted with regard to deed tax exemption. In the Hengyang Post-Preliminary Analysis, we determined that Hengyang Valin and Valin Xiangtan each received benefits under this program.[10] We asked the GOC to update its response to the initial questionnaire regarding the benefits received by Hengyang Valin and Valin Xiangtan. However, the GOC stated that it has no record of either company receiving benefits from this program and, therefore, did not provide a response to any parts of the original questionnaire with respect to this program.[11] Because the GOC did not provide the requested information concerning these exemptions, we determine that necessary information is not on the record. Accordingly, the use of facts otherwise available pursuant to section 776(a) of the Act is appropriate. Also, we determine that the GOC has failed to cooperate by not acting to the best of its ability to comply with our request for information. We determine that these deed tax exemptions confer a countervailable benefit on Hengyang. The deed tax exemptions are a financial contribution in the form of revenue forgone.[12] In the absence of a response from the GOC, we find, as an adverse inference pursuant to section 776(b) of the Act, that the subsidies received under this program are limited to Hengyang and, therefore, are specific under section 771(5A)(D)(i) of the Act. The amount of the countervailable benefit is the amount of deed tax Hengyang would have paid in the absence of this program.[13]

The Department finds that the use of "facts otherwise available" is warranted with regard to CRC China and its subsidiaries. In the Hengyang Post-Preliminary Analysis, we found that Hengyang and the GOC failed to provide complete information on CRC China or its subsidiaries.[14] Thus, we had no information to determine the ownership structure of CRC China or its subsidiaries, or to determine whether CRC China or its subsidiaries received countervailable subsidies. We also could not determine whether CRC China and/or its subsidiaries have other cross-owned affiliates (*e.g.,* producers of seamless pipe) that received countervailable subsidies. Because the GOC did not provide the requested information concerning CRC China and its subsidiaries, we determine that necessary information is not on the record. Accordingly, the use of facts otherwise available pursuant to section 776(a) of the Act is appropriate. Also, we determine that the GOC has failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, an adverse inference pursuant to section 776(b) of the Act is warranted in the application of facts available. For purposes of this final determination, we determine that CRC China together with its subsidiaries benefitted from all countervailable programs that at least one respondent in this investigation has used because we do not have information on the record concerning which programs CRC China and its subsidiaries actually used, but do have information that exporters or producers of seamless pipe and their cross-owned companies did use and benefit from these programs. For each of these programs, we are applying the highest rate that we calculated for that program for the responding Hengyang companies as a whole or for TPCO.[15] Specifically, we will apply the highest calculated rate for the identical program in this investigation if either Hengyang or TPCO used the program.

For a full discussion of these issues, please see the Decision Memorandum, at "Use of Facts Otherwise Available and Adverse Facts Available."

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we have calculated a rate for each individually investigated producer/exporter of the subject merchandise. Section 705(c)(5)(A)(i) of the Act states that for companies not investigated, we will determine an "all others" rate equal to the weighted average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates, and any rates determined entirely under section 776 of the Act.

Notwithstanding the language of section 705(c)(1)(B)(i)(I) of the Act, we have not calculated the "all others" rate by weight averaging the rates of TPCO and Hengyang, because doing so risks disclosure of proprietary information. Therefore, we have calculated a simple average of the two responding firms' rates. Since both TPCO and Hengyang received countervailable export subsidies and the "all others" rate is a simple average based on the individually investigated exporters and producers, the "all others" rate includes export subsidies.

We determine the total net countervailable subsidy rates to be:

[8] *See* 75 FR at 9179.

[9] *See* TPCO Post-Preliminary Analysis at pages 3–9; *see also* Hengyang Post-Preliminary Analysis at pages 25–30.

[10] *See* Hengyang Post-Preliminary Analysis at pages 22–23.

[11] *See* Response of the Government of China to the Department's Fourth Supplemental Questionnaire (May 5, 2010) ("G4SR") at 1.

[12] *See* section 771(5)(D)(ii) of the Act.

[13] *See* 19 CFR 351.509(a)(1).

[14] *See* Hengyang Post-Preliminary Analysis at 8.

[15] Tianjin Pipe (Group) Corporation, Tianjin Pipe Iron Manufacturing Co., Ltd., Tianguan Yuantong Pipe Product Co., Ltd., Tianjin Pipe International Economic and Trading Co., Ltd., and TPCO Charging Development Co., Ltd. (collectively, "TPCO").

Exporter/Manufacturer	Net subsidy rate
Tianjin Pipe (Group) Corp., Tianjin Pipe Iron Manufacturing Co., Ltd., Tianguan Yuantong Pipe Product Co., Ltd., Tianjin Pipe International Economic and Trading Co., Ltd., and TPCO Charging Development Co., Ltd.	13.66
Hengyang Steel Tube Group Int'l Trading, Inc., Hengyang Valin Steel Tube Co., Ltd., Hengyang Valin MPM Tube Co., Ltd., Xigang Seamless Steel Tube Co., Ltd., Wuxi Seamless Special Pipe Co., Ltd., Wuxi Resources Steel Making Co., Ltd., Jiangsu Xigang Group Co., Ltd., Hunan Valin Xiangtan Iron & Steel Co., Ltd., Wuxi Sifang Steel Tube Co., Ltd., Hunan Valin Steel Co., Ltd., Hunan Valin Iron & Steel Group Co., Ltd.	53.65
All Others	33.66

Also, in accordance with section 703(d) of the Act, we instructed U.S. Customs and Border Protection ("CBP") to discontinue the suspension of liquidation for countervailing duty purposes for subject merchandise entered on or after June 29, 2010, but to continue the suspension of liquidation of entries made from March 1, 2010, through June 28, 2010.

We will issue a countervailing duty order if the ITC issues a final affirmative injury determination, and will instruct CBP to suspend liquidation of entries of seamless pipe from the PRC and to require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated deposits or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an APO, without the written consent of the Assistant Secretary for Import Administration.

Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an administrative protective order ("APO") of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This determination is published pursuant to sections 705(d) and 777(i) of the Act.

Dated: September 10, 2010.

Paul Piquado,

Acting Deputy Assistant Secretary for Import Administration.

Appendix—List of Comments and Issues in the Decision Memorandum

General Issues

Comment 1 Application of CVD Law to the PRC
Comment 2 Whether Application of the CVD Law to NMEs Violates the Administrative Protection Act
Comment 3 Double Counting/Overlapping Remedies
Comment 4 Cutoff Date for Identifying Subsidies
Comment 5 Scope of the Investigation

Provision of Steel Rounds for LTAR

Comment 6 Application of AFA in Determining the Benchmark for Steel Rounds
Comment 7 Government Ownership Should Not be the Dispositive Factor in Determining Whether a Financial Contribution Has Occurred
Comment 8 Trading Company Suppliers
Comment 9 Benchmark Issues

Government Policy Lending

Comment 10 Whether Chinese Commercial Banks Are "Authorities"
Comment 11 Whether the Policy Loan Program Is *De Jure* Specific
Comment 12 Whether the Department Should Use an In-country Benchmark
Comment 13 External Benchmark Methodology

Whether There is a Provision of Land for LTAR

Comment 14 Financial Contribution
Comment 15 Whether to Use an In-country Benchmark
Comment 16 Whether There Are Flaws in the Thai Benchmark
Comment 17 Whether Land Is Specific
Comment 18 Provision of Land-use Rights to Hengyang

Provision of Coking Coal for LTAR

Comment 19 Countervailability of Program
Comment 20 Freight Benchmark for Coking Coal Purchases

Hengyang-specific Issues

Comment 21 Cross-ownership Between Hengyang Companies
Comment 22 Application of AFA to CRC China
Comment 23 Finding that the GOC Did Not Cooperate With Respect to CRC China
Comment 24 Hengyang Attribution
Comment 25 Hengyang Electricity Purchases
Comment 26 Currency Denomination for Hengyang Loans
Comment 27 Clerical Error Allegations for Debt Restructuring
Comment 28 Uncreditworthiness Allegation

TPCO-specific Issues

Comment 29 TPCO Attribution of Subsidies
Comment 30 TPCO Group Accelerated Depreciation

Other Issues

Comment 31 Export Restraints on Steel Rounds
Comment 32 Export Restraints on Coke

[FR Doc. 2010–23547 Filed 9–20–10; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–956]

Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Critical Circumstances, in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* September 21, 2010.

SUMMARY: The Department of Commerce ("the Department") has determined that certain seamless carbon and alloy steel standard, line, and pressure pipe from the People's Republic of China ("PRC")

are being, or are likely to be, sold in the United States at less than fair value ("LTFV") as provided in section 735 of the Tariff Act of 1930, as amended ("the Act"). The final dumping margins for this investigation are listed in the "Final Determination Margins" section below. The period covered by the investigation is January 1, 2009, through June 30, 2009 (the "POI").

FOR FURTHER INFORMATION CONTACT:

Magd Zalok or Howard Smith, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4162 and 482–5193, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published in the **Federal Register** its preliminary determination of sales at LTFV on April 28, 2010.[1] The Department published in the **Federal Register** its amended preliminary determination of sales at LTFV on May 28, 2010, after identifying and correcting certain ministerial errors.[2] Between May 10, 2010, and May 14, 2010, the Department conducted a verification of Hengyang Steel Tube Group Int'l Trading Inc., and its affiliates Hengyang Valin Steel Tube Co., Ltd., and Hengyang Valin MPM Tube Co., Ltd., (collectively, Hengyang) at its facilities in Hengyang City, China. Between May 17, 2010, and May 26, 2010, the Department conducted a verification of Tianjin Pipe (Group) Corporation and Tianjin Pipe International Economic Trading Corporation (collectively, TPCO) at its facilities in Tianjin City, China. Between June 7, 2010, and June 9, 2010, the Department conducted a verification of TPCO Enterprise Inc. ("TEI"), an affiliate of TPCO, at its facilities in Houston, Texas. *See* the "Verification" section of this notice below for additional information.

On May 24, 2010, Salem Steel North America LLC (Salem Steel), a U.S. importer of cold drawn seamless mechanical tubing, submitted a request to the Department that it reconsider its preliminary decision to include cold drawn mechanical tubing within the scope of the antidumping duty investigation. On May 27, 2010, Petitioners,[3] Salem Steel and a number of other importers and end-users of mechanical tubing met with Department officials to discuss the May 24, 2010, submission filed by Salem Steel. Subsequently, a number of interested parties filed comments regarding excluding mechanical tubing from the scope of the investigation. Additionally, on July 2, 2010, Petitioners submitted a request to the Department that it exclude from the scope seamless pipe made to the American Society for Testing and Materials ("ASTM") A–335 specification. The Department has issued proposed modifications to the scope language addressing mechanical tubing and pipe meeting the ASTM A–335 specification and interested parties have commented on the proposed modifications. *See* the "Scope Comments" section of this notice below for additional information.

On July 9, 2010, Mr. Daniel Porter of Winston Strawn LLP, counsel to TPCO, submitted an affidavit in response to the Department's verification report. The Department subsequently rejected the affidavit because it contained untimely new factual information and Mr. Porter resubmitted the affidavit on July 22, 2010. The Department responded to the affidavit on August 16, 2010. United States Steel Corporation and TPCO filed comments regarding the Department's response to the affidavit on August 18, 2010. United States Steel Corporation filed rebuttal comments on August 20, 2010. *See* the "Verification" section of this notice below for additional information.

On June 7, 2010, Petitioners, Hengyang, and TPCO filed surrogate value information. On June 17, 2010, Petitioners filed rebuttal surrogate value information.

In response to the Department's invitation to comment on the *Preliminary Determination* and *Amended Preliminary Determination,* on July 14, 2010, Petitioners, Hengyang, TPCO, Salem Steel North America LLC ("Salem Steel"), Toyota Tsusho America, Inc. ("TAI") and MC Tubular Products, Inc. ("MC Tubular") filed case briefs. Petitioners, Hengyang, TPCO and the Government of China filed rebuttal briefs on July 21, 2010, and TPCO's rebuttal brief was resubmitted on July 26, 2010.

On July 16, 2010, the Department placed additional data on the record of the investigation and notified interested parties that it would be reconsidering its valuation of the labor wage rate in this investigation as a result of the recent decision in *Dorbest Limited et al.* v. *United States,* 604 F.3d 1363 (Fed. Cir. 2010) (*Dorbest*) issued by the United States Court of Appeals for the Federal Circuit ("CAFC") on May 14, 2010.[4] The Department invited interested parties to comment on the narrow issue of the labor wage rate in light of the CAFC's decision. On July 21, 2010, TPCO and United States Steel Corporation submitted comments on the export data. On August 10, 2010, the Department released additional information relating to the wage rate to interested parties.[5] United States Steel Corporation submitted comments on the additional information on August 12, 2010.

Analysis of Comments Received

All of the issues raised in the case and rebuttal briefs submitted in this investigation are addressed in the "Issues and Decision Memorandum for the Final Determination" dated September 10, 2010, which is hereby adopted by this notice ("Issues and Decision Memorandum"). Appendix I to this notice contains a list of the issues addressed in the Issues and Decision Memorandum. The Issues and Decision Memorandum, which is a public document, is on file in the Central Records Unit ("CRU") at the Main Commerce Building, Room 7046, and is accessible on the Web at *http://ia.ita.doc.gov/frn.* The paper copy and electronic version of the memorandum are identical in content.

Changes Since the Preliminary Determination

Based on our analysis of the comments received, we have made the following changes to our preliminary determination. The following changes have been made to surrogate values: (1) We calculated financial ratios based on data contained within the financial statements of Jindal Steel & Power, Ltd., Oil Country Tubular Ltd., and Lloyds Line Pipe, Ltd. (*see* Comment 6 in the Issues and Decision Memorandum); (2) we valued steel billets using Indonesian

[1] *See Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances, in Part, and Postponement of Final Determination,* 75 FR 22372 (April 28, 2010) ("*Preliminary Determination*").

[2] *See Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Amended Preliminary Determination of Sales at Less than Fair Value,* 75 FR 29972 (May 28, 2010) ("*Amended Preliminary Determination*").

[3] Petitioners are United States Steel Corporation, V&M Star L.P, TMK IPSCO, and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (hereinafter, "Petitioners").

[4] *See* Memorandum to The File, through Howard Smith, Program Manager, AD/CVD Operations, Office 4, concerning, "Data on Labor Wage," dated July 16, 2010.

[5] *See* Memorandum to The File, through Howard Smith, Program Manager, AD/CVD Operations, Office 4, concerning, "Honduras Data on Labor Wage Rate," dated August 10, 2010.

World Trade Atlas ("WTA") import data under Harmonized Tariff Schedule ("HTS") number 7201.20.100 (*see* Comment 7 in the Issues and Decision Memorandum); (3) we valued iron ore using the simple average of iron ore lump prices from the financial statements of Kirloskar Ferrous Industries, Limited and KIOCL, Limited (*see* Comment 9 in the Issues and Decision Memorandum); (4) we valued compressed air based on the value of electricity used to generate the air (*see* Comment 14 in the Issues and Decision Memorandum); (5) we revised our calculation of the value of labor (*see* Comment 5 in the Issues and Decision Memorandum); and (6) we valued calcium silicide (Si Ca cable and SICAWIRE) using HTS number 2850.00.41 (*see* Comment 12 in the Issues and Decision Memorandum).

The following TPCO-specific changes have been made: (1) We have not granted TPCO a by-product offset for electricity (*see* Comment 26 in the Issues and Decision Memorandum); (2) as partial adverse facts available ("AFA"), we assigned each model (control number (CONNUM)) of seamless pipe sold by TPCO to the United States during the POI the highest purchased-billet consumption quantity reported by TPCO (*see* Comment 16 in the Issues and Decision Memorandum); (3) we updated the AFA rate applied to TPCO's downstream sales to reflect the highest CONNUM-specific dumping margin calculated for TPCO (*see* Comment 17 in the Issues and Decision Memorandum); (4) we calculated a value for compressed air in TPCO's margin program (*see* Comment 14 in the Issues and Decision Memorandum); (5) as partial AFA, we based the consumption quantity for steel strap on the average of the three highest usage rates for steel strap reflected in Hengyang's factors of production ("FOP") database (*see* Comment 27 in the Issues and Decision Memorandum); (6) we deducted inland freight insurance from TPCO's reported U.S. prices (*see* Comment 23 in the Issues and Decision Memorandum); (7) we valued steel scrap based on both market economy prices and a surrogate value based on WTA Indian import data (*see* Comment 19 in the Issues and Decision Memorandum); (8) we reduced TPCO's reported by-product offset for steel scrap by the quantity of further processed steel scrap for which TPCO never reported the inputs used for further processing (*see* Comment 20 in the Issues and Decision Memorandum); (9) we corrected the conversion factor for argon gas (*see* Comment 24 in the Issues and Decision Memorandum); and (10) we added truck freight to TPCO's cost of manufacturing to account for TPCO's costs associated with transporting semi-finished pipes for further processing (*see* Comment 21 in the Issues and Decision Memorandum).

The following Hengyang-specific changes have been made: (1) We adjusted the market-economy and non-market economy ("NME") percentages of pig iron purchased (*see* Comment 33 in the Issues and Decision Memorandum); (2) we did not value dolomite and dolomite powder (*see* Comment 13 in the Issues and Decision Memorandum); and (3) we made several corrections to the *Preliminary Determination* margin calculation program (*see* Hengyang Analysis Memorandum).

Scope Comments

As noted above, on May 24, 2010, Salem Steel, submitted comments on the scope of this investigation. Salem requested that the Department amend the scope of this investigation to exclude cold drawn seamless mechanical tubing ("mechanical tubing"). On May 27, 2010, Petitioners, Salem Steel and a number of other importers and end-users of mechanical tubing met with Department officials to discuss the May 24, 2010, submission filed by Salem Steel. On June 4, 2010, Salem Steel submitted proposed scope language to exclude mechanical tubing from the scope of the investigation. On June 8, 2010, MC Tubular Products, Inc. ("MC Tubular") and Toyota Tsusho America, Inc. ("TAI") submitted comments supporting Salem's proposed scope exclusion language. On June 23, 2010, the Department issued a proposed scope modification to interested parties and requested comments.[6] Specifically, the Department's proposed scope modification language excluded "all mechanical, boiler, condenser and heat exchange tubing, except when such products conform to the dimensional requirements, *i.e.,* outside diameter and wall thickness of ASTM A–53, ASTM A–106 or APL 5L specifications."[7] On June 30, 2010, TAI, MC Tubular and Salem Steel submitted comments supporting the exclusion of mechanical tubing from the scope of the investigation and providing suggestions for additional modifications to the scope of the investigation. Primarily parties' comments involved modifying the language so that all forms of mechanical tubing, regardless of whether they conform to the dimensional requirements of certain seamless pipe specifications, are excluded from the scope. On July 2, 2010, Petitioners submitted a request that the Department exclude from the scope seamless pipe produced to the ASTM A–335 specification. On August 19, 2010, the Department issued an additional proposed scope modification which excludes all pipes meeting the chemical requirements of ASTM A–335 whether finished or unfinished. On August 23, 2010, TAI submitted comments supporting the Department's proposed exclusion of ASTM A–335. After considering parties' comments, the Department has determined to remove ASTM A–335 from the list of covered specifications included within the scope of this investigation, and include the following exclusion language in the scope:

> Specifically excluded from the scope of these investigations are: (1) All pipes meeting aerospace, hydraulic, and bearing tubing specifications; (2) all pipes meeting the chemical requirements of ASTM A–335, whether finished or unfinished; and (3) unattached couplings. Also excluded from the scope of these investigations are all mechanical, boiler, condenser and heat exchange tubing, except when such products conform to the dimensional requirements, i.e., outside diameter and wall thickness of ASTM A–53, ASTM A–106 or API 5L specifications.

See Comment 1 of the accompanying Issues and Decision Memorandum for additional information.

Scope of Investigation

The merchandise covered by this investigation is certain seamless carbon and alloy steel (other than stainless steel) pipes and redraw hollows, less than or equal to 16 inches (406.4 mm) in outside diameter, regardless of wall-thickness, manufacturing process (*e.g.,* hot-finished or cold-drawn), end finish (*e.g.,* plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish (*e.g.,* bare, lacquered or coated). Redraw hollows are any unfinished carbon or alloy steel (other than stainless steel) pipe or "hollow profiles" suitable for cold finishing operations, such as cold drawing, to meet the American Society for Testing and Materials ("ASTM") or American Petroleum Institute ("API") specifications referenced below, or comparable specifications. Specifically included within the scope are seamless carbon and alloy steel (other than stainless steel) standard, line, and pressure pipes produced to the ASTM A–53, ASTM A–106, ASTM A–333,

[6] *See* Letter to Interested Parties, Regarding the "Antidumping Duty Investigation of Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China," dated June 23, 2010.

[7] *Id.*

ASTM A–334, ASTM A–589, ASTM A–795, ASTM A–1024, and the API 5L specifications, or comparable specifications, and meeting the physical parameters described above, regardless of application, with the exception of the exclusion discussed below.

Specifically excluded from the scope of the investigation are: (1) All pipes meeting aerospace, hydraulic, and bearing tubing specifications; (2) all pipes meeting the chemical requirements of ASTM A–335, whether finished or unfinished; and (3) unattached couplings. Also excluded from the scope of the investigation are all mechanical, boiler, condenser and heat exchange tubing, except when such products conform to the dimensional requirements, *i.e.,* outside diameter and wall thickness of ASTM A–53, ASTM A–106 or API 5L specifications.

The merchandise covered by the investigation is currently classified in the Harmonized Tariff Schedule of the United States ("HTSUS") under item numbers: 7304.19.1020, 7304.19.1030, 7304.19.1045, 7304.19.1060, 7304.19.5020, 7304.19.5050, 7304.31.6050, 7304.39.0016, 7304.39.0020, 7304.39.0024, 7304.39.0028, 7304.39.0032, 7304.39.0036, 7304.39.0040, 7304.39.0044, 7304.39.0048, 7304.39.0052, 7304.39.0056, 7304.39.0062, 7304.39.0068, 7304.39.0072, 7304.51.5005, 7304.51.5060, 7304.59.6000, 7304.59.8010, 7304.59.8015, 7304.59.8020, 7304.59.8025, 7304.59.8030, 7304.59.8035, 7304.59.8040, 7304.59.8045, 7304.59.8050, 7304.59.8055, 7304.59.8060, 7304.59.8065, and 7304.59.8070.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the merchandise subject to this scope is dispositive.

Verification

As provided in section 782(i) of the Act, we conducted verifications of Hengyang, TPCO, and TEI.[8] In conducting the verifications, we used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents provided by Hengyang, TPCO, and TEI. As noted above, on July 9, 2010, Mr. Daniel Porter of Winston Strawn LLP, counsel to TPCO, submitted an affidavit in response to the Department's verification report concerning TPCO, addressing the ratio TPCO calculated to distinguish between self-produced and purchased billets, as well as the Department's verification findings regarding certain market economy purchases of steel scrap. Specifically, Mr. Porter alleged that, at verification, the Department refused to accept a corrected chart and support documentation that revised its ratio of self-produced and purchased billets and erred in finding that TPCO's market economy purchases of steel scrap were less than the Department's 33 percent threshold for using a market economy price to value all of the input. The Department requested that Mr. Porter resubmit this affidavit to omit certain untimely new factual information; Mr. Porter complied and resubmitted the affidavit on July 22, 2010. On August 16, 2010, the Department issued a memorandum in response to Mr. Porter's affidavit. Specifically, the Department stated that it would not have accepted such information at verification because it would have been considered new information. On August 18, 2010, Petitioners submitted comments supporting the Department's response. On August 18, 2010, TPCO submitted comments contesting the facts in the Department's memorandum and arguing that the Department should have accepted its revisions and that information on the record prior to verification would have supported its ratio revisions. On August 20, 2010, Petitioners submitted comments arguing that TPCO's data for its consumption of steel billets could not be verified. *See* Comment 16 of the accompanying Issues and Decision Memorandum for additional information.

Surrogate Country

In the *Preliminary Determination,* pursuant to section 773(c) of the Act, we selected India as the appropriate surrogate country because it is at a level of economic development comparable to the PRC, and because it is a significant producer of merchandise comparable to subject merchandise. Additionally, we determined that reliable Indian data for valuing FOPs are readily available.[9] No party has commented on our selection of India as the appropriate surrogate country. We continue to find India to be the appropriate surrogate country in this investigation.

Separate Rates

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.[10]

In the *Preliminary Determination,* we found that TPCO, Hengyang, Xigang Seamless Steel Tube Co., Ltd. ("Xigang"), Jiangyin City Changjiang Steel Pipe Co., Ltd., Pangang Group Chengdu Iron & Steel Co., Ltd., Yangzhou Lontrin Steel Tube Co., Ltd., and Yangzhou Chengde Steel Tube Co., Ltd., demonstrated their eligibility for, and were hence assigned, separate rate status. No party has commented on the eligibility of these companies for separate rate status. For the final determination, we continue to find that the evidence placed on the record of this investigation by these companies demonstrates both a *de jure* and *de facto* absence of government control with respect to their exports of the merchandise under investigation and that these companies are thus eligible for separate rate status.[11]

Critical Circumstances

In the *Preliminary Determination,* the Department determined that, in accordance with section 733(e)(1) of the Act, critical circumstances exist with respect to Hengyang and the PRC-wide entity but not for TPCO or the separate rate companies, including Xigang. After the *Preliminary Determination,* TPCO and Hengyang placed additional shipment data on the record for use in the Department's critical circumstances analysis. Furthermore, Hengyang contended that the Department must revisit its critical circumstances analysis using Hengyang's final antidumping duty margin. We have examined the additional shipment information placed on the record, as adjusted for verification findings, and reviewed Hengyang's final antidumping margin and, for the final determination, we continue to find that critical circumstances exist with respect to Hengyang and the PRC-wide entity but

[8] *See* the Department's verification reports for Hengyang and TPCO, both on file in the CRU.

[9] *See Preliminary Determination,* 75 FR at 22376–22377.

[10] *See, e.g., Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China,* 56 FR 20588 (May 6, 1991), as amplified by *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China,* 59 FR 22585 (May 2, 1994); *see also* 19 CFR 351.107(d).

[11] *See Preliminary Determination,* 75 FR at 22377–22378.

not for TPCO or the separate rate companies, including Xigang.

The PRC-Wide Rate

In the *Preliminary Determination,* the Department considered certain non-responsive PRC producers/exporters to be part of the PRC-wide entity because they did not respond to our requests for information and did not demonstrate that they operated free of government control over their export activities.[12] No additional information regarding these entities has been placed on the record since the publication of the *Preliminary Determination.* Since the PRC-wide entity did not provide the Department with requested information, pursuant to section 776(a)(2)(A) of the Act, we continue to find it appropriate to base the PRC-wide rate on facts otherwise available. Moreover, given that the PRC-wide entity did not respond to our request for information, we continue to find that it failed to cooperate to the best of its ability to comply with a request for information. Thus, pursuant to section 776(b) of the Act, and consistent with the Department's practice, we have continued to use an adverse inference in selecting from among the facts otherwise available.[13]

Pursuant to section 776(b) of the Act, the Department may select, as AFA, information derived from: (1) The petition; (2) the final determination from the LTFV investigation; (3) a previous administrative review; or (4) any other information placed on the record. To induce respondents to provide the Department with complete and accurate information in a timely manner, the Department's practice is to select, as AFA, the higher of: (a) The highest margin alleged in the petition; or (b) the highest calculated rate for any respondent in the investigation.[14]

Since we begin with the presumption that all companies within an NME country are subject to government control and only the exporters listed under the "Final Determination Margins" section below have overcome that presumption, consistent with the Department's practice, we are applying a single antidumping rate (*i.e.,* the PRC-wide rate) to all exporters of subject merchandise from the PRC, other than the exporters listed in the "Final Determination Margins" section of this notice.[15]

Corroboration

Section 776(c) of the Act provides that, when the Department relies on secondary information, rather than on information obtained in the course of an investigation as facts available ("FA"), it must, to the extent practicable, corroborate that information from independent sources reasonably at its disposal. Secondary information is described in the Statement of Administrative Action ("SAA") as "information derived from the petition that gave rise to the investigation or review, the final determination concerning subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise."[16] The SAA provides that to "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value.[17] The SAA also states that independent sources used to corroborate may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.[18] To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.[19]

As total AFA, the Department preliminarily selected the rate of 98.37 percent from the "Petition for the Imposition of Antidumping Duties: Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China," dated September 16, 2009 ("Petition"). In the *Preliminary Determination,* we preliminarily found the rate of 98.37 percent to be the highest Petition margin that could be corroborated within the meaning of section 776(c) of the Act. For the final determination, we find that this rate, as adjusted to reflect the CAFC's decision in *Dorbest* (98.74), is within the range of CONNUM-specific margins calculated for the mandatory respondents in this proceeding. Therefore, we consider the rate to have probative value. *See* Hengyang and TPCO Analysis Memoranda. Therefore, we continue to find that the margin based on the petition has probative value. Accordingly, we find that the rate of 98.74 percent is corroborated within the meaning of section 776(c) of the Act.

Partial AFA for TPCO

As in the *Preliminary Determination,* the Department has continued to apply partial AFA with respect to the unreported downstream sales of TPCO's U.S. affiliate which TPCO failed to timely submit to the Department. Because this information is not on the record and TPCO significantly impeded this proceeding by its failure to timely submit the information, we have continued to rely upon the FA with respect to the unreported sales pursuant to sections 776(a)(1) and (2)(C) of the Act. Further, because the Department finds that TPCO failed to cooperate to the best of its ability, pursuant to section 776(b) of the Act, the Department has determined to use an adverse inference when applying FA in this investigation. As partial AFA, the Department is applying to the unreported sales the highest control number-specific dumping margin calculated for TPCO. For further details, *see* Comment 17 of the Issues and Decision Memorandum.

Also, the Department finds that the correct ratios of purchased and self-produced billets which TPCO used to produce subject merchandise are not on the record because the information regarding these ratios that was provided by TPCO could not be verified, pursuant to sections 776(a)(1) and (2)(D) of the Act. Accordingly, the Department is using FA. Moreover, because the Department finds that TPCO failed to cooperate by not acting to the best of its ability, pursuant to section 776(b) of the Act, the Department has determined to use an adverse inference when applying partial facts available. As partial AFA,

[12] *See id.,* 75 FR at 22379–22380.

[13] *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation,* 65 FR 5510, 5518 (February 4, 2000) (where the Department applied an adverse inference in determining the Russia-wide rate); *Final Determination of Sales at Less Than Fair Value: Certain Artists Canvas from the People's Republic of China,* 71 FR 16116, 16118–19 (March 30, 2006) (where the Department applied an adverse inference in determining the PRC-wide rate).

[14] *See Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products From the People's Republic of China,* 65 FR 34660 (May 31, 2000), and accompanying Issues and Decisions Memorandum at "Facts Available."

[15] *See Synthetic Indigo From the People's Republic of China; Notice of Final Determination of Sales at Less Than Fair Value,* 65 FR 25706 (May 3, 2000) (applying the PRC-wide rate to all exporters of subject merchandise in the PRC based on the presumption that the export activities of the companies that failed to respond to the Department's questionnaire were controlled by the PRC government).

[16] *See* SAA, accompanying the Uruguay Round Agreements Act, H.R. Doc. 103–316, Vol. 1 at 870.

[17] *See id.*

[18] *See id.*

[19] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews,* 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part,* 62 FR 11825 (March 13, 1997).

the Department is using the highest purchased billet usage rate of any CONNUM sold to the United States during the POI, reported in TPCO's FOP database, as the usage rate for purchased steel billets for all other CONNUMs. For further details, *see* Comment 16 of the Issues and Decision Memorandum.

In addition, the Department finds that necessary information is not on the record to determine TPCO's steel strap usage because TPCO did not report its steel strap usage by the deadline established by the Department, pursuant to sections 776(a)(1) and (2)(B) of the Act. Thus, the Department has determined to use FA. Moreover, because the Department finds that TPCO failed to cooperate by not acting to the best of its ability to report steel strap usage, pursuant to section 776(b) of the Act, the Department has determined to use an adverse inference when applying partial facts available. As partial AFA, we have assigned the average of the two highest consumption rates for steel strap provided on the record of this investigation by Hengyang, the other mandatory respondent in this investigation, to all CONNUMs reported in TPCO's FOP database. For further details, *see* Comment 27 of the Issues and Decision Memorandum.

Combination Rates

In the *Initiation Notice,* the Department stated that it would calculate combination rates for respondents that are eligible for a separate rate in this investigation.[20] This practice is described in Department Policy Bulletin 05.1, "Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries," which states:

> {W}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its {non-market economy} investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of "combination rates" because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation.[21]

Final Determination Margins

We determine that the following weighted-average dumping margins exist for the period January 1, 2009, through June 30, 2009:

Exporter & producer	Weighted-average margin (percent)
Tianjin Pipe International Economic and Trading Corporation	48.99
Produced by: Tianjin Pipe (Group) Corporation.	
Hengyang Steel Tube Group Int'l Trading Inc.	82.03
Produced by: Hengyang Valin Steel Tube Co., Ltd., and Hengyang Valin MPM Tube Co., Ltd..	
Xigang Seamless Steel Tube Co., Ltd.	65.51
Produced by: Xigang Seamless Steel Tube Co., Ltd., and Wuxi Seamless Special Pipe Co., Ltd..	
Jiangyin City Changjiang Steel Pipe Co., Ltd.	65.51
Produced by: Jiangyin City Changjiang Steel Pipe Co., Ltd..	
Pangang Group Chengdu Iron & Steel Co., Ltd.	65.51
Produced by: Pangang Group Chengdu Iron & Steel Co., Ltd..	
Yangzhou Lontrin Steel Tube Co., Ltd.	65.51
Produced by: Yangzhou Lontrin Steel Tube Co., Ltd..	
Yangzhou Chengde Steel Tube Co., Ltd.	65.51
Produced by: Yangzhou Chengde Steel Tube Co., Ltd..	
PRC-Wide Rate	98.74

Disclosure

We will disclose to parties the calculations performed within five days of the date of public announcement of this determination in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, and consistent with our finding of critical circumstances with respect to Hengyang and the PRC-wide entity, pursuant to section 733(e)(2) of the Act, the Department will instruct U.S. Customs and Border Protection ("CBP") to continue to suspend liquidation of all entries of certain seamless carbon and alloy steel standard, line, and pressure pipe from the PRC, as described in the "Scope of Investigation" section, entered, or withdrawn from warehouse, for consumption on or after January 28, 2010, which is 90 days prior to the date of publication of the *Preliminary Determination* in the **Federal Register**. However, because we have determined that critical circumstances does not exist for TPCO or the separate rate companies (including Xigang), we will instruct CBP to continue to suspend liquidation of all entries of the merchandise under consideration from the PRC entered, or withdrawn from warehouse, for the consumption on or after April 28, 2010, the date of publication of the *Preliminary Determination*.

[20] See Certain *Seamless Carbon and Alloy* Steel Standard, Line, and Pressure Pipe From the People's Republic of China: Initiation of Antidumping Duty Investigation, 74 FR 52744, 52748 (October 14, 2009) ("*Initiation Notice*").

[21] *See* Policy Bulletin 05.1 can be found on the Import Administration Web site at the following address: *http://ia.ita.doc.gov/policy/bull05–1.pdf.*

Additionally, the Department determined in its final determination for the companion countervailing duty ("CVD") investigation that TPCO's and Hengyang's merchandise benefited from export subsidies.[22] Therefore, we will instruct CBP to require a cash deposit or posting of a bond equal to the weighted-average amount by which normal value exceeds U.S. price for TPCO and Hengyang, as indicated above, minus the amount determined to constitute an export subsidy.[23]

With respect to the companies other than TPCO and Hengyang that are receiving a separate rate, we have applied to these companies the average of the rates calculated for TPCO and Hengyang. In the companion CVD investigation, the Department found that TPCO's and Hengyang's merchandise benefited from export subsidies during the POI, and, consequently all other exporters (besides TPCO and Hengyang) were found to have benefited from export subsidies based upon TPCO's and Hengyang's results. Therefore, we will instruct CBP to require a cash deposit or posting of a bond equal to the weighted-average amount by which normal value exceeds U.S. price for TPCO and Hengyang, as indicated above, minus the amount determined to constitute an export subsidy.

With respect to the PRC-wide entity, as AFA, we applied the highest rate from the Petition, as adjusted to reflect the CAFC's decision in *Dorbest,* that we were able to corroborate. *See* the *Corroboration* section above.

Cash Deposit

The Department will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average dumping margin amount by which the normal value exceeds U.S. price, as follows: (1) The rate for the exporter/producer combinations listed in the chart above will be the rate the Department has determined in this final determination; (2) for all PRC exporters of subject merchandise which have not received their own rate, the cash-deposit rate will be the PRC-wide entity rate; and (3) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash-deposit rate will be the rate applicable to the PRC exporter/producer combination that supplied that non-PRC exporter. These suspension-of-liquidation instructions will remain in effect until further notice.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission ("ITC") of our final determination of sales at LTFV. As our final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will determine whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise within 45 days of this final determination. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess, upon further instruction by the Department, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding APO

This notice also serves as a reminder to the parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination and notice are issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: September 10, 2010.

Paul Piquado,

Acting Deputy Assistant Secretary for Import Administration.

Appendix I

Comment 1: Scope Issues
Comment 2: Double Remedy
Comment 3: Zeroing
Comment 4: Whether to Deduct Chinese VAT from U.S. Price
Comment 5: The Appropriate Surrogate Value for Labor
Comment 6: The Appropriate Financial Statements
Comment 7: The Appropriate Surrogate Value for Steel Billets
Comment 8: The Appropriate Surrogate Value for Pig Iron
Comment 9: The Appropriate Surrogate Value for Iron Ore and Iron Powder
Comment 10: The Appropriate Surrogate Value for Oxygen and Nitrogen
Comment 11: The Appropriate Surrogate Value for Medium Chromium
Comment 12: The Appropriate Surrogate Value for SiCa Cable
Comment 13: The Appropriate Surrogate Value for Dolomite and Dolomite Powder
Comment 14: The Appropriate Surrogate Value for Compressed Air
Comment 15: The Appropriate Surrogate Value for Steam Coal
Comment 16: Whether to Apply AFA Because of Errors in the FOP Database
Comment 17: Whether TPCO is Affiliated with One of its U.S. Customers and Whether AFA or Partial AFA Should be Applied Because of Unreported Downstream Sales
Comment 18: Whether Targeted Dumping Exists
Comment 19: Whether Market Economy Purchase Prices Should be Used to Value Steel Scrap
Comment 20: Whether to Disallow a By-Product Offset for Steel Scrap
Comment 21: Calculating Freight Expenses for Transporting Pipe for Further Processing
Comment 22: Whether Certain Materials are Inputs or Overhead
Comment 23: Whether to Deduct Domestic Inland Insurance from the U.S. Price
Comment 24: Whether to Correct the Conversion Factor for Argon
Comment 25: Whether to Calculate a Factor for Pipeline Transmission
Comment 26: Whether to Disallow a By-Product Offset for Electricity
Comment 27: Whether to Apply Partial AFA to Unreported Steel Strap
Comment 28: Whether to Deduct Warranty Expenses from the U.S. Price
Comment 29: Whether to Deduct Unreported Stevedoring Expenses from the U.S. Price
Comment 30: Whether the 33 Percent Threshold Test is Appropriate When Deciding to Use Market Economy Purchase Prices
Comment 31: Whether the Ratio for Pig Iron was Calculated Correctly
Comment 32: Whether Freight Cost Should be Added to TPCO's Consumption of Water
Comment 33: Pig Iron Market Economy Purchases

[22] *See Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* dated concurrently with this notice.

[23] *See Notice of Final Determination of Sales at Less Than Fair Value: Carbazole Violet Pigment 23 from India,* 69 FR 67306, 67307 (November 17, 2004).

Comment 34: Export Price Sales Classification to a U.S. Customer
Comment 35: Steel Scrap Offset
Comment 36: By-product Offset for the Recovery of Blast Furnace Gas
Comment 37: Whether Hengyang Failed to Report Certain Alloying Materials
Comment 38: Treating Certain Ancillary Materials as Inputs
Comment 39: Application of Certain Adjustment to the Factors for Sintered Iron Ore
Comment 40: Critical Circumstances

[FR Doc. 2010–23549 Filed 9–20–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–914]

Light–Walled Rectangular Pipe and Tube from the People's Republic of China: Final Results of the 2008–2009 Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On May 14, 2010, the Department of Commerce (the "Department") published the preliminary results of the administrative review of the antidumping duty order on light–walled rectangular pipe and tube from the People's Republic of China ("PRC"), covering the period January 20, 2008, through July 31, 2009. *See Light–Walled Rectangular Pipe and Tube from the People's Republic of China: Preliminary Results of the 2008–2009 Antidumping Duty Administrative Review*, 75 FR 27308 (May 14, 2010) ("*Preliminary Results*"). We gave interested parties an opportunity to comment on the *Preliminary Results*. After reviewing the interested parties' comments, we made changes to our calculations for the final results of the review. The final dumping margin for this review is listed in the "Final Results of Review" section below.

EFFECTIVE DATE: September 21, 2010.

FOR FURTHER INFORMATION CONTACT: Melissa Blackledge or Howard Smith, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–3518 or (202) 482–5193, respectively.

SUPPLEMENTARY INFORMATION:

Background

Following the *Preliminary Results*, the Department issued additional supplemental questionnaires to Sun Group Inc.'s ("respondent") U.S. affiliated importer FitMAX Inc. ("FitMAX") on June 2, 2010 and June 16, 2010. FitMAX responded on June 7, 2010, and June 21, 2010, respectively. Respondent submitted post–preliminary surrogate value comments on June 1, 2010, and on June 11, 2010, petitioners[1] submitted rebuttal comments. On June 28, 2010, respondent submitted a case brief, and on July 6, 2010, petitioners submitted a rebuttal brief. None of the interested parties requested a hearing.

As explained in the memorandum from the Deputy Assistant Secretary for Import Administration, the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from February 5, through February 12, 2010. Thus, all deadlines in this segment of the proceeding were extended by seven days. The revised deadline for the final results of this administrative review was thus extended to September 11, 2010. *See* Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorms," dated February 12, 2010.

On June 9, 2010, the Department notified parties that as a result of the recent decision in *Dorbest Limited et al. v. United States*, No. 2009–1257, -1266 (Fed. Cir. May 14, 2010), issued by the United States Court of Appeals for the Federal Circuit ("CAFC"), the Department would be reconsidering its valuation of labor in this review. On July 22, 2010, the Department placed export data on the record of the review and gave parties until July 27, 2010, to comment on the narrow issue of the labor wage value in light of the CAFC's decision. On July 27, 2010, respondent submitted comments on the labor wage issue. No other party commented.

Scope of the Order

The merchandise subject to this order is certain welded carbon–quality light–walled steel pipe and tube, of rectangular (including square) cross section, having a wall thickness of less than 4 mm.

The term carbon–quality steel includes both carbon steel and alloy steel which contains only small amounts of alloying elements. Specifically, the term carbon–quality includes products in which none of the elements listed below exceeds the quantity by weight respectively indicated: 1.80 percent of manganese, or 2.25 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 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.15 percent vanadium, or 0.15 percent of zirconium. The description of carbon–quality is intended to identify carbon–quality products within the scope. The welded carbon–quality rectangular pipe and tube subject to the order is currently classified under the Harmonized Tariff Schedule of the United States ("HTSUS") subheadings 7306.61.50.00 and 7306.61.70.60.

While HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of the order is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs are addressed in the "Issues and Decision Memorandum for the Final Results in the Antidumping Duty Administrative Review of Light–Walled Rectangular Pipe and Tube from the People's Republic of China" ("Issues and Decision Memorandum"), which is dated concurrently with and hereby adopted by this notice. A list of the issues that parties raised and to which we responded in the Issues and Decision Memorandum is attached to this notice as an Appendix. The Issues and Decision Memorandum is a public document that is on file in the Central Records Unit in room 7046 in the main Department building, and is accessible on the web at http://www.ia.ita.doc.gov/frn. The paper copy and electronic version of the memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of the comments received, we made the following changes in calculating the respondent's dumping margin: (1) we made changes to the surrogate value for labor; and (2) we excluded delivery and website expenses from U.S. indirect selling expenses ("ISE") used to calculate the ISE ratio. For further details, see the accompanying "Issues and Decision Memorandum," and the memoranda entitled "Analysis for the Final Results of Antidumping Duty Administrative Review of Light–Walled Rectangular Pipe and Tube from the People's Republic of China: Sun Group Inc.," and "2008–2009 Antidumping Duty Administrative Review of Light–Walled Rectangular Pipe and Tube from the People's Republic of China:

[1] Petitioners are Atlas Tube, Bull Moose Tube Company and Searing Industries, Inc.

Surrogate Values for the Final Results" memoranda, all dated September 13, 2010.

Final Results of Review

We determine that the following margin exists for the period January 20, 2008, through July 31, 2009:

LIGHT–WALLED RECTANGULAR PIPE AND TUBE FROM THE PRC

Company	Weighted–Average Margin (Percent)
The Sun Group Inc.	27.12

Assessment Rates

The Department has determined, and U.S. Customs and Border Protection ("CBP") shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review.

Cash Deposit Requirements

The following cash–deposit requirements will apply to all shipments of light–walled rectangular pipe and tube from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Tariff Act of 1930, as amended (the "Act"): (1) the cash deposit rate for the reviewed company named above will be the rate for that firm established in the final results of this administrative review; (2) for any previously reviewed or investigated PRC or non–PRC exporter, not covered in this review, with a separate rate, the cash deposit rate will be the company–specific rate established in the most recent segment of this proceeding; (3) for all other PRC exporters, the cash deposit rate will be the PRC–wide rate which is 264.64 percent; and (4) the cash–deposit rate for any non–PRC exporter of subject merchandise from the PRC will be the rate applicable to the PRC exporter that supplied that exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Interested Parties

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a final reminder to parties subject to the administrative protective order ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under the APO in accordance with 19 CFR 351.305. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice of final results is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 13, 2010.

Ronald K. Lorentzen.

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–23548 Filed 9–20–10; 8:45 am]

BILLING CODE 3510–DS–S

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, October 1, 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. 2010–23645 Filed 9–17–10; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday October 15, 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. 2010–23648 Filed 9–17–10; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, October 22, 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. 2010–23649 Filed 9–17–10; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, October 8, 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. 2010–23647 Filed 9–17–10; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, October 29, 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. 2010–23650 Filed 9–17–10; 4:15 pm]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2010–OS–0123]

Privacy Act of 1974; System of Records

AGENCY: Department of Defense.

ACTION: Notice to alter a system of records.

SUMMARY: The Office of the Secretary of Defense proposes to alter a system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action would be effective without further notice on October 21, 2010, unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, Room 3C843 Pentagon, 1160 Defense Pentagon, Washington, DC 20301–1160.

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

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Allard at (703) 588–6830.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the Chief, OSD/JS Privacy Office, Freedom of Information Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington DC 20301–1155.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on September 8, 2010, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: September 15, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DNDU 01

SYSTEM NAME:

National Defense University (NDU) Student Data Files (October 1, 2008; 73 FR 57080).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "National Defense University, 300 5th Avenue, Building 62, Fort Leslie J. McNair, Washington, DC 20319–5000."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "Active Military, Reserve, National Guard, DoD and other Federal and State civilians, international military and civilian fellow, contractor, and private industry students attached to the National Defense University. Resident/non-resident students enrolled in courses of instruction at The National Defense University (NDU), including the College of International Security Affairs, Industrial College of the Armed Forces, Information Resources Management College, Joint Forces Staff College, National War College, Center for Applied Strategic Learning, Center for the Study of Chinese Military Affairs, Center for the Study of Weapons of Mass Destruction, Center for Technology and National Security Policy, Institute for National Strategic Studies, CAPSTONE, Institute for National Security Ethics and Leadership, International Student Management Office, Joint Reserve Affairs Center, NATO Education Center, Secretary of Defense Corporate Fellows Program, and Strategic Policy Forum."

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Name, address, date of birth, citizenship, race, Social Security Number (SSN), phone numbers, e-mail addresses, disability information, student identification number, grade/rank, branch of service or civilian agency, years of Federal service, school attended and years of attendance, security clearance granted and date, biographical data, course/section assignment, prior education, and academic data."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "10 U.S.C. 2165, National Defense University; 10 U.S.C. 2163, Degree Granting Authority for National Defense University and E.O. 9397, as amended (SSN)."

PURPOSE(S):

Delete entry and replace with "To confirm attendance eligibility, monitor student progress, produce record of grades and achievements, prepare assignment rosters and to render management, statistical summaries and reports at the National Defense University."

* * * * *

RETRIEVABILITY:

Delete entry and replace with "By name, Social Security Number (SSN), or student identification number."

SAFEGUARDS:

Delete entry and replace with "Records are housed in a controlled entry building with 24/7 security guards and accessed only by authorized personnel having an official need-to-know. Access Rights List is the Computer Network Defense Service Provider with 24/7 monitoring of all incoming and outgoing traffic. An Intrusion Detection System, firewalls, routers, and Access Control Lists are used to protect access to the system. Virtual Private Network and Secure Socket Layers are used for transactions to and from the system. Internally, National Defense University employs a two-factor authentication, Common Access Card login, role-based profiles and access is granted on a need-to-know basis. Access to user and division folders is granted on a need-to-know basis. Data at rest is protected through access controls including role-based permissions based on need-to-know. Annual Information Awareness Training including Personal Identifiable Information is required by all users. Completion of Privacy Act training is required annually."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "President, National Defense University, 300 5th Avenue, Building 62, Fort Leslie J. McNair, Washington, DC 20319–5000."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the President, National Defense University, 300 5th Avenue, Building 62, Fort Leslie J. McNair, Washington, DC 20319–5000.

Individuals should provide his/her full name, Social Security number (SSN), student identification number, date of birth, school attended, and years of attendance."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Office of the Secretary of Defense/Joint Staff Freedom of Information Act Requester Service Center, 1155 Defense Pentagon, Washington, DC 20301–1155.

Individuals should provide his/her full name, Social Security number (SSN), student identification number, date of birth, school attended, and years of attendance."

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with "Individuals, faculty evaluations and reports or transcripts from educational institutions."

* * * * *

DNDU 01

SYSTEM NAME:

National Defense University (NDU) Student Data Files

SYSTEM LOCATION:

National Defense University, 300 5th Avenue, Building 62, Fort Leslie J. McNair, Washington, DC 20319–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active Military, Reserve, National Guard, DoD and other Federal and State civilians, international military and civilian fellow, contractor, and private industry students attached to the National Defense University. Resident/non-resident students enrolled in courses of instruction at The National Defense University (NDU), including the College of International Security Affairs, Industrial College of the Armed Forces, Information Resources Management College, Joint Forces Staff College, National War College, Center for Applied Strategic Learning, Center for the Study of Chinese Military Affairs, Center for the Study of Weapons of Mass Destruction, Center for Technology and National Security Policy, Institute for National Strategic Studies, CAPSTONE, Institute for National Security Ethics and Leadership, International Student Management Office, Joint Reserve Affairs Center, NATO Education Center, Secretary of Defense Corporate Fellows Program, and Strategic Policy Forum.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, date of birth, citizenship, race, Social Security Number (SSN), phone numbers, e-mail addresses, disability information, student identification number, grade/rank, branch of service or civilian agency, years of Federal service, school attended and years of attendance, security clearance granted and date, biographical data, course/section assignment, prior education, and academic data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 2165, National Defense University; 10 U.S.C. 2163, Degree Granting Authority for National Defense University and E.O. 9397, as amended (SSN).

PURPOSE(S):

To confirm attendance eligibility, monitor student progress, produce record of grades and achievements, prepare assignment rosters and to render management, statistical summaries and reports at the National Defense University.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

By name, Social Security Number (SSN), or student identification number.

SAFEGUARDS:

Records are housed in a controlled entry building with 24/7 security guards and accessed only by authorized personnel having an official need-to-know. Access Rights List is the Computer Network Defense Service Provider with 24/7 monitoring of all incoming and outgoing traffic. An Intrusion Detection System, firewalls, routers, and Access Control Lists are used to protect access to the system. Virtual Private Network and Secure Socket Layers are used for transactions to and from the system. Internally, National Defense University employs a two-factor authentication, Common Access Card login, role-based profiles and access is granted on a need-to-know basis. Access to user and division folders is granted on a need-to-know basis. Data at rest is protected through access controls including role-based permissions based on need-to-know. Annual Information Awareness Training including Personal Identifiable Information is required by all users. Completion of Privacy Act training is required annually.

RETENTION AND DISPOSAL:

Individual and class academic records are destroyed after 40 years. Records pertaining to extension courses are held indefinitely before being retired to the National Personnel Records Center, St. Louis, MO. Individual training records are destroyed annually; management reports are destroyed when no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

President, National Defense University, 300 5th Avenue, Building 62, Fort Leslie J. McNair, Washington, DC 20319–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the President, National Defense University, 300 5th Avenue, Building 62, Fort Leslie J. McNair, Washington, DC 20319–5000.

Individuals should provide his/her full name, Social Security number (SSN), student identification number, date of birth, school attended and years of attendance.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Office of the Secretary of Defense/Joint Staff Freedom of Information Act Requester Service Center, 1155 Defense Pentagon, Washington, DC 20301–1155.

Individuals should provide his/her full name, Social Security number (SSN), student identification number,

date of birth, school attended and years of attendance.

CONTESTING RECORD PROCEDURES:

The Office of the Secretary of Defense rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individuals, faculty evaluations and reports or transcripts from educational institutions.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010–23458 Filed 9–20–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before October 21, 2010.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov*. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: September 15, 2010.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: New.

Title of Collection: Student Assistance General Provisions—Satisfactory Academic Progress Policy.

OMB Control Number: Pending.

Agency Form Number(s): N/A.

Frequency of Responses: On Occasion.

Affected Public:

Individuals or households.

Not-for-profit institutions.

State, Local, or Tribal Government, State Educational Agencies or Local Educational Agencies.

Total Estimated Number of Annual Responses: 21,672,244.

Total Estimated Annual Burden Hours: 977,033.

Abstract: These regulations identify the policies and procedures to ensure that students are making satisfactory academic progress in their program at a pace and a level to receive or continue to receive Title IV of the Higher Education Act of 1965, as amended (HEA) program funds.

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 4267. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–23573 Filed 9–20–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before October 21, 2010.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.* Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: September 15, 2010.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: New.

Title of Collection: Student Assistance General Provisions—Subpart K—Cash Management.

OMB Control Number: Pending.

Agency Form Number(s): N/A.

Frequency of Responses: On occasion.

Affected Public: Businesses or other for-profit; Not-for-profit institutions; State, Local, or Tribal Government, State Educational Agencies or Local Educational Agencies.

Total Estimated Number of Annual Responses: 479,595.

Total Estimated Annual Burden Hours: 54,377.

Abstract: The proposed regulations require institutions to provide a way for a Federal Pell Grant eligible student to obtain or purchase, by the seventh day of a payment period, the books and supplies required for the payment period when certain conditions are met. If, 10 days before the beginning of the payment period the institution could disburse Title IV, HEA program funds for which the student was eligible, and if disbursed a credit balance would result, the institution is required to provide to the student the lesser of the presumed credit balance or the amount needed by the student for books and supplies, as determined by the institution.

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 4325. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–23576 Filed 9–20–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before October 21, 2010.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.* Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: September 15, 2010.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: New.

Title of Collection: Student Assistance General Provisions—Subpart A—General.

OMB Control Number: Pending.

Agency Form Number(s): N/A.

Frequency of Responses: On occasion.

Affected Public: Businesses or other for-profit; Not-for-profit institutions; State, Local, or Tribal Government, State Educational Agencies or Local Educational Agencies.

Total Estimated Number of Annual Responses: 600,892.

Total Estimated Annual Burden Hours: 105,376.

Abstract: The proposed regulations require an institution to report annually for each student who completes a program that leads to gainful employment in a recognized occupation identifier information about student completers, the Classification of Instructional Programs code for each occupational training program, the completion date, and information about the amount of private education loans and institutional financing incurred by each graduate. In addition, the proposed regulations would require the following disclosures on the institution's Web site: the name of each occupational training program and links to the Department of Labor's O-Net site to obtain occupation profile data using a Standard Occupational Classification code, information about on-time graduation rates for students entering the program, cost information (including tuition fees, room and board, and other institutional costs incurred for enrolling in the program), placement rate information for students who completed the program, and the median debt incurred by students who completed the program during the preceding three years. The institution must identify separately the median Title IV, Higher Education Act of 1965, as amended (HEA) loan debt from the private education loan debt and institutional financing plans.

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 4317. When you access the information collection, click on "Download Attachments " to

view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–23574 Filed 9–20–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, October 13, 2010, 6 p.m.

ADDRESSES: DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, Tennessee 37830.

FOR FURTHER INFORMATION CONTACT: Patricia J. Halsey, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 576–4025; Fax (865) 576–2347 or e-mail: *halseypj@oro.doe.gov* or check the Web site at *http://www.oakridge.doe.gov/em/ssab.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: The main meeting presentation will be on DOE-Oak Ridge Budget and Prioritization.

Public Participation: The EM SSAB, Oak Ridge, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Patricia J. Halsey at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to the agenda item should contact Patricia J. Halsey at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Patricia J. Halsey at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.oakridge.doe.gov/em/ssab/minutes.htm.*

Issued at Washington, DC, on September 16, 2010.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. 2010–23561 Filed 9–20–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Savannah River Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River Site. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Monday, September 27, 2010 1 p.m.–5 p.m. Tuesday, September 28, 2010 8:30 a.m.–4:30 p.m.

ADDRESSES: The Francis Marion Hotel, 387 Kings Street, Charleston, SC 29403.

FOR FURTHER INFORMATION CONTACT: Gerri Flemming, Office of External Affairs, Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29802; Phone: (803) 952–7886.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Monday, September 27, 2010

1 p.m.—Combined Committee Session.
5 p.m.—Adjourn.

Tuesday, September 28, 2010

8:30 a.m.—Approval of Minutes, Agency Updates.
Public Comment Session.
Chair and Facilitator Updates.
Strategic and Legacy Management Committee Report.
Waste Management Committee Report.
Public Comment Session.
12 p.m.—Lunch Break.
1 p.m.—Facility Disposition and Site Remediation Committee Report.
Nuclear Materials Committee Report.
Administrative Committee Report.
Public Comment Session.
4:30 p.m.—Adjourn.

If needed, time will be allotted after public comments for items added to the agenda and administrative details. A final agenda will be available at the meeting on Monday, September 27, 2010.

Public Participation: The EM SSAB, Savannah River Site, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Gerri Flemming at least five days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gerri Flemming's office at the address or telephone listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments. This notice is being published less than 15 days before the date of the meeting due to programmatic issues.

Minutes: Minutes will be available by writing or calling Gerri Flemming at the address or phone number listed above. Minutes will also be available at the following Web site: *http://www.srs.gov/general/outreach/srs-cab/srs-cab.html.*

Issued at Washington, DC, on September 16, 2010.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. 2010–23560 Filed 9–20–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

DOE/NSF High Energy Physics Advisory Panel

AGENCY: Department of Energy, Office of Science.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the DOE/NSF High Energy Physics Advisory Panel (HEPAP). Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, November 18, 2010; 9 a.m.–6 p.m. and Friday, November 19, 2010; 8:30 a.m.–2 p.m.

ADDRESSES: Hotel Palomar, 2121 P Street, NW., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: John Kogut, Executive Secretary; High Energy Physics Advisory Panel; U.S. Department of Energy; SC–25/ Germantown Building, 1000 Independence Avenue, SW., Washington, DC 20585–1290; Telephone: 301–903–1298.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide advice and guidance on a continuing basis to the Department of Energy and the National Science Foundation on scientific priorities within the field of high energy physics research.

Tentative Agenda: Agenda will include discussions of the following:

Thursday, November 18, 2010

- Discussion of Department of Energy High Energy Physics Program.
- Discussion of National Science Foundation Elementary Particle Physics Program.
- Reports on and Discussions of Topics of General Interest in High Energy Physics.
- Public Comment (10-minute rule).

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact John Kogut, 301–903–1298 or *John.Kogut@science.doe.gov.* You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Panel will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of the meeting will be available on the U.S. Department of Energy's Office of High Energy Physics Advisory Panel Web site at: *http://www.er.doe.gov/hep/panels/hepap.shtml.*

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

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. 2010–23563 Filed 9–20–10; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9204–2]

Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122 (i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement concerning the R&H Oil/Tropicana Superfund Site in San Antonio, Bexar County, Texas.

The settlement requires the settling party to pay a total of $3,586.20 as payment of response costs to the Hazardous Substances Superfund. The settlement includes a covenant not to sue pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to this notice and will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202–2733.

DATES: Comments must be submitted on or before October 21, 2010.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202–2733. A copy of the proposed settlement may be obtained from Kevin Shade, 1445 Ross Avenue, Dallas, Texas 75202–2733 or by calling (214) 665–2708. Comments should reference the R&H Oil/Tropicana Superfund Site in San Antonio, Bexar County, Texas, and EPA Docket Number 06–11–10, and should be addressed to Kevin Shade at the address listed above.

FOR FURTHER INFORMATION CONTACT: I-Jung Chiang, 1445 Ross Avenue, Dallas, Texas 75202–2733 or call (214) 665–2160.

Dated: September 10, 2010.

Al Armendariz,

Regional Administrator, Region 6.

[FR Doc. 2010–23538 Filed 9–20–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2007–1145; FRL–9204–1]

Review of the Secondary National Ambient Air Quality Standards for Oxides of Nitrogen and Oxides of Sulfur

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of draft report.

SUMMARY: On or about September 13, 2010, the Office of Air Quality Planning and Standards (OAQPS) of EPA is making available a draft report, *Policy Assessment for the Review of the Secondary National Ambient Air Quality Standards for Oxides of Nitrogen and Oxides of Sulfur: Second External Review Draft.* The EPA is releasing this preliminary draft document to seek early consultation with the Clean Air Scientific Advisory Committee (CASAC) and to solicit public comment on the overall structure, framing of key issues and conclusions regarding options for key elements of the standards.

DATES: Comments should be submitted on or before November 12, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2007–1145, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail:* Comments may be sent by electronic mail (e-mail) to *a-and-r-*

docket@epa.gov, Attention Docket ID No. EPA–HQ–OAR–2007–1145.

• *Fax:* Fax your comments to 202–566–9744, Attention Docket ID. No. EPA–HQ–OAR–2007–1145.

• *Mail:* Send your comments to: Air and Radiation Docket and Information Center, Environmental Protection Agency, *Mailcode:* 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OAR–2007–1145.

• *Hand Delivery or Courier:* Deliver your comments to: EPA Docket Center, 1301 Constitution Ave., NW., Room 3334, Washington, DC. 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–2007–1145. The 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 in the EPA Docket Center, EPA West, Room 3334, 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 Docket telephone number is 202–566–1742; fax 202–566–9744.

FOR FURTHER INFORMATION CONTACT: Dr. Bryan Hubbell, Office of Air Quality Planning and Standards (Mail code C504–02), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; *e-mail:* hubbell.bryan@epa.gov; *telephone:* 919–541–0621; *fax:* 919–541–0804.

General Information

A. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

• Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

• Follow directions—The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

• Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

• Describe any assumptions and provide any technical information and/or data that you used.

• If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

• Provide specific examples to illustrate your concerns, and suggest alternatives.

• Make sure to submit your comments by the comment period deadline identified.

Under section 108(a) of the Clean Air Act (CAA), the Administrator identifies and lists certain pollutants which "cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare." The EPA then issues air quality criteria for listed pollutants, which are commonly referred to as "criteria pollutants." The air quality criteria are to "accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air, in varying quantities." Under section 109 of the CAA, EPA establishes national ambient air quality standards (NAAQS) for each listed pollutant, with the NAAQS based on the air quality criteria. Section 109(d) of the CAA requires periodic review and, if appropriate, revision of existing air quality criteria. The revised air quality criteria reflect advances in scientific knowledge on the effects of the pollutant on public health or welfare. The EPA is also required to periodically review and revise the NAAQS, if appropriate, based on the revised criteria.

The EPA is currently conducting a joint review of the existing secondary (welfare-based) NAAQS for oxides of nitrogen (NO_X) and oxides of sulfur (SO_X). Because NO_X, SO_X, and their associated transformation products are linked from an atmospheric chemistry perspective as well as from an environmental effects perspective, and because of the National Research Council's 2004 recommendations to consider multiple pollutants in forming the scientific basis for the NAAQS, EPA has decided to jointly assess the science, risks, and policies relevant to protecting the public welfare associated with NO_X and SO_X. This is the first time since NAAQS were established in 1971 that a joint review of these two pollutants has been conducted. Since both the CASAC and EPA have recognized these interactions historically, and the science related to these interactions has continued to evolve and grow to the present day, there is a strong basis for considering them together.

As part of this review of the current secondary (welfare-based) NAAQS for NO_X and SO_X, EPA's OAQPS staff are preparing a second draft Policy Assessment. The objective of this assessment is to evaluate the policy

implications of the key scientific information contained in the document *Integrated Science Assessment for Oxides of Nitrogen and Sulfur-Ecological Criteria (http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=201485)*, prepared by EPA's National Center for Environmental Assessment (NCEA) and the results from the analyses contained in the *Risk and Exposure Assessment for Review of the Secondary National Ambient Air Quality Standards for Oxides of Nitrogen and Oxides of Sulfur(http://www.epa.gov/ttn/naaqs/standards/no2so2sec/cr_rea.html)*. The second draft Policy Assessment will be available online at: *http://www.epa.gov/ttn/naaqs/standards/no2so2sec/index.html*. This second draft Policy Assessment will be reviewed by the CASAC during a public meeting to be held October 6 and 7, 2010. Information about this public meeting will be available at *http://yosemite.epa.gov/sab/sabpeople.nsf/WebCommittees/CASAC*.

Dated: September 13, 2010.

Alison Davis,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 2010–23540 Filed 9–20–10; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE U.S.

[Public Notice 2010–0036]

Agency Information Collection Activities: Comment Request

AGENCY: Export-Import Bank of the U.S.

ACTION: Submission for OMB Review and Comments Request.

Form Title: U.S. Beneficiary Certificate and Agreement EIB 92–37.

SUMMARY: The Export-Import Bank of the United States (Ex-Im Bank), as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995. Our customers will be able to submit this form on paper or electronically.

This form is used when the beneficiary of the letter of credit, the recipient of a funding under a direct buyer credit loan, or the recipient of payment under a reimbursement loan or a payment under a supplier credit is not the exporter. If the need to use this form arises, the insured holds it in the event of a claim, at which time it would submit it to Export Import Bank along with all other claim documentation. The form provides Export Import Bank staff with the information necessary to make a determination of the eligibility of the claimed export transaction for coverage.

DATES: Comments should be received on or before (60 days after publication) to be assured of consideration.

ADDRESSES: Comments maybe submitted through *http://www.Regulations.Gov* or mailed to Arnold Chow, Export Import Bank of the United States, 811 Vermont Ave., NW., Washington, DC 20571.

SUPPLEMENTARY INFORMATION:

Titles and Form Number: EIB 92–37 U.S. Beneficiary Certificate and Agreement.

OMB Number: 3048–0022.

Type of Review: Regular.

Need and Use: If the need to use this form arises, the insured holds it in the event of a claim, at which time it would submit it to Export Import Bank along with all other claim documentation.

Affected Public: This form affects entities involved in the export of U.S. goods and services.

Annual Number of Respondents: 10.

Estimated Time per Respondent: 1 hour.

Government Annual Burden Hours: 2.5 hours.

Frequency of Reporting or Use: Once.

Sharon A. Whitt,

Agency Clearance Officer.

[FR Doc. 2010–23468 Filed 9–20–10; 8:45 am]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK OF THE U.S.

[Public Notice 2010–0037]

Agency Information Collection Activities: Comment Request

AGENCY: Export-Import Bank of the U.S.

ACTION: Submission for OMB Review and Comments Request.

Form Title: Broker Registration Form, EIB 92–79.

SUMMARY: The Export-Import Bank of the United States (Ex-Im Bank), as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995. Our customers will be able to submit this form on paper or electronically.

This application is used by insurance brokers to register with Export-Import Bank. The application provides Export-Import Bank staff with the information necessary to make a determination of the eligibility of the broker to receive commission payments under Export-Import Bank's credit insurance programs.

DATES: Comments should be received on or before November 22, 2010 to be assured of consideration.

ADDRESSES: Comments may be submitted through *http://www.regulations.gov* or mailed to Judith Rivera, Export-Import Bank of the United States, 811 Vermont Ave., NW., Washington, DC 20571.

SUPPLEMENTARY INFORMATION:

Titles and Form Number: EIB 92–79 Broker Registration Form.

OMB Number: 3048–0024.

Type of Review: Regular.

Need and Use: This application is used by insurance brokers to register with Export-Import Bank. The application provides Export-Import Bank staff with the information necessary to make a determination of the eligibility of the broker to receive commission payments under Export-Import Bank's credit insurance programs.

Affected Public: This form affects entities involved in the export of U.S. goods and services.

Annual Number of Respondents: 50.

Estimated Time per Respondent: 100 hours.

Government Annual Burden Hours: 200 hours.

Frequency of Reporting or Use: Once.

Sharon A. Whitt,

Agency Clearance Officer.

[FR Doc. 2010–23469 Filed 9–20–10; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Open Commission Meeting; Thursday, September 23, 2010

Date: September 16, 2010.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, September 23, 2010, which is scheduled to commence at 10:30 am in Room TW–C305, at 445 12th Street, SW., Washington, DC.

ITEM NO.	BUREAU	SUBJECT
1	OFFICE OF ENGINEERING AND TECHNOLOGY.	TITLE: Unlicensed Operation in the TV Broadcast Bands (ET Docket No. 04–186); Additional Spectrum for Unlicensed Devices Below 900 MHz and in the 3 GHz Band (ET Docket No. 02–380) SUMMARY: The Commission will consider a Second Memorandum Opinion and Order addressing 17 petitions for reconsideration of the rules adopted in this proceeding to make unused spectrum in the TV bands available for unlicensed broadband wireless devices while protecting incumbent services.
2	WIRELINE COMPETITION	TITLE: Schools and Libraries Universal Service Support Mechanism (CC Docket No. 02–6); A National Broadband Plan for our Future (GN Docket No. 09–51) SUMMARY: The Commission will consider a Report and Order that improves connectivity for students and library patrons, and accelerates the National Broadband Plan's goal of affordable access to 1 gigabit per second broadband at community anchor institutions across the country, by upgrading, modernizing, and streamlining the E–Rate program.
3	PUBLIC SAFETY & HOMELAND SECURITY	TITLE: Wireless E911 Location Accuracy Requirements (PS Docket No. 07–114) SUMMARY: The Commission will consider a Second Report and Order that enables a more effective emergency response system by establishing a timeline and benchmarks for wireless carriers to provide more granular E911 location information at either a county–based or PSAP–based geographic level.
4	PUBLIC SAFETY & HOMELAND SECURITY	TITLE: Wireless E911 Location Accuracy Requirements (PS Docket No. 07–114); E911 Requirements for IP–Enabled Service (WC Docket No. 05–196) SUMMARY: The Commission will consider a Further Notice of Proposed Rulemaking and Notice of Inquiry that seeks to improve E911 location accuracy and reliability for existing and new voice communication technologies, including Voice over Internet Protocol and, consistent with the National Broadband Plan, to understand the ways in which voice communications enabled by broadband and next generation 911 technologies could support enhanced first response.

The meeting site is fully accessible to people using wheelchairs or other mobility aids. Sign language interpreters, open captioning, and assistive listening devices will be provided on site. Other reasonable accommodations for people with disabilities are available upon request. In your request, include a description of the accommodation you will need and a way we can contact you if we need more information. Last minute requests will be accepted, but may be impossible to fill. Send an e–mail to: fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fiske, Office of Media Relations, (202) 418–0500; TTY 1–888–835–5322. Audio/Video coverage of the meeting will be broadcast live with open captioning over the Internet from the FCC Live web page at www.fcc.gov/live.

For a fee this meeting can be viewed live over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. To purchase these services call (703) 993–3100 or go to www.capitolconnection.gmu.edu.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Best Copy and Printing, Inc. (202) 488–5300; Fax (202) 488–5563; TTY (202) 488–5562. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio and video tape. Best Copy and Printing, Inc. may be reached by e–mail at FCC@BCPIWEB.com.

Federal Communications Commission.

Marlene H. Dortch,

Secretary,

Office of the Secretary, Office of Managing Director.

[FR Doc. 2010–23705 Filed 9–17–10; 4:15 pm]

BILLING CODE 6712–01–S

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Renewal of Currently Approved Collection (3064–0137); Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act, and Request for Comment.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The FDIC, 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 the renewal of an existing information collection, as required by the PRA. On July 1, 2010 (75 FR 38095), the FDIC solicited public comment for a 60-day period on renewal of the following information collection: Interagency Guidance on Asset Securitization Activities. (OMB No. 3064–0137). No comments were received. Therefore, the FDIC hereby gives notice of its submission of its request for renewal to OMB for review.

DATES: Comments must be submitted on or before October 21, 2010.

ADDRESSES: Interested parties are invited to submit written comments. All comments should refer to the name of the collection. Comments may be submitted by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html.*
- *E-mail: comments@fdic.gov* Include the name of the collection in the subject line of the message.
- *Mail:* Gary A. Kuiper (202.898.3877), Counsel, Federal Deposit Insurance Corporation, F–1086, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street, Building (located on F Street), on business days between 7 a.m. and 5 p.m.

A copy of the comments may also be submitted to the FDIC Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Gary A. Kuiper at the FDIC address above.

SUPPLEMENTARY INFORMATION: The FDIC is proposing to renew this collection:

Title: Interagency Guidance on Asset Securitization Activities.

OMB Number: 3064–0137.

Form Number: None.

Frequency of Response: On occasion.

Affected Public: Insured state nonmember banks involved in asset securitization activities.

Estimated Number of Responses: 20.

Estimated Time per Response: 7.45 hours.

Total Annual Burden: 149 hours.

General Description of Collection: The collection applies to institutions engaged in asset securitization and consists in recordkeeping requirements associated with developing or upgrading a written asset securitization policy, documenting fair value of retained interests, and a management information system to monitor securitization activities. Bank managements use this information as the basis for the safe and sound operation of their asset securitization activities and to ensure that they minimize operational risk in these activities. The FDIC uses the information to evaluate the quality of an institution's risk management practices, and to assist institutions without proper internal supervision of their asset securitization activities to implement corrective action to conduct these activities in a safe and sound manner.

Request for Comment

Comments are invited on: (a) Whether these collections of information are necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimate of the burdens of the information collections, 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 information collections on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 16th day of September, 2010.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2010–23505 Filed 9–20–10; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Update To Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Update Listing of Financial Institutions in Liquidation.

SUMMARY: Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the following financial institutions effective as of the Date Closed as indicated in the listing. This list (as updated from time to time in the **Federal Register**) may be relied upon as "of record" notice that the Corporation has been appointed receiver for purposes of the statement of policy published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions which have been placed in liquidation, please visit the Corporation Web site at *http://www.fdic.gov/bank/individual/failed/banklist.html* or contact the Manager of Receivership Oversight in the appropriate service center.

Dated: September 13, 2010.

Federal Deposit Insurance Corporation.

Pamela Johnson,

Regulatory Editing Specialist.

INSTITUTIONS IN LIQUIDATION

[In alphabetical order]

FDIC Ref. No.	Bank name	City	State	Date closed
10286	Horizon Bank	Bradenton	FL	9/10/2010

[FR Doc. 2010–23439 Filed 9–20–10; 8:45 am]

BILLING CODE P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS10–3]

Appraisal Subcommittee Notice of Meeting

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

ACTION: Notice of meeting.

Description: In accordance with Section 1104(b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, notice is hereby given that the Appraisal Subcommittee (ASC) will meet in open session for its regular meeting, rescheduled from September 8, 2010:

Location: FDIC Building, 1776 F Street, NW., Room 4085, Washington, DC 20429.

Date: September 22, 2010.

Time: 10:30 a.m.

Status: Open.

Matters To Be Considered

Summary Agenda

July 22, 2010 minutes from open session.

(No substantive discussion of the above items is anticipated. These matters will be resolved with a single vote unless a member of the ASC requests that an item be moved to the discussion agenda.)

Discussion Agenda

Appraisal Foundation 2010 Grant Reimbursement Requests for May and June.

Appraisal Foundation 2009 Grant Reprogramming Request.

Proposed Fiscal Year 2011 ASC Budget.

How to Attend and Observe an ASC Meeting

E-mail your name, organization and contact information to *meetings@asc.gov.*

You may also send a written request via U.S. Mail, fax or commercial carrier to the Executive Director of the ASC, 1401 H Street, NW., Ste 760, Washington, DC 20005. Your request must be received no later than 4:30 p.m., ET, on the Monday prior to the meeting. If that Monday is a Federal holiday, then your request must be received 4:30 p.m., ET on the previous Friday. Attendees must have a valid government-issued photo ID and must agree to submit to reasonable security measures. The meeting space is intended to accommodate public attendees. However, if the space will not accommodate all requests, the ASC may refuse attendance on that reasonable basis.

Dated: September 16, 2010.

James R. Park,

Executive Director.

[FR Doc. 2010–23565 Filed 9–20–10; 8:45 am]

BILLING CODE P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS10–4]

Appraisal Subcommittee Notice of Meeting

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

ACTION: Notice of meeting.

Description: In accordance with Section 1104(b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, notice is hereby given that the Appraisal Subcommittee (ASC) will meet in closed session:

Location: FDIC Building, 1776 F Street, NW., Room 4085, Washington, DC 20429.

Date: September 22, 2010.

Time: Immediately following the ASC open session beginning at 10:30 a.m.

Status: Closed.

Matters to be Considered:

July 22, 2010 minutes from closed session.

Preliminary discussion of Compliance Reviews.

Staff briefing on operational matters.

Dated: September 16, 2010.

James R. Park,

Executive Director.

[FR Doc. 2010–23568 Filed 9–20–10; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 14, 2010.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) P.O. Box 55882, Boston, Massachusetts 02106-2204:

1. Eastern Bank Corporation, Boston, Massachusetts to acquire 100 percent of the voting shares of Wainwright Bank and Trust Company, Boston, Massachusetts.

Board of Governors of the Federal Reserve System, September 16, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–23521 Filed 9–20–10; 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 October 14, 2010.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. GLAASS Financial, LLC; to become a bank holding company through the acquisition of 36.4 percent of the voting shares of EMSWATER Financial, LLC, both in Exeter, Nebraska. In connection with this application, Applicant also has applied to acquire EMSWATER Financial, LLC and First National Insurance Agency, Inc., both of Exeter, Nebraska pursuant to section 225.28(b)(11)(A) of Regulation Y.

Board of Governors of the Federal Reserve System, September 16, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–23522 Filed 9–20–10; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 12 p.m., Monday, September 20, 2010.

The business of the Board requires that this meeting be held with less than one week's advance notice to the public, and no earlier announcement of the meeting was practicable.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

Matters To Be Considered

1. Implications of Dodd-Frank Reform Act for Board Organization and Staffing.

FOR MORE INFORMATION PLEASE CONTACT: Michelle Smith, Director, or Dave Skidmore, Assistant to the Board, Office of Board Members at 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: September 17, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–23669 Filed 9–17–10; 4:15 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Guidance on Withdrawal of Subjects From Research: Data Retention and Other Related Issues

AGENCY: Office for Human Research Protections, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Office for Human Research Protections (OHRP), within the Office of the Assistant Secretary for Health, is announcing the availability of a guidance document entitled, "Guidance on Withdrawal of Subjects From Research: Data Retention and Other Related Issues." The guidance document provides OHRP's first formal guidance on this topic. The document, which is available on the OHRP Web site at *http://www.hhs.gov/ohrp/policy/subjectwithdrawal.html* or *http://www.hhs.gov/ohrp/policy/subjectwithdrawal.pdf,* is intended primarily for institutional review boards (IRBs), investigators, and funding agencies that may be responsible for the review or oversight of human subject research conducted or supported by the Department of Health and Human Services (HHS). The guidance document announced in this notice finalizes the draft guidance entitled, "Guidance on Important Considerations for When Participation of Human Subjects in Research is Discontinued," that was made available for public comment through a notice in the **Federal Register** on December 1, 2008 (73 FR 72804). OHRP received comments on the draft guidance document from 30 individuals and organizations, and those comments were considered as the guidance was finalized.

DATES: Comments on OHRP guidance documents are welcome at any time.

ADDRESSES: Submit written requests for a single copy of the guidance document entitled, "Guidance on Withdrawal of Subjects From Research: Data Retention and Other Related Issues," to the Division of Policy and Assurances, Office for Human Research Protections, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–402–2071. *See* the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance document.

Submit written comments to COMMENTS ON SUBJECT WITHDRAWAL GUIDANCE, Office for Human Research Protections, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852. Comments also may be sent via e-mail to *ohrp@hhs.gov* or via facsimile at 240–402–2071.

FOR FURTHER INFORMATION CONTACT: Irene Stith-Coleman, PhD, Office for Human Research Protections, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852, 240–453–6900; e-mail *Irene.StithColeman@hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

OHRP, Office of the Assistant Secretary for Health, is announcing the availability of a guidance document entitled, "Guidance on Withdrawal of Subjects From Research: Data Retention and Other Related Issues." The guidance document provides OHRP's first formal guidance on this topic. The document is intended primarily for IRBs, investigators, and funding agencies that may be responsible for the review or oversight of human subject research conducted or supported by HHS.

The guidance document applies to non-exempt human subjects research conducted or supported by HHS. The guidance addresses the following six topics:

(1) What does it mean when a subject withdraws from a research study?

(2) May an investigator retain and analyze already collected data about a subject who withdraws from the research or whose participation is terminated by the investigator?

(3) Can investigators honor subjects' requests to have their data destroyed or excluded from any analysis?

(4) Should the withdrawal of a subject from a research study be documented?

(5) What is the relationship of this guidance to FDA's guidance on this issue and to the HIPAA Privacy Rule?

(6) When seeking the informed consent of subjects, what should investigators tell subjects about data retention in the event the subjects withdraw?

Of particular importance, the guidance document clarifies that when a subject chooses to withdraw from (*i.e.,* discontinue his or her participation in) an ongoing research study, or when an investigator terminates a subject's participation in such a research study without regard to the subject's consent, the investigator may retain and analyze already collected data relating to that subject, even if that data includes identifiable private information about the subject.

The guidance document announced in this notice finalizes the draft guidance entitled, "Guidance on Important Considerations for When Participation of Human Subjects in Research is Discontinued," that was made available for public comment through a notice in the **Federal Register** on December 1, 2008 (73 FR 72804). OHRP received comments on the draft guidance document from 30 individuals and organizations, and those comments were considered as the guidance was finalized.

In addition to the change in the title, the final guidance document differs from the draft guidance document that was made available for public comment in the following three key ways:

(1) All content regarding biospecimens that was included in the draft guidance document has been removed from the final guidance document. This change makes the final guidance document more harmonious with the Food and Drug Administration's (FDA's) corresponding guidance entitled, "Guidance for Sponsors, Clinical Investigators, and IRBs: Data Retention When Subjects Withdraw from FDA-Regulated Clinical Trials," which also focuses on data retention when subjects withdraw from research and is silent on issues related to biospecimens. Furthermore, research involving the banking and use of biospecimens for research purposes is a complex, evolving area of research. OHRP believes that guidance on the use of biospecimens obtained from subjects who subsequently withdraw from research should be addressed in the future by a more comprehensive guidance document that addresses more broadly research involving biospecimens. In the meantime, individuals with questions regarding how to handle biospecimens obtained from subjects who subsequently withdraw from a research study should contact OHRP by telephone at 240–453–6900 or 866–447–4777 or by e-mail at *ohrp@hhs.gov.*

(2) The final guidance document includes more examples of social and behavioral research activities in order to emphasize that the guidance applies to such research, in addition to its applicability to biomedical research.

(3) The final guidance includes a recommendation that investigators plan for the possibility that subjects will withdraw from research and that they include a discussion of what withdrawal will mean and how it will be handled in their research protocols and informed consent documents. Furthermore, the final guidance addresses the question of what investigators, when seeking the informed consent of subjects, should tell the subjects about data retention in the event the subjects withdraw.

For HHS-conducted or supported research that is regulated by FDA, FDA's guidance on this issue also should be consulted. FDA's guidance entitled, "Guidance for Sponsors, Clinical Investigators, and IRBs: Data Retention When Subjects Withdraw from FDA-Regulated Clinical Trials" can be found at *http://www.fda.gov/OHRMS/DOCKETS/98fr/FDA–2008–D–0576-gdl.pdf.*

II. Electronic Access

Persons with access to the Internet may obtain the guidance document on OHRP's Web site at *http://www.hhs.gov/ohrp/policy/subjectwithdrawal.html* or *http://www.hhs.gov/ohrp/policy/subjectwithdrawal.pdf.*

III. Comments

Interested persons may submit comments regarding this guidance document to OHRP at any time. Please see the **ADDRESSES** section for information on where to submit written comments.

Dated: September 15, 2010.

Jerry Menikoff,

Director, Office for Human Research Protections.

[FR Doc. 2010–23517 Filed 9–20–10; 8:45 am]

BILLING CODE 4150–36–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Clinical Center; Proposed Collection; Comment Request; Customer and Other Partners Satisfaction Surveys

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for the opportunity for public comment on the proposed data collection projects, the National Institutes of Health Clinical Center (CC) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: Customer and Other Partners Satisfaction Surveys. *Type of Information Collection Request:* Extension request. *Need and Use of Information Collection:* The information collected in these surveys will be used by Clinical Center personnel: (1) To evaluate the satisfaction of various Clinical Center customers and other partners with Clinical Center services; (2) to assist with the design of modifications of these services, based on customer input; (3) to develop new services, based on customer need; and (4) to evaluate the satisfaction of various Clinical Center customers and other partners with implemented service modifications. These surveys will almost certainly lead to quality improvement activities that will enhance and/or streamline the Clinical Center's operations. The major mechanisms by which the Clinical Center will request customer input is through surveys and focus groups. The surveys will be tailored specifically to each class of customer and to that class of customer's needs. Surveys will either be collected as written documents, as faxed documents, mailed electronically or collected by telephone from customers. Information gathered from these surveys of Clinical Center customers and other partners will be presented to, and used directly by, Clinical Center management to enhance the services and operations of our organization. *Frequency of Response:* The participants will respond yearly. *Affected public:* Individuals and households; businesses and other for profit, small businesses and organizations. *Types of respondents:* These surveys are designed to assess the satisfaction of the Clinical Center's major internal and external customers with the services provided. These customers include, but are not limited to, the following groups of individuals:

Clinical Center patients, family members of Clinical Center patients, visitors to the Clinical Center, NIH intramural collaborators, private physicians or organizations who refer patients to the Clinical Center, volunteers, vendors and collaborating commercial enterprises, small businesses, regulators, and other organizations. The annual reporting burden is as follows:

FY 2010

Customer	Number of respondents	Frequency of response	Average time per response	Annual hour burden
Clinical Center Patients	5000	1	.5	2500
Family Members of Patients	2000	1	.5	1000
Visitors to the Clinical Center	1000	1	.17	170
NIH Intramural Collaborators	2000	1	.17	340
Vendors and Collaborating Commercial Enterprises	2500	1	.33	833
Professionals and Organizations Referring Patients	2000	1	.33	833
Regulators	30	1	.33	10
Volunteers	275	1	.5	138
Total	14,805			5,824

FY 2011

Customer	Number of respondents	Frequency of response	Average time per response	Annual hour burden
Clinical Center Patients	5000	1	.5	2500
Family Members of Patients	3000	1	.5	1500
Visitors to the Clinical Center	1500	1	.17	255
NIH Intramural Collaborators	1500	1	.25	375
Vendors and Collaborating Commercial Enterprises	1000	1	.25	250
Professionals and Organizations Referring Patients	3000	1	.33	1000
Regulators	30	1	.33	10
Volunteers	275	1	.33	92
Total	15,305			5,982

FY 2012

Customer	Number of respondents	Frequency of response	Average time per response	Annual hour burden
Clinical Center Patients	5000	1	.5	2500
Family Members of Patients	2000	1	.5	1000
Visitors to the Clinical Center	1000	1	.17	170
NIH Intramural Collaborators	1000	1	.17	170
Vendors and Collaborating Commercial Enterprises	2500	1	.25	625
Professionals and Organizations Referring Patients	3000	1	.33	1000
Regulators	25	1	.25	6
Volunteers	300	1	.25	75
Total	14,825			5,546

Estimated costs to the respondents consists of their time; time is estimated using a rate of $10.00 per hour for patients and the public; $30.00 for vendors, regulators, organizations and $55.00 for health care professionals. The estimated annual costs to respondents for each year for which the generic clearance is requested is $127,885 for 2010, $126,895 for 2011, and $120,730 for 2012. Estimated Capital Costs are $7,000. Estimated Operating and Maintenance costs are $75,000.

Requests for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Clinical Center and the agency, including whether the information shall have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project, or to obtain a copy of the data collection plans and instruments, contact: Dr. David K. Henderson, Deputy Director for Clinical Care, National Institutes of Health Clinical Center, Building 10, Room 6–1480, 10 Center Drive, Bethesda, Maryland 20892, or call non-toll free: 301–496–3515, or e-mail your request or comments, including your address to: *dkh@nih.gov*.

Comments Due Date: Comments regarding this information collection are

best assured of having their full effect if received within 60 days of the date of this publication.

Dated: September 6, 2010.

David K. Henderson,

Deputy Director for Clinical Care, CC National Institutes of Health.

[FR Doc. 2010–23526 Filed 9–20–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Breast and Cervical Cancer Early Detection and Control Advisory Committee (BCCEDCAC): Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the BCCEDCAC, HHS, has been renewed for a 2-year period through September 12, 2012.

For information, contact Ms. Jameka Blackmon, Designated Federal Officer, BCCEDCAC, CDC, 1600 Clifton Road, NE., M/S K57, Atlanta, Georgia, 30333, telephone (770) 488–4740; fax (770) 488–3230.

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 the Agency for Toxic Substances and Disease Registry.

Dated: September 14, 2010.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–23588 Filed 9–20–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0456]

Clinical Investigator Training Course

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), Office of Critical Path Programs, in cosponsorship with the Clinical Trials Transformation Initiative (CTTI), is announcing a 3-day training course for health care professionals responsible for, or involved in, the conduct and/or design of clinical trials (clinical investigators). This course is intended to assist clinical investigators in understanding what preclinical and clinical information is needed to support the investigational use of medical products, as well as the scientific, regulatory, and ethical considerations involved in the conduct of clinical trials.

DATES: The training course will be held on November 8 and 9, 2010, from 8 a.m. to 5 p.m. and on November 10, 2010, from 8 a.m. to 3 p.m.

ADDRESSES: The training course will be held at the National Labor College, 10000 New Hampshire Ave., Silver Spring, MD 20993–0002.

FOR FURTHER INFORMATION CONTACT: Nancy Masiello, Office of Critical Path Programs, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 4166, Silver Spring, MD 20993–0002, 301–796–8498, *Nancy.Masiello@fda.hhs.gov*.

Registration: Register by November 1, 2010, at the registration/information Web site at *https://www.trialstransformation.org/fda-clinical-investigator-training-course/*. Registration materials, payment procedures, accommodation information, and a detailed description of the course can be found at the registration/information Web site. The registration fee is $350 per person. The fee includes course materials and onsite lunch. Early registration is recommended because seating is limited. There will be no onsite registration. Persons attending the course are advised that FDA is not responsible for providing access to electrical outlets. If you need special accommodations due to a disability, please contact Nancy Masiello at least 7 days in advance.

SUPPLEMENTARY INFORMATION: Clinical trial investigators play a critical role in the development of medical products. They bear the responsibility for ensuring the safe and ethical treatment of study subjects and for acquiring adequate and reliable data to support regulatory decisions. This course is intended to assist clinical investigators in understanding what preclinical and clinical information is needed to support the investigational use of medical products, as well as the scientific, regulatory, and ethical considerations involved in the conduct of clinical trials.

The training course is designed to provide clinical investigators with an overview of the following topics:

- The essential toxicological, pharmacological, and manufacturing data to support investigational use in humans;
- Fundamental issues in the design and conduct of clinical trials;
- Statistical and analytic considerations in the interpretation of trial data;
- Appropriate safety evaluation during studies;
- The ethical considerations and regulatory requirements for clinical trials; and
- Application and compliance issues.

In addition, the course should:

- Foster a cadre of clinical investigators with knowledge, experience, and commitment to investigational medicine;
- Promote communication between clinical investigators and FDA;
- Enhance investigators' understanding of FDA's role in experimental medicine; and
- Improve the quality of data while enhancing subject protection in the performance of clinical trials.

On November 8, 2010, the course will address the role of FDA in clinical studies, regulatory considerations for clinical trials, and review of the material generally appearing in an "investigator's brochure," i.e., the preclinical information (toxicology, animal studies, and chemistry/manufacturing information) that supports initial clinical trials in humans. Presentations will also discuss the role of clinical pharmacology in early clinical studies and how this information is used in the design of subsequent studies. On November 9, 2010, the course will include discussions of scientific, statistical, ethical, and regulatory aspects of clinical studies. On November 10, 2010, the course will include discussions of safety assessment in clinical trials, including hepatic and cardiovascular safety, approaches to special populations (e.g., pregnant women and pediatrics), and breakout sessions to discuss how to put together an application, including related compliance issues.

Dated: September 16, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–23493 Filed 9–20–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, T32 Institutional Training Grants.

Date: November 9, 2010.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Lorraine Gunzerath, PhD, MBA, Scientific Review Officer, National Institute on Alcohol Abuse and Alcoholism, Office of Extramural Activities, Extramural Project Review Branch, 5635 Fishers Lane, Room 2121, Bethesda, MD 20852, 301–443–2369, *lgunzera@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: September 14, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–23535 Filed 9–20–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Enabling Bioanalytical and Imaging Technologies Study Section, October 7, 2010, 8:30 a.m. to October 8, 2010, 5 p.m., The Westin St Francis Hotel, 400 West Broadway, San Diego, CA, 92101 which was published in the **Federal Register** on September 13, 2010, 75 FR 55593–55594.

The meeting will be held at The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102. The meeting dates and time remain the same. The meeting is closed to the public.

Dated: September 14, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–23539 Filed 9–20–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors, NIDCD.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute on Deafness and Other Communication Disorders, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIDCD.

Date: October 21–22, 2010.

Open: October 21, 2010, 12:30 p.m. to 1 p.m.

Agenda: Reports from institute staff.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 7, Bethesda, MD 20892.

Closed: October 21, 2010, 1 p.m. to 6 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 7, Bethesda, MD 20892.

Closed: October 22, 2010, 8:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 7, Bethesda, MD 20892.

Contact Person: Andrew J. Griffith, PHD, MD, Director, Division of Intramural Research, National Institute on Deafness and Other Communication Disorders, 5 Research Court, Room 1A13, Rockville, MD 20850, 301–496–1960, *griffita@nidcd.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: September 15, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–23546 Filed 9–20–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, T32 Review.

Date: September 21, 2010.

Time: 5 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Person: Sergei Radaev, PhD, Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 8113, Bethesda, MD 20892. 301–435–5655. *sradaev@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to scheduling conflicts.

Name of Committee: National Cancer Institute Special Emphasis Panel, Preclinical Toxicology Study of Drugs Developed for Cancer and Other Diseases.

Date: September 23, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Zhiqiang Zou, MD, PhD, Scientific Review Officer, National Cancer Institute, National Institutes of Health, 6116 Executive Blvd., Room 8055A, MSC 8329, Bethesda, MD 20852. *zouzhiq@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to scheduling conflicts.

Name of Committee: National Cancer Institute Special Emphasis Panel, Therapeutic Strategies for Cancer.

Date: October 14–15, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Majed M. Hamawy, MBA, PhD, Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 8135, Bethesda, MD 20852. 301–594–5659. *mh101v@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel, Cellular & Tissue Biology II P01.

Date: October 19, 2010.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6116 Executive Boulevard, Room 8018, Rockville, MD 20852. (Telephone Conference Call.)

Contact Person: Caron A. Lyman, PhD, Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd, Room 8119, Bethesda, MD 20892–8328. 301–451–4761. *lymanc@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel, Small Grants Program for Cancer Epidemiology.

Date: October 28–29, 2010.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Legacy Hotel and Meeting Center, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Joyce C. Pegues, BS, BA, PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 7149, Bethesda, MD 20892–8329. 301–594–1286. *peguesj@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel, Small Grants Behavioral Research in Cancer Control.

Date: November 15–16, 2010.

Time: 7 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Legacy Hotel and Meeting Center, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Gerald G. Lovinger, PhD, Scientific Review Administrator, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd., Room 8101, Bethesda, MD 20892–8329. 301/496–7987. *lovingeg@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 15, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–23545 Filed 9–20–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the President's Cancer Panel.

The meeting will be open to the public, 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.

Name of Committee: President's Cancer Panel.

Date: October 26, 2010.

Time: 8 a.m. to 4 p.m.

Agenda: The Future of Cancer Research: Accelerating Scientific Innovation.

Place: Chemical Heritage Foundation, 315 Chestnut Street, Philadelphia, PA 19106.

Contact Person: Abby B. Sandler, PhD, Executive Secretary, Chief, Institute Review Office, Office of the Director, 6116 Executive Blvd., Suite 220, MSC 8349, National Cancer Institute, NIH, Bethesda, MD 20892–8349, (301) 451–9399, *sandlera@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/pcp/pcp.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 15, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–23543 Filed 9–20–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0001]

Cardiovascular and Renal Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Cardiovascular and Renal Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on October 18, 2010, from 8 a.m. to 5 p.m.

Location: The Marriott Inn and Conference Center, University of Maryland University College, 3501 University Boulevard East, Adelphi, MD. The conference center telephone number is 301–985–7300.

Contact Person: Elaine Ferguson, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., WO31–2417, Silver Spring, MD 20993–0002, 301–796–9001, FAX: 301–847–8540, email: *elaine.ferguson@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512533. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On October 18, 2010, the committee will consider the results and analyses of the TREAT (Trial to Reduce Cardiovascular Events with Aranesp Therapy) study of ARANESP (darbepoetin alfa), manufactured by Amgen, Inc. This meeting is a follow-up to the September 2007 advisory committee meeting at which the committee discussed updated information on the risks and benefits of erythropoeisis-stimulating agents (drugs that stimulate production of red blood cells), marketed under the brand names ARANESP, EPOGEN, and PROCRIT, manufactured by Amgen, Inc., when used in the treatment of anemia (low red blood cell counts) due to chronic kidney failure.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before October 11, 2010. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before October 3, 2010. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by October 4, 2010.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Elaine Ferguson at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 15, 2010.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2010–23514 Filed 9–20–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Cellular and Molecular Biology of Neurodegeneration Study Section.

Date: October 14–15, 2010.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Donovan House, 1155 14th Street, NW., Washington, DC 20005.

Contact Person: Laurent Taupenot, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4183, MSC 7850, Bethesda, MD 20892, 301–435–1203, *taupenol@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Biobehavioral Regulation and Learning.

Date: October 15, 2010.

Time: 2:30 p.m. to 4 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: Biao Tian, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3089B, MSC 7848, Bethesda, MD 20892, (301) 402–4411, *tianbi@csr.nih.gov.*

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Nursing and Related Clinical Sciences Study Section.

Date: October 19–20, 2010.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: InterContinental Mark Hopkins Hotel, 999 California Street, San Francisco, CA 94108.

Contact Person: Katherine Bent, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3160, MSC 7770, Bethesda, MD 20892, 301–435–0695, *bentkn@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Collaborative: Behavioral Genetics and Epidemiology Linked Applications.

Date: October 20–21, 2010.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

Contact Person: Suzanne Ryan, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of

Health, 6701 Rockledge Drive, Room 3139, MSC 7770, Bethesda, MD 20892, (301) 435–1712, *ryansj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Retinopathy Studies.

Date: October 26, 2010.

Time: 8 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Raya Mandler, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217, MSC 7840, Bethesda, MD 20892, 301–402–8228, *rayam@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cell Biology.

Date: October 26–27, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications,

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting).

Contact Person: Noni Byrnes, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5130, MSC 7840, Bethesda, MD 20892, (301) 435–1023, *byrnesn@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflicts: Lung Injury and Fibrosis.

Date: October 26–27, 2010.

Time: 9 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting).

Contact Person: George M Barnas, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4220, MSC 7818, Bethesda, MD 20892, 301–435–0696, *barnasg@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: BMIT/CMIP/MEDI Imaging Applications.

Date: October 26, 2010.

Time: 10 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn San Francisco Fisherman's Wharf, 1300 Columbus Avenue, San Francisco, CA 94133.

Contact Person: Weihua Luo, MD, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5114, MSC 7854, Bethesda, MD 20892, (301) 435–1170, *luow@csr.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Ethical, Legal, and Social Implications of Human Genetics Study Section.

Date: October 26, 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: Cheryl M. Corsaro, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892, (301) 435–1045, *corsaroc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Population Sciences and Epidemiology.

Date: October 27–28, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting).

Contact Person: Fungai Chanetsa, MPH, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3135, MSC 7770, Bethesda, MD 20892, 301–408–9436, *fungai.chanetsa@nih.hhs.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowship: Oncological Sciences.

Date: October 27–28, 2010.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: DoubleTree Hotel Washington, 1515 Rhode Island Avenue, NW., Washington, DC 20005.

Contact Person: Michael A. Marino, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6152, MSC 7892, Bethesda, MD 20892, (301) 435–0601, *marinomi@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 15, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–23541 Filed 9–20–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, National Research Service Award Institutional Research Training Grants (NRSA T32).

Date: October 20, 2010.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Rebecca C Steiner, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd, Room 6149, MSC 9608, Bethesda, MD 20892–9608, 301–443–4525, *steinerr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: September 14, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–23537 Filed 9–20–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of 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 Deafness and Other Communication

Disorders Special Emphasis Panel, Clinical Trials.

Date: October 14, 2010.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Christine A. Livingston, PhD, Scientific Review Officer, Division of Extramural Activities, National Institutes of Health/NIDCD, 6120 Executive Blvd.—MSC 7180, Bethesda, MD 20892, (301) 496–8683, *livingsc@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: *September 15, 2010.*

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–23524 Filed 9–20–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Patient Safety Organizations: Voluntary Delisting

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of Delisting.

SUMMARY: AHRQ has accepted a notification of voluntary relinquishment from the Creighton Center for Health Services Research and Patient Safety (CHRP) Patient Safety Organization (PSO). The Patient Safety and Quality Improvement Act of 2005 (Patient Safety Act), Public Law 109–41, 42 U.S.C. 299b–21–b–26, provides for the formation of PSOs, which collect, aggregate, and analyze confidential information regarding the quality and safety of health care delivery. The Patient Safety and Quality Improvement Final Rule (Patient Safety Rule), 42 CFR part 3, authorizes AHRQ, on behalf of the Secretary of HHS, to list as a PSO an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be "delisted" by the Secretary if it is found to no longer meet the requirements of the Patient Safety Act and Patient Safety Rule, including when a PSO chooses to voluntarily relinquish its status as a PSO for any reason.

DATES: The directories for both listed and delisted PSOs are ongoing and reviewed weekly by AHRQ. The delisting was effective at 12 Midnight ET (2400) on July 6, 2010.

ADDRESSES: Both directories can be accessed electronically at the following HHS Web site: *http://www.pso.AHRQ.gov/index.html.*

FOR FURTHER INFORMATION CONTACT: Diane Cousins, RPh., Center for Quality Improvement and Patient Safety, AHRQ, 540 Gaither Road, Rockville, MD 20850; Telephone (toll free): (866) 403–3697; Telephone (local): (301) 427–1111; TTY (toll free): (866) 438–7231; TTY (local): (301) 427–1130; E-mail: *PSO@AHRQ.HHS.GOV.*

SUPPLEMENTARY INFORMATION:

Background

The Patient Safety Act authorizes the listing of PSOs, which are entities or component organizations whose mission and primary activity is to conduct activities to improve patient safety and the quality of health care delivery.

HHS issued the Patient Safety Rule to implement the Patient Safety Act. AHRQ administers the provisions of the Patient Safety Act and Patient Safety Rule (PDF file, 450 KB. PDF Help) relating to the listing and operation of PSOs. Section 3.108(d) of the Patient Safety Rule requires AHRQ to provide public notice when it removes a PSO from listing. AHRQ has accepted a notification from the Creighton Center for Health Services Research and Patient Safety (CHRP) Patient Safety Organization (PSO), PSO number P0049, to voluntarily relinquish its status as a PSO. Accordingly, the Creighton Center for Health Services Research PSO was delisted effective at 12 Midnight ET (2400) on July 6, 2010.

More information on PSOs can be obtained through AHRQ's PSO Web site at *http:/www.pso.AHRQ.qov/index.html.*

Dated: September 7, 2010.

Carolyn M. Clancy,

Director.

[FR Doc. 2010–23445 Filed 9–20–10; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Inspectorate America Corporation, as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Inspectorate America Corporation, as a commercial gauger and laboratory.

Summary: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Inspectorate America Corporation, 3904 Corporex Park Drive Suite 145, Tampa, FL 33619, has been approved to gauge and accredited to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.*

DATES: The accreditation and approval of Inspectorate America Corporation, as commercial gauger and laboratory became effective on June 30, 2010. The next triennial inspection date will be scheduled for June 2013.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: September 13, 2010.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2010–23476 Filed 9–20–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Camin Cargo Control, Inc., as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Camin Cargo Control, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Camin Cargo Control, Inc., 1800 Dabney Drive, Pasadena, TX 77536, has been approved to gauge and accredited to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.*

DATES: The accreditation and approval of Camin Cargo Control, Inc., as commercial gauger and laboratory became effective on June 29, 2010. The next triennial inspection date will be scheduled for June 2013.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: September 13, 2010.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2010–23481 Filed 9–20–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of King Laboratories, Inc., as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of King Laboratories, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, King Laboratories, Inc., 5009 S. MacDill Ave., Tampa, FL 33611, has been approved to gauge and accredited to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.

DATES: The accreditation and approval of King Laboratories, Inc., as commercial gauger and laboratory became effective on July 1, 2010. The next triennial inspection date will be scheduled for July 2013.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: September 13, 2010.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2010–23483 Filed 9–20–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of NMC Global Corporation, as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of NMC Global Corporation, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, NMC Global Corporation, 650 Groves Road Suite 111, Thorofare, NJ 08086, has been approved to gauge and accredited to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.

DATES: The accreditation and approval of NMC Global Corporation, as commercial gauger and laboratory became effective on July 25, 2007. The next triennial inspection date will be scheduled for July 2010.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: September 13, 2010.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2010–23484 Filed 9–20–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Chem Coast, Inc., as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Chem Coast, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Chem Coast, Inc., 11820 North H Street, Laporte, TX 77571, has been approved to gauge and accredited to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ

this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.

DATES: The accreditation and approval of Chem Coast, Inc., as commercial gauger and laboratory became effective on June 2, 2010. The next triennial inspection date will be scheduled for June 2013.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: September 13, 2010.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2010–23482 Filed 9–20–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Camin Cargo Control, Inc., as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Camin Cargo Control, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Camin Cargo Control, Inc., 2844 Sharon Street Suite B, Kenner, LA 70062, has been approved to gauge and accredited to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.*

DATES: The accreditation and approval of Camin Cargo Control, Inc., as commercial gauger and laboratory became effective on June 15, 2010. The next triennial inspection date will be scheduled for June 2013.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: September 13, 2010.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2010–23480 Filed 9–20–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Inspectorate America Corporation, as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Inspectorate America Corporation, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Inspectorate America Corporation, 37 Panagrossi Circle, East Haven, CT 06512, has been approved to gauge and accredited to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.*

DATES: The accreditation and approval of Inspectorate America Corporation, as commercial gauger and laboratory became effective on May 7, 2010. The next triennial inspection date will be scheduled for May 2013.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: September 13, 2010.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2010–23475 Filed 9–20–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

Accreditation and Approval of Inspectorate America Corporation, as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Inspectorate America Corporation, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Inspectorate America Corporation, 5237 Halls Mill Road—Building F, Mobile, AL 36619, has been approved to gauge and accredited to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested.

Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.

DATES: The accreditation and approval of Inspectorate America Corporation, as commercial gauger and laboratory became effective on April 7, 2010. The next triennial inspection date will be scheduled for April 2013.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: September 13, 2010.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2010–23473 Filed 9–20–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Commercial Invoice

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; Extension of an existing collection of information: 1651–0090.

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 Commercial Invoice. 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 November 22, 2010, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 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, Regulations and Rulings, Office of International Trade, 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: Commercial Invoice.

OMB Number: 1651–0090.

Form Number: None.

Abstract: The collection of the commercial invoice is necessary for conducting adequate examination of merchandise and determination of the duties due on imported merchandise as required by 19 CFR 141.81, 141.82, 141.83, 141.84, 141.85, and 141.86 and by 19 U.S.C. 1481 and 1484. The information on the commercial invoice is obtained from the foreign shipper and provided to CBP by the importer. To facilitate trade, CBP did not develop a specific form for this information collection. Importers are allowed to use their existing invoices to comply with these regulations.

Current Actions: This submission is being made to extend the expiration date with a change to the burden hours based on updated estimates by CBP.

Type of Review: Extension (with change).

Affected Public: Businesses.

Estimated Number of Respondents: 38,500.

Estimated Number of Annual Responses per Respondent: 1,208.

Estimated Number of Total Annual Responses: 46,500,000.

Estimated time per Response: 1 minute.

Estimated Total Annual Burden Hours: 744,000.

Dated: September 16, 2010.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2010–23559 Filed 9–20–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs And Border Protection

Agency Information Collection Activities: Customs Declaration (Form 6059B)

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; Extension of an existing collection of information: 1651–0009.

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 Customs Declaration. 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 November 22, 2010, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 799 9th Street, NW., 5th 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, Regulations and Rulings, Office of International Trade, 799 9th Street, NW., 5th 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: Customs Declaration.

OMB Number: 1651–0009.

Form Number: CBP Form 6059B.

Abstract: CBP Form 6059B, Customs Declaration, is used as a standard report of the identity and residence of each person arriving in the United States. This form is also used to declare imported articles to CBP in accordance with 19 U.S.C. 66, section 498 of the Tariff Act of 1930, as amended (19 U.S.C. 1498). CBP Form 6059B requires basic information to facilitate the clearance of persons and goods arriving in the United States and helps CBP officers determine if any duties or taxes are due. A sample of CBP Form 6059B can be found at: *http://www.cbp.gov/xp/cgov/travel/vacation/sample_declaration_form.xml.*

Current Actions: This submission is being made to extend the expiration date with no change to the burden hours.

Type of Review: Extension (without change).

Affected Public: Individuals.

Estimated Number of Respondents: 105,606,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 105,606,000.

Estimated Time per Response: 4 minutes.

Estimated Total Annual Burden Hours: 7,075,602.

Dated: September 16, 2010.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2010–23558 Filed 9–20–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5432–N–02]

Statutorily Mandated Designation of Difficult Development Areas and Qualified Census Tracts for 2011

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: On September 9, 2010 (75 FR 54902), HUD published a notice designating "Difficult Development Areas" (DDAs) for 2011. HUD makes new DDA designations annually for purposes of the Low-Income Housing Tax Credit (LIHTC) under Section 42 of the Internal Revenue Code of 1986 (IRC) (26 U.S.C. 42). HUD's September 9, 2010, notice also provided that designations of "Qualified Census Tracts" (QCTs) under IRC Section 42 published October 6, 2009 (74 FR 51304), remain in effect.

HUD's September 9, 2010, notice included a summary of the LIHTC and an explanation of HUD's methodology in designating DDAs. HUD's September 9, 2010, notice, however, inadvertently omitted the tables listing the metropolitan and nonmetropolitan DDAs for 2011. For the convenience of the public, today's **Federal Register** notice republishes HUD's DDA notice in its entirety, and includes the tables listing metropolitan and nonmetropolitan DDAs.

FOR FURTHER INFORMATION CONTACT: For questions on how areas are designated and on geographic definitions, contact Michael K. Hollar, Senior Economist, Economic Development and Public Finance Division, Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 8234, Washington, DC 20410–6000; telephone number 202–402–5878, or send an e-mail to *Michael.K.Hollar@hud.gov.* For specific legal questions pertaining to Section 42, contact Branch 5, Office of the Associate Chief Counsel, Passthroughs and Special Industries, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224; telephone number 202–622–3040, fax number 202–622–4753. For questions about the "HUB Zones" program, contact Mariana Pardo, Assistant Administrator for Procurement Policy, Office of Government Contracting, Small Business Administration, 409 Third Street, SW., Suite 8800, Washington, DC 20416; telephone number 202–205–8885, fax number 202–205–7167, or send an e-mail to *hubzone@sba.gov.* A text telephone is available for persons with hearing or speech impairments at 202–708–8339. (These are not toll-free telephone numbers.) Additional copies of this notice are available through HUD User at 800–245–2691 for a small fee to cover duplication and mailing costs.

Copies Available Electronically: This notice and additional information about DDAs and QCTs are available electronically on the Internet at *http://www.huduser.org/datasets/qct.html.*

SUPPLEMENTARY INFORMATION:

This Document

This notice designates DDAs for each of the 50 states, the District of Columbia, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands. The designations of DDAs in this notice are based on final Fiscal Year (FY) 2010 Fair Market Rents (FMRs), FY2010 income limits, and 2000 Census population counts, as explained below. In accordance with the Gulf Opportunity Zone Act of 2005 (GO Zone Act) (Pub. L. 109–135, approved December 21, 2005), as amended by the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007, (Pub. L. 110–28, approved, May 25, 2007), GO Zone DDAs expire on December 31, 2010. Thus, this notice does not designate GO Zone DDAs.

2000 Census

Data from the 2000 Census on total population of metropolitan areas and nonmetropolitan areas are used in the designation of DDAs. The Office of Management and Budget (OMB) first published new metropolitan area definitions incorporating 2000 Census data in OMB Bulletin No. 03–04 on June 6, 2003, and updated them periodically through OMB Bulletin No. 09–01 on November 20, 2008. The FY2010 FMRs and FY2010 income limits used to designate DDAs are based on these new metropolitan statistical area (MSA) definitions, with modifications to account for substantial differences in rental housing markets (and, in some cases, median income levels) within MSAs.

Background

The U.S. Department of the Treasury (Treasury) and its Internal Revenue Service (IRS) are authorized to interpret and enforce the provisions of the IRC, including the LIHTC found at Section 42. The Secretary of HUD is required to designate DDAs and QCTs by IRC Section 42(d)(5)(B). In order to assist in understanding HUD's mandated

designation of DDAs and QCTs for use in administering IRC Section 42, a summary of the section is provided. The following summary does not purport to bind Treasury or the IRS in any way, nor does it purport to bind HUD, since HUD has authority to interpret or administer the IRC only in instances where it receives explicit statutory delegation.

Summary of the Low-Income Housing Tax Credit

The LIHTC is a tax incentive intended to increase the availability of low-income housing. IRC Section 42 provides an income tax credit to owners of newly constructed or substantially rehabilitated low-income rental housing projects. The dollar amount of the LIHTC available for allocation by each state (credit ceiling) is limited by population. Each state is allowed a credit ceiling based on a statutory formula indicated at IRC Section 42(h)(3). States may carry forward unallocated credits derived from the credit ceiling for one year; however, to the extent such unallocated credits are not used by then, the credits go into a national pool to be redistributed to states as additional credit. State and local housing agencies allocate the state's credit ceiling among low-income housing buildings whose owners have applied for the credit. Besides IRC Section 42 credits derived from the credit ceiling, states may also provide IRC Section 42 credits to owners of buildings based on the percentage of certain building costs financed by tax-exempt bond proceeds. Credits provided under the tax-exempt bond "volume cap" do not reduce the credits available from the credit ceiling.

The credits allocated to a building are based on the cost of units placed in service as low-income units under particular minimum occupancy and maximum rent criteria. In general, a building must meet one of two thresholds to be eligible for the LIHTC; either: (1) 20 percent of the units must be rent-restricted and occupied by tenants with incomes no higher than 50 percent of the Area Median Gross Income (AMGI), or (2) 40 percent of the units must be rent-restricted and occupied by tenants with incomes no higher than 60 percent of AMGI. The term "rent-restricted" means that gross rent, including an allowance for tenant-paid utilities, cannot exceed 30 percent of the tenant's imputed income limitation (*i.e.,* 50 percent or 60 percent of AMGI). The rent and occupancy thresholds remain in effect for at least 15 years, and building owners are required to enter into agreements to maintain the low-income character of the building for at least an additional 15 years.

The LIHTC reduces income tax liability dollar-for-dollar. It is taken annually for a term of 10 years and is intended to yield a present value of either: (1) 70 percent of the "qualified basis" for new construction or substantial rehabilitation expenditures that are not federally subsidized (as defined in Section 42(i)(2)), or (2) 30 percent of the qualified basis for the cost of acquiring certain existing buildings or projects that are federally subsidized. The actual credit rates are adjusted monthly for projects placed in service after 1987 under procedures specified in IRC Section 42. Individuals can use the credits up to a deduction equivalent of $25,000 (the actual maximum amount of credit that an individual can claim depends on the individual's marginal tax rate). For buildings placed in service after December 31, 2007, individuals can use the credits against the alternative minimum tax. Corporations, other than S or personal service corporations, can use the credits against ordinary income tax, and, for buildings placed in service after December 31, 2007, against the alternative minimum tax. These corporations also can deduct losses from the project.

The qualified basis represents the product of the building's "applicable fraction" and its "eligible basis." The applicable fraction is based on the number of low-income units in the building as a percentage of the total number of units, or based on the floor space of low-income units as a percentage of the total floor space of residential units in the building. The eligible basis is the adjusted basis attributable to acquisition, rehabilitation, or new construction costs (depending on the type of LIHTC involved). These costs include amounts chargeable to a capital account that are incurred prior to the end of the first taxable year in which the qualified low-income building is placed in service or, at the election of the taxpayer, the end of the succeeding taxable year. In the case of buildings located in designated DDAs or designated QCTs, eligible basis can be increased up to 130 percent from what it would otherwise be. This means that the available credits also can be increased by up to 30 percent. For example, if a 70 percent credit is available, it effectively could be increased to as much as 91 percent.

IRC Section 42 defines a DDA as any area designated by the Secretary of HUD as an area that has high construction, land, and utility costs relative to the AMGI. All designated DDAs in metropolitan areas (taken together) may not contain more than 20 percent of the aggregate population of all metropolitan areas, and all designated areas not in metropolitan areas may not contain more than 20 percent of the aggregate population of all nonmetropolitan areas.

IRC Section 42(d)(5)(B)(v) allows states to award an increase in basis up to 30 percent to buildings located outside of federally designated DDAs and QCTs if the increase is necessary to make the building financially feasible. This state discretion applies only to buildings allocated credits under the state housing credit ceiling and is not permitted for buildings receiving credits in connection with tax-exempt bonds. Rules for such designations shall be set forth in the LIHTC-allocating agencies' qualified allocation plans (QAPs).

Explanation of HUD Designation Methodology

A. Difficult Development Areas

In developing the list of DDAs, HUD compared housing costs with incomes. HUD used 2000 Census population data and the MSA definitions, as published in OMB Bulletin No. 09–01 on November 20, 2008, with modifications, as described below. In keeping with past practice of basing the coming year's DDA designations on data from the preceding year, the basis for these comparisons is the FY2010 HUD income limits for very low-income households (very low-income limits, or VLILs), which are based on 50 percent of AMGI, and final FY2010 FMRs used for the Housing Choice Voucher (HCV) program. In formulating the FY2010 FMRs and VLILs, HUD modified the current OMB definitions of MSAs to account for substantial differences in rents among areas within each new MSA that were in different FMR areas under definitions used in prior years. HUD formed these "HUD Metro FMR Areas" (HMFAs) in cases where one or more of the parts of newly defined MSAs that previously were in separate FMR areas had 2000 Census base 40th-percentile recent-mover rents that differed, by 5 percent or more, from the same statistic calculated at the MSA level. In addition, a few HMFAs were formed on the basis of very large differences in AMGIs among the MSA parts. All HMFAs are contained entirely within MSAs. All nonmetropolitan counties are outside of MSAs and are not broken up by HUD for purposes of setting FMRs and VLILs. (Complete details on HUD's process for determining FY2010 FMR areas and FMRs are available at *http://www.huduser.org/portal/datasets/fmr/fmrs/*

docsys.html&data=fmr10. Complete details on HUD's process for determining FY2010 income limits are available at *http://www.huduser.org/portal/datasets/il/il10/index.html.*)

HUD's unit of analysis for designating metropolitan DDAs, therefore, consists of: Entire MSAs, in cases where these were not broken up into HMFAs for purposes of computing FMRs and VLILs; and HMFAs within the MSAs that were broken up for such purposes. Hereafter in this notice, the unit of analysis for designating metropolitan DDAs will be called the HMFA, and the unit of analysis for nonmetropolitan DDAs will be the nonmetropolitan county or county equivalent area. The procedure used in making the DDA calculations follows:

1. For each HMFA and each nonmetropolitan county, a ratio was calculated. This calculation used the final FY2010 two-bedroom FMR and the FY2010 four-person VLIL.

a. The numerator of the ratio was the area's final FY2010 FMR. In general, the FMR is based on the 40th-percentile gross rent paid by recent movers to live in a two-bedroom apartment. In metropolitan areas granted a FMR based on the 50th-percentile rent for purposes of improving the administration of HUD's HCV program (see 71 FR 5068), the 40th-percentile rent was used to ensure nationwide consistency of comparisons.

b. The denominator of the ratio was the monthly LIHTC income-based rent limit, which was calculated as 1/12 of 30 percent of 120 percent of the area's VLIL (where the VLIL was rounded to the nearest $50 and not allowed to exceed 80 percent of the AMGI in areas where the VLIL is adjusted upward from its 50 percent-of-AMGI base).

2. The ratios of the FMR to the LIHTC income-based rent limit were arrayed in descending order, separately, for HMFAs and for nonmetropolitan counties.

3. The DDAs are those with the highest ratios cumulative to 20 percent of the 2000 population of all metropolitan areas and of all nonmetropolitan areas.

B. Application of Population Caps to DDA Determinations

In identifying DDAs, HUD applied caps, or limitations, as noted above. The cumulative population of metropolitan DDAs cannot exceed 20 percent of the cumulative population of all metropolitan areas, and the cumulative population of nonmetropolitan DDAs cannot exceed 20 percent of the cumulative population of all nonmetropolitan areas.

In applying these caps, HUD established procedures to deal with how to treat small overruns of the caps. The remainder of this section explains those procedures. In general, HUD stops selecting areas when it is impossible to choose another area without exceeding the applicable cap. The only exceptions to this policy are when the next eligible excluded area contains either a large absolute population or a large percentage of the total population, or the next excluded area's ranking ratio, as described above, was identical (to four decimal places) to the last area selected, *and* its inclusion resulted in only a minor overrun of the cap. Thus, for both the designated metropolitan and nonmetropolitan DDAs, there may be minimal overruns of the cap. HUD believes the designation of additional areas in the above examples of minimal overruns is consistent with the intent of the IRC. As long as the apparent excess is small due to measurement errors, some latitude is justifiable, because it is impossible to determine whether the 20 percent cap has been exceeded. Despite the care and effort involved in a Decennial Census, the Census Bureau and all users of the data recognize that the population counts for a given area and for the entire country are not precise. Therefore, the extent of the measurement error is unknown. There can be errors in both the numerator and denominator of the ratio of populations used in applying a 20 percent cap. In circumstances where a strict application of a 20 percent cap results in an anomalous situation, recognition of the unavoidable imprecision in the census data justifies accepting small variances above the 20 percent limit.

C. Exceptions to OMB Definitions of MSAs and Other Geographic Matters

As stated in OMB Bulletin 09–01, defining metropolitan areas:

> "OMB establishes and maintains the definitions of Metropolitan * * * Statistical Areas, * * * solely for statistical purposes. * * * OMB does not take into account or attempt to anticipate any non-statistical uses that may be made of the definitions[.] In cases where * * * an agency elects to use the Metropolitan * * * Area definitions in nonstatistical programs, it is the sponsoring agency's responsibility to ensure that the definitions are appropriate for such use. An agency using the statistical definitions in a nonstatistical program may modify the definitions, but only for the purposes of that program. In such cases, any modifications should be clearly identified as deviations from the OMB statistical area definitions in order to avoid confusion with OMB's official definitions of Metropolitan * * * Statistical Areas."

Following OMB guidance, the estimation procedure for the FY2010 FMRs incorporates the current OMB definitions of metropolitan areas based on the Core-Based Statistical Area (CBSA) standards, as implemented with 2000 Census data, but makes adjustments to the definitions, in order to separate subparts of these areas in cases where FMRs (and in a few cases, VLILs) would otherwise change significantly if the new area definitions were used without modification. In CBSAs where subareas are established, it is HUD's view that the geographic extent of the housing markets are not yet the same as the geographic extent of the CBSAs, but may approach becoming so as the social and economic integration of the CBSA component areas increases.

The geographic baseline for the new estimation procedure is the CBSA Metropolitan Areas (referred to as Metropolitan Statistical Areas or MSAs) and CBSA Non-Metropolitan Counties (nonmetropolitan counties include the county components of Micropolitan CBSAs where the counties are generally assigned separate FMRs). The HUD-modified CBSA definitions allow for subarea FMRs within MSAs based on the boundaries of "Old FMR Areas" (OFAs) within the boundaries of new MSAs. (OFAs are the FMR areas defined for the FY2005 FMRs. Collectively, they include the June 30, 1999, OMB definitions of MSAs and Primary MSAs (old definition MSAs/PMSAs), metropolitan counties deleted from old definition MSAs/PMSAs by HUD for FMR-setting purposes, and counties and county parts outside of old definition MSAs/PMSAs referred to as nonmetropolitan counties). Subareas of MSAs are assigned their own FMRs when the subarea 2000 Census Base FMR differs significantly from the MSA 2000 Census Base FMR (or, in some cases, where the 2000 Census base AMGI differs significantly from the MSA 2000 Census Base AMGI). MSA subareas, and the remaining portions of MSAs after subareas have been determined, are referred to as "HUD Metro FMR Areas (HMFAs)," to distinguish such areas from OMB's official definition of MSAs.

In the New England states (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont), HMFAs are defined according to county subdivisions or minor civil divisions (MCDs), rather than county boundaries. However, since no part of an HMFA is outside an OMB-defined, county-based MSA, all New England nonmetropolitan counties are kept intact for purposes of designating Nonmetropolitan DDAs.

For the convenience of readers of this notice, the geographical definitions of designated Metropolitan DDAs are included in the list of DDAs.

The Census Bureau provides no tabulations of 2000 Census data for Broomfield County, Colorado, an area that was created from parts of four Colorado counties when the city of Broomfield became a county in November 2001. Broomfield County is made up of former parts of Adams, Boulder, Jefferson, and Weld counties. The boundaries of Broomfield County are similar, but not identical to, the boundaries of the city of Broomfield at the time of the 2000 Census. In OMB metropolitan area definitions and, therefore, for purposes of this notice, Broomfield County is included as part of the Denver-Aurora, CO MSA. Census tracts in Broomfield County include the parts of the Adams, Boulder, Jefferson, and Weld County census tracts that were within the boundaries of the city of Broomfield according to the 2000 Census, plus parts of three Adams County tracts (85.15, 85.16, and 85.28), and one Jefferson County tract (98.25) that were not within any municipality during the 2000 Census but which, according to Census Bureau maps, are within the boundaries of Broomfield County. Data for Adams, Boulder, Jefferson, and Weld counties and their census tracts were adjusted to exclude the data assigned to Broomfield County and its census tracts.

Future Designations

DDAs are designated annually as updated income and FMR data are made public. QCTs are designated periodically as new data become available, or as metropolitan area definitions change.

Effective Date

The 2011 lists of DDAs are effective:

(1) for allocations of credit after December 31, 2010; or

(2) for purposes of IRC Section 42(h)(4), if the bonds are issued and the building is placed in service after December 31, 2010.

If an area is not on a subsequent list of DDAs, the 2011 lists are effective for the area if:

(1) The allocation of credit to an applicant is made no later than the end of the 365-day period after the applicant submits a complete application to the LIHTC-allocating agency, and the submission is made before the effective date of the subsequent lists; or

(2) for purposes of IRC Section 42(h)(4), if:

(a) the bonds are issued or the building is placed in service no later than the end of the 365-day period after the applicant submits a complete application to the bond-issuing agency, and

(b) the submission is made before the effective date of the subsequent lists, provided that both the issuance of the bonds and the placement in service of the building occur after the application is submitted.

An application is deemed to be submitted on the date it is filed if the application is determined to be complete by the credit-allocating or bond-issuing agency. A "complete application" means that no more than *de minimis* clarification of the application is required for the agency to make a decision about the allocation of tax credits or issuance of bonds requested in the application.

In the case of a "multiphase project," the DDA or QCT status of the site of the project that applies for all phases of the project is that which applied when the project received its first allocation of LIHTC. For purposes of IRC Section 42(h)(4), the DDA or QCT status of the site of the project that applies for all phases of the project is that which applied when the first of the following occurred: (a) The building(s) in the first phase were placed in service, or (b) the bonds were issued.

For purposes of this notice, a "multiphase project" is defined as a set of buildings to be constructed or rehabilitated under the rules of the LIHTC and meeting the following criteria:

(1) The multiphase composition of the project (*i.e.,* total number of buildings and phases in project, with a description of how many buildings are to be built in each phase and when each phase is to be completed, and any other information required by the agency) is made known by the applicant in the first application of credit for any building in the project, and that applicant identifies the buildings in the project for which credit is (or will be) sought;

(2) The aggregate amount of LIHTC applied for on behalf of, or that would eventually be allocated to, the buildings on the site exceeds the one-year limitation on credits per applicant, as defined in the Qualified Allocation Plan (QAP) of the LIHTC-allocating agency, or the annual per-capita credit authority of the LIHTC allocating agency, and is the reason the applicant must request multiple allocations over 2 or more years; and

(3) All applications for LIHTC for buildings on the site are made in immediately consecutive years.

Members of the public are hereby reminded that the Secretary of Housing and Urban Development, or the Secretary's designee, has sole legal authority to designate DDAs and QCTs, by publishing lists of geographic entities as defined by, in the case of DDAs, the several states and the governments of the insular areas of the United States and, in the case of QCTs, by the Census Bureau; and to establish the effective dates of such lists. The Secretary of the Treasury, through the IRS thereof, has sole legal authority to interpret, and to determine and enforce compliance with the IRC and associated regulations, including **Federal Register** notices published by HUD for purposes of designating DDAs and QCTs. Representations made by any other entity as to the content of HUD notices designating DDAs and QCTs that do not precisely match the language published by HUD should not be relied upon by taxpayers in determining what actions are necessary to comply with HUD notices.

The designations of "Qualified Census Tracts" under IRC Section 42, published October 6, 2009 (74 FR 51304), remain in effect. The above language regarding 2011 and subsequent designations of DDAs also applies to the designations of QCTs published October 6, 2009 (74 FR 51304) and to subsequent designations of QCTs.

Interpretive Examples of Effective Date

For the convenience of readers of this notice, interpretive examples are provided below to illustrate the consequences of the effective date in areas that gain or lose DDA status. The examples covering DDAs are equally applicable to QCT designations.

(Case A) Project A is located in a 2011 DDA that is NOT a designated DDA in 2012. A complete application for tax credits for Project A is filed with the allocating agency on November 15, 2011. Credits are allocated to Project A on October 30, 2012. Project A is eligible for the increase in basis accorded a project in a 2011 DDA because the application was filed BEFORE January 1, 2012 (the assumed effective date for the 2012 DDA lists), and because tax credits were allocated no later than the end of the 365-day period after the filing of the complete application for an allocation of tax credits.

(Case B) Project B is located in a 2011 DDA that is NOT a designated DDA in 2012 or 2013. A complete application for tax credits for Project B is filed with the allocating agency on December 1, 2011. Credits are allocated to Project B on March 30, 2013. Project B is NOT

eligible for the increase in basis accorded a project in a 2011 DDA because, although the application for an allocation of tax credits was filed BEFORE January 1, 2012 (the assumed effective date of the 2012 DDA lists), the tax credits were allocated later than the end of the 365-day period after the filing of the complete application.

(Case C) Project C is located in a 2011 DDA that was not a DDA in 2010. Project C was placed in service on November 15, 2010. A complete application for tax-exempt bond financing for Project C is filed with the bond-issuing agency on January 15, 2011. The bonds that will support the permanent financing of Project C are issued on September 30, 2011. Project C is NOT eligible for the increase in basis otherwise accorded a project in a 2011 DDA, because the project was placed in service BEFORE January 1, 2011.

(Case D) Project D is located in an area that is a DDA in 2011, but is NOT a DDA in 2012. A complete application for tax-exempt bond financing for Project D is filed with the bond-issuing agency on October 30, 2011. Bonds are issued for Project D on April 30, 2012, but Project D is not placed in service until January 30, 2013. Project D is eligible for the increase in basis available to projects located in 2011 DDAs because: (1) One of the two events necessary for triggering the effective date for buildings described in Section 42(h)(4)(B) of the IRC (the two events being bonds issued and buildings placed in service) took place on April 30, 2012, within the 365-day period after a complete application for tax-exempt bond financing was filed, (2) the application was filed during a time when the location of Project D was in a DDA, and (3) both the issuance of the bonds and placement in service of Project D occurred after the application was submitted.

(Case E) Project E is a multiphase project located in a 2011 DDA that is NOT a designated DDA in 2012. The first phase of Project E received an allocation of credits in 2011, pursuant to an application filed March 15, 2011, which describes the multiphase composition of the project. An application for tax credits for the second phase Project E is filed with the allocating agency by the same entity on March 15, 2012. The second phase of Project E is located on a contiguous site. Credits are allocated to the second phase of Project E on October 30, 2012. The aggregate amount of credits allocated to the two phases of Project E exceeds the amount of credits that may be allocated to an applicant in one year under the allocating agency's QAP and is the reason that applications were made in multiple phases. The second phase of Project E is, therefore, eligible for the increase in basis accorded a project in a 2011 DDA, because it meets all of the conditions to be a part of a multiphase project.

(Case F) Project F is a multiphase project located in a 2011 DDA that is NOT a designated DDA in 2012. The first phase of Project F received an allocation of credits in 2011, pursuant to an application filed March 15, 2011, which does not describe the multiphase composition of the project. An application for tax credits for the second phase of Project F is filed with the allocating agency by the same entity on March 15, 2013. Credits are allocated to the second phase of Project F on October 30, 2013. The aggregate amount of credits allocated to the two phases of Project F exceeds the amount of credits that may be allocated to an applicant in one year under the allocating agency's QAP. The second phase of Project F is, therefore, NOT eligible for the increase in basis accorded a project in a 2011 DDA, since it does not meet all of the conditions for a multiphase project, as defined in this notice. The original application for credits for the first phase did not describe the multiphase composition of the project. Also, the application for credits for the second phase of Project F was not made in the year immediately following the first phase application year.

Findings and Certifications

Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.19(c)(6) of HUD's regulations, the policies and procedures contained in this notice provide for the establishment of fiscal requirements or procedures that do not constitute a development decision affecting the physical condition of specific project areas or building sites and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act, except for extraordinary circumstances, and no Finding of No Significant Impact is required.

Federalism Impact

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any policy document that has federalism implications if the document either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the document preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the executive order. This notice merely designates DDAs as required under Section 42 of the IRC, as amended, for the use by political subdivisions of the states in allocating the LIHTC. This notice also details the technical methodology used in making such designations. As a result, this notice is not subject to review under the order.

Dated: September 14, 2010.

Raphael W. Bostic,

Assistant Secretary for Policy, Development and Research.

BILLING CODE 4210–67–P

2011 IRS SECTION 42(d)(5)(B) METROPOLITAN DIFFICULT DEVELOPMENT AREAS
(OMB Metropolitan Area Definitions, November 20, 2008 [MSA] and derived FY2010 HUD Metro FMR Area Definitions [HMFA])

State	Metropolitan Area	Metropolitan Area Components			
Arizona	Flagstaff, AZ MSA	Coconino County			
	Prescott, AZ MSA	Yavapai County			
	Yuma, AZ MSA	Yuma County			
California	Los Angeles-Long Beach, CA HMFA	Los Angeles County			
	Napa, CA MSA	Napa County			
	Orange County, CA HMFA	Orange County			
	Oxnard-Thousand Oaks-Ventura, CA MSA	Ventura County			
	Riverside-San Bernardino-Ontario, CA MSA	Riverside County	San Bernardino County		
	Salinas, CA MSA	Monterey County			
	San Diego-Carlsbad-San Marcos, CA MSA	San Diego County			
	San Francisco, CA HMFA	Marin County	San Francisco County	San Mateo County	
	Santa Barbara-Santa Maria-Goleta, CA MSA	Santa Barbara County			
	Santa Cruz-Watsonville, CA MSA	Santa Cruz County			
	Santa Rosa-Petaluma, CA MSA	Sonoma County			
Florida	Cape Coral-Fort Myers, FL MSA	Lee County			
	Deltona-Daytona Beach-Ormond Beach, FL MSA	Volusia County			
	Miami-Miami Beach-Kendall, FL HMFA	Miami-Dade County			
	Naples-Marco Island, FL MSA	Collier County			
	North Port-Bradenton-Sarasota, FL MSA	Manatee County	Sarasota County		
	Orlando-Kisimmee-Sanford, FL MSA	Lake County	Orange County	Osceola County	Seminole County
	Palm Coast, FL MSA	Flagler County			
	Port St. Lucie, FL MSA	Martin County	St. Lucie County		
	Punta Gorda, FL MSA	Charlotte County			
	Sebastian-Vero Beach, FL MSA	Indian River County			
	Tampa-St. Petersburg-Clearwater, FL MSA	Hernando County	Hillsborough County	Pasco County	Pinellas County
Hawaii	Honolulu, HI MSA	Honolulu County			
Mississippi	Gulfport-Biloxi, MS MSA	Hancock County	Harrison County	Stone County	
	Tunica County, MS HMFA	Tunica County			
Nevada	Las Vegas-Paradise, NV MSA	Clark County			
New Jersey	Jersey City, NJ HMFA	Hudson County			
	Vineland-Millville-Bridgeton, NJ MSA	Cumberland County			
New York	New York, NY HMFA	Bronx County	Kings County	New York County	Putnam County
		Queens County	Richmond County	Rockland County	Westchester County

2011 IRS SECTION 42(d)(5)(B) METROPOLITAN DIFFICULT DEVELOPMENT AREAS
(OMB Metropolitan Area Definitions, November 20, 2008 [MSA] and derived FY2010 HUD Metro FMR Area Definitions [HMFA])

State	Metropolitan Area	Metropolitan Area Components			
Puerto Rico	Aguadilla-Isabela-San Sebastián, PR MSA	Aguada Municipio	Aguadilla Municipio	Añasco Municipio	Isabela Municipio
		Lares Municipio	Moca Municipio	Rincón Municipio	San Sebastián Municipio
	Arecibo, PR HMFA	Arecibo Municipio	Camuy Municipio	Hatillo Municipio	
	Barranquitas-Aibonito-Quebradillas, PR HMFA	Aibonito Municipio	Barranquitas Municipio	Ciales Municipio	Maunabo Municipio
		Orocovis Municipio	Quebradillas Municipio		
	Caguas, PR HMFA	Caguas Municipio	Cayey Municipio	Cidra Municipio	Gurabo Municipio
		San Lorenzo Municipio			
	Fajardo, PR MSA	Ceiba Municipio	Fajardo Municipio	Luquillo Municipio	
	Guayama, PR MSA	Arroyo Municipio	Guayama Municipio	Patillas Municipio	
	Mayagüez, PR MSA	Hormigueros Municipio	Mayagüez Municipio		
	Ponce, PR MSA	Juana Díaz Municipio	Ponce Municipio	Villalba Municipio	
	San Germán-Cabo Rojo, PR MSA	Cabo Rojo Municipio	Lajas Municipio	Sabana Grande Municipio	San German Municipio
	San Juan-Guaynabo, PR HMFA	Aguas Buenas Municipio	Barceloneta Municipio	Bayamón Municipio	Canóvanas Municipio
		Carolina Municipio	Cataño Municipio	Comerío Municipio	Corozal Municipio
		Dorado Municipio	Florida Municipio	Guaynabo Municipio	Humacao Municipio
		Juncos Municipio	Las Piedras Municipio	Loíza Municipio	Manatí Municipio
		Morovis Municipio	Naguabo Municipio	Naranjito Municipio	Río Grande Municipio
		San Juan Municipio	Toa Alta Municipio	Toa Baja Municipio	Trujillo Alto Municipio
		Vega Alta Municipio	Vega Baja Municipio	Yabucoa Municipio	

2011 IRS SECTION 42(d)(5)(B) NONMETROPOLITAN DIFFICULT DEVELOPMENT AREAS (OMB Metropolitan Area Definitions, November 20, 2008)

State	Nonmetropolitan Counties or County Equivalents			
Alaska	Aleutians East Borough	Bethel Census Area	Bristol Bay Borough	Dillingham Census Area
	Haines Borough	Hoonah-Angoon Census Area	Juneau City and Borough	Ketchikan Gateway Borough
	Kodiak Island Borough	Lake and Peninsula Borough	Nome Census Area	North Slope Borough
	Northwest Arctic Borough	Petersburg Census Area	Prince of Wales-Hyder Census Area	Sitka City and Borough
	Skagway Municipality	Southeast Fairbanks Census Area	Valdez-Cordova Census Area	Wade Hampton Census Area
	Wrangell City and Borough	Yakutat City and Borough	Yukon-Koyukuk Census Area	
Arizona	Apache County	Cochise County	Gila County	Graham County
	La Paz County	Navajo County	Santa Cruz County	
Arkansas	Montgomery County			
California	Alpine County	Amador County	Calaveras County	Colusa County
	Del Norte County	Glenn County	Humboldt County	Inyo County
	Lake County	Lassen County	Mariposa County	Mendocino County
	Modoc County	Mono County	Nevada County	Plumas County
	Sierra County	Siskiyou County	Tehama County	Trinity County
	Tuolumne County			
Colorado	Archuleta County	Eagle County	Garfield County	Hinsdale County
	Jackson County	Lake County	Mineral County	Ouray County
	Pitkin County	Rio Blanco County	Routt County	San Miguel County
	Summit County			
Delaware	Sussex County			
Florida	Calhoun County	Citrus County	Columbia County	DeSoto County
	Franklin County	Glades County	Gulf County	Hardee County
	Hendry County	Highlands County	Holmes County	Levy County
	Liberty County	Madison County	Monroe County	Okeechobee County
	Putnam County	Taylor County	Union County	Walton County
Georgia	Decatur County	Gilmer County	Gordon County	Lumpkin County
	Polk County	Rabun County	Talbot County	Towns County
	Troup County	Union County	Upson County	White County
Hawaii	Hawaii County	Kalawao County	Kauai County	Maui County
Idaho	Benewah County	Bonner County	Boundary County	Camas County
	Cassia County	Gooding County	Idaho County	Jerome County
	Lincoln County	Twin Falls County		
Kentucky	Butler County	Carlisle County	Fulton County	Lincoln County
	Nicholas County	Owen County	Powell County	
Louisiana	Bienville Parish	Claiborne Parish	Morehouse Parish	Natchitoches Parish
	Red River Parish	Sabine Parish	St. Mary Parish	Tangipahoa Parish
Maine	Franklin County	Hancock County	Knox County	Lincoln County
	Oxford County	Piscataquis County	Waldo County	Washington County
Massachusetts	Dukes County	Nantucket County		
Michigan	Benzie County	Branch County	Grand Traverse County	Otsego County
Mississippi	Adams County	Benton County	Bolivar County	Chickasaw County
	Clarke County	Coahoma County	Holmes County	Issaquena County
	Kemper County	Lauderdale County	Newton County	Noxubee County
	Oktibbeha County	Pearl River County	Quitman County	Sharkey County
	Washington County	Winston County		
Missouri	Taney County			
Montana	Beaverhead County	Madison County	Meagher County	Mineral County
Nevada	Churchill County	Douglas County	Lyon County	
New Hampshire	Belknap County	Carroll County	Cheshire County	Grafton County
	Merrimack County			

2011 IRS SECTION 42(d)(5)(B) NONMETROPOLITAN DIFFICULT DEVELOPMENT AREAS (OMB Metropolitan Area Definitions, November 20, 2008)

State	Nonmetropolitan Counties or County Equivalents			
New Mexico	Guadalupe County	McKinley County	Mora County	San Miguel County
	Taos County			
New York	Chautauqua County	Clinton County	Columbia County	Cortland County
	Delaware County	Essex County	Fulton County	Genesee County
	Greene County	Hamilton County	Jefferson County	Otsego County
	Schuyler County	Seneca County	Steuben County	Sullivan County
	Yates County			
North Carolina	Avery County	Chowan County	Cleveland County	Dare County
	Gates County	Hyde County	Jones County	McDowell County
	Mitchell County	Pasquotank County	Perquimans County	Rutherford County
	Transylvania County	Tyrrell County	Watauga County	Wilson County
Oklahoma	Hughes County	Okfuskee County		
Oregon	Coos County	Crook County	Curry County	Douglas County
	Grant County	Hood River County	Josephine County	Lincoln County
	Linn County	Morrow County	Tillamook County	Wheeler County
Pennsylvania	Monroe County	Wayne County		
South Carolina	Beaufort County			
Tennessee	Bedford County	Haywood County	Sevier County	
Texas	Anderson County	Angelina County	Brown County	Burnet County
	Camp County	Coke County	Coleman County	Comanche County
	Dallam County	Eastland County	Falls County	Franklin County
	Frio County	Gillespie County	Grimes County	Henderson County
	Houston County	Kerr County	Kleberg County	Lamar County
	Leon County	Llano County	Madison County	Marion County
	Mills County	Montague County	Morris County	Nacogdoches County
	Navarro County	Palo Pinto County	Red River County	San Saba County
	Titus County	Trinity County	Walker County	
Utah	Duchesne County			
Vermont	Addison County	Bennington County	Lamoille County	Orange County
	Rutland County	Windham County	Windsor County	
Virginia	Northampton County			
Washington	Clallam County	Jefferson County	Lewis County	San Juan County
West Virginia	Calhoun County	Doddridge County	Grant County	Pendleton County
	Roane County	Taylor County		
Wyoming	Teton County			
American Samoa	Eastern District	Manu'a District	Swains Island	Western District
Guam	Guam			
Northern Mariana Islands	Northern Islands Municipality	Rota Municipality	Saipan Municipality	Tinian Municipality
Puerto Rico	Adjuntas Municipio	Coamo Municipio	Culebra Municipio	Jayuya Municipio
	Las Marias Municipio	Maricao Municipio	Salinas Municipio	Santa Isabel Municipio
	Utuado Municipio	Vieques Municipio		
Virgin Islands	St. Croix	St. John	St Thomas	

[FR Doc. 2010–23577 Filed 9–20–10; 8:45 am]

BILLING CODE 4210–67–C

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5376–N–91]

Notice of Submission of Proposed Information Collection to OMB Multifamily Project Monthly Accounting Reports

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. This information is necessary for HUD to monitor compliance with contractual agreements and analyze cash flow trends as well as occupancy and rent collection levels.

DATES: *Comments Due Date:* October 21, 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 (2502–0108) 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: Multifamily Project Monthly Accounting Reports.

OMB Approval Number: 2502–0108.

Form Numbers: HUD–93479, HUD–93480 and HUD–96003.

Description of the Need for the Information and its Proposed Use: This information is necessary for HUD to monitor compliance with contractual agreements and analyze cash flow trends as well as occupancy and rent collection levels.

Frequency of Submission: Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden:	10,269	123,228		12	....	143,766

Total Estimated Burden Hours: 143,766.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: September 14, 2010.

Leroy McKinney, Jr.,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2010–23567 Filed 9–20–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5376–N–89]

Notice of Submission of Proposed Information Collection to OMB Section 202 Supportive Housing for the Elderly Application Submission Requirements

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.

Grant application for Section 202 Supportive Housing for the Elderly and addition of predevelopment grant funding for architectural and engineering work, site control, and other planning related expenses for Section 202 grantees.

DATES: *Comments Due Date: October 21, 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 (2502–0267) 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.l, 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: Section 202 Supportive Housing for the Elderly Application Submission Requirements.

OMB Approval Number: 2502–0267.

Form Numbers: HUD–9201CA, HUD–96010.1, HUD–92041, SF–424, SF–424–Supplemental, SF–LLL, HUD–2880, HUD–2990, HUD–2991, HUD–92042, HUD–96010, HUD–96011 and HUD–2994–A.

Description of the Need for the Information and Its Proposed Use: Grant application for Section 202 Supportive Housing for the Elderly and addition of predevelopment grant funding for architectural and engineering work, site control, and other planning related expenses for Section 202 grantees.

Frequency of Submission: Annually.

Reporting Burden:	Number of Respondents	Annual Responses	×	Hours per Response	=	Burden hours
	300	300	....	2.0167	....	605

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: *September 14, 2010.*

Leroy McKinney, Jr.,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2010–23570 Filed 9–20–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5376–N–87]

Notice of Submission of Proposed Information Collection to OMB; Emergency Comment Request; Family Unification Program

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 of 1995 (44 U.S.C. Chapter 35, as amended). The Department is soliciting public comments on the subject proposal, to assure better understanding of the reporting requirements and consistency in the submission of data.

Public Housing Agencies (PHA) application for funding of new Housing Choice Vouchers to promote family unification. The Family Unification Program (FUP) is a program under which vouchers are provided to families for whom the lack of adequate housing is a primary factor in the imminent placement of the family's child, or children, in out-of-home care; or the delay in the discharge of the child, or children, to the family from out-of-home care. Youths at least 18 years old and not more than 21 years old (have not reached 22nd birthday) who left foster care at age 16 or older and who do not have adequate housing are also eligible to receive housing assistance under the FUP. A FUP voucher issued to such a youth may only be used to provide housing assistance for the youth for a maximum of 18 months.

DATES: *Comments Due Date:* September 28, 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: *ORA_Submission @sombrero;* fax: (202)395–5806.

FOR FURTHER INFORMATION CONTACT: 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 e-mail Mr. McKinney at *LeroyMcKinneyJr@HUD.gov* for a copy of the proposed forms, or other available information. Copies of available documents submitted to OMB may be obtained from Mr. McKinney.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the U.S. Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, a proposed information collection that supports Family Unification Program (FUP).

Title of Proposed Notice: Family Unification Program (FUP).

Description of Information Collection: Public Housing Agencies (PHA) application for funding of new Housing Choice Vouchers to promote family unification. The Family Unification Program (FUP) is a program under which vouchers are provided to families for whom the lack of adequate housing is a primary factor in the imminent placement of the family's child, or children, in out-of-home care; or the delay in the discharge of the child, or children, to the family from out-of-home care. Youths at least 18 years old and not more than 21 years old (have not reached 22nd birthday) who left foster care at age 16 or older and who do not have adequate housing are also eligible to receive housing assistance under the FUP. A FUP voucher issued to such a youth may only be used to provide housing assistance for the youth for a maximum of 18 months.

OMB Control Number: 2577–0259.

Agency Form Number: (SF424, SF LLL, HUD–96011, HUD–2993, HUD–96010, HUD–50058, HUD 2880, HUD–2991, HUD–2990.)

Members of Affected Public: Public housing authorities, Public Child Welfare Agencies.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of responses, and hours of responses: Burden hours per response: 27.27 hours. The total burden hours, estimating 265 respondents applicants and 42 successful applicants is 5811 hours.

Status of the proposed information collection: This is a revision to a exiting information collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: September 14, 2010.

Leroy McKinney, Jr.,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2010–23575 Filed 9–20–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5376–N–88]

Notice of Submission of Proposed Information Collection to OMB Public Housing 5 Year Annual PHA Plan

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.

PHAs are required to submit annual and 5-Year Plans to HUD as required by section 5A of the United States Housing Act of 1937 (42 U.S.C. 1437c–1) The purpose of the plan is to provide a framework for local accountability and an easily identifiealble source by which public housing residents, participants in the tenant-based assistance program, and other members of the public may locate basic PHA policies, rules and requirments concerning the PHA's operations, programs and services.

DATES: *Comments Due Date: October 21, 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 (2577–0226) 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: Public Housing 5 Year Annual PHA Plan.

OMB Approval Number: 2577–0226.

Form Numbers: HUD–50075, HUD–50071–1, HUD–50075–2, HUD–50077, HUD–50077–CR,, HUD–50077–SL,, HUD–50070.

Description of the Need for the Information and Its Proposed Use: PHAs are required to submit annual and 5-Year Plans to HUD as required by section 5A of the United States Housing Act of 1937 (42 U.S.C. 1437c–1) The purpose of the plan is to provide a framework for local accountability and an easily identifiealble source by which public housing residents, participants in the tenant-based assistance program, and other members of the public may locate basic PHA policies, rules and requirments concerning the PHA's operations, programs and services.

Frequency of Submission: Annually.

	Number of respondents	x	Annual responses	x	Hours per response	=	Burden hours
Reporting Burden:	4114	....	2802	....	5.4	....	111,005

Total Estimated Burden Hours: 111,005.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: *September 14, 2010.*

Leroy McKinney, Jr.,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2010–23572 Filed 9–20–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5376–N–90]

Notice of Submission of Proposed Information Collection to OMB American Recovery and Reinvestment Act; Public and Indian Housing Grants Reporting

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 Public Housing Capital Fund, Assisted Housing Stability and Energy and Green retrofit Investment program, Indian Community Development Block Grant Program, Native American Housing Block Grants, and Native Hawaiian Housing Block Grants must provide information to HUD for the reporting requirements of HUD ARRA Section 1512 ("Recovery Act") grants. Section 1512 of the Recovery Act details reporting requirements for the recipients of Recovery Act funding. Recipients are to report on the obligation and expenditure of Recovery Act funding, details of the projects on which those funds have been obligated and expended, an evaluation of the completion status of projects and the number of jobs created and jobs retained by the project.

DATES: *Comments Due Date:* October 21, 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 (2577–0264) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Leroy McKinney, Jr., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Leroy McKinney, Jr. at *Leroy.McKinneyJr@hud.gov* or telephone (202) 402–5564. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. McKinney.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: American Recovery and Reinvestment Act; Public and Indian Housing Grants Reporting.

OMB Approval Number: 2577–0264.

Form Numbers: N/A.

Description of the Need for the Information and Its Proposed Use: The Public Housing Capital Fund, Assisted Housing Stability and Energy and Green retrofit Investment program, Indian Community Development Block Grant Program, Native American Housing Block Grants, and Native Hawaiian Housing Block Grants must provide information to HUD for the reporting requirements of HUD ARRA Section 1512 ("Recovery Act") grants. Section 1512 of the Recovery Act details reporting requirements for the recipients of Recovery Act funding. Recipients are to report on the obligation and expenditure of Recovery Act funding, details of the projects on which those funds have been obligated and expended, an evaluation of the completion status of projects, and the number of jobs created and jobs retained by the project.

Frequency of Submission: Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	5,500	22,000	....	4	....	90,222

Total Estimated Burden Hours: 90,222.

Status: Extension of a previously approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Leroy McKinney, Jr.,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2010–23569 Filed 9–20–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–6661–F; LLAK965000–L14100000–KC0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that the Bureau of Land Management (BLM) will issue an appealable decision approving the conveyance of surface estate for certain lands to Eklutna, Inc., pursuant to the Alaska Native Claims Settlement Act. The subsurface estate in these lands will be conveyed to Cook Inlet Region, Inc. when the surface estate is conveyed to Eklutna, Inc. The lands are in the vicinity of Birchwood, Alaska, and are located in:

Seward Meridian, Alaska

T. 15 N., R. 1 W.,
Secs. 5 and 7.
Containing approximately 69 acres.

Notice of the decision will also be published four times in the *Anchorage Daily News.*

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until October 21, 2010 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The BLM by phone at 907–271–5960, by e-mail at *ak.blm.conveyance@blm.gov,* or by telecommunication device (TTD) through the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

Christy Favorite,

Land Law Examiner, Land Transfer Adjudication II Branch.

[FR Doc. 2010–23466 Filed 9–20–10; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Department of Anthropology & Ethnic Studies, University of Nevada Las Vegas, Las Vegas, NV

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and an associated funerary

object in the possession of the Department of Anthropology & Ethnic Studies, University of Nevada Las Vegas, Las Vegas, NV. The human remains and associated funerary object were removed from an unknown location in northern Nevada and from Churchill, Douglas, Lincoln, Pershing, and Nye Counties, NV.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary object. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the Department of Anthropology & Ethnic Studies, University of Nevada Las Vegas, professional staff in consultation with representatives of the Great Basin Inter-Tribal NAGPRA Coalition, a non-Federally recognized Indian group, which represents the Inter-Tribal Council of Nevada, a non-Federally recognized Indian group, and the following Federally-recognized Indian tribes: Alturas Indian Rancheria, California; Battle Mountain Shoshone Tribe (Constituent Band of the Te-Moak Tribe of Western Shoshone Indians of Nevada); Big Pine Paiute Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California; Bridgeport Paiute Indian Colony of California; Burns Paiute Tribe, California; Chemehuevi Indian Tribe of the Chemehuevi Reservation, California; Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada; Ely Shoshone Tribe of Nevada; Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada; Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada; Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California; Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada; Reno-Sparks Indian Colony, Nevada; Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada; South Fork Band (Constituent Band of the Te-Moak Tribe of Western Shoshone Indians of Nevada); Susanville Indian Rancheria, California; Te-Moak Tribe of Western Shoshone Indians of Nevada; Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada; and Yomba Shoshone Tribe of the Yomba Reservation, Nevada. Direct consultation was made with the Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada; Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada; and Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada.

At an unknown date, human remains representing a minimum of one individual were removed from northern Nevada (AHUR 0119A). At an unknown date, the human remains were donated to the Department of Anthropology. No known individual was identified. No associated funerary objects are present.

Analysis determined that the human remains are that of a pre-contact or early historic Native American adult male. No additional information is available regarding the circumstances surrounding removal.

In 1989, human remains representing a minimum of one individual were collected from Lovelock, Pershing County, NV, by the under-sheriff for that area (AHUR 120C). No known individual was identified. No associated funerary objects are present.

Analysis determined that the human remains are that of a pre-contact or early historic Native American adult. No additional information is available regarding the circumstances surrounding removal.

On April 11, 1984, human remains representing a minimum of one individual were removed from highway SR 206 near Wally's Hot Springs, south of the town of Genoa, Douglas County, NV (AHUR 531). Records indicate that skull fragments were observed resting on the ground by a Nevada Department of Transportation (NDOT) District II maintenance crew. Following this discovery, two NDOT archeologists surveyed the immediate area and concluded that the skull fragments had washed through a culvert that drained into a shallow wash. A subsequent survey, which was conducted uphill from the initial discovery, found additional human remains. No known individual was identified. No associated funerary objects are present.

Analysis determined that the human remains are that of a pre-contact or early historic Native American adult female.

On June 15, 1984, human remains representing a minimum of one individual were removed from a canal bank near Crystal Springs, Lincoln County, NV (FHUR 26). Records indicate that these remains were found by Raymond Phelps, while he was poking at the mud with a stick. The human remains were then excavated by officers from the Lincoln County Sheriff's Department and examined by the coroner, Dr. Sheldon Green. Dr. Green subsequently turned the remains over to the Department of Anthropology & Ethnic Studies, University of Nevada Las Vegas. No known individual was identified. No associated funerary objects are present.

Analysis determined that the human remains are that of a pre-contact or early historic Native American adult female, approximately 27 years of age.

At an unknown date, human remains representing a minimum of one individual were removed from Madison Socke's Ranch, Nye County, NV (FHUR 35). No known individual was identified. The one associated funerary object is a clay pipe.

No additional information is available regarding the circumstances surrounding removal. Radiocarbon analysis has indicated that the human remains date to between 1630 and 1440 B.C., and analysis determined that the remains are of an adult male. The pipe is similar in style to that used by prehistoric Great Basin Native Americans.

At an unknown date, human remains representing a minimum of one individual were removed from near the town of Fallon, Churchill County, NV (FHUR 36). Records indicate that the human remains were donated by a Mrs. Allen to the Department of Anthropology & Ethnic Studies, University of Nevada Las Vegas. No known individual was identified. No associated funerary objects are present.

Analysis determined that the human remains are that of a pre-contact or early historic Native American adult, probably female, and 45 years or more of age.

Archeological, linguistic, and oral historical evidence suggests that the geographical area where the above-mentioned human remains were found was occupied by Western Shoshone and Paiute groups during pre-contact and early historic times. Therefore, museum officials reasonably believe the human remains and associated funerary object to be culturally affiliated to Western Shoshone and Paiute Indian tribes. Descendants of the Western Shoshone and Paiute are represented by the Alturas Indian Rancheria, California; Battle Mountain Shoshone Tribe (Constituent Band of the Te-Moak Tribe of Western Shoshone Indians of Nevada); Big Pine Paiute Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California; Bridgeport Paiute Indian Colony of California; Burns Paiute Tribe, California; Cedarville Rancheria, California; Chemehuevi Indian Tribe of the Chemehuevi Reservation, California; Confederated Tribes of the Goshute Reservation, Nevada and Utah; Death Valley Timibi-Sha Shoshone Band of California; Duckwater Shoshone Tribe

of the Duckwater Reservation, Nevada; Elko Band (Constituent Band of the Te-Moak Tribe of Western Shoshone Indians of Nevada); Ely Shoshone Tribe of Nevada; Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California; Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Arizona; Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada; Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada; Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada; Northwestern Band of Shoshoni Nation of Utah (Washakie); Paiute Indian Tribe of Utah; Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California; Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada; Paiute-Shoshone Tribe of the Lone Pine Community of the Lone Pine Reservation, California; Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada; Reno-Sparks Indian Colony, Nevada; San Juan Southern Paiute Tribe of Arizona; Shoshone Tribe of the Wind River Reservation, Wyoming; Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho; Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada; South Fork Band (Constituent Band of the Te-Moak Tribe of Western Shoshone Indians of Nevada); Summit Lake Paiute Tribe of Nevada; Susanville Indian Rancheria, California; Te-Moak Tribe of Western Shoshone Indians of Nevada; Utu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation, California; Walker River Paiute Tribe of the Walker River Reservation, Nevada; Washoe Tribe of Nevada and California; Wells Band (Constituent Band of the Te-Moak Tribe of Western Shoshone Indians of Nevada); Winnemucca Indian Colony of Nevada; Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada; and Yomba Shoshone Tribe of the Yomba Reservation, Nevada.

The Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada, have made a claim for the human remains and associated funerary object on behalf of the Great Basin Inter-Tribal NAGPRA Coalition, a non-federally recognized Indian group, and its members of federally-recognized Indian tribes.

Officials of the Department of Anthropology & Ethnic Studies, University of Nevada Las Vegas, have determined that, pursuant to 25 U.S.C. 3001(9), the human remains described above represent the physical remains of six individuals of Native American ancestry. Officials of the Department of Anthropology & Ethnic Studies, University of Nevada Las Vegas, also have determined that, pursuant to 25 U.S.C. 3001(3)(A), the one object described above is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Department of Anthropology & Ethnic Studies, University of Nevada Las Vegas, have determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary object and the Alturas Indian Rancheria, California; Battle Mountain Shoshone Tribe; Big Pine Paiute Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California; Bridgeport Paiute Indian Colony of California; Burns Paiute Tribe, California; Cedarville Rancheria, California; Chemehuevi Indian Tribe of the Chemehuevi Reservation, California; Confederated Tribes of the Goshute Reservation, Nevada and Utah; Death Valley Timibi-Sha Shoshone Band of California; Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada; Elko Band; Ely Shoshone Tribe of Nevada; Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California; Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Arizona; Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada; Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada; Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada; Northwestern Band of Shoshoni Nation of Utah (Washakie); Paiute Indian Tribe of Utah; Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California; Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada; Paiute-Shoshone Tribe of the Lone Pine Community of the Lone Pine Reservation, California; Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada; Reno-Sparks Indian Colony, Nevada; San Juan Southern Paiute Tribe of Arizona; Shoshone Tribe of the Wind River Reservation, Wyoming; Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho; Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada; South Fork Band; Summit Lake Paiute Tribe of Nevada; Susanville Indian Rancheria, California; Te-Moak Tribe of Western Shoshone Indians of Nevada; Utu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation, California; Walker River Paiute Tribe of the Walker River Reservation, Nevada; Washoe Tribe of Nevada and California; Wells Band; Winnemucca Indian Colony of Nevada; Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada; and Yomba Shoshone Tribe of the Yomba Reservation, Nevada.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary object should contact Dr. Karen Harry, Department of Anthropology & Ethnic Study, University of Nevada Las Vegas, 4505 Maryland Parkway, Box 455003, Las Vegas, NV 89154–5003, telephone (702) 895–2534, before October 21, 2010. Repatriation of the human remains and associated funerary object to the Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada, representing the Great Basin Inter-Tribal NAGPRA Coalition, a non-Federally recognized Indian group, and its members, may proceed after that date if no additional claimants come forward.

The Department of Anthropology & Ethnic Studies, University of Nevada Las Vegas, is responsible for notifying officials of the Alturas Indian Rancheria, California; Battle Mountain Shoshone Tribe; Big Pine Paiute Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California; Bridgeport Paiute Indian Colony of California; Burns Paiute Tribe, California; Cedarville Rancheria, California; Chemehuevi Indian Tribe of the Chemehuevi Reservation, California; Confederated Tribes of the Goshute Reservation, Nevada and Utah; Death Valley Timibi-Sha Shoshone Band of California; Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada; Elko Band; Ely Shoshone Tribe of Nevada; Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California; Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Arizona; Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada; Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada; Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada; Northwestern Band of Shoshoni Nation of Utah (Washakie); Paiute Indian Tribe of Utah; Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California; Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada; Paiute-Shoshone Tribe of the Lone Pine Community of the Lone Pine

Reservation, California; Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada; Reno-Sparks Indian Colony, Nevada; San Juan Southern Paiute Tribe of Arizona; Shoshone Tribe of the Wind River Reservation, Wyoming; Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho; Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada; South Fork; Summit Lake Paiute Tribe of Nevada; Susanville Indian Rancheria, California; Te-Moak Tribe of Western Shoshone Indians of Nevada; Utu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation, California; Walker River Paiute Tribe of the Walker River Reservation, Nevada; Washoe Tribe of Nevada and California; Wells Band; Winnemucca Indian Colony of Nevada; Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada; and Yomba Shoshone Tribe of the Yomba Reservation, Nevada, that this notice has been published.

Dated: September 10, 2010.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2010–23412 Filed 9–20–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Public Meeting, Santa Rosa and San Jacinto Mountains National Monument Advisory Committee; California

AGENCIES: Bureau of Land Management, Interior; and Forest Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Santa Rosa and San Jacinto Mountains National Monument Act of 2000 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) and U.S. Department of Agriculture, Forest Service (Forest Service) Santa Rosa and San Jacinto Mountains National Monument Advisory Committee (MAC) will meet as indicated below.

DATES: September 20, 2010. The meeting will start at 3 p.m. and end at 6 p.m. with the public comment period beginning at 4 p.m. The meeting will be held at the County of Riverside Permit Assistance Center, Second Floor Conference Room, 38686 El Cerrito Road, Palm Desert, California.

FOR FURTHER INFORMATION CONTACT: Jim Foote, Monument Manager, Santa Rosa and San Jacinto Mountains National Monument, 1201 Bird Center Drive, Palm Springs, CA 92262, or telephone (760) 833–7136.

SUPPLEMENTARY INFORMATION: The MAC advises the Secretary of the Interior and the Secretary of Agriculture, through the BLM and Forest Service, with respect to the preparation and implementation of a management plan for the National Monument. The meeting will focus on a variety of planning and management issues associated with the National Monument. All MAC meetings are open to the public. The public may present written comments to the MAC in advance of or at the meeting. Each formal MAC meeting will also have time allocated for receiving public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Monument Manager as provided above.

Dated: August 24, 2010.

John R. Kalish,

Field Manager, Palm Springs-South Coast Field Office, California Desert District, Bureau of Land Management.

Dated: August 24, 2010.

Laurie Rosenthal,

District Ranger, San Jacinto Ranger District, San Bernardino National Forest, Forest Service.

[FR Doc. 2010–23490 Filed 9–20–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW174006]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of the Mineral Leasing Act of 1920, as amended, the Bureau of Land Management (BLM) received a petition for reinstatement from EOG Resources, Inc. for competitive oil and gas lease WYW174006 for land in Converse County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Julie L. Weaver, Chief, Fluid Minerals Adjudication, at (307) 775–6176.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10 per acre or fraction thereof per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $163 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW174006 effective April 1, 2010, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. The BLM has not issued a valid lease to any other interest affecting the lands.

Julie L. Weaver,

Chief, Fluid Minerals Adjudication.

[FR Doc. 2010–23465 Filed 9–20–10; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLID–931–000–L1020–0000–JP–0000252R]

Notice of Proposed Supplementary Rule To Require the Use of Certified Noxious-Weed-Free Forage and Straw on Bureau of Land Management Lands in the State of Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed supplementary rules.

SUMMARY: The Bureau of Land Management (BLM) in Idaho is proposing a supplementary rule that would require anyone bringing or anyone feeding or storing forage or straw on BLM-administered land when using BLM public lands in Idaho to use certified noxious-weed-free forage and straw. Restoration, rehabilitation, and stabilization projects also will be required to use weed-free straw bales and mulch for project work. This action is a cooperative effort between the BLM, the U.S. Forest Service (USFS), and the Idaho State Department of Agriculture (ISDA), and supports Idaho State noxious weed laws.

DATES: Comments on the proposed supplementary rules must be received

or postmarked by November 22, 2010 to be assured consideration. In developing final supplementary rules, the BLM is not obligated to consider comments postmarked or received in person or by electronic mail after this date.

ADDRESSES: Please mail comments to Roger Rosentreter, Bureau of Land Management, 1387 S. Vinnell Way, Boise, ID 83709, or e-mail comments to *Roger_Rosentreter@blm.gov.* If you require a printed copy of the proposed supplementary rules, please call Roger Rosentreter, (208) 373–3824 or e-mail *Roger_Rosentreter@blm.gov,* to request that one be mailed to you.

FOR FURTHER INFORMATION CONTACT: Roger Rosentreter, Bureau of Land Management, 1387 S. Vinnell Way, Boise, ID 83709; telephone (208) 373–3824; e-mail *Roger_Rosentreter@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may contact this individual by calling the Federal Information Relay Service (FIRS) at (800) 877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

You may mail comments to Roger Rosentreter, Bureau of Land Management, 1387 S. Vinnell Way, Boise, ID 83709, or e-mail comments to *Roger_Rosentreter@blm.gov.* Written comments on the proposed supplementary rules should be specific, be confined to issues pertinent to the proposed supplementary rules, and explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the proposal which the comment is addressing. The BLM is not obligated to consider or include in the Administrative Record for the supplementary rules comments that the BLM receives after the close of the comment period (See **DATES**), unless they are postmarked or electronically dated before the deadline. Neither is the BLM obligated to consider comments delivered to an address other than the address listed above (See **ADDRESSES**).

Comments—including names, street addresses, and other contact information of respondents—will be available for public review at 1387 S. Vinnell Way, Boise, ID 83709, during regular business hours (7:30 a.m. to 3:45 p.m., Monday through Friday, except Federal holidays). Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

II. Background

Noxious and invasive weeds are a serious problem in the western United States. Noxious weeds are spreading on BLM lands at a rate of over 2,300 acres per day, and on all western public lands at approximately 4,600 acres per day. Species such as perennial pepperweed, purple loosestrife, yellow starthistle, hoary cress (whitetop), leafy spurge, diffuse knapweed, spotted knapweed, Russian knapweed, Scotch thistle, Canada thistle, rush skeletonweed, and many others are non-native to the United States and have no natural enemies to keep their populations in balance. Consequently, depending on the circumstances (e.g., weed(s) involved, soil type, range condition, and climatic influences), these undesirable weeds may rapidly invade healthy ecosystems, displace native vegetation, reduce species diversity, destroy wildlife habitat, reduce forage for wild and domestic ungulates, weaken rehabilitation and landscape restoration efforts, increase soil erosion and stream sedimentation, create fire hazards, and degrade special resource values.

To curb the spread of noxious weeds, a growing number of Western states have jointly developed noxious-weed-free forage certification standards, and in cooperation with various Federal, State, and county agencies, have also passed weed management laws. Idaho participates in a regional inspection-certification process with Oregon, Montana, Washington, Nevada, and Wyoming and encourages, on a voluntary basis, forage producers in Idaho to grow and request voluntary certification inspections of forage products and straw.

Because forage products and straw containing noxious weed seed contribute to the spread and establishment of weed infestations, the USFS promulgated regulations in 1996, known as a "Weed Free Hay Order," to address this issue. In response to that Order, the State of Idaho implemented a noxious-weed-free forage and straw certification program in 1997. Under Idaho Code the ISDA wrote regulations in 2007 (Title 22, Chapter 24 Noxious-Weed-Free Forage and Straw Rules and IDAPA 02.06.31). This program, which is a cooperative effort between the ISDA and the USFS, was established to limit the introduction and spread of noxious weeds through forage and straw onto National Forest System lands and other lands within Idaho. The Federal Plant Protection Act of June 2000 directs agencies to develop integrated management plans for noxious weeds. The proposed rules are intended to complement the existing regulatory framework.

III. Discussion of the Proposed Supplementary Rules

Currently, National Forest System lands are the only lands in Idaho which require the use of certified noxious-weed-free forage and straw, although some Idaho State agencies (the Idaho Department of Lands and the Idaho Department of Fish and Game) have weed-free hay policies in place for lands they manage. The proposed supplementary rules would provide a standard regulation for all users of BLM-administered lands in Idaho and provide for consistent management with National Forest System lands across jurisdictional boundaries.

The proposed supplementary rules would be implemented by including a standard stipulation in all Special Recreation Permits and most other use authorizations. Livestock grazing permits would not need to include such a stipulation because 43 CFR 4140.1(a)(3) already requires the permittee to secure authorization before supplemental feeding, maintenance feeding, and emergency feeding on lands administered by the BLM.

The stipulation would require holders of affected permits and use authorizations to use certified noxious-weed-free forage and straw, to the extent they use hay, cubes, and straw on BLM-administered public lands in Idaho. Affected permittees includes recreationists using pack and saddle stock, grazing permittees, outfitters, and contractors and operators who use straw or mulch for reclamation or re-seeding purposes. These individuals or groups would be required to use certified noxious-weed-free forage and straw while on BLM-administered public lands in Idaho, unless authorized in writing or when transporting forage across public lands from private property to private property. BLM Idaho would allow forage certified by other states to be used as forage on lands administered by Idaho BLM offices.

In addition, in cooperation with the USFS hay closure and the Idaho State Department of Agriculture Noxious-Weed-Free Forage and Straw Certification (ISDA, NWFFS) program, the BLM is proposing a prohibition on the use of forage and straw that has not been certified as noxious-weed-free, for

all BLM-administered public lands within Idaho. The BLM State Office in Idaho, in cooperation with the ISDA, will implement a public information plan with the intention of publicizing the supplementary rules and notifying visitors and land users where they can purchase state-certified noxious-weed-free forage and straw.

This rule will be effective 45 days after the close of the public comment period. Similar to other agency closures, once this rule becomes effective, there will be a 60-day grace period for enforcement of this rule. This proposal is in conformance with all BLM land use plans within Idaho. The proposed supplementary rules are consistent with and supportive of the statewide Conservation Plan for the Greater Sage-Grouse in Idaho (Idaho Sage-grouse Advisory Committee, 2006), which recommends that the use of weed-free forage on public and state lands be required to discourage the spread of invasive annuals and noxious weeds.

IV. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

These supplementary rules are not a significant regulatory action and are not subject to review by the Office of Management and Budget under Executive Order 12866. These rules will not have an effect of $100 million or more on the economy. They will not adversely affect, in a material way, the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments, or communities. These proposed supplementary rules will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The proposed supplementary rules do not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients, nor do they raise novel legal or policy issues. They merely impose rules regarding the use of certified noxious-weed-free forage and straw on BLM-administered public lands in Idaho.

Clarity of the Supplementary Rules

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these proposed supplementary rules easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed supplementary rules clearly stated? (2) Do the proposed supplementary rules contain technical language or jargon that interferes with their clarity? (3) Does the format of the proposed supplementary rules (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? (4) Would the supplementary rules be easier to understand if they were divided into more (but shorter) sections? (5) Is the description of the proposed supplementary rules helpful to your understanding of the supplementary rules? How could this description be more helpful in making the supplementary rules easier to understand? Please send any comments you have on the clarity of the proposed supplementary rules to Roger Rosentreter, Bureau of Land Management, 1387 S. Vinnell Way, Boise, ID 83709, or email comments to *Roger_Rosentreter@blm.gov.*

National Environmental Policy Act

The BLM has prepared an environmental assessment (EA) titled "Implementation of Requirements for Certified Noxious-Weed-Free Forage and Straw On Bureau of Land Management Lands in Idaho" and has found that the proposed supplementary rules would not constitute a major Federal action significantly affecting the quality of the human environment under Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). A detailed environmental impact statement under NEPA is not required. The BLM has placed the EA and the Finding of No Significant Impact on file in the BLM Administrative Record at the address specified in the **ADDRESSES** section. The BLM invites the public to review these documents.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. 601–612, (RFA) to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. The proposed supplementary rules do not pertain specifically to commercial or governmental entities of any size but contain rules to protect the natural resources and the environment on public lands. Therefore, the BLM has determined under the RFA that these proposed supplementary rules would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

These proposed supplementary rules do not constitute a "major rule" as defined at 5 U.S.C. 804(2). They would not result in an annual effect on the economy of $100 million or more, in an increase in costs or prices, or in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. They would merely impose rules regarding the use of certified noxious-weed-free forage and straw on BLM-administered public lands in Idaho.

Unfunded Mandates Reform Act

These proposed supplementary rules do not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year, nor do these proposed supplementary rules have a significant or unique effect on State, local, or Tribal governments or the private sector. The proposed supplementary rules do not require anything of State, local, or Tribal governments. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

The proposed supplementary rules do not represent a government action capable of interfering with constitutionally protected property rights. The proposed supplementary rules do not address property rights in any form and do not cause the impairment of anyone's property rights. Therefore, the Department of the Interior has determined that the proposed supplementary rules would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

The proposed supplementary rules will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The proposed supplementary rules apply in only one State, Idaho, and do not address jurisdictional issues involving the Idaho State Government. Therefore,

in accordance with Executive Order 13132, the BLM has determined that these proposed supplementary rules do not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the BLM Idaho State Office has determined that these proposed supplementary rules would not unduly burden the judicial system and that they meet the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have found that these proposed supplementary rules do not include policies that have tribal implications. Since the proposed rules do not change BLM policy as it pertains to Tribes and do not involve Indian reservation lands, resources, or property rights, the BLM has determined that the government-to-government relationships should remain unaffected.

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

These proposed supplementary rules do not comprise a significant energy action. The rules will not have an adverse effect on energy supplies, production, or consumption. They only address the use of certified noxious-weed-free forage and straw on public lands and have no connection with energy policy.

Paperwork Reduction Act

These proposed supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

Author

The principal author of these proposed supplementary rules is Roger Rosentreter, Botanist, Idaho BLM State Office.

Supplementary Rules To Require the Use of Certified Noxious-Weed-Free Forage and Straw on Bureau of Land Management-Administered Public Lands in Idaho

(1) To prevent the spread of noxious weeds on BLM-administered public lands in Idaho, it is a prohibited act to feed or store forage or straw on BLM-administered land that has not been certified as noxious-weed-free. Restoration, rehabilitation, and stabilization projects also are required to use weed-free straw bales and mulch for project work.

Once this rule becomes effective, there will be a 60-day grace period for enforcement of this rule.

(2) The certification program currently includes 57 weeds that have been designated as noxious in Idaho under the Idaho State noxious-weed-free standards, or certified to be free from those weeds designated in the North American Weed Free Forage Program list, which was developed by the North American Weed Management Association (NAWMA). This NAWMA list currently includes the 57 weeds designated noxious in Idaho and also includes an additional 15 invasive weeds. BLM Idaho allows forage that meets Idaho, NAWMA, or other states' standards for certification as noxious-weed-free. Although weeds may be added or removed from these various lists, the BLM recognizes this forage as certified noxious-weed-free as long as it has been marked indicating that it meets the standards for certification.

(3) Certified noxious-weed-free hay must be identified by one of the following:

(a) State certification tag attached to the bale string;

(b) At least one strand of purple and yellow (intertwined) bale twine encircling the bale;

(c) Blue and orange (intertwined) bale twine encircling the bale; or

(d) Other colored twine encircling the bale that is used to designate certified forage.

(4) Certified noxious-weed-free compressed forage bales are identified by yellow binding (strapping) material with the statement "ISDA NWFFS" and the manufacturer's name printed in purple.

(5) Certified noxious-weed-free forage in bags is identified by a stamp, sticker, or printing on the bag identifying it as certified forage.

(6) The following persons/activities are exempt from this order:

(a) Any person with a permit or letter signed by a BLM authorized officer specifically authorizing the prohibited act, such as an authorized livestock permittee during an emergency situation in which livestock must be fed uncertified forage or hay for a short period of time until they can be moved to safety; and

(b) Any person transporting hay or forage across public lands from private property to private property.

(7) Any person who knowingly or willfully violates the provisions of these supplementary rules may be required to appear before a designated United States Magistrate and may be subject to a fine of not more than $1,000 or imprisonment of not more than 12 months, or both, as defined in 43 U.S.C. 1733(a). Such violations may also be subject to enhanced fines provided for by 18 U.S.C. 3571.

Peter J. Ditton,

Acting Idaho State Director, Bureau of Land Management.

[FR Doc. 2010–23462 Filed 9–20–10; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMTL06000.L12200000.DD0000.252X]

Notice of Temporary Closure of Public Lands in Fergus County, MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of temporary area closure.

SUMMARY: Notice is hereby given that a temporary closure of public land to motorized vehicles, hiking, or other recreational uses is in effect on 660 acres of public lands administered by the Lewistown Field Office, Bureau of Land Management, within the Limekiln Canyon/Ruby Gulch area. This notice also applies to a BLM-held easement over 80 acres of private land.

DATES: This temporary closure will be in effect for 2 years from the date this notice is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Willy Frank, Field Manager, 920 NE Main St., Lewistown, Montana 59457; (406) 538–1918. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This temporary closure is in response to a severe wind event that heavily damaged most of the timber within this 660-acre block of BLM-managed lands in the Judith Mountains Recreation Management Area in Fergus County, Montana. The downed timber is blocking a portion of a popular loop hiking trail and, if left in place, will also

contribute to the potential for catastrophic wildland fire. The BLM has contracted for road construction into the damaged area, salvage logging, and reclamation of the road once salvage logging is completed and administrative access is no longer needed. In the interim, the mixture of heavy equipment, a narrow temporary road, logging operations, steep slopes, tumbling rocks, and other debris in the construction/logging area make the area unsafe for public use, including motorized vehicles, hiking, or other recreational uses.

Approximately two-thirds of the loop hiking trail within the Limekiln Canyon/Ruby Gulch area will remain available for public use.

The area closure (including about one-third of the hiking trail) is necessary to protect the public health and safety and to enhance efficient contract administration.

The legal description of the affected lands is:

Montana Principal Meridian

T. 16 N., R. 19 E.,
Sec. 17, S½;
Sec. 20, N½ NE¼; SE¼ NE¼; N½ NE¼ SE¼; N½ NW¼;
Sec. 21, NW¼ SW¼; W½ NW¼.
The area described aggregates 660 acres.

The BLM will post closure signs at main entry points to the roads and trails in the immediate vicinity of the logging operations. The BLM will also post the closure order in the Lewistown Field Office and will keep the public informed as this project progresses via local and regional press releases and posting those releases on the BLM Montana Web site (*http://www.blm.gov/mt/st/en.html*). Maps of the affected areas and other documents associated with this closure are available on site and at the BLM Lewistown Field Office at 920 NE Main, Lewistown, Montana 59457.

Further information may be found in the Limekiln Canyon/Ruby Gulch Temporary Closure Environmental Assessment (EA #MT–060–2010–0029) and in the case file for EA #MT060–2009–001, the Limekiln/Ruby Timber Salvage and Thinning Project.

Under the authority of Section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)), 43 CFR 8360.0–7, and 43 CFR 8364.1, the BLM will enforce the following rule within the Upper Limekiln Canyon in Fergus County, Montana:

You must not use motorized vehicles, hike, or otherwise enter the public land within the closed area.

The following persons are exempt from this order: Federal, State, and local officers and employees in the performance of their official duties; members of organized rescue or fire-fighting forces in the performance of their official duties; and persons with written authorization from the Bureau of Land Management.

Penalties: Any person who violates the above restriction may be tried before a United States Magistrate and fined no more than $1,000, imprisoned for no more than 12 months, or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

Gary L. "Stan" Benes,
Lewistown District Manager.

Authority: 43 CFR 8364.1.

[FR Doc. 2010–23467 Filed 9–20–10; 8:45 am]
BILLING CODE 4310–DN–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *In Re Certain Digital Televisions and Components Thereof,* DN 2755 ; the Commission is soliciting comments on any public interest issues raised by the complaint.

FOR FURTHER INFORMATION CONTACT: Marilyn R. Abbott, Secretary to the Commission, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint filed on behalf of LG Electronics, Inc. on September 15, 2010. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain digital televisions and components thereof. The complaint names as respondents Vizio, Inc. of Irvine, CA; AmTRAN Technology Co., Ltd. of Chungho City, Taipei 23553, Taiwan; and AmTRAN Logistics, Inc. of Irvine, CA.

The complainant, proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five pages in length, on any public interest issues raised by the complaint. Comments should address whether issuance of an exclusion order and/or a cease and desist order in this investigation would negatively affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the potential orders;

(iii) Indicate the extent to which like or directly competitive articles are produced in the United States or are otherwise available in the United States, with respect to the articles potentially subject to the orders; and

(iv) Indicate whether Complainant, Complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to an exclusion order and a cease and desist order within a commercially reasonable time.

Written submissions must be filed no later than by close of business, five business days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office

of the Secretary. Submissions should refer to the docket number ("Docket No. 2755") in a prominent place on the cover page and/or the first page. The Commission's rules authorize filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR § 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.50(a)(4) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.50(a)(4)).

Issued: September 16, 2010.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–23488 Filed 9–20–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1063, 1064, 1066–1068 (Review)]

Frozen Warmwater Shrimp From Brazil, China, India, Thailand, and Vietnam

AGENCY: United States International Trade Commission.

ACTION: Scheduling of full five-year reviews concerning the antidumping duty orders on frozen warmwater shrimp from Brazil, China, India, Thailand, and Vietnam.

SUMMARY: The Commission hereby gives notice of the scheduling of full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty orders on frozen warmwater shrimp from Brazil, China, India, Thailand, and Vietnam would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission has determined that these reviews are extraordinarily complicated, and will therefore exercise its authority to extend its time for making its determinations by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B). For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* April 28, 2010.

FOR FURTHER INFORMATION CONTACT: Elizabeth Haines (202–205–3200), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for theses reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On April 9, 2010, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act (75 FR 22424, April 28, 2010). The Commission found that both the domestic and respondent interested party group responses to its notice of institution (75 FR 1078, January 8, 2010) were adequate for each order under review. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's web site.

Participation in the reviews and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the reviews will be placed in the nonpublic record on January 12, 2011, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on February 1, 2011, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before January 25, 2011. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on January 25, 2011, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party to the reviews may submit a prehearing brief to the Commission. Prehearing

briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is January 20, 2011. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is February 10, 2011; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before February 10, 2011. On March 7, 2011, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before March 9, 2011, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II(c) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: September 14, 2010.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–23474 Filed 9–20–10; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Robotics Technology Consortium, Inc.

Correction

In notice document 2010–22215 beginning on page 54914 in the issue of Thursday, July 9, 2010, make the following corrections:

1. On page 54914, in the first column, in the sixteenth line below the document subject, "AEB, Inc." should read "ABB, Inc.".

2. On the same page, in the same column, in the 23rd line below the document subject, "BEN Technologies Corp" should read "BBN Technologies Corp".

3. On the same page, in the same column, in the eighth line from the bottom of the page, "Amstin, TX" should read "Austin, TX".

4. On the same page, in the same column, in the last line of the column, "101–Integrated Consultants, Inc." should read "ICI–Integrated Consultants, Inc."

5. On the same page, in the third column, in the first full paragraph, in the second and third lines, "activity of this group research additional written membership" should read " activity of the group research project. Membership in this group research project remains open, and RTC intends to file additional written notifications disclosing all changes in membership."

6. On the same page, in the same column, in the second full paragraph, in the first through sixth lines, "On October 15, pursuant to Section the group research project. Membership in the project remains open, and RTC intends to file notifications disclosing all changes. In 2009, RTC filed its original notification 6(a) of the Act." should read, "On October 15, 2009, RTC filed its original notification pursuant to section 6(a) of the Act."

[FR Doc. C1–2010–22215 Filed 9–20–10; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–74,281]

Humana Insurance Company, a Division Of Carenetwork, Inc., Green Bay, WI; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated August 23, 2010, petitioners requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers and former workers of the subject firm. The determination was issued on August 13, 2010. The Notice of Determination was published in the **Federal Register** on August 30, 2010 (75 FR 52986). Workers are engaged in employment related to the supply of health insurance benefits.

The negative determination applicable to workers and former workers at Humana Insurance Company, a Division of CareNetwork, Inc., Green Bay, Wisconsin was based on the findings that the subject firm did not, during the period under investigation, shift to a foreign country services like or directly competitive with the supply of health insurance benefits provided by the workers or acquire these services from a foreign country; that the workers' separation, or threat of separation, was not related to any increase in imports of like or directly competitive services; and that the workers did not supply a service that was directly used in the production of an article or the supply of service by a firm that employed a worker group that is eligible to apply for TAA based on the aforementioned article or service.

In the request for reconsideration, the petitioners provided additional information pertaining to a shift in services abroad.

The Department has carefully reviewed the request for reconsideration and the existing record and has determined that the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 9th day of September 2010.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2010–23495 Filed 9–20–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2010–0029]

Application for Training Grant; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comment.

SUMMARY: OSHA solicits public comments concerning its proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements contained in the Training Grant Application.

DATES: Comments must be submitted (postmarked, sent, or received) by November 22, 2010.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit three copies of your comments and attachments to the OSHA Docket Office, Docket Number OSHA–2010–0029, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number for this Information Collection Request (ICR) (OSHA–2010–0029). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov*. For further information on submitting comments *see* the "Public Participation" heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. To obtain a copy of the ICR, you may contact Theda Kenney or Todd Owen at the Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2222.

FOR FURTHER INFORMATION CONTACT: *Technical:* Kimberly A. Newell, OSHA Directorate of Training and Education, 2020 S. Arlington Heights Road, Arlington Heights, IL 60005–4102; telephone: (847) 759–7700; e-mail: *HarwoodGrants@dol.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

Section 21 of the OSH Act (29 U.S.C. 670) authorizes the Occupational Safety and Health Administration ("OSHA" or the "Agency") to conduct directly, or through grants and contracts, education and training courses. These courses must ensure an adequate number of qualified personnel to fulfill the purposes of the Act, provide them with short-term training, inform them of the importance and proper use of safety and health equipment, and train employers and workers to recognize, avoid, and prevent unsafe and unhealthful working conditions.

Under Section 21, the Agency awards grants to non-profit organizations to provide part of the required training. To obtain such a grant, an organization must complete the training grant application. OSHA uses the information in this application to evaluate: The organization's competence to provide the proposed training (including the qualifications of the personnel who manage and implement the training); the goals and objectives of the proposed training program; a workplan that describes in detail the tasks that the organization will implement to meet these goals and objectives; the appropriateness of the proposed costs; and compliance with Federal regulations governing nonprocurement debarment and suspension, maintaining a drug-free workplace, and lobbying activities. Also required is a program summary that Agency officials use to review and evaluate the highlights of the overall proposal.

After awarding a training grant, OSHA uses the work plan and budget information provided in the application to monitor the organization's progress in meeting training goals and objectives, as well as planned expenditures. The initial grant award is for one year.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of the Agency's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend its approval of the information collection requirements contained in the Training Grant Application. The Agency is requesting to increase its current

burden hour estimate associated with the Training Grant Application ICR from 10,166 hours to 11,480 hours for a total increase of 1,314 hours. The increase mainly results from an increase in the number of grant applications received during the last three fiscal years (FY07–FY09). The Agency will summarize the comments submitted in response to this notice, and will include this summary in the request to OMB.

Type of Review: Extension of a currently approved collection.

Title: Application for Training Grant.

OMB Number: 1218–0020.

Affected Public: Not-for-profit institutions.

Number of Respondents: 205.

Frequency: Annually.

Total Responses: 205.

Average Time per Response: 56 hours.

Estimated Total Burden Hours: 11,480 hours.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for this ICR (OSHA Docket No. OSHA–2010–0029). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or a facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov*. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's "User Tips" link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

Electronic copies of this **Federal Register** document are available at *http://www.regulations.gov*. This document, as well as news releases and other relevant information, also are available at OSHA's Web page at *http://www.osha.gov*.

V. Authority and Signature

David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 5–2007 (72 FR 31160).

Signed at Washington, DC, on September 8, 2010.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2010–23491 Filed 9–20–10; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,251; TA–W–72,251A; TA–W–72,251B; TA–W–72,251C; TA–W–72,251D; TA–W–72,251E; TA–W–72,251F; TA–W–72,251G; TA–W–72,251H; TA–W–72,251I; TA–W–72,251J; TA–W–72,251K; TA–W–72,251L; TA–W–72,251M; TA–W–72,251N]

Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

SUPERVALU, Inc., IT and Finance Departments, Including Workers Whose Unemployment Insurance (UI) Wages Are Paid Through New Albertsons, Inc., Including On-Site Leased Workers From Volt Services Group, Boise, Idaho

SUPERVALU, Inc., Formerly Known As New Albertsons, IT and Finance Departments, Including Workers Whose Unemployment Insurance (UI) Wages Are Paid Through New Albertsons, Inc., Salt Lake, Utah

SUPERVALU, Inc., IT and Finance Departments, Including Workers Whose Unemployment Insurance (UI) Wages Are Paid Through New Albertsons, Inc., Franklin Park, Illinois

SUPERVALU, Inc., IT and Finance Departments, Including Workers Whose Unemployment Insurance (UI) Wages Are Paid Through New Albertsons, Inc., Milford, Ohio

SUPERVALU, Inc., IT and Finance Departments, Including Workers Whose Unemployment Insurance (UI) Wages Are Paid Through New Albertsons, Inc., Dublin, California

SUPERVALU, Inc., Formerly Known As New Albertsons, IT and Finance Departments, Including Workers Whose Unemployment Insurance (UI) Wages Are Paid Through New Albertsons, Inc., Virginia Beach, Virginia

SUPERVALU, Inc., IT and Finance Departments, Including Workers Whose Unemployment Insurance (UI) Wages Are Paid Through New Albertsons, Inc., Including On-Site Leased Workers From Global Resources and Professional Employment Services, Phoenix, Arizona

SUPERVALU, Inc., IT and Finance Departments, Including Workers Whose Unemployment Insurance (UI) Wages Are Paid Through New Albertsons, Inc., Malvern, Pennsylvania

SUPERVALU, Inc., IT and Finance Departments, Including Workers Whose Unemployment Insurance (UI) Wages Are Paid Through New Albertsons, Inc., Portland, Oregon

SUPERVALU, Inc., IT and Finance Departments, Including Workers Whose Unemployment Insurance (UI) Wages Are Paid Through New Albertsons, Inc., Aurora, Colorado

SUPERVALU, Inc., IT and Finance Departments, Including Workers Whose Unemployment Insurance (UI) Wages Are Paid Through New Albertsons, Inc., Lanham, Maryland

SUPERVALU, Inc., IT and Finance Departments, Including Workers Whose Unemployment Insurance (UI) Wages Are Paid Through New Albertsons, Inc., Las Vegas, Nevada

SUPERVALU, Inc., IT and Finance Departments, Including Workers Whose Unemployment Insurance (UI) Wages Are Paid Through New Albertsons, Inc., Spokane, Washington

SUPERVALU, Inc., IT and Finance Departments, Including Workers Whose Unemployment Insurance (UI) Wages Are Paid Through New Albertsons, Inc., Fort Wayne, Indiana

SUPERVALU, Inc., IT and Finance Departments, Including Workers Whose Unemployment Insurance (UI) Wages Are Paid Through New Albertsons, Inc., West Bridgewater, Massachusetts

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 15, 2010, applicable to workers of SUPERVALU, Inc., IT and Finance Departments, including leased workers from Volt Services Group, Boise, Idaho (TA–W–

72,251); SUPERVALU, Inc., IT and Finance Departments, Salt Lake, Utah (TA–W–72,251A); SUPERVALU, Inc., IT and Finance Departments, Franklin Park, Illinois (TA–W–72,251B); SUPERVALU, Inc., IT and Finance Departments, Milford, Ohio (TA–W–72,251C); SUPERVALU, Inc., IT and Finance Departments, Dublin, California (TA–W–72,251D); SUPERVALU, Inc., IT and Finance Departments, Virginia Beach, Virginia (TA–W–72,251E); SUPERVALU, Inc., IT and Finance Departments, including leased workers from Global Resources and Professional Employment Services, Phoenix, Arizona (TA–W–72,251F); SUPERVALU, Inc., IT and Finance Departments, Malvern, Pennsylvania (TA–W–72,251G); SUPERVALU, Inc., IT and Finance Departments, Portland, Oregon (TA–W–72,251H); SUPERVALU, Inc., IT and Finance Departments, Aurora, Colorado (TA–W–72,251I); SUPERVALU, Inc., IT and Finance Departments, Lanham, Maryland (TA–W–72,251J); SUPERVALU, Inc., IT and Finance Departments, Las Vegas, Nevada (TA–W–72,251K); SUPERVALU, Inc., IT and Finance Departments, Spokane, Washington (TA–W–72,251L); SUPERVALU, Inc., IT and Finance Departments, Fort Wayne, Indiana (TA–W–72,251M); SUPERVALU, Inc., IT and Finance Departments, West Bridgewater, Massachusetts (TA–W–72,251N). The notice was published in the **Federal Register** on February 16, 2010 (75 FR 7037).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in employment related to the supply of information technology and finance services.

New information shows that in June 2006, SUPERVALU, Inc. purchased New Albertsons, Inc. Some workers separated from employment at the subject firms have their wages reported under a separate unemployment insurance (UI) tax account for New Albertsons, Inc.

Accordingly, the Department is amending this certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by acquisition in services related to the supply of information technology and finance.

The amended notice applicable to TA–W–72,251 is hereby issued as follows:

All workers of SUPERVALU, Inc., IT and Finance Departments, including workers whose unemployment insurance (UI) wages are paid through New Albertsons, Inc., including leased workers from Volt Services Group, Boise, Idaho (TA–W–72,251); SUPERVALU, Inc., IT and Finance Departments, including workers whose unemployment insurance (UI) wages are paid through New Albertsons, Inc., Salt Lake, Utah (TA–W–72,251A); SUPERVALU, Inc., IT and Finance Departments, including workers whose unemployment insurance (UI) wages are paid through New Albertsons, Inc., Franklin Park, Illinois (TA–W–72,251B); SUPERVALU, Inc., IT and Finance Departments, including workers whose unemployment insurance (UI) wages are paid through New Albertsons, Inc., Milford, Ohio (TA–W–72,251C); SUPERVALU Inc., IT and Finance Departments, including workers whose unemployment insurance (UI) wages are paid through New Albertsons, Inc., Dublin, California (TA–W–72,251D); SUPERVALU, Inc., IT and Finance Departments, including workers whose unemployment insurance (UI) wages are paid through New Albertsons, Inc., Virginia Beach, Virginia (TA–W–72,251E); SUPERVALU, Inc., IT and Finance Departments, including workers whose unemployment insurance (UI) wages are paid through New Albertsons, Inc., including leased workers from Global Resources and Professional Employment Services, Phoenix, Arizona (TA–W–72,251F); SUPERVALU, Inc., IT and Finance Departments, including workers whose unemployment insurance (UI) wages are paid through New Albertsons, Inc., Malvern, Pennsylvania (TA–W–72,251G); SUPERVALU, Inc., IT and Finance Departments, including workers whose unemployment insurance (UI) wages are paid through New Albertsons, Inc., Portland, Oregon (TA–W–72,251H); SUPERVALU, Inc., IT and Finance Departments, including workers whose unemployment insurance (UI) wages are paid through New Albertsons, Inc., Aurora, Colorado (TA–W–72,251I); SUPERVALU, Inc., IT and Finance Departments, including workers whose unemployment insurance (UI) wages are paid through New Albertsons, Inc., Lanham, Maryland (TA–W–72,251J); SUPERVALU, Inc., IT and Finance Departments, including workers whose unemployment insurance (UI) wages are through New Albertsons, Inc., Las Vegas, Nevada (TA–W–72,251K); SUPERVALU, Inc., IT and Finance Departments, including workers whose unemployment insurance (UI) wages are paid through New Albertsons, Inc., Spokane, Washington (TA–W–72,251L); SUPERVALU, Inc., IT and Finance Departments, including workers whose unemployment insurance (UI) wages are paid through New Albertsons, Inc., Fort Wayne, Indiana (TA–W–72,251M); SUPERVALU, Inc., IT and Finance Departments, including workers whose unemployment insurance (UI) wages are paid through New Albertsons, Inc., West Bridgewater, Massachusetts (TA–W–72,251N), who became totally or partially separated from employment on or after September 2, 2008 through January 15, 2012, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC this 7th day of September 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–23499 Filed 9–20–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,575]

Dell Products LP, Winston-Salem (WS–1) Division, Including On-Site Leased Workers From Adecco, Spherion, Patriot Staffing, Manpower, Teksystems, APN, ICONMA, Staffing Solutions, South East and OMNI Resources and Recovery, Winston-Salem, NC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 1, 2010, applicable to workers of Dell Products LP, Winston-Salem (WS–1) Division, including on-site leased workers from Adecco, Spherion, Patriot Staffing, Manpower, TEKsystems, APN and ICONMA, Winston-Salem, North Carolina. The notice was published in the **Federal Register** on April 23, 2010 (75 FR 21361). The notice was amended on March 30, 2010 to include on-site leased workers from Staffing Solutions, South East. The notice was published in the **Federal Register** on April 19, 2010 (75 FR 20385)

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in employment related to the production of desktop computers.

New information shows that workers leased from Omni Resources and Recovery were employed on-site at the Winston-Salem, North Carolina location of Dell Products LP, Winston-Salem (WS–1) Division. The Department has determined that on-site workers from Omni Resources and Recovery were sufficiently under the control of the subject firm to be covered by this certification.

Based on these findings, the Department is amending this certification to include workers leased from Omni Resources and Recovery working on-site at the Winston-Salem,

North Carolina location of Dell Products LP, Winston-Salem (WS–1) Division.

The amended notice applicable to TA–W–72,575 is hereby issued as follows:

"All workers of Dell Products LP, Winston-Salem (WS–1) Division, including on-site leased workers of Adecco, Spherion, Patriot Staffing, Manpower, TEKsystems, APN, ICONMA, and Staffing Solutions, South East, and Omni Resources and Recovery, Winston-Salem, North Carolina, who became totally or partially separated from employment on or after October 13, 2008 through March 1, 2012, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended."

Signed at Washington, DC, this 31st day of August 2010.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2010–23501 Filed 9–20–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,291]

EDS, an HP Company, A Subsidiary of Hewlett-Packard Company Including On-Site Leased Workers from Compuware Comporation, Detroit, Michigan; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 17, 2009, applicable to workers of EDS, an HP Company, a subsidiary of Hewlett-Packard Company, Detroit, Michigan. The notice was published in the **Federal Register** on February 16, 2010 (75 FR 7033).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to information technology (IT) outsourcing services.

New information shows that workers leased from Compuware Corporation were employed on-site at the Detroit, Michigan location of EDS, an HP Company, a subsidiary of Hewlett-Packard Company. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Compuware Corporation working on-site at the Detroit, Michigan location of EDS, an HP Company, a subsidiary of Hewlett-Packard Company.

The amended notice applicable to TA–W–72,291 is hereby issued as follows:

All workers of EDS, an HP Company, a subsidiary of Hewlett-Packard Company, including on-site leased workers from Compuware Corporation, Detroit, Michigan, who became totally or partially separated from employment on or after September 11, 2008, through December 17, 2011, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC this 9th day of September 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–23500 Filed 9–20–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,096]

Amphenol Antenna Solutions, a Subsidiary of Amphenol Corporation, Formerly Known as Jaybeam Wireless, Including On-Site Leased Workers From Manpower, Accurate Staffing and Administaff, Inc. Hickory, NC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 9, 2010, applicable to workers of Amphenol Antenna Solutions, a subsidiary of Amphenol Corporation, formerly known as Jaybeam Wireless, including on-site leased workers from Manpower and Accurate Staffing, Hickory, North Carolina. The notice was published in the **Federal Register** on July 26, 2010 (75 FR 43559).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of base station antennas and mounting kits.

The company reports that workers leased from Administaff, Inc. were employed on-site at the Hickory, North Carolina location of Amphenol Antenna Solutions, a subsidiary of Amphenol Corporation, formerly known as Jaybeam Wireless. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Administaff, Inc. working on-site at the Hickory, North Carolina location of Amphenol Antenna Solutions, a subsidiary of Amphenol Corporation, formerly known as Jaybeam Wireless.

The amended notice applicable to TA–W–72,096 is hereby issued as follows:

"All workers of Amphenol Antenna Solutions, a subsidiary of Amphenol Corporation, formerly known as Jaybeam Wireless, including on-site leased workers from Manpower, Accurate Staffing and Administaff, Inc., Hickory, North Carolina, who became totally or partially separated from employment on or after August 14, 2008, through July 9, 2012, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended."

Signed at Washington, DC, this 7th day of September 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–23498 Filed 9–20–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Summary of Comments

AGENCY: Bureau of Labor Statistics.

ACTION: Notice of comments received and final definition of green jobs.

SUMMARY: The Bureau of Labor Statistics (BLS) is responsible for developing and implementing the collection of new data on green jobs. The resulting information will be useful for evaluating policy initiatives and the labor market impact of economic activity related to protecting the environment and conserving natural resources. BLS activities also will be useful to State

labor market information offices in their efforts to meet the need for information for State policymakers, businesses, and job seekers.

In a **Federal Register** Notice on March 16, 2010 (75 FR 12571), BLS solicited comments on the definition BLS will use in measuring green jobs, the list of industries where green goods or services are classified, or any other aspect of the information provided in the notice. The current notice summarizes the comments received and the BLS response to the comments, and provides the final BLS definition of green jobs for use in data collection.

Appendices. This notice includes four appendices in the **SUPPLEMENTARY INFORMATION** section below. Appendix I summarizes the comments received on the proposed definition of green jobs and the BLS response. Appendix II presents the final definition of green jobs BLS will use for data collection beginning in FY 2011. Appendix III summarizes comments on identifying industries where green goods and services are classified and the approach BLS intends to use for data collection beginning in FY 2011. Appendix IV summarizes comments received on the BLS plan to measure green jobs and the BLS response.

ADDRESSES: For further information, contact Richard Clayton, Office of Industry Employment Statistics, Bureau of Labor Statistics, Room 4840, 2 Massachusetts Avenue, NE., Washington, DC 20212 or by e-mail to: *green@bls.gov.*

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SUPPLEMENTARY INFORMATION:

I. Summary of Comments on the Green Jobs Definition and BLS Response

In response to the March 16, 2010, **Federal Register** Notice, BLS received 156 comments. The largest number of comments was from business or industry associations (44 comments), followed by State workforce agencies (22), private employers (20), labor unions (16), individuals (15), other State or local government (14), academic or research organizations (9), Federal agencies (8), and nonprofit organizations (8). BLS reviewed and considered all comments and made certain changes in the green jobs definition and industry list, as described below.

In the March 16, 2010, **Federal Register** Notice, BLS requested comments and recommendations from the public on the definition, industry list, or any other aspect of the information provided in the notice. BLS was interested in comments on:

1. Whether the definition of green jobs is clear and understandable.
2. The comprehensiveness of the definition, including the composition of the set of economic activities in which green jobs are involved and the types of green goods and services.
3. Whether the distribution of green goods should be included as green services.
4. Whether the preparation and sale of organic food by restaurants and food service industries should be included as green services.

The following summary addresses the comments received on each of these questions, followed by comments on other topics related to the definition of green jobs. Comments related to data collection plans are summarized in Appendix IV.

Whether the definition of green jobs is clear and understandable. Three comments asked for clarification of the broad definition of green jobs. One comment noted that, by using both the output and process approaches, BLS is trying to encompass the broadest definition of green jobs, although one would want to know the degree of overlap between the two approaches. BLS agrees this overlap is of interest; the data BLS will collect will provide an indication but not a direct measure of the overlap.

One comment questioned whether certain workers would be included, such as a sustainability manager in a business that is not producing a green good or service. BLS responds that jobs with the titles listed in the comment would be captured by either of the two measurement approaches, depending on where these jobs occur.

One comment noted that the definition should clearly include development, production, installation, and maintenance activities that contribute to protecting the environment and conserving natural resources. BLS has modified the descriptions of the relevant categories to specifically mention research and development, installation, and maintenance.

The comprehensiveness of the definition. Ten comments addressed the broad definition of green jobs. Three comments agreed with the broad definition, with one of these comments noting that this is a new area for data collection and the dimensions are somewhat unknown until data collection occurs. Three comments encouraged BLS to narrow the definition, with one of these comments citing policy needs for credible and concrete data, and one of these comments expressing the fear that the definition of green becomes so broad as to make it not useful.

Two comments recommended wording changes to reference "growing the economic engine" or "promoting sustainability." BLS has not adopted these changes, as they suggest policy positions or advocacy roles inappropriate for a statistical agency.

Whether the distribution of green goods should be included as green services. Thirty-one comments addressed whether distribution of green goods should be included in the BLS definition of green goods and services. The proposed BLS definition includes services that specialize in the distribution of green goods, including certain detailed industries in the North American Industry Classification System (NAICS) sectors of Transportation and Warehousing, Wholesale Trade, Retail Trade, and Real Estate and Rental and Leasing. Including these industries would result in the identification of green jobs in, for example, trucking, grocery stores, and motor vehicle dealers.

Thirteen comments recommended excluding distribution activities. Most of these comments based their recommendation on lack of skill differences for workers involved in distributing green goods versus those distributing other goods. In response, BLS notes that its green jobs definition is not based on skill differences, but instead on the environmental impact of the good or service produced or the production process used. Several comments expressed concerns about the feasibility and cost of data collection in the distribution sectors.

Ten comments recommended including distribution only on the basis of whether the distribution process is green (*e.g.,* use of energy-efficiency vehicles). BLS responds that distribution activities conducted using environmentally friendly production processes will be addressed in the process approach to data collection.

Eight comments recommended including distribution. One commenter noted that their State green jobs survey had identified jobs in the transportation industry and related occupations. BLS notes that it is unclear in this State survey whether these jobs were reported because of the nature of the good being transported or the nature of the production process.

Five comments recommended including distribution but narrowing the

scope of what is included. These comments would narrow the scope variously, such as limited to "the extent a distributor deals predominantly or exclusively in green goods;" only if "the primary function is green related;" only if "the overall net impact of those jobs is positive or neutral at best;" and if "the distribution services are a subdivision of a company that is selling energy efficient or organic produce, then the distribution costs for that percentage of the business should be included."

Three comments recommended BLS investigate local and regional food networks or include locally produced foods as green. BLS responds that food producers who distribute locally and businesses that purchase locally produced food have adopted an environmentally friendly process that will be covered in the process survey.

BLS has determined to exclude distribution of green goods from its definition of green goods and services. Transporting or selling a green good has no apparent benefit to the environment compared to transporting or selling any other good.

Whether the preparation and sale of organic food by restaurants and food service industries should be included as green services. Twenty-two comments responded to this question. The proposed BLS definition includes services classified in Accommodation and Food Services industries such as restaurants, caterers, and cafeterias.

Ten comments recommended excluding this activity from the definition of green goods and services. Generally, these comments noted that the environmental benefit of organic food is in the production stage, not in the preparation and sale. Several comments expressed concerns that including this activity would lead to overcounting the number of green jobs.

One comment that recommended excluding this activity noted an inconsistency in the proposed definition in the treatment of organic food products versus goods containing recycled inputs. BLS agrees with this comment and has addressed this inconsistency in its final definition.

Eight comments recommended including this activity. One comment said the reason was to encourage the growth of organic farming; BLS responds that it does not have an advocacy position on organic farming. One comment noted that the purchase and end use is as important as production of organic products because without the buyers and markets, no organic farming could exist. One comment noted environmental impacts in this category, i.e., using fresh versus packaged food, reduces packaging waste and using composting practices diverts waste from the landfill. BLS notes that these practices are not inherent to organic foods.

Three comments recommended including this activity only on the basis of whether the process is green; another comment said that if the activity is counted as a green service, then it should not be counted in the process approach.

BLS has determined to exclude preparation and sale of organic food from its definition of green goods and services. Preparing or selling organic food has no apparent benefit to the environment compared to preparing or selling other food.

Need for a standardized definition of green jobs. Thirteen comments noted the need for a standardized national definition of green jobs, and some comments indicated an expectation that the BLS definition would be adopted for other than statistical purposes. BLS responds that it is developing the definition of green jobs only for use in collecting and analyzing data. Other uses of the definition have played no role in its development.

Job quality and worker characteristics. Eleven comments expressed concerns about the statement in the **Federal Register** Notice that the definition does not consider job aspects unrelated to the work itself, such as wages, union membership, benefits, or career ladders. Some of these comments urged BLS to use criteria such as worker health and safety, wages and benefits, and career pathways. BLS responds that using such criteria would require BLS to determine, for example, what level of worker safety is high enough for the job to be included as a green job. Making such determinations would be inappropriate for a statistical agency, which must refrain from policy advocacy to maintain its credibility among data users. However, data users may make use of information on worker safety, wages, and other topics to select jobs from the BLS data that meet their own criteria regarding these topics.

Two comments cited the need for demographic characteristics of workers in green jobs. BLS does not plan to collect demographic data in its surveys. However, users may be able to supplement the BLS green jobs data with demographic data from other sources.

Categories of green economic activity: General comments. Three comments addressed the categories of green economic activity in general. One comment recommended including "operation and maintenance" in each instance where development and implementation are listed. BLS agrees that green goods maintenance services should be included and has changed the descriptions for the relevant categories.

One comment noted that the categories are highly integrated and not necessarily independent. BLS agrees with this comment. The categories do overlap and are not intended to be mutually exclusive. The purpose of the categories is to establish the scope of green jobs. BLS may decide to tabulate data from the green goods and services survey according to these categories, recognizing that such a tabulation would sum to greater than the total number of green jobs identified, and requires clear explanation to data users. Alternatively, BLS could assign each industry where green goods or services are produced to only one category, so the categories sum to the total number of green jobs identified.

One comment supported the use of "reduction" throughout the definition, but noted that this does not address the goal of environmental sustainability and climate stability. The comment stated that "while the seven economic activities are comprehensive * * * they do not capture the underpinnings of business and industry that create these economic activities and their associated environmental outcomes. It would help to articulate the management policies and operational systems that lead to these outcomes." BLS responds that it is unclear how the commenter would change the definition or data collection.

BLS has determined to consolidate the seven categories into five categories for green goods and services and four categories for environmentally friendly production processes. Additionally, BLS has determined to modify the term "categories of green economic activity" to "categories of green goods and services" and "categories of green technologies and practices used within establishments." See Appendix II of this notice.

Category 1, Renewable energy. Five comments addressed category 1. One comment recommended that BLS merge this category with categories 2 (energy efficiency) and 3 (greenhouse gas reduction), creating a single "clean energy" category, with the proposed category addressing only energy systems. BLS has determined to merge certain categories, as described in Appendix II of this notice. These decisions do not affect category 1, however.

One comment recommended that BLS modify the description to show the sources of renewable energy consistent with the statutory definition. BLS has

modified the description to reflect the sources listed in Section 203(b) of the Energy Policy Act of 2005, with the exception of the qualification of hydropower. The statutory definition includes as renewable only "new hydroelectric generation capacity achieved from increased efficiency or additions of new capacity at an existing hydroelectric project." BLS finds this qualification too complex to be used in employment surveys and therefore includes all hydroelectric generation as a green good. In response to this comment, BLS has changed the description to add landfill gas and municipal solid waste as renewable sources, and remove hydrogen fuel cells.

One comment recommended that the description include installation and maintenance. BLS agrees that these activities are included and has modified the description accordingly. One comment asked whether trading of certificates and offsets is included. BLS responds that these activities are included. They could be placed in categories for renewable energy, pollution reduction and cleanup, or greenhouse gas reduction, depending on what is being traded.

One comment recommended that BLS expand the description to include "construction workers who build and install technologies that harness or collect renewable energy." BLS responds that these workers are included in the proposed definition, and should be identified in the data collection.

Category 2, Energy efficiency. Four comments addressed category 2. Two comments recommended that BLS clarify where energy storage and distribution are categorized, including the electric power grid and battery technologies, and whether BLS intends to distinguish between the storage and distribution of energy from renewable sources versus energy from other sources.

BLS has determined to categorize improving the efficiency of the electric power grid, including Smart Grid technologies, in category 2. BLS has also determined that electric power distribution services are not included as a green service, similar to its decision on distribution of other green goods and services as discussed above.

One comment recommended that BLS break out transportation efficiency and other sources of efficiency. BLS responds that it does not see a need for this breakout.

One comment asked that BLS clarify whether the category means to include "energy efficiency products" not "energy-efficient production of any product." BLS responds that both "energy efficiency products" and "energy-efficient production of any product" are included, with the latter identified as an environmentally friendly production process. The revised presentation of the categories makes this clearer.

Category 3, Greenhouse gas reduction. Five comments addressed category 3. One comment stated agreement with the inclusion of research and development activities in this category. One comment recommended moving nuclear energy to category 1, renewable energy. BLS responds that nuclear power is not renewable energy, as the fuel source is not renewable.

Two comments supported including nuclear energy in this category, while one comment opposed including nuclear energy as a source of green jobs. One comment supporting inclusion of nuclear energy recommended keeping it as a separate category for data tabulation, as many stakeholders will likely reject nuclear energy as a source of green jobs. BLS responds that it intends to tabulate data from the green jobs surveys by NAICS industry, which should result in presentation of data specifically for NAICS 221113 Nuclear electric power generation as well as other NAICS categories, providing transparency and allowing users to exclude sectors for their own purposes. BLS continues to include nuclear energy in the final definition on the basis of lower greenhouse gas emissions relative to other major sources of electric power.

One comment recommended eliminating "reduction of GHG emissions in electricity from fossil fuels" from this category, noting that "every fossil fueled power plant * * * is or will soon be trying to make incremental improvements to its emissions intensity, but that activity will not 'green' the fossil fuel industry and nor will it qualify the associated power plants as 'green energy.' " Another comment supported including this activity, noting that "energy production includes jobs that design and apply cleaner technologies to coal such as gasification, pyrolysis, and carbon capture and sequestration (CCS). CCS is still under development but our definition includes efforts that seek to reduce adverse impacts of coal in the near future while the country works to develop clean, renewable energy sources." BLS responds that activities in the fossil fuel industry to make incremental improvements to its emissions intensity represent establishments adopting environmentally friendly production processes and should be measured in the BLS green process survey. BLS also notes that the proposed definition includes research and development of CCS as a green activity, and the planned surveys should identify this activity, depending on where it is being performed.

Category 4, Pollution reduction and cleanup. Five comments addressed category 4. These comments generally supported the category and recommended including the words "prevention" and/or "elimination" in the description. BLS agrees with this recommendation and has revised the description accordingly.

One comment recommended merging category 4 and category 5 (recycling and waste reduction), noting that there is some overlap in the categories. BLS has determined to merge certain categories, as described in Appendix II of this notice. This decision combines categories 3, 4 and 5 into one category.

Category 5, Recycling and waste reduction. Forty-four comments addressed category 5. These comments generally recommended adding certain activities to the description, specifically reuse (29 comments), remanufacturing (23), composting (22), reduction or elimination (7), deconstruction (4), repair (2), and demanufacturing (1). BLS has revised the description to include reuse, remanufacturing, composting, and avoiding creation of waste materials. "Reuse" includes reuse of building materials.

One comment recommended creation of new NAICS codes related to composting. BLS responds that revising the NAICS is outside the scope of the BLS green jobs initiative.

One comment recommended that recycled goods be included only on evidence that they typically had previously entered the waste stream; another comment recommended the category recognize producer responsibility for recycling product at end of life. BLS responds that, while these suggestions may have merit, they are more complex than BLS data collection processes could reasonably identify.

One comment recommended rewording the description to include greater detail about the nature of recycling. BLS responds that it does not believe this additional detail is needed.

One comment recommended rewording to include stormwater management. BLS agrees with this recommendation and has included stormwater management in the natural resources conservation category.

Two comments opposed including solid waste landfills, incineration, waste-to-energy, or landfill-to-energy

activities as green activities. BLS responds that it has added municipal solid waste and landfill gas as sources of renewable energy, consistent with the statutory definition of renewable energy sources.

Category 6, Agriculture and natural resources conservation. Eighteen comments addressed category 6. Fourteen of the comments concerned the inclusion of additional NAICS industries on the industry list in the area of forestry and wood products, specifically 113110 Timber Tract Operations, and manufacturing industries related to wood and paper products. BLS has added timber tract operations to the list of industries producing green goods and services, based on timber tracts producing timber meeting sustainable forestry standards.

BLS continues to include on the industry list industries producing certain wood products meeting standards, such as LEED-eligible construction materials. One comment criticized the use of the LEED standard to identify green wood products and recommended alternative standards. BLS is examining the recommended standards.

One comment recommended this category include activities that take place in urban areas. BLS agrees that activities in urban areas are included; the key is environmental impact of the activity, not where it occurs.

Two comments asked for clarification of the term "natural resources conservation." One comment recommended that the category include land management and water conservation. BLS agrees that these activities are included; they are specifically mentioned in the description for this category.

Category 7, Education, compliance, public awareness, and training. Eight comments addressed category 7. Two comments supported including this category. One comment called for deleting the category, stating that "all industries perform these as a public service and academia trains in them as its mission. Compliance is a regulatory and process review activity, not an economic one—no good or service is produced." BLS responds that education and compliance are services industries recognized in the NAICS.

One comment recommended adding "internally within the organization" in addition to the point of raising public awareness. One comment noted that this category does not denote any green function, but agrees that the jobs meant to be included in the category are green. This comment proposed counting jobs in this category under each of the preceding categories, depending on the type of training provided. BLS has determined to retain a separate category for education and compliance goods and services, as some of these outputs span across two or more of the preceding categories. BLS has determined to drop this category from the categories of environmentally friendly production processes, and to include training of an establishment's staff or contractors in application of environmentally friendly technologies and practices in the remaining four categories.

One comment recommended the category be more open to allow respondents to include themselves, e.g., add 'other' or 'similar services.' BLS responds that, if these categories are presented on data collection forms for either the green goods and services survey or the process survey, an "other" response may be provided.

One comment stated that it was unclear what types of jobs would count. BLS responds that the approach is under development and will be specified on the data collection instruments.

One comment recommended that health and safety education and compliance related to green jobs may deserve special notice within this category. BLS does not see how health and safety education and compliance related to environmental problems has a beneficial impact on the environment.

Comments recommending additional categories. Seven comments recommended adding new categories. Two comments recommended adding a category "Environmental health" to cover work to protect public health and worker health from the adverse effects of environmental problems. For the reason given in the paragraph above, BLS rejected this suggestion.

Two comments recommended adding a category "Sustainable design, construction, and operations." BLS responds that these activities are related to energy efficient building design, construction, and operation, and are covered in the category 2, Energy efficiency.

One comment recommended adding a category "Emission inventory management and trading and compliance." With the clarification that emission offset trading is included as a green activity (see discussion of category 1, above), BLS has addressed this comment.

One comment recommended adding a category for the transportation sector, mentioning equipment manufacturing, public transit operation and maintenance, public transit infrastructure, and all road construction involved in repair "as long as those construction projects are linked to greenhouse gas emissions reductions and/or oil savings goals." BLS responds that the definition of green goods and services includes the equipment manufacture and public transit topics. Some road construction activities are also included; it does not seem feasible to use the suggested criterion in BLS data collection.

One comment recommended adding a category "Water efficiency" similar to "Energy efficiency," noting that the proposed categories mainly focus on energy, and that water is not included except for the mention of water conservation in category 6. The comment recommended including activities such as water conservation, drinking water protection, and stormwater management. BLS responds that the recommendation appears to be an elaboration of "water conservation" which is already included in the natural resources conservation category, and wastewater management, which is included in the pollution reduction category. Stormwater management has been added to the description for the natural resources conservation category.

Types of green goods and services, general comments. Ten comments generally addressed the definition of green goods and services, with a focus on the extent to which the supply chain or production chain is included in the BLS definition.

Most comments recommended including all of the "supply chain" or all stages from inputs to final sale. One comment, however, noted that "going too far down the chain reduces the 'greenness' of the good because it could be shipped, stored, or sold with many other nongreen goods."

Two comments pointed out inconsistencies in the treatment of organic food products versus recycled inputs. The proposed BLS definition includes organic food products from specialized inputs through specialized distribution and sale, while recycled products are included only up to the stage where the recycled inputs are introduced.

BLS notes that including the entire production chain is difficult for products other than organic foods, which carry a specific certification label, and would greatly expand the list of industries in which green goods are classified. These comments also relate to the question about whether to include distribution of green goods as a green service, discussed above.

BLS has determined to drop the use of the four types of green goods and services from its final definition. Many

comments indicated that these types were not clear or helpful to data users.

Direct green goods and services. One comment addressed treatment of Recyclable Material Merchant Wholesalers in the NAICS. BLS responds that revising the NAICS is outside the scope of the BLS green jobs initiative. However, this NAICS industry is included in the industry list as producing a green service.

Indirect green goods and services. Two comments addressed indirect green goods and services. One comment said the qualifier "favorable * * * relative to other goods" is vague. BLS responds that it intends, where possible, to use existing Federal or industry standards to make this qualifier more specific. BLS also notes that, without the "relative" qualifier, it would have little or no basis to make a distinction between green and nongreen goods or services that are not "direct" and would exclude a large number of products and services that are generally considered green.

One comment said the distinction between direct green products and indirect green products seems unclear: For example, why is weatherizing a building directly green, but producing renewable energy is indirectly green? BLS responds to this example by noting that weatherization is conducted specifically for an environmental purpose, the definition of a direct good or service. Producing renewable energy is conducted to produce electricity, but has an environmental benefit, and thus fits the definition of an indirect green good or service.

Specialized inputs. One comment recommended that specialized inputs be rolled into indirect green goods and services, noting that examples such as USDA approved fertilizers, wind turbine blades, and mass transit rail cars fit the definition of indirect, i.e., they are "produced for another purpose, but when produced, consumed, or scrapped have a favorable impact on protecting the environment or conserving natural resources."

Standards. Twenty-six comments addressed the BLS plan to use existing Federal or industry standards to identify indirect green goods and services. Most of these comments suggested specific standards for BLS to consider or commented on the standards listed in the **Federal Register** Notice as examples. BLS finds these comments very helpful.

II. Definition of Green Jobs BLS Will Use for Data Collection

In response to comments received on the proposed definition, as well as additional considerations, BLS has revised the definition of green jobs. The final definition will be used in data collection beginning in FY 2011, and is presented below, following a discussion of the nature of the changes.

Categories of green jobs. BLS has changed the term "categories of green economic activity" to "categories of green goods and services" and "categories of green technologies and practices used within establishments."

BLS has revised the name of category 1 to "Energy from renewable sources."

BLS has revised the description of category 2, "Energy efficiency," to include improving the efficiency of energy storage and distribution, including Smart Grid technologies.

BLS has combined categories 3 (greenhouse gas reduction), 4 (pollution reduction and cleanup), and 5 (recycling and waste reduction) into one category, now labeled "category 3, Pollution reduction and removal, greenhouse gas reduction, and recycling and reuse." Combining these categories reduces to some extent the overlap among categories. The description for this category has been edited to include mention of eliminating emissions of pollutants and to include reuse, remanufacturing, composting, and avoiding creation of waste materials.

BLS has revised the title of category 4 (formerly category 6) to "Natural resources conservation."

BLS has edited the descriptions of categories 1 through 4 (formerly 1 through 6) to include the terms research and development, installation, and maintenance.

BLS has revised the title of category 5 (formerly category 7) to "Environmental compliance, education and training, and public awareness." This category now appears only in relation to green goods and services.

Types of green goods and services. BLS has dropped the use of the four types of green goods and services (direct, indirect, specialized inputs, and distribution). BLS has excluded distribution of green goods from its definition of green services.

Final BLS definition of green jobs. BLS has developed this definition of green jobs for use in data collection in two planned surveys.

Green jobs are either:

A. Jobs in businesses that produce goods or provide services that benefit the environment or conserve natural resources.

B. Jobs in which workers' duties involve making their establishment's production processes more environmentally friendly or use fewer natural resources.

The BLS approach to identifying each type of green job for measurement purposes is described in more detail below. The planned BLS surveys may identify and count some jobs in both surveys.

A. Jobs in businesses that produce goods and provide services that benefit the environment or conserve natural resources. These goods and services are sold to customers, and include research and development, installation, and maintenance services. This definition will be used in the BLS survey of establishments in industries that produce green goods and services. Green goods and services fall into one or more of five groups:

1. *Energy from renewable sources.* Electricity, heat, or fuel generated from renewable sources. These energy sources include wind, biomass, geothermal, solar, ocean, hydropower, landfill gas, and municipal solid waste.

2. *Energy efficiency.* Products and services that improve energy efficiency. Included in this group are energy-efficient equipment, appliances, buildings, and vehicles, as well as products and services that improve the energy efficiency of buildings and the efficiency of energy storage and distribution, such as Smart Grid technologies.

3. *Pollution reduction and removal, greenhouse gas reduction, and recycling and reuse.* These are products and services that:

- Reduce or eliminate the creation or release of pollutants or toxic compounds, or remove pollutants or hazardous waste from the environment.
- Reduce greenhouse gas emissions through methods other than renewable energy generation and energy efficiency, such as electricity generated from nuclear sources.
- Reduce or eliminate the creation of waste materials; collect, reuse, remanufacture, recycle, or compost waste materials or wastewater.

4. *Natural resources conservation.* Products and services that conserve natural resources. Included in this group are products and services related to organic agriculture and sustainable forestry; land management; soil, water, or wildlife conservation; and stormwater management.

5. *Environmental compliance, education and training, and public awareness.* These are products and services that:

- Enforce environmental regulations.
- Provide education and training related to green technologies and practices.
- Increase public awareness of environmental issues.

B. Jobs in which workers' duties involve making their establishment's production processes more environmentally friendly or use fewer natural resources. These workers research, develop, maintain, or use technologies and practices to lessen the environmental impact of their establishment, or train the establishment's workers or contractors in these technologies and practices. This definition will be used in the BLS survey of establishments across all industries to identify jobs related to green technologies and practices used within the establishment. These technologies and practices fall into one or more of four groups:

1. *Energy from renewable sources.* Generating electricity, heat, or fuel from renewable sources primarily for use within the establishment. These energy sources include wind, biomass, geothermal, solar, ocean, hydropower, landfill gas, and municipal solid waste.

2. *Energy efficiency.* Using technologies and practices to improve energy efficiency within the establishment. Included in this group is cogeneration (combined heat and power).

3. *Pollution reduction and removal, greenhouse gas reduction, and recycling and reuse.* Using technologies and practices within the establishment to:

- Reduce or eliminate the creation or release of pollutants or toxic compounds, or remove pollutants or hazardous waste from the environment.
- Reduce greenhouse gas emissions through methods other than renewable energy generation and energy efficiency.
- Reduce or eliminate the creation of waste materials; collect, reuse, remanufacture, recycle, or compost waste materials or wastewater.

4. *Natural resources conservation.* Using technologies and practices within the establishment to conserve natural resources. Included in this group are technologies and practices related to organic agriculture and sustainable forestry; land management; soil, water, or wildlife conservation; and stormwater management.

III. Summary of Comments on Identifying Industries Where Green Goods and Services Are Classified and the Approach BLS Will Use for Data Collection

Forty-seven comments recommended adding a total of 371 detailed NAICS industries to the list of industries where green goods and services are classified. Six comments recommended dropping 18 detailed NAICS industries from the list. Numerous comments addressed certain details on the industry list.

BLS notes that many of the comments were based on whether establishments in the industry may use environmentally friendly production processes, rather than whether the product or service meets the BLS definition of a green product or service. The purpose of the industry list is only to identify industries where green goods and services are classified.

A large number of the industries were recommended for addition to the list based on the use of recycled inputs, such as numerous fabricated metal products industries that may use recycled metals. BLS notes that recycled products are included only up to the stage where the environmental impact occurs, and do not include products fabricated from materials containing recycled content. Therefore BLS has not added these industries to the list.

Some comments requested changing the type of green good or service from indirect to direct, apparently based on a belief that direct green goods or services are preferred over other types of green goods or services. BLS notes that the direct and indirect types were used as criteria for determining what goods or services to include as green, and indicate no hierarchy or preference. These types are not included in the final definition.

BLS has revised the industry list to be consistent with the final definition of green jobs and in light of its review of comments recommending inclusion or exclusion of specific industries. The revised list is posted at *http://www.bls.gov/green,* along with a separate list showing the industries added or dropped from the list published with the March 16, 2010, **Federal Register** Notice. The following table presents the industry sector distribution of business establishments that potentially produce green goods and services. The establishment counts represent the number of establishments eligible for sample selection for the green goods and services survey. The approximately 2.2 million eligible establishments compare to a total of 9.0 million establishments on the BLS business list in 2009. The number of establishments that potentially produce green goods and services could change over time as industries currently offering green goods and services grow or decline, or as new or different industries begin to produce green goods and services.

NUMBER AND PERCENT DISTRIBUTION OF ESTABLISHMENTS IN INDUSTRIES WHERE GREEN GOODS AND SERVICES ARE CLASSIFIED, BY INDUSTRY SECTOR, 2009

Industry sector	Number of establishments	Percent distribution
Construction	820,700	38.1
Professional and business services	779,100	36.2
Other services (Repair and maintenance services, Professional organizations)	183,300	8.5
Natural resources and mining	88,700	4.1
Information	77,000	3.6
Manufacturing	77,700	3.6
Trade, transportation, and utilities	49,300	2.3
Public administration	42,100	2.0
Education and health services	26,400	1.2
All other sectors	10,400	0.5
Total	2,154,700	100.0

In general, the BLS approach is to designate as green those goods and services that directly benefit the environment or preserve natural resources. The BLS approach does not (automatically) designate as green the goods and services produced by industries that supply inputs to or distribute the outputs from green producing industries. Instead, BLS first evaluates those supplier and distributor industry goods and services for whether

they directly benefit the environment or preserve natural resources. Green goods and services may be sold to intermediate demand or to final demand.

IV. Summary of Comments on Plans To Measure Green Jobs and BLS Response

BLS received comments on its approach to measuring green jobs and specific measurement plans. These comments are summarized in this Appendix, and the BLS response is indicated.

General measurement approach. One comment expressed unqualified support for the output and process approaches.

Two comments disagreed with the BLS approach. One of these comments recommended using the O*NET categories and focusing on occupations in the output approach. BLS responds that the O*NET program in the Employment and Training Administration is developing information on green jobs and an effort by BLS to collect similar data would be duplicative. Further, data users will be able to use O*NET information in conjunction with the BLS green jobs data, since both sources use the Standard Occupational Classification.

One comment disagreeing with the BLS approach recommended that "BLS make it clear that this is a 'green firm survey' and not a 'green jobs survey' " and that "the BLS is more concerned with measuring jobs created by the demand for green products and not necessarily green jobs per se." BLS responds that it is referring to the survey to be used in the output approach as the "green goods and services survey."

Three comments pointed out that the BLS approach will miss green goods and services produced by firms classified in NAICS industries excluded from the list. Establishments are classified into NAICS industries based on the goods or services that account for the majority of their revenue. Establishments not classified into an industry on the BLS list will not be included in the green goods and services survey; if a minority of their revenue is from a green good or service, these goods or services and the jobs related to them will not be identified. BLS is aware of this limitation and notes that how large this limitation may be is unknown.

Use of share of revenue to apportion share of jobs. In the green goods and services survey, for establishments that produce both green and nongreen goods or services, BLS proposed to capture the share of establishment revenue received from the sale of green goods and services. (An alternative to revenue will be used for nonmarket sectors.) BLS plans to use the revenue share as a proxy for the share of the establishment's employment associated with the production of green goods and services.

Fifteen comments agreed with use of revenue, and seven comments disagreed. Both types of comments cited collectability and respondent burden as reasons for their agreement or disagreement. Some comments disagreeing with the approach questioned whether the result would overestimate the number of green jobs, and said the results would be difficult to interpret. BLS responds that its field research to date indicates that respondents are generally able to provide share of revenue information and this information is more readily available than share of employment. BLS also notes that this result is similar to the experience of Statistics Canada in its environmental surveys.

Eleven comments pointed out limitations of the revenue share approach, suggested other measures (employment, hours, task proportions, degree of shift to green practices or sustainability), recommended attempting to collect employment as well as revenue, and/or recommended field testing. BLS responds that it is conducting field testing of both share of revenue and share of employment, and that the collection of hours, task proportions, or degree of shift to green practices or sustainability would be more difficult to collect than shares of revenue or employment.

One comment recommended that, regarding electric power distribution jobs associated with "clean energy," BLS count jobs associated with transmission and distribution as proportional to the quantity of clean energy flowing on the grid. Consistent with its decision to exclude distribution of green goods from the definition of green services, BLS has determined that the operation of the electric power grid is not included as a green good or service. However, goods and services or processes that improve the efficiency of energy storage and distribution, such as Smart Grid technologies, are included in category 2, energy efficiency. Construction of the power transmission facilities to connect new renewable energy sources to the grid is included in category 1, energy from renewable sources.

Coverage and sampling frame, green goods and services survey. Three comments addressed the coverage and sampling frame for the green goods and services survey. One comment expressed concern about exclusion of the self-employed. BLS responds that this limitation is imposed by nature of the BLS business list that will be used as the sampling frame.

One comment recommended that, for the construction industry, BLS should rely on a sampling frame of projects, not establishments. BLS responds that such a frame is not available and would result in data based on a different concept than for other industries.

One comment suggested that BLS work with the National Agricultural Statistics Service (NASS) if BLS has a need to expand coverage of farms beyond the BLS business list, where coverage of agriculture production is limited. BLS has determined that the scope of its green jobs data collection will be wage and salary employment within the scope of the Quarterly Census of Employment and Wages (QCEW) program, except private households. All NAICS industries in this scope will be surveyed in the process survey; only those NAICS industries identified as producing green goods or services will be surveyed in the goods and services survey. While QCEW coverage of NAICS Sector 11 Agriculture, Forestry, Fishing and Hunting is not as complete as in most other industries, BLS believes it is comprehensive enough for purposes of green jobs data collection.

Measuring occupational employment and wages. Six comments addressed the collection of occupational data from establishments in the green goods and services survey. Certain of these comments indicate that the **Federal Register** Notice did not provide sufficient description of the plans concerning occupational data collection. BLS responds that it intends to collect an Occupational Employment Statistics (OES) schedule from establishments sampled for the green goods and services survey. These responses will allow estimation of occupational staffing patterns, employment, and wages for those establishments reporting green goods or services and for those not reporting such goods or services. BLS has not yet developed the specific estimation methods to account for establishments that report producing both green and nongreen goods or services.

One comment recommended that survey respondents be asked directly to identify the job titles of positions that meet the BLS definition of "green." BLS responds that, in the process survey, respondents may be asked to provide job titles, which would be coded using the SOC. For the occupations of jobs related to production of green goods and services, however, the existing OES survey procedures will be used, which do not ask respondents for job titles.

One comment stated that determining green job occupations based on OES assumes that green jobs are distributed throughout the workforce in the same proportion by occupation as all jobs. The commenter stated that results of their State survey indicated that green jobs seem to be widely disbursed, but are more concentrated in construction and extraction, production, and farming and fishing occupations. BLS responds that occupational employment will be estimated using OES data for specific establishments, according to whether or not they produce green goods or services. This is different from using OES estimates for overall employment.

Two comments concerned the BLS plan to count jobs in all occupations in the establishment in the green goods and services survey, with one comment agreeing and one comment saying there is "no need to count support jobs, such as accountants or administrative staff, because their job duties are not affected directly by the green product or service and thus they do not require additional training." BLS notes that its green jobs definition is not based on skill differences, but instead on the environmental impact of the good or service produced or the production process used. However, data users can select the occupations they wish to consider for training offerings from those BLS identifies as occurring in establishments producing green goods and services. The O*NET green occupations taxonomy should be useful in this type of analysis.

Data by public ownership. One comment encouraged BLS to generate data that identify the level of public sector green employment in the NAICS-defined industries and the characteristics of the public sector green jobs. BLS responds that it intends to provide data from the green goods and services survey by public versus private ownership.

Process approach to measuring green jobs. BLS plans to develop a special employer survey to test the feasibility of collecting data on jobs associated with use of environmentally friendly production processes. Environmentally friendly production processes and practices are those that reduce the environmental or natural resources impact resulting from production of any good or service. These production processes include (1) production of green goods and services for use within the establishment, and (2) use of technologies and practices that have a positive environmental or natural resources conservation impact.

Sixteen comments addressed the process approach. Five comments supported using this approach and one comment recommended against. Three of these comments emphasized that all industries should be included in the process survey. BLS responds that, as stated in the March 16, 2010, notice, the scope of the process survey will be all industries.

Six comments indicated the need for more clarity in the process approach. BLS responds that the approach is under development and will be described in a future notice.

Two comments recommended using product life-cycle criteria for identifying green goods, with one of these comments suggesting that "a 'green good' and a good produced with 'green processes' will become increasingly indistinguishable in the marketplace among the leading experts and stakeholders in the sustainable products field." BLS responds that applying life-cycle criteria or identifying "sustainable" products is not feasible in its data collection.

Signed at Washington, DC, this 26th day of August 2010.

Kimberley Hill,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 2010–23485 Filed 9–20–10; 8:45 am]

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DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of August 30, 2010 through September 3, 2010.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) Imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) Imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) Imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) Imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) The increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) there has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) there has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) The shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in public agencies and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) A significant number or proportion of the workers in the public agency have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The public agency has acquired from a foreign country services like or directly competitive with services which are supplied by such agency; and

(3) The acquisition of services contributed importantly to such workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(c) of the Act must be met.

(1) A significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) Either—

(A) the workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(f) of the Act must be met.

(1) The workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) An affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) An affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) An affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) The petition is filed during the 1-year period beginning on the date on which—

(A) a summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) The workers have become totally or partially separated from the workers' firm within—

(A) the 1-year period described in paragraph (2); or

(B) notwithstanding section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
72,531	Riley Power, Inc., Vogt-Nem, Inc. and Babcock Power, Inc	Erie, PA	October 2, 2008.
73,656	JK Products and Services, Inc., Leased Workers Aid Temporary Services, Inc., Staffmark, and Appleone, etc.	Jonesboro, AR	March 5, 2009.
73,965	Angell-Demmel North America Corp, Sellner Corporation	Dayton, OH	April 9, 2009.
74,025	Babcock Lumber Company, Hardwood Division; leased Workers Staff Right Services, etc.	St. Marys, PA	April 23, 2009.
74,134	Reynoldsville Holding Company	Reynoldsville, PA	May 10, 2009.
74,267	Mason County Forest Products	Shelton, WA	June 14, 2009.
74,277	Westcode, Inc	Binghamton, NY	June 21, 2009.
74,307	Brockway Mould, Inc., Ross Mould, Inc	Brockport, PA	June 25, 2010.
74,384	Shipbuilders of Wisconsin, Inc., Burger Boat Company; Leased Workers Aerotek and Skilled Trade Services.	Manitowoc, WI	June 8, 2009.
74,534	DuPont Teijin Films, Leased Workers from Schenkers Logistics, Inc.	Florence, SC	November 7, 2009.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
73,547	Acxiom Corporation, Leased Workers from CJCN, Kyntex, Premier Staffing, Quintex, etc.	Little Rock, AR	February 22, 2009.
73,547A	Acxiom Corporation, Leased Workers from CJCN, Kyntex, Premier Staffing, Quintex, etc.	Conway, AR	February 22, 2009.
73,608	PricewaterhouseCoopers, LLP ('PwC'), Internal Firm Services ('IFS') Group.	Charlotte, NC	February 26, 2009.
73,829	Suncor Energy (U.S.A.), Inc., A Subsidiary of Suncor Energy, Inc.	Greenwood Village, CO	March 11, 2009.
73,887	ITT Water & Wastewater Leopold, Inc., ITT Corporation; Leased Workers Account Temps, Kelly Services, Adecco, etc.	Zelienople, PA	May 22, 2010.

TA–W No.	Subject firm	Location	Impact date
74,008	Cooper, Crouse-Hinds MTL, Inc., Cooper, Crouse-Hinds; Cooper Industries; Leased Workers from Accountemps, etc.	West Melbourne, FL	April 22, 2009.
74,028	Imhauser Corporation	Romney, WV	April 28, 2009.
74,065	ShopKo Stores Operating Co., LLC, Information Services Division; SKO Group Holding, LLC; Leased Workers, etc.	Green Bay, WI	May 7, 2009.
74,085	Avery Dennison, Leased Workers from Adecco, Inc	Lenoir, NC	May 13, 2009.
74,086	Unisys Corporation, Managed Service Center; Leased Workers from Apex Systems and Pinnacle.	Austin, TX	May 13, 2009.
74,142	World Color Mt. Morris, IL LLC, Premedia Chicago Division; Leased Workers from The Creative Group, etc.	Schaumburg, IL	May 21, 2009.
74,377	Sony Pictures Entertainment, IT Department, Leased Workers from Banctec, CCP Global, Invision, etc.	Culver City, CA	June 28, 2009.
74,414	PricewaterhouseCoopers LLP, Internal Firm Services Group.	Cleveland, OH	July 13, 2009.
74,454	LSI Corporation, Integrated Circuit Testing Department	Fort Collins, CO	July 22, 2009.
74,455	Uniboard Fostoria, Inc., Uniboard Canada	Fostoria, OH	July 26, 2009.
74,483	Wood Group Component Repair Services, Inc., Wood Group Gas Turbine Services, Inc.	East Windsor, CT	August 3, 2009.
74,505	Neff Motivation, Inc., Visant Corporation	Unadilla, GA	August 9, 2009.
74,518	Peco II by Lineage Power, Leased Workers from Waycraft, Incorporated.	Galion, OH	July 27, 2009.
74,524	TD Ameritrade, Inc., TD Ameritrade Clearing, Inc.; TD Ameritrade Holding Corporation etc.	Fort Worth, TX	August 5, 2009.
74,530	Hewlett Packard Company, Human Resources Division	Auburn and other Cities in California, CA.	August 4, 2009.
74,530A	Hewlett Packard Company, Human Resources Division	Boise, ID	August 4, 2009.
74,530B	Hewlett Packard Company, Human Resources Division	Ellicott City, MD	August 4, 2009.
74,530C	Hewlett Packard Company, Human Resources Division	Canton, MI	August 4, 2009.
74,530D	Hewlett Packard Company, Human Resources Division	Wake Forest, NC	August 4, 2009.
74,530E	Hewlett Packard Company, Human Resources Division	Corvallis, OR	August 4, 2009.
74,530F	Hewlett Packard Company, Human Resources Division	Blue Bell, PA	August 4, 2009
74,530G	Hewlett Packard Company, Human Resources Division	Houston and other Cities in Texas, TX.	August 4, 2009.
74,530H	Hewlett Packard Company, Human Resources Division	Herndon, VA	August 4, 2009.
74,530I	Hewlett Packard Company, Human Resources Division	Vancouver, WA	August 4, 2009.
74,545	HAVI Logistics, North America, HAVI Group, LP; Leased Worker from Express Personnel Services, etc.	Bloomingdale, IL	August 11, 2009.
74,550	Artisans, Inc	Glen Flora, WI	August 20, 2009.
74,552	CKE Restaurants, Inc., Client Services Division; Leased Workers from B2B Staffing Services.	Anaheim, CA	August 18, 2009.
74,561	Hilton Reservations and Customer Care, Hemet Division of Hilton Worldwide.	Hemet, CA	August 11, 2009.

The following certifications have been issued. The requirements of Section 222(c) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
73,203	Hitachi Automotive Products (USA), Inc., Hitachi America, Ltd.; Leased Workers from Nesco Resource Company.	Harrodsburg, KY	December 31, 2009.
73,486	Ethan Allen Retail, Inc	Lombard, IL	February 10, 2009.
73,496	Guardian Automotive Corp., SRG Global Inc	LaGrange, GA	March 27, 2009.
74,495	General Electric Company, Transportation Division; Leased Workers from Adecco Technical.	Grove City, PA	August 3, 2009.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criteria under paragraphs(a)(2)(A) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W No.	Subject firm	Location	Impact date
73,021	BJ Services, A Baker Hughes Incorporated Company	Eldorado, TX	
73,721	RCL Burco, Inc., RCL Services Group, LLC	Culloden, WV	

TA–W No.	Subject firm	Location	Impact date
73,722	Sojitz Corporation of America, Sojitz Corporation; Forest Products Department.	Seattle, WA	
74,035	OSRAM Sylvania, Siemens	Warren, PA	
74,246	Bank of America, Card Customer Assistance Division	State College, PA	
74,290	Supermedia LLC, Idearc Media LLC; SuperMedia Information Services LLC; Client Care, etc..	Middleton, MA	

Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

TA–W No.	Subject firm	Location	Impact date
73,707	JD Norman Industries, Inc., Brooklyn Facility	Brooklyn, OH	
73,759	Eskco, Inc	Dayton, OH	
74,353	Riverhawk Aviation	Hickory, NC	

The following determinations terminating investigations were issued because the petitioning groups of workers are covered by active certifications. Consequently, further investigation in these cases would serve no purpose since the petitioning group of workers cannot be covered by more than one certification at a time.

TA–W No.	Subject firm	Location	Impact date
73,625	Compuware Corporation	Warren, MI	

I hereby certify that the aforementioned determinations were issued during the period of August 30, 2010 through September 3, 2010. Copies of these determinations may be requested under the Freedom of Information Act. Requests may be submitted by fax, courier services, or mail to FOIA Disclosure Officer, Office of Trade Adjustment Assistance (ETA), U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 or *tofoiarequest@dol.gov.* These determinations also are available on the Department's Web site at *http://www.doleta.gov/tradeact* under the searchable listing of determinations.

Dated: September 10, 2010.

Elliott S. Kushner

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–23496 Filed 9–20–10; 8:45 am]

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DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–70,344]

Atlantic Southeast Airlines, a Subsidiary of Skywest, Inc., Airport Customer Service Division, Including On-Site Leased Workers of Delta Global Services, Inc., Fort Smith, AR; Notice of Negative Determination on Remand

On July 6, 2010, the United States Court of International Trade (USCIT) granted the Department of Labor's request for voluntary remand to conduct further investigation in *Former Employees of Atlantic Southeast Airlines, a Subsidiary of Skywest, Inc., Airport Customer Service Division* v. *United States Secretary of Labor* (Court No. 09–00522).

Background

On September 28, 2009, the Department of Labor (Department) issued a Negative Determination regarding eligibility to apply for Trade Adjustment Assistance (TAA) under the Trade Act of 1974, as amended (hereafter referred to as the Act) applicable to workers and former workers of Atlantic Southeast Airlines, a Subsidiary of Skywest, Inc., Airport Customer Division, Fort Smith, Arkansas (subject firm). AR 35. Workers at the subject firm (subject worker group) provided airline ground services, such as baggage handling, at the Forth Smith, Arkansas airport. AR 8, 14, 17, 25–26, 34. The Department's Notice of negative determination was published in the **Federal Register** on November 17, 2009 (74 FR 59251). AR 48.

The negative determination stated that the subject firm did not import services like or directly competitive with the services supplied by the subject workers in the period under investigation nor shift the supply of these services to a foreign country during this period. A customer survey was not conducted because the subject firm's customers were private individuals who traveled through Fort Smith, Arkansas airport. AR 35–38.

By application dated October 19, 2009, a petitioner requested administrative reconsideration on the Department's negative determination. In the request for reconsideration, the petitioner alleged that workers at the subject firm provided services to individuals employed at firms that employed workers eligible to apply for TAA and that workers at the subject firm should also be eligible to apply for TAA as "downstream producers" to these firms. AR 42–43.

Because the petitioner did not provide information that had not been previously considered, the Department

issued a Notice of Negative Determination Regarding Application for Reconsideration applicable to workers at the subject firm on November 5, 2009. AR 44. The Notice of determination was published in the **Federal Register** on December 8, 2009 (74 FR 64736). AR 54.

In the complaint to the USCIT, dated December 2, 2009, the Plaintiff reiterated the reconsideration application allegations, claiming that workers at the subject firm are eligible to apply for TAA as secondarily affected workers because they provided transportation services to individuals employed at manufacturing firms in the Fort Smith area that employed worker groups eligible to apply for TAA and which used the airport at which the subject firm employed the worker group. The complaint stated that "our station was closed as a direct result of down sizing and closing of major companies in our area; all of which are receiving TAA benefits." The Plaintiff did not provide additional information in support of the complaint, but attached a copy of the request for reconsideration.

On June 30, 2010, the Department requested voluntary remand to address the allegations made by the Plaintiff, to determine whether the subject worker group is eligible to apply for TAA, and to issue an appropriate determination. On July 6, 2010, the USCIT granted the Department's Motion for voluntary remand.

Statutory Requirements

The Act authorizes the Department to certify worker groups as eligible to apply for TAA generally when the increased imports or shifts in production of articles or supply of services of the workers' firm contributed importantly to a significant number or proportion of worker separations or threats of separation and there have been absolute decreases in the sales or production of the workers' firm.

In narrowly defined circumstances, Section 222(c) of the Act, 19 U.S.C. 2272(c), permits the certification of worker groups based on the direct relationship between the workers' firm and another firm that employed a worker group eligible to apply for TAA (a primary firm). For the Department to issue such a "secondary worker" certification to workers of a Supplier or a Downstream Producer, the following criteria must be met:

(1) A significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, 19 U.S.C. 2272(a), and such supply or production is related to the article or service that was the basis for such certification; and

(3) Either

(A) the workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

Section 222(d)(3)(A) of the Act, 19 U.S.C. 2272(d)(3)(A), states that a "downstream producer means a firm that performs additional, value-added production processes or services directly for another firm for articles or services with respect to which a group of workers in such other firm has been certified under subsection (a)."

Section 222(d)(3)(B) of the Act, 19 U.S.C. 2272(d)(3)(B), states that "value-added production processes or services include final assembly, finishing, testing, packaging, or maintenance or transportation services."

Investigations of Petition, Application for Reconsideration, and USCIT Complaint

The petitioners identified the subject worker group as twelve "airline customer service and ramp agents" in the employ of Atlantic Southeast Airlines (ASA) working at Fort Smith, Arkansas. AR 4. The petition states that "ASA is closing stations @ Ft. Smith and all surrounding airports." AR 5.

Information provided by the subject firm during the initial investigation revealed that, at the Fort Smith, Arkansas location, the subject worker group consisted of airport station manager(s), airport station supervisor(s), and airport ramp/baggage agent(s). AR 25–26. The initial investigation also revealed that the subject firm had a contract with Delta Air Lines to supply airport ramp and baggage agents and airport station supervisors and managers. AR 14, 17, 24–25, 27–28, 33–34. The subject firm also employed temporary workers supplied by Delta Global Services, Inc. to perform security personnel and administrative support personnel services at the Fort Smith, Arkansas airport. AR 25, 33.

The initial investigation also revealed that the worker separations were due to the subject firm's failure to win a bid to continue to supply services at the Fort Smith, Arkansas airport. Specifically, when Delta Air Lines and Northwest Air Lines merged, their operations were consolidated and regional airlines with contracts to supply services at airports where they operated were invited to submit new bids to maintain operations at those airports. The subject firm did not win the bid to supply services at the Fort Smith, Arkansas airport because the merged entity decided to use the company that supplied the same services to Northwest Air Line rather than complete the bidding process. AR 17, 25, 33–34.

In the request for reconsideration, the petitioner alleged that because the subject firm is "completely reliant on the manufacturing industry in our town" and because the businesses "discontinued their flights with us due to their downsizing," the workers of the subject firm should be eligible to apply for TAA as "downstream producers" to those companies in the area who employed workers eligible to apply for TAA because they used the Fort Smith, Arkansas airport. AR 42–43.

In the negative determination regarding the application for reconsideration, the Department stated that because the subject firm did not perform additional, value-added production processes or services directly to these primary firms, the subject firm is not a downstream producer. Therefore, the application for reconsideration was denied. AR 44–47.

During the remand investigation, the Department carefully reviewed previously-submitted information and obtained additional information from the subject firm regarding its operations. The subsequent investigation covered the reasons for the subject firm's closure of its Fort Smith, Arkansas operations, the type of work engaged in by the subject worker group and where the work that it performed is currently taking place, the nature of the customer base at that location, and the customer(s) of the subject firm.

The remand investigation confirmed that the subject firm did not solicit business for Delta Air Lines, SAR 24, 27, or maintain or have access to Delta Air Lines' customer list. SAR 3, 19, 27. The subject firm provided ground handling and ticketing services to Delta Air Lines customers, who included individual passengers, corporate accounts and travel agencies. SAR 3, 19, 21, 27. Under contract to Delta Air Lines, on some flights, the subject firm also provided aircraft and personnel. SAR 19, 27. The

subject firm, and not Delta Air Lines, paid the subject worker group. SAR 19, 27.

Issues on Remand

The Plaintiff alleged in the complaint to the USCIT that the decline in travel in the Forth Smith, Arkansas area is attributable to a reduction in the operations of local firms that employed workers eligible to apply for TAA, and that this decline contributed to worker separations at the subject firm.

Because there is no dispute that a significant proportion or number of workers of the subject firm was separated, the only issues for the Department to decide on remand are whether or not the remaining two criteria of Section 222(c) of the Act have been met. Specifically, the Department must determine whether or not the subject firm meets the requirements of a "downstream producer" under Sections 222(c) and (d) of the Act and, if so, whether or not the loss of business by the subject firm with a primary firm contributed importantly to the subject worker group separations or threat of separations.

The investigations revealed that the services supplied by the subject firm were provided under contract exclusively for Delta Air Lines, AR 14, 24–25, 27–28, 33–34, SAR 3, 19, 21, 27, but that the subject worker group worked for the subject firm and not for Delta Air Lines. SAR 19, 27. Delta Air Lines was the sole customer of the subject firm. SAR 3, 21, 27. The Fort Smith, Arkansas airport users such as leisure travelers, travel agencies, corporate accounts, and the military may have benefited from the services supplied by the subject firm, and one or more of these entities may have employed workers who are eligible to apply for TAA. However, workers and former workers of Delta Air Lines at Fort Smith, Arkansas airport are not eligible to apply for TAA. SAR 32–33.

Section 222(d)(3)(A) of the Act requires that a "downstream producer" perform "additional, value-added production processes or services directly for another firm for articles or services with respect to which a group of workers in such other firm has been certified under subsection (a) [of Section 222 of the Act]." Section 222(d)(3)(B) includes "transportation services" among those services.

The subject firm cannot meet the statutory definition of a "downstream producer" because it only directly provided services to Delta Air Lines (not for the customers of Delta Air Lines). SAR 3, 21, 27. The subject firm did not supply services directly related to the production or supply of an article or service that was a basis for a TAA certification. SAR 32–33.

Moreover, Section 222(c)(2) of the Act does not permit secondary worker certification unless the service provided by the subject firm "is related to the article or service that was the basis for such certification [under Section 222(a) of the Act]." Certification of a worker group under Section 222(c) of the Act may not be based on a secondary worker certification. Therefore, even if Delta Air Lines workers could be certified eligible to apply for TAA on the basis that Delta Air Lines provided transportation services related to the production or supply of an article or service that was a basis for a TAA certification of one or more of its customers, workers of the subject firm may not be certified as adversely affected secondary workers.

The Plaintiff also alleged that the domestic merger between Delta Air Lines and Northwest Airlines shows trade impact that resulted in the worker group layoffs.

The Department investigated this allegation during the remand investigation, and confirmed that worker separations at the subject firm are attributable to Delta Air Lines ceasing operations out of the Fort Smith, Arkansas airport. SAR 3, 19, 21, 27. However, the newly-merged airline maintained operations out of the Fort Smith, Arkansas location using a different airline customer service provider. SAR 3, 19, 21, 27. Further, those services provided by the subject firm cannot be imported or shifted abroad as they are used directly by domestic passengers. As such, conducting a survey of Delta Air Lines to determine whether it increased its imports of services like or directly competitive with those supplied by the subject firm (as requested by Plaintiff's counsel) is not necessary.

Based on a careful review of previously-submitted information and new information obtained during the remand investigation, the Department determines that the petitioning workers have not met the eligibility criteria of Section 222(c) of the Trade Act of 1974, as amended.

Conclusion

After careful reconsideration, I affirm the original negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Atlantic Southeast Airlines, a Subsidiary of Skywest, Inc., Airport Customer Division, including on-site leased workers of Delta Global Services, Inc., Fort Smith, Arkansas.

Signed at Washington, DC this 3rd day of September, 2010.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2010–23497 Filed 9–20–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,673]

Weather Shield Manufacturing, Medford, WI; Notice of Negative Determination Regarding Application for Reconsideration

By application dated August 12, 2010, the petitioners requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of Weather Shield Manufacturing, Inc., Medford, Wisconsin (subject firm). The negative determination was signed on July 16, 2010. The Notice of determination was published in the **Federal Register** on August 2, 2010 (75 FR 45163). The petitioning worker group provides administrative support services related to the production of doors and windows at various Weather Shield Manufacturing, Inc. facilities.

Workers at Weather Shield Manufacturing, Inc., Medford, Wisconsin, who became totally or partially separated from employment on or after December 17, 2007 through August 9, 2012, are eligible to apply for TAA and alternative trade adjustment assistance under TA–W–64,725.

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The negative determination applicable to workers and former workers at the subject firm was based on the findings that the subject firm did not, during the period under investigation, shift to a foreign country services like or directly competitive with those supplied by the workers or

acquire these services from a foreign country; that the workers' separation, or threat of separation, was not related to any increase in imports of like or directly competitive services; and that the workers did not supply a service that was directly used in the production of an article or the supply of service by a firm that employed a worker group that is eligible to apply for TAA based on the aforementioned article or service.

Additionally, the Department surveyed the subject firm's major declining customers regarding their purchases of doors and/or windows. The customer survey revealed that customer imports of articles like or directly competitive with those produced by the subject firm declined in the relevant time period, both in absolute terms and relative to the purchases of such articles from the subject firm.

In the request for reconsideration, the petitioner states that "Case number TA–W–72,673 is the same company and division as petition TA–64,725—Weather Shield Employees."

The petition date of TA–W–64,725 is December 17, 2008. The petition date of TA–W–72,673 is October 23, 2009. Because the investigation periods in the two cases are different, the findings in TA–W–64,725 cannot be used as the basis for a certification of TA–W–72,673.

The petitioner did not supply facts not previously considered; nor provide additional documentation indicating that there was either (1) a mistake in the determination of facts not previously considered or (2) a misinterpretation of facts or of the law justifying reconsideration of the initial determination.

After careful review of the request for reconsideration, the Department determines that 29 CFR 90.18(c) has not been met.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC, this 10th day of September, 2010.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2010–23502 Filed 9–20–10; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (10–112)]

NASA Advisory Council; Planetary Science Subcommittee; Supporting Research and Technology Working Group; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the Supporting Research and Technology Working Group of the Planetary Science Subcommittee of the NASA Advisory Council.

DATED: Wednesday, October 13, 2010, 9 a.m.–3 p.m., Local Time.

ADDRESSES: NASA Headquarters, 300 E Street, SW., Washington, DC, Room 1Q39 (9 a.m.–3 p.m. EST).

FOR FURTHER INFORMATION CONTACT: Dr. Michael New, Planetary Science Division, National Aeronautics and Space Administration Headquarters, 300 E Street, SW., Washington, DC 20546, 202/358–1766; *michael.h.new@nasa.gov.*

SUPPLEMENTARY INFORMATION: The agenda topics for the meeting will include:

- Presentation of Working Group Process.
- Discussion of Role of NASA HQ Program Officers.

This meeting will be held in room 1Q39 on the 1st floor of NASA Headquarters located at 300 E Street, SW., Washington, DC 20546. All visitors will need to sign in and show valid government-issued picture identification such as driver's license or passport to enter NASA Headquarters. Foreign nationals attending this meeting will be required to provide a copy of their passport, visa, or green card in addition to providing the following information no less than 10 working days prior to the meeting: Full name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee. The meeting will also be available via teleconference and by Web Ex. Any interested person may call the USA toll free conference call number 877–915–2770, participant pass code 60186, to participate in this meeting by telephone. The Webex link is *https://nasa.webex.com/,* meeting number 991 907 278, and password R+AW0rk! (the fifth character is the number zero). For questions, please call Michael New at (202) 358–1766.

Dated: September 14, 2010.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2010–23437 Filed 9–20–10; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL CREDIT UNION ADMINISTRATION

SUNSHINE ACT; NOTICE OF AGENCY MEETING

TIME AND DATE: 10 a.m., Friday, September 24, 2010.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Consideration of Supervisory Activities (7). Closed pursuant to exemptions (8), (9)(A)(ii) and 9(B).

RECESS: 11:30 a.m.

TIME AND DATE: 2:30 p.m., Friday, September 24, 2010.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

Matters To Be Considered

1. Final Rule—Part 704 of NCUA's Rules and Regulations, Corporate Credit Unions.

2. Delegation of Authority, Corporate Credit Union Service Organizations.

3. Board Briefing, Corporate Credit Unions' Legacy Asset Plan Update.

4. Interpretive Ruling and Policy Statement (IRPS) 10–2, Corporate Federal Credit Union Chartering Guidelines.

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, Telephone: 703–518–6304.

Mary Rupp,

Board Secretary.

[FR Doc. 2010–23706 Filed 9–17–10; 4:15 pm]

BILLING CODE P

NATIONAL SCIENCE FOUNDATION

Networking and Information Technology Research and Development (NITRD) Program: Draft NITRD 2010 Strategic Plan—URL Correction

AGENCY: The National Coordination Office (NCO) for Networking and Information Technology Research and Development (NITRD).

ACTION: Notice, request for public comment.

FOR FURTHER INFORMATION CONTACT: The National Coordination Office (NCO) at *nitrd-sp@nitrd.gov* or (703) 292–4873. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

DATES: Comments must be received by 5 p.m. EDT on October 11, 2010.

SUMMARY: With this notice, the National Coordination Office for Networking and Information Technology Research and Development (NITRD) requests comments from the public regarding the draft 2010 Strategic Plan for the Federal NITRD Program. The draft Strategic Plan is posted at: *http://www.nitrd.gov/DraftStrategicPlan/*. Comments of one page or less in length are requested. This request for information will be active from September 10, 2010 to October 11, 2010.

ADDRESSES: Submit comments via e-mail to: *nitrd-sp@nitrd.gov*. Comments submitted in response to this notice may be made available to the public online or by alternative means. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information.

SUPPLEMENTARY INFORMATION:

Overview: This notice is issued by the National Coordination Office for the Networking and Information Technology Research and Development (NITRD) Program. The draft NITRD Strategic Plan reflects broad input from Federal agencies as well as from researchers and other stakeholders in academia, industry, national laboratories, and professional/technical organizations. Public inputs were solicited in a detailed August 2008 Request for Information (RFI) and in a February 2009 public forum and Webcast. Several hundred comments were received in response to the RFI, and many of these were posted to the NITRD Web site for further comment. The public forum, which included formal presentations by academic and industry experts addressing key concepts for the draft Strategic Plan, was attended by some 100 members of the public, while another 400 persons participated via the Webcast.

Background: As required by the High-Performance Computing Act of 1991 (Pub. L. 102–194), the Next Generation Internet Research Act of 1998 (Pub. L. 105–305), and the America COMPETES Act of 2007 (Pub. L. 110–69), NITRD currently provides a framework and mechanisms for coordination among 14 Federal agencies that support advanced IT R&D. These agencies report IT research budgets in the NITRD crosscut, and many other agencies with IT interests also participate informally in NITRD activities. The draft 2010 Strategic Plan for the NITRD Program was developed by the NITRD agencies pursuant to a recommendation of the President's Council of Advisors on Science and Technology (PCAST).

Invitation to comment: Inputs of one page or less are welcomed in response to this third and final request for public comment on the Plan. E-mail to: *nitrd-sp@nitrd.gov*.

Submitted by the National Science Foundation for the National Coordination Office (NCO) for Networking and Information Technology Research and Development (NITRD) on September 1, 2010.

September 13, 2010.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2010–23459 Filed 9–20–10; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0297]

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 August 26, 2010, to September 8, 2010. The last biweekly notice was published on September 7, 2010 (75 FR 54390–54400).

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.*

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: July 20, 2010.

Description of amendment request: The proposed amendment would modify Technical Specification (TS) Limiting Condition for Operation (LCO) 3.7.1.2, "Emergency Feedwater System," to clarify the acceptability of transitioning from Mode 4 to Mode 3 with the turbine-driven emergency feedwater (EFW) pump inoperable but available. This proposal would grant an exception to TS LCO 3.0.4 and Surveillance Requirement 4.0.4 allowing entry into operational Mode 3 with TS LCO equipment, the turbine-driven EFW pump, associated with a shutdown action inoperable.

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 addition of an exception to TS LCO 3.0.4 for entry into Mode 3 during a plant startup for the turbine-driven EFW pump for a plant condition when the turbine driven EFW pump would be unable to complete its post maintenance activities (*i.e.* dynamic final calibration of the governor valve speed control unit governor control system) due to insufficient steam pressure in the steam generator secondary side and then to complete the quarterly IST [Inservice Testing] and 18 month EFAS [Engineered Safety Features Actuation System] SR [Surveillance Requirement] within the allowance of the delay of the respective SR is administrative in nature.

This change will clarify that the turbine-driven EFW pump is not required to fully demonstrate operability (*i.e.* be inoperable pending completion of the quarterly IST and 18 month EFAS SR) during plant startup prior to entry into Mode 3 under the conditions and for the period as provided in the quarterly IST and 18 month EFAS SR as granted by the NRC [Nuclear Regulatory Commission] in Reference 7.1 [NRC letter to Waterford 3 dated October 4, 2001, Waterford Steam Electric Station—Unit 3, Issuance of Amendment RE: Emergency Feedwater System (TAC No MB2010), Agencywide Documents Access and Management System (ADAMS) Accession No. ML012840538]. When the plant enters Mode 3 during plant

startup, the turbine-driven EFW pump is available (*i.e.,* there is a reasonable expectation that once sufficient steam pressure is available to the turbine-driven EFW pump turbine, it will be able to successfully complete the quarterly IST and 18 month EFAS surveillance requirements to fully demonstrate operability).

Prior to entry into Mode 2, surveillance requirement testing of various combinations of EFW pumps and valves will ensure ALL required EFW system flow paths and equipment (which includes the turbine-driven EFW pump) are demonstrated operable before sufficient core heat is generated that would require the operation of the EFW System during a subsequent shutdown.

Since the two motor-driven EFW pumps are required to be operable when entering Modes 3 from Mode 4, then for the worst case postulated accident scenario during plant startup, with the turbine-driven EFW pump considered inoperable but available (utilizing the exception to TS LCO 3.0.4 as tied to the quarterly IST and 18 month EFAS SR for fully demonstrating operability of the turbine-driven EFW pump), the EFW System safety function of achieving shutdown cooling entry conditions would be met.

This request is merely a clarification and does not present any change to equipment operation, design or practices. The proposed clarification is not an accident initiator and will not adversely affect plant safety functions. The EFW System capability to provide its specified function of being able to achieve shutdown cooling entry conditions of the Reactor Coolant [S]ystem is unchanged by this clarification.

Therefore, this 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 addition of an exception to TS LCO 3.0.4 for entry into Mode 3 during a plant startup for the turbine-driven EFW pump for a plant condition when the turbine-driven EFW pump would be unable to complete its post maintenance activities (*i.e.* dynamic final calibration of the governor valve speed control unit governor control system) due to insufficient steam pressure in the steam generator secondary side and then to complete the quarterly IST and 18 month EFAS SR within the allowance of the delay of the respective SR is administrative in nature.

This change will clarify that the turbine-driven EFW pump is not required to fully demonstrate operability (*i.e.* be inoperable pending completion of the quarterly IST and 18 month EFAS SR) during plant startup prior to entry into Mode 3 under the conditions and for the period as provided in the quarterly IST and 18 month EFAS SR as granted by the NRC in Reference 7.1. When the plant enters Mode 3 during plant startup, the turbine-driven EFW pump is available (*i.e.* there is a reasonable expectation that once sufficient steam pressure is available to the turbine-driven EFW pump turbine, it will be able to successfully complete the quarterly IST and 18 month EFAS surveillance requirements to fully demonstrate operability).

Prior to entry into Mode 2, surveillance requirement testing of various combinations of EFW pumps and valves will ensure ALL required EFW system flow paths and equipment (which includes the turbine-driven EFW pump) are demonstrated operable before sufficient core heat is generated that would require the operation of the EFW System during a subsequent shutdown.

The addition of this exception to TS LCO 3.0.4 for the turbine-driven EFW pump introduces no new mode of plant operation and does not alter the EFW System functional capability. The scope of this proposed change does not establish a potential new accident precursor. This proposed change will not change the design, configuration or method of operation of the EFW System. No new possibility for an accident is introduced by the proposed clarification.

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 proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed addition of an exception to TS LCO 3.0.4 for entry into Mode 3 during a plant startup for the turbine-driven EFW pump for a plant condition when the turbine-driven EFW pump would be unable to complete its post maintenance activities (*i.e.* dynamic final calibration of the governor valve speed control unit governor control system) due to insufficient steam pressure in the steam generator secondary side and then to complete the quarterly IST and 18 month EFAS SR within the allowance of the delay of the respective SR is administrative in nature.

This change will clarify that the turbine-driven EFW pump is not required to fully demonstrate operability (i.e. be inoperable pending completion of the quarterly IST and 18 month EFAS SR) during plant startup when entering Mode 3 under the conditions and for the period as provided in the quarterly IST and 18 month EFAS SR as granted by the NRC in Reference 7.1. When the plant enters Mode 3 during plant startup, the turbine-driven EFW pump is available (*i.e.* there is a reasonable expectation that once sufficient steam pressure is available to the turbine-driven EFW pump turbine, it will be able to successfully complete the quarterly IST and 18 month EFAS surveillance requirements to fully demonstrate operability).

Prior to entry into Mode 2, surveillance requirement testing of various combinations of EFW pumps and valves will ensure ALL required EFW system flow paths and equipment (which includes the turbine-driven EFW pump) are demonstrated operable before sufficient core heat is generated that would require the operation of the EFW System during a subsequent shutdown.

The proposed clarification does not adversely affect Emergency Feedwater equipment operating practices. The EFW System has the same capabilities as before to mitigate accidents. Surveillance requirements are not reduced by the proposed change. The EFW System capability to provide its specified function of being able to achieve shutdown cooling entry conditions of the Reactor Coolant System following a worst case postulated accident is unchanged by this clarification.

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.

NextEra Energy Point Beach, LLC (the licensee), Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant (PBNP), Units 1 and 2, Town of Two Creeks, Manitowac County, Wisconsin

Date of amendment request: April 7, 2009, as supplemented by letters dated June 17, September 11, November 20, November 30, and December 8 of 2009; and February 11, February 25, April 22, April 30, July 21, July 28, and August 2 of 2010.

Description of amendment request: The proposed amendment would revise Reactor Protection System (RPS) and Engineered Safety Feature Actuation System (ESFAS) instrumentation setpoints for the PBNP, Units 1 and 2. The revised Technical Specification (TS) allowable values are specified in Tables 3.3.1–1 and 3.3.2–1 for RPS and ESFAS, respectively. These changes were originally included as part of the April 7, 2009, extended power uprate (EPU) license amendment request, but subsequently divided into a separate licensing action for independent technical review. The proposed changes include both EPU and non-EPU related changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

1. Does the proposed amendment involve a significant increase in the probability or

consequences of an accident previously evaluated?

Response: No.

The proposed changes to the TSs will ensure that the results of previously evaluated accidents at the uprated conditions remain within the acceptance criteria. The proposed RPS and ESFAS setpoint changes provide appropriate values for operation at EPU conditions. The revised TS allowable values have been calculated to account for new EPU analytical limits, instrument uncertainties, and instrument drift. The proposed RPS and ESFAS setpoint changes are considered in the safety analysis for the affected RPS and ESFAS functions, and do not significantly increase the probability or consequences of the accidents previously evaluated and the setpoint changes considered in the safety analysis continue to meet the applicable acceptance criteria. The safety analyses for these accidents have been performed at the EPU power level and demonstrated acceptable results.

The proposed changes will ensure that the instruments actuate as assumed to mitigate accidents previously evaluated. The proposed changes will not significantly affect accident initiators or precursors and will not alter or prevent the ability of systems, structures, or components from performing the intended safety function to meet the applicable acceptance limits for the accidents and events.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The change does not involve a physical alteration of the plant or change the methods governing normal plant operation. The change does not alter assumptions made in the safety analyses, but ensures that the instruments behave as assumed in the accident analysis. The proposed change is consistent with the safety analysis assumptions. The proposed RPS and ESFAS Limiting Safety System Setting (LSSS) changes do not create the possibility of a new or different type of accident due to operation at EPU conditions. The revised TS LSSS values have been calculated to account for new EPU analytical limits and known instrument uncertainties. The proposed RPS and ESFAS setpoint changes are used in the safety analysis for the affected RPS and ESFAS functions, and do not significantly affect these accidents or the applicable acceptance criteria.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed changes clarify the TS requirements for instrumentation to ensure that the automatic protection action will correct the abnormal situation before a safety limit is exceeded. The proposed change also revises the TSs to enhance the controls used to maintain the variables and systems within the prescribed operating ranges, in order to ensure that automatic protection actions occur to initiate the operation of systems and components important to safety as assumed in the accident analysis. No change is made to the accident analysis assumptions.

The proposed changes to the RPS and ESFAS setpoint TSs provide adequate margin such that PBNP Units 1 and 2 can be operated in a safe manner at EPU conditions. No new accident scenarios, failure mechanisms, or single failures are introduced as a result of the proposed changes. All systems, structures and components previously assumed for the mitigation of an event remain capable of fulfilling their intended function. The proposed changes will not have any significant effect on the margin of safety.

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: William Blair, Senior Attorney, NextEra Energy Point Beach, LLC, P. O. Box 14000, Juno Beach, FL 33408–0420.

NRC Branch Chief: Robert J. Pascarelli.

NextEra Energy Point Beach, LLC (the licensee), Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowac County, Wisconsin

Date of amendment request: April 7, 2009, as supplemented by letters dated June 17 (two letters), September 11, September 25, October 9, November 20 (two letters), November 21 (two letters), November 30, December 8, and December 16 of 2009; and January 7, January 8, January 22, February 11, February 25, March 3, April 15, April 22, July 8, July 28, August 2, August 9, and August 24 of 2010.

Description of amendment request: The proposed amendment would change the auxiliary feedwater (AFW) system design and Technical Specifications (TS) 3.7.5, "Auxiliary Feedwater (AFW)," and TS 3.7.6, "Condensate Storage Tank (CST)," resulting from (1) modifications to the AFW system to support requirements for transients and other accidents at extended power uprate (EPU) conditions; (2) installation of main feedwater isolation valves to support accident mitigation by ensuring that containment pressure does not exceed safety analysis limits; (3) automatic AFW switchover from a CST suction source to a safety-related Service Water (SW) source; and (4) setpoint changes supporting the aforementioned physical modifications. These changes were originally included as part of the April 7, 2009, EPU license amendment request, but subsequently divided into a separate licensing action for independent technical review. The upgrades and modifications to the AFW system are being installed to provide additional capacity and reliability for the system. Although the proposed changes are also designed to support the requirements for transients and other accidents at EPU conditions, the proposed changes for this amendment are being evaluated using the current licensing 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. The NRC staff performed its own analysis, 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 design functions of the AFW system will not be altered by the proposed change. The AFW system will continue to perform its original intended design function, mitigating the consequences of accidents previously evaluated. The proposed changes will not significantly affect accident initiators or precursors. No new accident scenarios, failure mechanisms, or single failures are introduced as a result of the proposed modifications.

Implementation of the new AFW system design and the proposed changes to TS 3.7.5 was evaluated against the current analysis of record for the current licensed power level at PBNP, Units 1 and 2. The current analyses remain applicable or are unaffected by implementation of the new AFW system and associated TS changes, with the exception of the steam line break containment response and steam generator tube rupture (SGTR) radiological consequences. These two accidents were reanalyzed with the current licensing basis for the AFW modifications and the results were acceptable with the revised minimum and maximum AFW flow rates and pump start timing.

Therefore, the consequences of accidents previously evaluated for the current licensed power level are not significantly increased.

A proposed change to TS 3.7.6 changes the surveillance requirement (SR) for minimum CST water inventory to be maintained to supply AFW pump suction in the event of a Station Blackout, when the safety-related AFW suction source from the SW system is not available. The proposed TS 3.7.6 SR increases the current minimum required inventory to account for the increased flow rates from the new AFW system design,

suction piping losses, instrument uncertainties, vortex prevention, net positive suction head (NPSH) requirements, and the suction of the AFW pumps under various combinations of CST and plant units in operation. This change to the minimum required CST level inventory will not increase the probability or consequences of previously evaluated accidents.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not introduce a new mode of plant operation. The proposed changes involving the AFW system do not significantly alter any design basis accident or event response. The proposed changes will not significantly affect accident initiators or precursors. The AFW system will continue to perform its design function. No new accident scenarios, failure mechanisms, or single failures are introduced as a result of the proposed modifications. All systems, structures, and components previously assumed for the mitigation of an event remain capable of fulfilling their intended design function. The new AFW system design and proposed changes to TS 3.7.5 and the proposed increase in CST inventory in TS 3.7.6 do not create the possibility of a new or different kind of accident or event.

As previously discussed, implementation of the new AFW system design and the proposed changes to TS 3.7.5 was evaluated against the current analysis of record for the current licensed power level at PBNP, Units 1 and 2. The current analyses remain applicable or are unaffected by implementation of the new AFW system and associated TS changes, with the exception of the steam line break containment response and steam generator tube rupture (SGTR) radiological consequences. These two accidents were reanalyzed with the current licensing basis for the AFW modifications and the results are acceptable with the revised minimum and maximum AFW flow rates and pump start timing. The AFW system design change, the changes to TS .3.7.5, and the increase in required CST inventory established in TS 3.7.6, are not significant accident initiators or precursor and will not 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 previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The upgrade to the AFW system is being made to support requirements for transients and other accidents at EPU conditions. This modification to the AFW system will provide additional capacity and reliability for the system. As such, the proposed amendment does not involve a significant reduction in safety.

The analyses and evaluations of the Nuclear Steam Supply System (NSSS) and Balance of Plant (BOP) systems based on completion of the required modifications, confirm that the systems and components will function as designed and demonstrate that the NSSS and BOP systems and components meet all applicable design and licensing requirements at the uprated power level.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

Based on the above 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: William Blair, Senior Attorney, NextEra Energy Point Beach, LLC,.P. O. Box 14000, Juno Beach, FL 33408–0420.

NRC Branch Chief: Robert J. Pascarelli.

NextEra Energy Point Beach, LLC (the licensee), Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowac County, Wisconsin

Date of amendment request: June 1, 2010, as supplemented by letter dated July 9, 2010.

Description of amendment request: The proposed amendment consists of revising the current license basis regarding a postulated reactor vessel head (RVH) drop event to conform to the NRC-endorsed guidance of Nuclear Energy Institute (NEI) 08–05, "Industry Initiative on Control of Heavy Loads," Revision 0. The proposed change to the license basis will revise Chapter 14.3.6, "Reactor Vessel Head Drop Event," of the Final Safety Analysis Report. The current license basis assumes failure of the reactor coolant system (RCS) boundary caused by the predicted maximum downward displacement of the reactor vessel which would sever all 36 bottom-mounted instrument (BMI) conduit tubes. The new analysis demonstrates that a postulated RVH drop would not result in a loss of RCS inventory caused by an RCS boundary failure, since the BMI conduits would remain intact.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment is limited in scope to a postulated RVH drop and the administrative controls in place, which limit the height of the RVH lift, ensuring an actual drop is bounded by the analyses of record.

Incorporation of the analysis performed in accordance with NRC-approved guidance, which demonstrates bottom-mounted instrumentation (BMI) conduits will not sever following a postulated RVH drop, does not increase the probability or consequences of a previously evaluated accident. The evaluation, in fact, demonstrates that if the postulated RVH drop occurred, the consequences would be significantly less than are now assumed because the ability to maintain a coolable geometry in the core has not been compromised. In accordance with NRC-endorsed methodology contained in NEI 08–05, which states, "Previous evaluations have indicated that the consequences of impacts between the upper vessel internals and the fuel were not significant with respect to public health and safety," a revised radiological analysis was not performed.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment is limited in scope to a postulated RVH drop and the administrative controls in place, which limit the height of the reactor RVH lift, ensuring an actual drop is bounded by the analysis of record.

Incorporation of the analysis performed in accordance with NRC-approved guidance, which demonstrates BMI conduits will not sever following a postulated RVH drop, does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed amendment does not: (1) Operate equipment in alignments or in a manner different form that previously evaluated in the FSAR; (2) install, remove or modify equipment important to safety; or (3) introduce new failure modes or effects for any existing system, structure or component.

Therefore, the proposed change does not create the possibility of a new or different kind of any accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment is limited in scope to a postulated RVH drop and the administrative controls in place, which limit the height of the reactor RVH lift, ensuring an actual drop is bounded by the analysis of record.

Incorporation of the analysis performed in accordance with NRC-approved guidance, which demonstrates BMI conduits will not sever following a postulated RVH drop, does not involve a significant reduction in the margin of safety. The evaluation, in fact, demonstrates that if the postulated RVH drop occurred, the consequences would be significantly less than are now assumed because the ability to maintain a coolable geometry in the core has not been compromised.

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: William Blair, Senior Attorney, NextEra Energy Point Beach, LLC, P. O. Box 14000, Juno Beach, FL 33408–0420.

NRC Branch Chief: Robert J. Pascarelli.

Northern States Power Company—Minnesota, Docket No. 50–263, Monticello Nuclear Generating Plant (MNGP), Wright County, Minnesota

Date of amendment request: January 21, 2010.

Description of amendment request: The licensee proposed to amend the MNGP Technical Specifications to allow operation in the Maximum Extended Load Line Limit Analysis Plus (MELLLA+) expanded domain. The licensee stated that the Nuclear Regulatory Commission (NRC) had previously approved various aspects of the MELLLA+ methodology, but that the current application is the first plant-specific use of such methodology. The amendment would include changes to the Technical Specifications to: (1) Prohibit the use of the MELLLA+ expanded operating domain when in single loop operation; (2) change the allowable value for Average Power Range Monitor (APRM)-Simulated Thermal Power—High; (3) eliminate an unnecessary surveillance requirement; (4) require certain content in the Core Operating Limits Report. Approval of this amendment would allow the licensee to implement operational changes to provide increased operational flexibility for power maneuvering, to compensate for fuel depletion, and to maintain efficient power distribution in the reactor core without the need for more frequent rod pattern changes. MELLLA+ would increase the operating range to the Extended Power Uprate rated thermal power at 80 percent flow; thus creating a 20 percent flow-control window. By operating in the MELLLA+ domain, a significantly lower number of control rod movements will be required than in the present operating domain. This would represent a significant improvement in operating flexibility. It also provides safer operation, because reducing the number of control rod manipulations would minimize the likelihood of fuel failures, and reduce the likelihood of accidents initiated by reactor maneuvers.

Basis for proposed no significant hazards consideration determination: As required by Title 10 of the Code of Federal Regulations (10 CFR) Part 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (NSHC). The licensee's NSHC analysis is reproduced below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The probability (frequency of occurrence) of [d]esign [b]asis [a]ccidents occurring is not affected by the MELLLA+ operating domain, because MNGP continues to comply with the regulatory and design basis criteria established for plant equipment. Further, a probabilistic risk assessment demonstrates that the calculated core damage frequencies do not significantly change due to the MELLLA+.

There is no change in consequences of postulated accidents, when operating in the MELLLA+ operating domain compared to the operating domain previously evaluated. The results of accident evaluations remain within the NRC[-]approved acceptance limits.

The spectrum of postulated transients has been investigated and is shown to meet the plant's currently licensed regulatory criteria. In the area of fuel and core design, for example, the Safety Limit Minimum Critical Power Ratio (SLMCPR) is still met. Continued compliance with the SLMCPR will be confirmed on a cycle[-]specific basis consistent with the criteria accepted by the NRC.

Challenges to the [r]eactor [c]oolant [p]ressure [b]oundary were evaluated for the MELLLA+ operating domain conditions (pressure, temperature, flow, and radiation) and were found to meet their acceptance criteria for allowable stresses and overpressure margin.

Challenges to the containment were evaluated and the containment and its associated cooling systems continue to meet the current licensing basis. The calculated post[-]LOCA [loss-of-coolant accident] suppression pool temperature remains acceptable.

Therefore, the proposed changes do 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.

Equipment that could be affected by the MELLLA+ operating domain has been evaluated. No new operating mode, safety-related equipment lineup, accident scenario, or equipment failure mode was identified. The full spectrum of accident considerations has been evaluated and no new or different kind of accident has been identified. The MELLLA+ operating domain uses developed technology and applies it within the capabilities of existing plant safety-related equipment in accordance with the regulatory criteria (including NRC approved codes, standards and methods). No new accident or event precursor has been identified.

The-MNGP TS require revision to implement the MELLLA+ operating domain. The revisions have been assessed and it was determined that the proposed change will not introduce a different accident than that previously evaluated.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The MELLLA+ operating domain affects only design and operational margins. Challenges to the fuel, reactor coolant pressure boundary, and containment were evaluated for the MELLLA+ operating domain conditions. Fuel integrity is maintained by meeting existing design and regulatory limits. The calculated loads on affected structures, systems and components, including the reactor coolant pressure boundary, will remain within their design allowables for design[-]basis event categories. No NRC acceptance criterion is exceeded. Because the MNGP configuration and responses to transients and postulated accidents do not result in exceeding the presently approved NRC acceptance' limits, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Attorney for the licensee: Peter M. Glass, Assistant General Counsel, Xcel Energy Services, Inc., 414 Nicollet Mall, Minneapolis, MN 55401.

NRC Branch Chief: Robert J. Pascarelli.

Northern States Power Company—Minnesota, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of amendment request: June 14, 2010.

Description of amendment request: The proposed amendments would revise the Technical Specifications to allow the use of a dedicated on-line core power distribution monitoring system (PDMS) to enhance surveillance of core thermal limits. The PDMS to be used at Prairie Island Nuclear Generating Plant, Units 1 and 2, is the Westinghouse proprietary core analysis system called the Best Estimate Analyzer for Core Operations—Nuclear (BEACON™).

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 PDMS performs continuous core power distribution monitoring with data input from existing plant instrumentation. The system passively supports Technical Specification (TS) surveillances which ensure that core power distribution is within the same limits that are currently prescribed. Further, the proposed TS Actions are comparable to existing operator actions such that no new plant configurations are prompted by the proposed change. The system's physical interface with plant equipment is limited to an electronic link from a new workstation to the plant process computer. The system is passive in that it provides no control or alarm functions, and does not promote any new plant configuration which would affect the initiation, probability, or consequences of a previously-evaluated accident. Continuous on-line core monitoring through the use of PDMS provides significantly more information about the power distributions present in the core than is currently available. This system performance may result in an earlier determination of an adverse core condition and more time for operator action, thus reducing the probability of an accident occurrence and reduced consequences should a previously-evaluated accident occur.

By virtue of its inherently passive surveillance function and limited interface with plant systems, structures, or components, the proposed changes will not result in any additional challenges to plant equipment that could increase the probability or occurrence of any previously-evaluated accident. Further, the proposed changes will ensure conformance to the same core power distribution limits that form the basis for initial conditions of previously evaluated accidents. Thereby, the proposed changes will not affect the consequences of any previously-evaluated accident.

Therefore, the proposed change does not involve a significant increase in the probability or consequence of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The system's physical interface with plant equipment is limited to an electronic link from a new workstation to the plant process computer. The system is passive in that it provides no control or alarm functions, and the proposed changes (including operator actions prescribed by the proposed TS) do not promote any new plant configuration which would create the possibility for an accident of a new or different type.

The NRC previously evaluated the effects of using the PDMS to monitor core power distribution parameters and determined that all design standards and applicable safety criteria limits are met. The Technical Specifications will continue to require operation within the required core operating limits, and appropriate actions will continue to be taken when or if limits are exceeded. Thus, the reactor core will continue to be operated within its reference bounds of design such that an accident of a new or different type is not credible.

The proposed change, therefore, does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

No margin of safety is adversely affected by the implementation of the PDMS. The margins of safety provided by current TS requirements and limits remain unchanged, as the TS will continue to require operation within the core limits that are based on NRC-approved reload design methodologies. The proposed change does not result in changes to the core operating limits. Appropriate measures exist to control the values of these cycle-specific limits, and appropriate actions will continue to be specified and taken when limits are violated. Such actions remain unchanged.

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: Peter M. Glass, Assistant General Counsel, Xcel Energy Services, Inc., 414 Nicollet Mall, Minneapolis, MN 55401.

NRC Branch Chief: Robert J. Pascarelli.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: May 18, 2010.

Description of amendment request: The proposed amendments would reduce system/equipment diversity in isolation of low-pressure residual heat removal (RHR) system from high-pressure reactor coolant system (RCS). The change will allow similarly qualified pressure transmitters to be used in more than one RHR train as necessary regardless of manufacturer of the transmitters.

The valves separating the RHR from the RCS are to have independent and diverse interlocks to prevent both from opening unless the RCS pressure is below that of the RHR in compliance with the Nuclear Regulatory Commission's Technical Position ICSB–3, "Isolation of Low Pressure Systems from the High Pressure Reactor Coolant System." Consequently, the change would result in more than minimal increase in the likelihood of a malfunction of systems, structures, or components important to safety as previously evaluated in the plants' Updated Final Safety Analysis Report.

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 consequences of an accident previously evaluated?

Response: No.

The proposed change revising the justification for diversity associated with the RHR isolation valves will not cause an accident to occur and will not result in any change in the operation of the associated accident mitigation equipment. The proposed changes will not revise the operability requirements (*e.g.,* leakage limits) for the RHR system. The design-basis accidents will remain the same postulated events described in the STP Unit 1 and Unit 2 Updated Final Safety Analysis Report[,] and the consequences of the design-basis accidents will remain the same.

Therefore, the proposed changes will not increase 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 changes will not alter the plant configuration or require any unusual operator actions. The proposed changes will not alter the way any structure, system, or component functions, and will not significantly alter the manner in which the plant is operated. The response of the plant and the operators following an accident will not be different. In addition, the proposed changes do not introduce any new failure modes. In the event the RHR system is overpressurized by the RCS, all leakages originating from RHR components will be detected by the Reactor Coolant Pressure Boundary Leakage Detection System as discussed in the STP UFSAR [Updated Final Safety Analysis Report].

Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously analyzed.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change to revise the rationale for diversity associated with RHR system isolation valve operation will not

cause an accident to occur and will not result in any change in the operation of the associated accident mitigation equipment. The operability requirements for the isolation valves have not been changed, and the RHR system will continue to function as assumed in the safety analysis. In addition, the proposed changes will not adversely affect equipment design or operation, and there are no changes being made to required safety limits or safety system settings that would adversely affect plant safety.

Therefore, the proposed changes will not result in a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the 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: A. H. Gutterman, Esq., Morgan, Lewis & Bockius, 1111 Pennsylvania Avenue, NW., Washington, DC 20004.

NRC Branch Chief: Michael T. Markley.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: May 18, 2010.

Description of amendment request: The proposed amendments would revise the Technical Specification (TS) 6.8.3.l, "Containment Post-Tensioning System Surveillance Program." TS 6.8.3.l states that the containment post-tensioning system surveillance program shall be in accordance with American Society of Mechanical Engineers (ASME) Code, Section XI, Subsection IML, 1992 Edition with 1992 Addenda, as supplemented by 10 CFR 50.55a(b)(2)(viii). The current inspection interval of South Texas Project (STP), Units 1 and 2 ends in September 2010. The proposed amendments will provide for updating the surveillance program consistent with the updated edition of the ASME Code, Section XI as required by 10 CFR 50.55a.

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 Technical Specification change removes the specific edition of the ASME [C]ode to be applied. Inspection practices will continue to be consistent with the approved ASME [C]ode edition. The proposed change is consistent with NUREG–1481 [guidance].

Therefore, the proposed changes will not increase 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 changes will not alter the plant configuration (no new or different type of equipment will be installed) or require any unusual operator actions. The proposed changes will not alter the way any structure, system, or component functions, and will not significantly alter the manner in which the plant is operated. The response of the plant and the operators following an accident will not be different. In addition, the proposed change does not introduce any new failure modes.

Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously analyzed.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed Technical Specification change removes the specific edition of the ASME [C]ode to be applied. Inspection practices will continue to be consistent with the approved ASME [C]ode edition. The change is consistent with NUREG–1481 guidance.

Therefore, the proposed changes will not result in a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the 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: A. H. Gutterman, Esq., Morgan, Lewis & Bockius, 1111 Pennsylvania Avenue, NW., Washington, DC 20004.

NRC Branch Chief: Michael T. Markley.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: June 28, 2010.

Description of amendment requests: The proposed amendments request correction of an oversight in previous amendments (Amendment No. 185 to Facility Operating License No. NPF–76 and Amendment No. 172 to Facility Operating License No. NPF–80) that revised the Technical Specifications (TSs) regarding control room envelope (CRE) habitability in accordance with TS Task Force (TSTF) Traveler No. 448, Revision 3. In its application for those previous amendments, STP Nuclear Operating Company (STPNOC) did not specify what shutdown actions would be taken if required actions for an inoperable CRE boundary were not met. This was inconsistent with TSTF–448. The proposed amendments would correct this oversight. STPNOC also requested to add a note to the required actions for inoperable CRE boundary to clarify that the boundary is not a required system, subsystem, train, component, or device that depends on a diesel generator as a source of emergency power. This change would clarify the application of TS action 3.8.1.1, "AC Sources, DC Sources, and Other Power Distribution," when the CRE is inoperable.

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 change to add the shutdown actions to TS ACTION 3.7.7.d is consistent with Nuclear Regulatory Commission (NRC) noticed Industry/Technical Specification Task Force (TSTF) Standard Technical Specification (STS) change TSTF–448 Revision 3, which has been approved by an NRC safety evaluation.

The proposed change to add a note to the required action for an inoperable control room envelope boundary does not change the design function of the Control Room Makeup and Cleanup Filtration Systems or the design function of the A.C. Sources, D.C. Sources, and Onsite Power Systems or how these systems operate. The change only clarifies that the Control Room Envelope boundary is not a required system, subsystem, train, component, or device that depends on a diesel generator as a source of emergency power.

Therefore, 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 change to add the shutdown actions to TS ACTION 3.7.7.d is consistent with Nuclear Regulatory Commission (NRC) noticed Industry/Technical Specification Task Force (TSTF) Standard Technical Specification (STS) change TSTF–448 Revision 3, which has been approved by an NRC safety evaluation.

The proposed change to add a note to the required action for an inoperable control room envelope boundary does not change the design of the Control Room Makeup and

Cleanup Filtration Systems or the design function of the A.C. Sources, D.C. Sources, and Onsite Power Systems. The change only clarifies that the Control Room Envelope boundary is not a required system, subsystem, train, component, or device that depends on a diesel generator as a source of emergency power.

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 to a margin of safety?

Response: No.

The proposed change to add the shutdown actions to TS ACTION 3.7.7.d is consistent with Nuclear Regulatory Commission (NRC) noticed Industry/Technical Specification Task Force (TSTF) Standard Technical Specification (STS) change TSTF–448 Revision 3, which has been approved by an NRC safety evaluation.

The proposed change to add a note to the required action for an inoperable control room envelope boundary does not change any safety margins associated with operation of the Control Room Makeup and Cleanup Filtration Systems or any safety margins associated with the A.C. Sources, D.C. Sources, and Onsite Power Systems. The change only clarifies that the Control Room Envelope boundary is not a required system, subsystem, train, component, or device that depends on a diesel generator as a source of emergency power.

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 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: A. H. Gutterman, Esq., Morgan, Lewis & Bockius, 1111 Pennsylvania Avenue, NW., Washington, DC 20004.

NRC Branch Chief: Michael T. Markley.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action, see (1) The applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr.resource@nrc.gov.*

Duke Energy Carolinas, LLC, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application of amendments: August 31, 2009, as supplemented April 14, 2010.

Brief description of amendments: The amendments revised the Technical Specifications to allow one of the two required 230 kV switchyard 125 Vdc power sources (batteries) to be inoperable for up to 10 days for the purpose of replacing an entire battery bank and performing the required testing.

Date of Issuance: August 30, 2010.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 370, 372, 371.

Renewed Facility Operating License Nos. DPR–38, DPR–47, and DPR–55: Amendments revised the licenses and the technical specifications.

Date of initial notice in **Federal Register***:* March 9, 2010 (75 FR 10828).

The supplement dated April 14, 2010, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 30, 2010.

No significant hazards consideration comments received: No.

Entergy Gulf States Louisiana, LLC, and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1 (RBS), West Feliciana Parish, Louisiana

Date of amendment request: August 10, 2009, as supplemented by letters dated December 8, 2009, and April 22, June 16, and August 17, 2010, and by emails dated June 29, July 12, and July 28, 2010.

Brief description of amendment: The amendment revised the TSs for the RBS to support operation with 24-month fuel cycles. By letter dated June 16, 2010, Entergy withdrew its proposed changes to TS 3.3.8 regarding the change to the degraded voltage instrumentation allowable values as indicated on Table 3.3.8.1–1 and to extend the Surveillance Requirement (SR) 3.3.8.1.3 and SR 3.3.8.1.4 from 18 to 24 months. By letter dated August 17, 2010, Entergy withdrew the request for not revising SR 3.3.8.1.4 and requested that this SR be extended as originally requested.

Date of issuance: August 31, 2010.

Effective date: As of the date of issuance and shall be implemented 180 days from the date of issuance.

Amendment No.: 168.

Facility Operating License No. NPF–47: The amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in **Federal Register***:* October 20, 2009 (74 FR 53776).

The supplements dated December 8, 2009, April 22, June 16, and August 17, 2010, and emails dated June 29, July 12, and July 28, 2010, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 31, 2010.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–255, Palisades Nuclear Plant, Van Buren County, Michigan

Date of application for amendment: August 25, 2009 supplemented by letter dated May 3, 2010.

Brief description of amendment: The amendment modifies technical specification 5.5.14, "Containment Leakage Rate Testing Program," to allow a one-time extension to the 10-year frequency for the next 10 CFR Part 50 Appendix J, Option B, Type A, containment integrity leakage test (ILRT) or Type A test at Palisades Nuclear Plant. This amendment permits the existing ILRT frequency to be extended from 10 years (120 months) to approximately 11.25 years (135 months). This amendment also prevents the necessity of performing a Type A test six months prior to the 10th anniversary of the completion of the last Type A test, which was completed on May 3, 2001.

Date of issuance: August 23, 2010.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 240.

Facility Operating License No. DPR–20: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register***:* October 20, 2009 (74 FR 53777).

The supplemental letters contained clarifying information and did not change the initial no significant hazards consideration determination, and did not expand the scope of the original **Federal Register** notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 23, 2010.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: October 23, 2008, as supplemented by letters dated September 28, and November 18, 2009, March 29, and August 3, 2010.

Brief description of amendments: The amendments revise the Technical Specifications to support the application of alternative source term methodology with respect to the loss-of-coolant accident and the fuel-handling accident.

Date of issuance: September 6, 2010.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment Nos.: 197, 184.

Facility Operating License Nos. NPF–11 and NPF–18: The amendments revised the Technical Specifications and License.

Date of initial notice in **Federal Register***:* April 7, 2009 (74 FR 15771).

The September 28, and November 18, 2009, March 29, and August 3, 2010 supplements contained clarifying information and did not change the NRC staff's initial proposed finding of no significant hazards consideration.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 6, 2010.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, and PSEG Nuclear, LLC, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station (PBAPS), Units 2 and 3, York and Lancaster Counties, Pennsylvania

Date of application for amendments: August 31, 2009.

Brief description of amendments: The amendments modify the PBAPS Technical Specifications (TS) by relocating specific surveillance frequencies to a licensee-controlled program with the implementation of Nuclear Energy Institute (NEI) 04–10, "Risk-Informed Technical Specifications Initiative 5b, Risk-Informed Method for Control of Surveillance Frequencies." Additionally, the change adds a new program, the Surveillance Frequency Control Program, to TS Section 5, Administrative Controls. The changes are based on NRC-approved Industry Technical Specifications Task Force (TSTF) Traveler 425, Revision 3, "Relocate Surveillance Frequencies to Licensee Control—Risk Informed Technical Specification Task Force Initiative 5b," with optional changes and variations as described in Attachment 1, Section 2.2 of the licensee's submittal dated August 31, 2009.

Date of issuance: August 27, 2010.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: 278 and 281.

Renewed Facility Operating License Nos. DPR–44 and DPR–56: Amendments revised the License and Technical Specifications.

Date of initial notice in **Federal Register***:* May 5, 2010 (75 FR 23815).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 27, 2010.

No significant hazards consideration comments received: No.

NextEra Energy Seabrook, LLC, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: March 16, 2010, as supplemented on July 9, 2010.

Description of amendment request: This amendment revises the Seabrook Technical Specifications requirement that the Operations Manager shall have held a senior reactor operator license for the Seabrook Station prior to assuming the Operations Manager position. Specifically, the proposed change now requires the Operations Manager to meet one of the following: (1) Hold a senior operator license; (2) have held a senior operator license for a similar unit; or (3) have been certified for equivalent senior operator knowledge.

Date of issuance: September 2, 2010.

Effective date: As of its date of issuance and shall be implemented within 30 days.

Amendment No.: 124.

Facility Operating License No. NPF–86: The amendment revised the TS and the License.

Date of initial notice in **Federal Register***:* May 4, 2010 (75 FR 23816).

The supplemental letter dated July 9, 2010, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 2, 2010.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket No. 50–311, Salem Nuclear Generating Station, Unit No. 2, Salem County, New Jersey

Date of application for amendment: March 29, 2010, as supplemented on June 25, and August 18, 2010.

Brief description of amendments: The amendment revises the Technical Specifications (TSs) to allow a one-time replacement of the 2C 125-volt direct current battery while Salem Unit No. 2 is at power.

Date of issuance: September 1, 2010.

Effective date: As of the date of issuance, to be implemented within 30 days.

Amendment No.: 280.

Facility Operating License No. DPR–75: The amendment revised the TSs and the License.

Date of initial notice in **Federal Register***:* June 1, 2010 (75 FR 30446).

The letters dated June 25, and August 18, 2010, provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the application beyond the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 1, 2010.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 10th day of September 2010.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–23388 Filed 9–20–10; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[NRC–2010–0301; EA–10–054]

In the Matter of: Stone & Webster Construction, Inc.; Confirmatory Order (Effective Immediately)

I

Stone & Webster Construction, Inc. (SWCI), a Shaw Group company (referred to as Shaw), provides integrated services to various industries including the nuclear power industry. Shaw provides services to over thirty (30) operating nuclear plants and other facilities regulated by the U.S. Nuclear Regulatory Commission (NRC or Commission).

This Confirmatory Order is the result of an agreement reached during an alternative dispute resolution (ADR) mediation session conducted on August 24, 2010 in Washington, DC.

II

By letter dated June 2, 2010, the NRC identified to Shaw an apparent violation of 10 CFR. 50.7, "Employee Protection," relating to the termination of a former painter foreman in May 2004 at the Browns Ferry Nuclear Power Plant. The apparent violation was issued based on the U.S. Department Labor (DOL) Administrative Review Board's (ARB) September 24, 2009 decision (ARB Case No. 06–041). The ARB reversed a January 9, 2006, DOL Administrative Law Judge's (ALJ) recommended decision (2005–ERA–6) where, following an evidentiary hearing, the ALJ had concluded that Shaw had not violated section 211 of the Energy Reorganization Act, as amended, by terminating the former painter foreman. Shaw denies that it has retaliated against the former painter foreman for engaging in a protected activity and is pursuing its legal challenge to the ARB decision.

In its June 2, 2009 letter, the NRC offered Shaw the opportunity to provide a written response, attend a pre-decisional enforcement conference, or request ADR in which a neutral mediator with no decision-making authority would facilitate discussions between the NRC and Shaw and, if possible, assist the NRC and Shaw in reaching an agreement. Shaw requested to use ADR to resolve differences it had with the NRC.

On August 24, 2010, the NRC and Shaw met in an ADR mediation session arranged through the Cornell University Institute on Conflict Resolution. This Confirmatory Order is issued pursuant to the agreement reached during the ADR process.

III

A. The NRC acknowledged that Shaw, for its own business reasons, had already put in place during the past several years the following policies, practices and programs that support Safety Conscious Work Environment (SCWE) and Safety Culture:

At the parent company, The Shaw Group Inc., level:

- The SpeakUp Program is a toll-free hotline and Web site in which workers can report issues to the Company. Reports can be made anonymously;
- The Stop Work Policy gives employees authority to immediately stop any work activity that presents a danger to him/her, co-workers, clients, partners or the public without fear of reprimand or retaliation;
- The Targeting Zero Program focuses on achieving zero environmental, health and safety incidents; it minimizes health and safety risks to employees, clients, the public and the environment;
- The Employment Discipline Policy prohibits retaliation for exercising the right to raise safety concerns;
- Mandatory Code of Corporate Conduct training for all employees with computer access;
- Consideration of integrity and compliance as performance factors in annual employee performance evaluations;
- Periodic independent culture surveys.

For nuclear maintenance sites:

- A SCWE Procedure outlines the Company's expectations, and each individual's responsibilities for establishing and maintaining a SCWE;
- The New to Nuclear Workforce Orientation Program provides training and resources specific to working in the nuclear industry for workers coming in without nuclear experience;
- New Hire Orientation informs new hires about Shaw's Safety Culture and SCWE expectations, and informs them of their responsibilities and programs available to them, including SpeakUp and Stop Work and Shaw's non-discrimination and harassment policies;
- Supervisor Challenge (Oral Boards) evaluates supervisors' skills in the key focus areas including leadership, human performance, work performance, and reinforcing expectations.

For new nuclear construction sites:

- An on-site Employee Concerns Program, modeled on resources in NEI 97–05 is available to all site workers;
- Procedure *Maintaining a Strong Nuclear Safety Culture & Safety Conscious Work Environment,* modeled on NEI 09–12 and RIS 2005–018, describes Shaw's expectations for a SCWE and the methods by which it will establish and maintain it;
- Shaw provides SCWE training comprised of four modules: In-processing for all personnel; 90-day enhanced training with case studies for new craft personnel; nuclear professional for office workers; and training for supervisors and above;
- Shaw conducts periodic SCWE surveys based on NEI 09–12 survey tool.

B. During the ADR mediation session, an agreement in principle was reached where Shaw agreed to take the following additional actions:

1. Within 2 months of issuance of this Confirmatory Order, Shaw will issue a written communication from a Shaw Power Group senior executive to Shaw employees in its Nuclear Services (i.e., construction) and Nuclear Maintenance Divisions working at nuclear facilities addressing: (a) A recent DOL ARB decision that concluded that retaliation occurred at a SWCI facility in 2004; b) that Shaw strives to maintain a SCWE; and (c) that nuclear workers have multiple avenues in which to raise concerns and identifying these avenues.

2. Where not already required by the applicable nuclear facility licensee, Shaw will establish an Executive Review Board (ERB) that will include management personnel at or above the level of the site project manager, including legal and/or human resources participation, to review all proposed significant adverse actions (defined as three or more days off without pay up to and including termination for cause, but excludes reductions-in-force and other ordinary layoffs) at any NRC-regulated maintenance site to ensure these actions

comport with applicable employee-protection requirements and to assess and mitigate the potential for any chilling effect. Within 3 months of issuance of this Confirmatory Order, Shaw will establish requirements for the ERB in a new or existing Nuclear Maintenance Procedure to become effective during this three-month period.

3. Within 3 months of issuance of this Confirmatory Order, Shaw will revise the SpeakUp program brochure issued at its nuclear facilities to include use of the program to raise safety concerns.

4. Consistent with the requirements of the nuclear facility licensees, Shaw will perform SCWE surveys including craft workers, at its Nuclear Maintenance sites and review the survey results for actions as appropriate. Within 24 months of issuance of this Confirmatory Order, Shaw will complete a substantial number of these surveys and will have scheduled surveys for the remaining sites, if any, to be completed within the following 12 months. Shaw will provide semi-annual status reports to the NRC Office of Enforcement regarding status toward completion of this action.

5. At Nuclear Maintenance sites, where not already provided by the nuclear facility licensees, Shaw will provide SCWE training to all Shaw Nuclear Maintenance supervisors and above to include an overview of regulatory requirements and case studies. Shaw will complete this action within 24 months of issuance of this Confirmatory Order.

6. For 24 months following issuance of this Confirmatory Order, Shaw will collect, review and assess for each of its Nuclear Maintenance sites, data regarding labor grievances, significant human resources actions, and ECP and SpeakUp concerns. Shaw's Compliance Council, chaired by the Chief Compliance Officer, will review this compilation of data quarterly for SCWE trends and recommend actions to line management as appropriate.

On September 9, 2010, Shaw consented to the issuance of this Confirmatory Order with the commitments, as described in Section V below. Shaw further agreed that this Confirmatory Order is to be effective upon issuance and that it has waived its right to a hearing.

IV

Since Shaw has agreed to take additional actions, as set forth in Item III.B above, the NRC has concluded that its concerns can be resolved through issuance of this Confirmatory Order and thereby has agreed not to pursue further action in connection with the NRC's June 2, 2010 letter to Shaw arising out of the ARB's September 29, 2009 decision (ARB Case No. 06–041).

I find that Shaw's commitments as set forth in Section V are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that public health and safety require that Shaw's commitments be confirmed by this Confirmatory Order. Based on the above and Shaw's consent, this Confirmatory Order is immediately effective upon issuance. By no later than thirty (30) calendar days after the completion of the requirements in Section V, Shaw is required to notify the NRC in writing and summarizing its actions.

V

Accordingly, pursuant to Sections 104b, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 50, It is hereby ordered, effective immediately, that:

1. Within 2 months of issuance of this Confirmatory Order, Shaw will issue a written communication from a Shaw Power Group senior executive to Shaw employees in its Nuclear Services (i.e., construction) and Nuclear Maintenance Divisions working at nuclear facilities addressing: (a) A recent DOL ARB decision that concluded that retaliation occurred at a SWCI facility in 2004; b) that Shaw strives to maintain a SCWE; and (c) that nuclear workers have multiple avenues in which to raise concerns and identifying these avenues.

2. Where not already required by the applicable nuclear facility licensee, Shaw will establish an Executive Review Board (ERB) that will include management personnel at or above the level of the site project manager, including legal and/or human resources participation, to review all proposed significant adverse actions (defined as three or more days off without pay up to and including termination for cause, but excludes reductions-in-force and other ordinary layoffs) at any NRC-regulated maintenance site to ensure these actions comport with applicable employee-protection requirements and to assess and mitigate the potential for any chilling effect. Within 3 months of issuance of this Confirmatory Order, Shaw will establish requirements for the ERB in a new or existing Nuclear Maintenance Procedure to become effective during this three-month period.

3. Within 3 months of issuance of this Confirmatory Order, Shaw will revise the SpeakUp program brochure issued at its nuclear facilities to include use of the program to raise safety concerns.

4. Consistent with the requirements of the nuclear facility licensees, Shaw will perform SCWE surveys including craft workers, at its Nuclear Maintenance sites and review the survey results for actions as appropriate. Within 24 months of issuance of this Confirmatory Order, Shaw will complete a substantial number of these surveys and will have scheduled surveys for the remaining sites, if any, to be completed within the following 12 months. Shaw will provide semi-annual status reports to the NRC Office of Enforcement regarding status toward completion of this action.

5. At Nuclear Maintenance sites, where not already provided by the nuclear facility licensees, Shaw will provide SCWE training to all Shaw Nuclear Maintenance supervisors and above to include an overview of regulatory requirements and case studies. Shaw will complete this action within 24 months of issuance of this Confirmatory Order.

6. For 24 months following issuance of this Confirmatory Order, Shaw will collect, review and assess for each of its Nuclear Maintenance sites, data regarding labor grievances, significant human resources actions, and ECP and SpeakUp concerns. Shaw's Compliance Council, chaired by the Chief Compliance Officer, will review this compilation of data quarterly for SCWE trends and recommend actions to line management as appropriate.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Shaw of good cause.

VI

Any person adversely affected by this Confirmatory Order, other than Shaw, may request a hearing within 20 days of its publication in the **Federal Register**. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension.

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 the Electronic Information Exchange (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.

If a person (other than Shaw) requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Confirmatory Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 20 days from the date this Confirmatory Order is published in the **Federal Register** without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received.

A request for hearing shall not stay the immediate effectiveness of this order.

Dated at Rockville, Maryland, this 10th day of September 2010.

For the Nuclear Regulatory Commission.

Roy Zimmerman,

Director, Office of Enforcement.

[FR Doc. 2010–23519 Filed 9–20–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–282 and 50–306; NRC–2010–0290]

Northern States Power Company—Minnesota Notice of Issuance of Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance; Correction.

SUMMARY: This document corrects a notice appearing in the **Federal Register** on September 7, 2010 (75 FR 54397), which informed the public that the Nuclear Regulatory Commission issued Amendment Nos. 197 and 186 to Facility Operating License Nos. DPR–42 and DPR–60, respectively, for the Prairie Island Nuclear Generating Plant, Units 1 and 2. This action is necessary to correct the date of issuance.

FOR FURTHER INFORMATION CONTACT: Thomas J. Wengert, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone (301) 415–4037, e-mail: *Thomas.Wengert@nrc.gov.*

SUPPLEMENTARY INFORMATION: On page 54397, appearing near the bottom of the second column, after *Date of Issuance:* The date is corrected to read from "August 17, 2010" to "August 18, 2010".

Dated in Rockville, Maryland, this 9th day of September 2010.

For the Nuclear Regulatory Commission.

Thomas J. Wengert,

Senior Project Manager, Plant Licensing Branch III–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–23516 Filed 9–20–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–213; NRC–2010–0201]

Connecticut Yankee Atomic Power Company; Haddam Neck Plant; Notice of Issuance of Amendment To Operating License No. DPR–61

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance of Amendment to Operating License No. DRP–61.

FOR FURTHER INFORMATION CONTACT: John Goshen, Project Manager, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards, Mail Stop EBB–3D–02M, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001. Telephone: (301) 492–3325; e-mail: *john.goshen@nrc.gov.*

SUPPLEMENTARY INFORMATION: Haddam Neck completed the transfer of their spent fuel to the independent spent fuel storage installation (ISFSI) in 2005. In 2007, the decommissioning of the reactor site was completed and a portion of the site was released from the license.

By application dated April 2, 2009, as supplemented March 30, 2010, Connecticut Yankee Atomic Power Company (CYAPC) submitted an application to the U. S. Nuclear Regulatory Commission (NRC), in accordance with 10 CFR Part 50, requesting an amendment to NRC Operating License No. DPR–61. CYAPC's application requested that the title of the Physical Security Plan in the Operating License be modified to reflect the proper title. The Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with this action was published in the **Federal Register** on June 14, 2010 (75 FR 33653).

On September 10, 2010, the NRC approved and issued Amendment No. 203 to Operating License No. DPR–61, held by CYAPC for the possession of the Haddam Neck facility pursuant to 10 CFR Part 50 and for the receipt, possession, and use of byproduct, source, and special nuclear material in accordance with 10 CFR parts 30, 40, and 70. Amendment No. 203 is effective as of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment No. 203 complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the NRC's rules and regulations. As required by the Act and the NRC's rules and regulations in 10 CFR Chapter I, the NRC has made appropriate findings, which are set forth in Amendment No. 203 Safety Evaluation Report (SER). The issuance of Amendment No. 203 satisfied the criteria specified in 10 CFR 51.22(c)(10)(ii) for a categorical exclusion. Thus, the preparation of an environmental assessment or an environmental impact statement is not required.

The NRC has prepared a SER that documents the staff's review and evaluation of the amendment. In accordance with 10 CFR 2.390 of NRC's "Rules of Practice," final NRC records and documents related to this action, including the application for amendment and supporting documentation and the SER, are available electronically at the NRC's Electronic Reading Room, at: *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS Accession Numbers for the applicable documents are:

Document	Date	ADAMS Accession No.
License Amendment Request	April 2, 2009	ML091250324
Re-submittal of License Amendment Request	September 1, 2009	ML101100480
License Amendment No. 203 Issuance Package	September 10, 2010	ML102460099
Safety Evaluation Report	September 10, 2010	ML102460121

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact NRC's Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

These documents may also be viewed electronically on the public computers located at NRC's PDR, O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents, for a fee.

Dated at Rockville, Maryland, this 10th day of September, 2010.

For the Nuclear Regulatory Commission.

Michele Sampson,

Acting Chief, Licensing Branch, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2010–23512 Filed 9–20–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on ABWR

The ACRS Subcommittee on Advanced Boiling Water Reactor (ABWR) will hold a meeting on October 20, 2010, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance except for portions of the meeting that may be closed to protect information designated as proprietary to Westinghouse or other parties pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Wednesdy, October 20, 2010–8:30 a.m. until 5 p.m.

The Subcommittee will review selected Chapters of the safety evaluation report associated with the combined license application for South Texas Project Units 3 and 4. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, South Texas Project Nuclear Operating Company, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Maitri Banerjee (Telephone 301–415–6973 or E-mail *Maitri.Banerjee@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be e-mailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 14, 2009, (74 FR 58268–58269).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs*. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

Dated: September 14, 2010.

Cayetano Santos,

Chief, Reactor Safety Branch A, Advisory Committee on Reactor Safeguards.

[FR Doc. 2010–23515 Filed 9–20–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Thermal Hydraulic Phenomena

The ACRS Subcommittee on Thermal Hydraulic Phenomena will hold a meeting on October 18, 2010, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Monday, October 18, 2010—8:30 a.m. until 5 p.m.

The Subcommittee will review the thermal-hydraulic research activities in the Office of Nuclear Regulatory Research including TRACE code development and experimental programs. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Hossein Nourbakhsh (Telephone 301–415–5622 or e-mail *Hossein.Nourbakhsh@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be e-mailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 14, 2009, (74 FR 58268–58269).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs*. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

Dated: September 14, 2010.

Cayetano Santos,

Chief, Reactor Safety Branch B, Advisory Committee on Reactor Safeguards.

[FR Doc. 2010–23510 Filed 9–20–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee On Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee On Regulatory Policies and Practices

The ACRS Subcommittee on Regulatory Policies and Practices will hold a meeting on October 4, 2010, at 11545 Rockville Pike, Room T–2B1, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Monday, October 4, 2010, 1 p.m. until 5 p.m.

The Subcommittee will review proposed Revision 2 to Regulatory Guide 1.115, "Protection Against Turbine Missiles." The Subcommittee will hear presentations by and hold discussions with representatives of the

NRC staff and other interested persons. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Girija Shukla (Telephone 301–415–6855 or E-mail *Girija.Shukla@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 14, 2009 (74 FR 58268–58269).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs*. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

Dated: September 15, 2010.

Antonio Dias,

Chief, Reactor Safety Branch B, Advisory Committee on Reactor Safeguards.

[FR Doc. 2010–23513 Filed 9–20–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) Meeting of the ACRS Subcommittee on AP1000

The ACRS Subcommittee on AP1000 will hold a meeting on October 5, 2010, at 11545 Rockville Pike, Room T–2B1, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed to protect information that is proprietary to Westinghouse Electric Company and its contractors, pursuant to 5 U.S.C. 552b(c)(3)(4).

The agenda for the subject meeting shall be as follows:

Tuesday, October 5, 2010, 8:30 a.m. until 5 p.m.

The Subcommittee will review Chapters 6 and 15 of the Final Safety Evaluation Report (FSER) associated with revisions to the AP1000 Design Control Document (DCD). The Subcommittee will also review issues associated with Generic Safety Issue (GSI)–191, Assessment of Debris Accumulation on PWR Sump Performance. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, Westinghouse, and other interested persons regarding these matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Weidong Wang (Telephone 301–415–6279 or E-mail *Weidong.Wang@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be e-mailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 14, 2009, (74 FR 58268–58269).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs*. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

Dated: September 15, 2010.

Antonio Dias,

Chief, Reactor Safety Branch B, Advisory Committee on Reactor Safeguards.

[FR Doc. 2010–23511 Filed 9–20–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0002]

Sunshine Act; Notice of Meetings

Date: Weeks of September 20, 27, October 4, 11, 18, 25, 2010.

Place: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

Status: Public and Closed.

Week of September 20, 2010

There are no meetings scheduled for the week of September 20, 2010.

Week of September 27, 2010—Tentative

Wednesday, September 29, 2010

1 p.m. Briefing on Resolution of Generic Safety Issue (GSI)—191, Assessment of Debris Accumulation on Pressurized Water Reactor (PWR) Sump Performance (Public Meeting). (Contact: Michael Scott, 301–415–0565).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

Week of October 4, 2010—Tentative

There are no meetings scheduled for the week of October 4, 2010.

Week of October 11, 2010—Tentative

Thursday, October 14, 2010

9:30 a.m. Briefing on Alternative Risk Metrics for New Light Water Reactors (Public Meeting) (Contact: CJ Fong, 301 415–6249).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

Week of October 18, 2010—Tentative

Monday, October 18, 2010

1:30 p.m. NRC All Employees Meeting (Public Meeting) Marriott Bethesda North Hotel, 5701 Marinelli Road, Rockville, MD 20852.

Wednesday, October 20, 2010

9:30 a.m. Briefing on Medical Issues (Public Meeting). (Contact: Michael Fuller, 301 415–0520).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

Week of October 25, 2010—Tentative

Tuesday, October 26, 2010

9:30 a.m. Briefing on Security Issues (Closed—Ex. 1).

* * * * *

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Angela Bolduc, Chief, Employee/Labor Relations and Work Life Branch, at 301–492–2230, TDD: 301–415–2100, or by e-mail at *angela.bolduc@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an e-mail to *darlene.wright@nrc.gov.*

Dated: September 16, 2010.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2010–23654 Filed 9–17–10; 4:15 pm]

BILLING CODE 7590–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 12320 and # 12321]

New Mexico Disaster # NM–00016

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of New Mexico (FEMA–1936–DR), dated 09/13/2010.

Incident: Severe Storms and Flooding.

Incident Period: 07/25/2010 through 08/09/2010.

DATES: *Effective Date:* 09/13/2010.

Physical Loan Application Deadline Date: 11/12/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 06/13/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 09/13/2010, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Cibola, Mckinley, Mora, San Juan, Socorro.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere	3.625
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12320B and for economic injury is 12321B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–23529 Filed 9–20–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12318 and #12319]

Illinois Disaster # IL–00027

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Illinois (FEMA—1935—DR), dated 09/13/2010.

Incident: Severe Storms and Flooding.

Incident Period: 07/19/2010 through 08/07/2010.

DATES: *Effective Date:* 09/13/2010.

Physical Loan Application Deadline Date: 11/12/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 06/13/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 09/13/2010, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Adams, Carroll, Jo Daviess, Ogle, Pike, Schuyler, Stephenson.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere	3.625
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 123186 and for economic injury is 123196.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–23530 Filed 9–20–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 12314 and # 12315]

Wisconsin Disaster # WI–00025

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Wisconsin dated 09/13/2010.

Incident: Severe Storms and Flooding.

Incident Period: 08/10/2010 through 08/14/2010.

DATES: *Effective Date:* 09/13/2010.

Physical Loan Application Deadline Date: 11/12/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 06/13/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Saint Croix.

Contiguous Counties:

Wisconsin: Barron, Dunn, Pierce, Polk.

Minnesota: Washington.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.000
Homeowners Without Credit Available Elsewhere	2.500
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.625
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12314 B and for economic injury is 12315 0.

The States which received an EIDL Declaration # are Wisconsin; Minnesota.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: September 13, 2010.

Karen G. Mills,

Administrator.

[FR Doc. 2010–23533 Filed 9–20–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12290 and #12291]

Illinois Disaster Number IL–00025

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Illinois (FEMA–1935–DR), dated 08/19/2010.

Incident: Severe Storms and Flooding.

Incident Period: 07/19/2010 and continuing through 08/07/2010.

DATES: *Effective Date:* 09/13/2010.

Physical Loan Application Deadline Date: 10/18/2010.

EIDL Loan Application Deadline Date: 05/19/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155/

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Illinois, dated 08/19/2010 is hereby amended to re-establish the incident period for this disaster as beginning 07/19/2010 and continuing through 08/07/2010.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–23532 Filed 9–20–10; 8:45 am]

BILLING CODE 8025–01–P

OFFICE OF SCIENCE & TECHNOLOGY POLICY

U.S. National Climate Assessment Objectives, Proposed Topics, and Next Steps

Correction

In notice document 2010–22229 beginning on page 54403 in the issue of Tuesday, September 7, 2010 make the following correction:

On page 54403 under the **SUMMARY** section, in the second column, in the tenth through eleventh lines, the Web site is corrected to read as "(*http://globalchange.gov/what-we-do/assessment/notices*)".

[FR Doc. C1–2010–22229 Filed 9–20–10; 8:45 am]

BILLING CODE 1505–01–D?≤

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62911; File No. SR–CBOE–2009–075]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving Notice of Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To Establish a Pilot Program To List P.M.-Settled End of Week and End of Month Expirations for Options on Broad-Based Indexes

September 14, 2010.

On October 14, 2009, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] a proposed rule change to establish a pilot program that would permit p.m.-settled options on broad-based indexes expiring on any Friday of the month, other than the third Friday of the month, as well as the last trading day of the month. On May 3, 2010, the Exchange filed Amendment 1 to the proposed rule change, and on July 30, 2010, the Exchange filed Amendment 2 to the proposed rule change.[2] The proposed rule change was published for comment in the **Federal Register** on August 12, 2010.[3] The Commission received no comment letters on the

[1] 15 U.S.C. 78s(b)(1).

[2] Amendment 2 replaced Amendment 1 and the original filing in their entireties. The purpose of Amendment 2 is to broaden the definition of End of Week Expirations to include any Friday of the month, other than the third Friday of the month.

[3] *See* Securities Exchange Act Release No. 62658 (August 5, 2010), 75 FR 49009 ("Notice").

proposed rule change. This order approves the proposed rule change.

The Exchange is proposing to establish a pilot program that would permit p.m.-settled options on broad-based indexes to expire on (a) any Friday of the month, other than the third Friday of the month [4] ("End of Week Expirations" or "EOWs"), and (b) the last trading day of the month ("End of Month Expirations" or "EOMs").[5] Under the End of Week/End of Month Expirations Pilot Program ("Pilot"), EOWs and EOMs will be permitted on any broad-based index that is eligible for regular options trading. EOWs and EOMs will be cash-settled and have European-style exercise, and will be subject to the same rules that currently govern the trading of traditional index options, including sales practice rules, margin requirements, and floor trading procedures. Contract terms for EOWs and EOMs will be similar to regular index options, except the exercise settlement value will be based on the index value derived from the closing prices of component stocks. EOWs and EOMs on the same broad-based index (*e.g.,* of the same class) shall be aggregated for position limits (if any) and any applicable reporting and other requirements.[6] The duration of the Pilot will be effective for a period of fourteen months from the next full month from approval.[7]

Currently, the vast majority of options in the standardized options markets are a.m.-settled.[8] In light of historic Commission concerns about expanding p.m. settlement, CBOE has represented that, at least two months prior to the expiration of the Pilot, it will provide the Commission with an annual report analyzing EOW and EOM volume, open interest, and trading patterns.[9] In addition, for series that exceed specific minimum open interest parameters, the annual report will provide an analysis of index price volatility and, if needed, underlying share trading volume.[10] The annual report will be provided to the Commission on a confidential basis.[11]

The Commission has carefully reviewed CBOE's proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,[12] and, in particular, Section 6(b)(5) of the Act,[13] which requires that an exchange have rules designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest, to allow CBOE to conduct limited, and carefully monitored, pilots as proposed.

The Commission has had concerns about the adverse effects and impact of p.m. settlement upon market volatility and the operation of fair and orderly markets on the underlying cash market at or near the close of trading. Only in limited instances has the Commission previously approved p.m. settlement for cash-settled options. In 1993, the Commission approved CBOE's listing of p.m.-settled, cash-settled options on certain broad-based indexes expiring on the first business day of the month following the end of each calendar quarter ("Quarterly Index Expirations").[14] In 2006, the Commission approved, on a pilot basis, CBOE's listing of p.m.-settled index options expiring on the last business day of a calendar quarter ("Quarterly Options Series").[15] In 2010, the Commission approved CBOE's listing of p.m.-settled FLEX options on a pilot basis.[16]

The Commission believes that it is appropriate to approve the proposal on a pilot basis. CBOE's proposed fourteen month Pilot will allow for both the Exchange and the Commission to monitor the potential for adverse market effects. In particular, the Commission notes that CBOE will provide the Commission with the annual report analyzing volume and open interest of EOWs and EOMs, will also contain information and analysis of EOW and EOM trading patterns, and index price volatility and share trading activity for series that exceed minimum parameters. This information will enable the Commission to evaluate whether allowing p.m. settlement for EOW and EOMs will result in increased market and price volatility in the underlying component stocks.

The p.m. settlement Pilot information should help the Commission assess the impact on the markets and determine whether other changes are necessary. Furthermore, the Exchange's ongoing analysis of the Pilot should help it monitor any potential risks from large p.m.-settled positions and take appropriate action if warranted.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change (SR–CBOE–2009–075), as modified by Amendment Nos. 1 and 2, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–23455 Filed 9–20–10; 8:45 am]

BILLING CODE 8010–01–P

[4] A third Friday of the month expiration is generally referred to as "Expiration Friday."

[5] For example, if EOWs and EOMs were currently listed, the expiration dates for October 2010 would be: October 1 (EOW), October 8 (EOW), October 15 (standard), October 22 (EOW) and October 29 (EOM). If the last trading day of the month is a Friday, the Exchange will list an End of Month expiration series and not an End of Week expiration. *See* Rule 24.9(a)(2) for specific rule governing the expiration months that may be listed for index options. CBOE does not intend to list EOWs or EOMs that would expire on Exchange holidays.

[6] *See e.g.,* CBOE Rule 4.13, *Reports Related to Position Limits* and Interpretation and Policy .03 to Rule 24.4 which sets forth the reporting requirements for certain broad-based indexes that do not have position limits.

[7] Any positions established under the Pilot would not be impacted by the expiration of the Pilot. If an EOW or EOM expiration expires after the Pilot expires, then those positions would continue to exist; however, any further trading in those series would be restricted to transactions where at least one side of the trade is a closing transaction. The Exchange would address this point in a circular to members. *See* Notice, supra note 3, 75 FR 49011.

[8] In the 1980s, the options and futures markets began moving from closing-price to opening price settlement procedures for stock index options and futures as a result of increased market and price volatility in underlying component stocks due to the unwinding of arbitrage-related positions at the close on expiration Friday.

[9] The annual report would also contain information and analyses of standard Expiration Friday, a.m.-settled series, if applicable, for the period covered in the pilot report as well as for the six-month period prior to the initiation of the pilot. *See* Notice, supra note 3, 75 FR at 49011.

[10] For each EOW and EOM Expiration that has open interest that exceeds certain minimum thresholds, the annual report will contain a comparison of index price changes at the close of trading on a given expiration date with comparable price changes from a control sample; and if needed, a calculation of share volume for a sample set of the component securities representing an upper limit on share trading that could be attributable to expiring in-the-money EOW and EOM expirations.

[11] CBOE will also provide to the Commission upon request a data file containing (1) EOW and EOM option volume data aggregated by series, and (2) EOW week-ending open interest for expiring series and EOM month-end open interest for expiring series.

[12] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78f(b)(5).

[14] *See* Securities Exchange Act Release No. 31800 (February 1, 1993), 58 FR 7274 (February 5, 1993).

[15] *See* Securities Exchange Act Release No. 54123 (July 11, 2006), 71 FR 40558 (July 17, 2006).

[16] *See* Securities Exchange Act Release No. 61439 (January 28, 2010), 75 FR 5831 (February 4, 2010) (SR–CBOE–2009–087) (order approving rule change to establish a pilot program to modify FLEX option exercise settlement values and minimum value sizes).

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62923; File Nos. SR–NYSE–2010–20 and SR–NYSEAmex–2010–25]

Self-Regulatory Organizations; New York Stock Exchange LLC and NYSE Amex LLC; Order Approving Proposed Rule Changes Amending Rule 123C To Allow Exchange Systems To Provide Order Imbalance Information With Respect to Market At-The-Close and Marketable Limit At-The-Close Interest to Floor Brokers Beginning Two Hours and Until Fifteen Minutes Prior to the Scheduled Close of Trading on Every Trading Day

September 15, 2010.

I. Introduction

On June 9, 2010, New York Stock Exchange LLC ("NYSE") and NYSE Amex LLC ("NYSE Amex" and, with NYSE, each an "Exchange" and collectively, the "Exchanges") each filed with the Securities and Exchange Commission (the "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify the manner in which the systems of each Exchange provide order imbalance information to Floor brokers. The proposed rule changes were published for comment in the **Federal Register** on June 24, 2010.[3] The Commission received one comment letter opposing NYSE's proposal and received a letter from NYSE responding to the comment letter.[4] This order approves the proposed rule changes.

II. Description of the Proposals

The Exchanges each propose to amend their Rule 123C(6) [5] to specify that, beginning at 2 p.m. on every trading day,[6] Floor brokers will receive an electronic communication from the Exchanges' systems that provides the amount of, and any imbalance between, Market "At-The-Close" ("MOC") interest and marketable Limit "At-The-Close" ("LOC") interest to buy and sell in certain securities ("Order Imbalance Information"). MOC/LOC interest is executable only on the close and is subject to cancellation at any time before 3:45 p.m.[7]

The Exchanges' current rules do not allow for Exchange systems to send Order Imbalance Information to Floor brokers electronically. However, under Rule 115, Designated Market Makers ("DMMs"), while acting in a market making capacity, may provide information about buying or selling interest in the market "in response to an inquiry from a member conducting a market probe in the normal course of business" ("market probe").[8] Thus, for Floor brokers to obtain the Order Imbalance Information, they must manually request the information from DMMs, who are permitted to provide such information in response to a Floor broker's "market probe."

The Exchanges propose to amend Rule 123C(6) to state that, between 2 p.m. and 3:45 p.m. on any trading day (or two hours prior to the closing transaction until 15 minutes prior to the closing transaction on any day that the scheduled close of trading on the Exchange is earlier than 4 p.m.), the Exchanges' systems would automatically provide the Order Imbalance Information to Floor brokers, approximately every 15 seconds, for any security in which the Floor broker is representing an order and in any security that the Floor broker specifically requests.[9] Thus, for Order Imbalance Information, Floor brokers would no longer need to request such information from DMMs as part of a Rule 115 "market probe." The Exchanges' electronic dissemination of this information would be limited to Floor brokers' hand-held devices, which cannot automatically forward or re-transmit the electronic datafeed to any other location, although Floor brokers are permitted to provide their customers with specific data points from the feed. In addition, specific requests for information by Floor brokers would not carry over to the next trading day and would need to be re-entered on each trade date.

Beginning at 3:45 p.m., Floor brokers may receive the Exchanges' proprietary Order Imbalance Information datafeed pursuant to Rule 123C(6)(a)(iv), under which the Exchanges provide the datafeed to subscribers for a fee.

The Exchanges also propose to amend the time period in Rule 123C(6)(a)(v) when the dissemination of Order Imbalance Information would commence when the scheduled closing is earlier than 4 p.m. Currently, the Exchanges' rules state that the dissemination will commence approximately 10 minutes before the scheduled closing time when the scheduled closing is earlier than 4 p.m. The Exchanges state that, when they moved to a single imbalance publication at 3:45 p.m., the rule text was not modified at that time to reflect that dissemination of the Order Imbalance Information on any day that the scheduled close was prior to 4 p.m. would commence approximately 15 minutes before the scheduled closing time consistent with the single imbalance publication.

III. Summary of Comment and NYSE's Response

One commenter opposes NYSE's proposal. The commenter notes that the Order Imbalance Information is material, that investors should receive the information at the same time as Floor brokers, and that NYSE has an obligation to ensure all participants (DMMs, Floor brokers, and the public) have the opportunity to receive the same data at the same time. The commenter also disputes NYSE's rationale that Floor brokers need the data feed to offset the decrease in Floor broker personnel. The commenter instead suggests that Floor brokers should hire additional staff or NYSE should extend the 15 minute time-period prior to the close of trading if Floor brokers require more time to analyze the Order Imbalance Information. Finally, the commenter states that the proposal is similar to flash orders, in which select market participants receive material public information prior to other market participants.

NYSE responds that the Order Imbalance Information does not represent overall supply or demand for a security, and is a small subset of buying and selling interest, subject to change or cancellation before the close. In addition, NYSE notes that MOC and LOC orders represent only a small fraction of NYSE's activity.[10] NYSE

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release Nos. 62312 (June 17, 2010), 75 FR 36138; and 62311 (June 17, 2010), 75 FR 36140 (each a "Notice" and collectively, the "Notices").

[4] *See* Anonymous Letter dated July 14, 2010 ("Comment Letter") and NYSE Response Letter from Janet M. Kissane, Senior Vice President—Legal & Corporate Secretary, NYSE Euronext, dated August 10, 2010 ("NYSE Response Letter").

[5] References to the rules herein refer to both the relevant NYSE and NYSE Amex Equities rules unless otherwise noted. The rule texts of NYSE Rule 123C(6) and NYSE Amex Rule 123C(6) are identical and the proposed additions to Rule 124C(6)(b) are identical.

[6] On any day that the scheduled close of trading on the Exchange is earlier than 4 p.m., the information will be disseminated beginning two hours prior to the scheduled close of trading.

[7] *See* Rule 123C(3) and (9).

[8] *See* Rule 115.

[9] *See* Notices for a description of the history of the dissemination of the MOC/LOC imbalance information to Floor brokers.

[10] NYSE noted that "[g]enerally, MOC and LOC orders account for less than 1% of total NYSE orders on any given trading day, both in terms of

Continued

believes that the Order Imbalance Information that all participants receive beginning at 3:45 p.m. is more accurate, timely, and complete, and is more material to investors. Finally, NYSE disagrees that the proposal is similar to flash orders. NYSE notes that the Order Imbalance Information is not actionable prior to 15 minutes before the close of trading and is subject to change or cancellation and, therefore, MOC/LOC orders cannot be executed before the public receives the information.[11]

IV. Discussion and Commission Findings

After careful consideration, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[12] In particular, the proposed rule changes are consistent with Section 6(b)(5) of the Act,[13] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Commission also finds that the proposed rule changes are consistent with the provisions of Section 6(b)(8) of the Act,[14] which require that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The proposals would allow Exchange systems to disseminate the Order Imbalance Information directly to Floor brokers' handheld devices[15] beginning two hours prior to the scheduled close. The Exchanges' rules currently only permit Floor brokers to obtain this and other market information on a one-off basis from DMMs as "market probes" under Rule 115. The proposal would automate the process and allow Floor brokers to receive Order Imbalance Information more frequently and quickly. Thus, the proposal would permit information Floor brokers to obtain certain market information (*i.e.,* Order Imbalance Information) that they are already permitted to obtain under the Exchanges' current rules as part of "market probes" under Rule 115, albeit in a more technologically advanced and more efficient format. The Commission notes that the Exchanges have represented that the dissemination of this information would be limited to the Floor broker's handheld devices, and that the electronic datafeed cannot be automatically forwarded or retransmitted.[16] The Commission finds that the proposal is consistent with the requirements of the Act.

Finally, the Commission notes that this order does not approve any prior dissemination of Order Imbalance Information by the Exchanges that may have been inconsistent with the approved rules of the Exchanges then in effect.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule changes (SR–NYSE–2010–20 and SR–NYSEAmex–2010–25) be, and they hereby are, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–23489 Filed 9–20–10; 8:45 am]

BILLING CODE 8011–01–P

actual number of orders and the number of shares represented by those orders. With respect to the total number of shares executed on NYSE on any given trading day, MOC and LOC orders generally account for less than 10%." *See* NYSE's Response Letter at 2.

[11] *See* NYSE Response Letter at 3–4.

[12] In approving these proposed rule changes, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78f(b)(8).

[15] *See* Notices, *supra* note 3.

[16] *See also* SR–NYSE–2010–53 and SR–NYSEAmex–2010–71.

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 7178; OMB Control Number 1405–0102]

60-Day Notice of Proposed Information Collection: Refugee Biographic Data

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Refugee Biographic Data.
- *OMB Control Number:* 1405–0102.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Population, Refugees, and Migration, PRM/A.
- *Form Number:* N/A.
- *Respondents:* Refugee applicants for the U.S. Resettlement Program.
- *Estimated Number of Respondents:* 75,000.
- *Estimated Number of Responses:* 75,000.
- *Average Hours Per Response:* One-half hour.
- *Total Estimated Burden:* 37,500 hours.
- *Frequency:* Once per respondent.
- *Obligation to Respond:* Required to Obtain a Benefit.

DATES: The Department will accept comments from the public up to 60 days from September 21, 2010.

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

- *E-mail: spruellda@state.gov.* You must submit information collection title and OMB control number in the subject line of your message.
- *Mail (paper, disk, or CD–ROM submissions):* PRM/Admissions, 2025 E Street, NW., SA–9, 8th Floor, Washington, DC 20522–0908.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Delicia Spruell, PRM/Admissions, 2025 E Street, NW., SA–9 8th Floor, Washington, DC 20522–0908, who may be reached at 202–453–9257.

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of Proposed Collection

The Refugee Biographic Data Sheet describes a refugee applicant's personal characteristics and is needed to match the refugee with a sponsoring voluntary agency to ensure initial reception and

placement in the U.S. under the United States Refugee Admissions Program administered by the Bureau of Population, Refugees, and Migration.

Methodology

Biographic information is collected in a face-to-face interview of the applicant overseas. An employee of an Overseas Processing Entity, under contract with PRM, collects the information and enters it into the Worldwide Refugee Admissions Processing System.

Dated: September 15, 2010.

Lawrence Bartlett,

Acting Director, Office of Admissions, Bureau of Population, Refugees, and Migration, Department of State.

[FR Doc. 2010–23553 Filed 9–20–10; 8:45 am]

BILLING CODE 4710–33–P

DEPARTMENT OF STATE

[Public Notice: 7177]

30-Day Notice of Proposed Information Collection: DS–1648, Application for A, G, or NATO Visa, OMB No. 1405–0100

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Application for A, G, or NATO Visa.
- *OMB Control Number:* 1405–0100.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Office of Visa Services.
- *Form Number:* DS–1648.
- *Respondents:* All applicants for A, G, or NATO visas reauthorizations.
- *Estimated Number of Respondents:* 30,000.
- *Estimated Number of Responses:* 30,000.
- *Average Hours per Response:* 30 minutes.
- *Total Estimated Burden:* 15,000 hours.
- *Frequency:* Once per application.
- *Obligation to Respond:* Required to obtain benefit.

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from September 21, 2010.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *E-mail: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Stefanie Claus of the Office of Visa Services, U.S. Department of State, 2401 E. Street, NW., L–603, Washington, DC 20522, who may be reached at (202) 663–2910.

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of Proposed Collection

The Department of State uses Form DS–1648 to elicit information from applicants for a renewal of A, G, or NATO visas, excluding A–3, G–5 and NATO–7 applicants. An estimated 30,000 renewal applications are filed each year.

Methodology

The DS–1648 will be submitted electronically to the Department via the internet. The applicant will be instructed to print a confirmation page containing a bar coded record locator, which will be scanned at the time of processing.

Dated: September 8, 2010.

David T. Donahue,

Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 2010–23554 Filed 9–20–10; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice: 7176]

30-Day Notice of Proposed Information Collection: Form DS–156K, Nonimmigrant Fiance(e) Visa Application, OMB Control Number 1405–0096

ACTION: Notice of request for public comments.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Nonimmigrant Fiance(e) Visa Application.
- *OMB Control Number:* 1405–0096.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Department of State (CA/VO).
- *Form Number:* DS–156K.
- *Respondents:* Aliens applying for a nonimmigrant visa to enter the U.S. as the fiancé(e) of a U.S. citizen
- *Estimated Number of Respondents:* 35,000.
- *Estimated Number of Responses:* 35,000.
- *Average Hours per Response:* 1 hour.
- *Total Estimated Burden:* 35,000 hours per year.
- *Frequency:* Once per respondent.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

DATE(S): Submit comments to the Office of Management and Budget (OMB) for up to 30 days from September 21, 2010.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *E-mail: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: You may obtain copies of the proposed information collection and supporting documents from Stefanie Claus in the Office of Visa Services, U.S. Department of State, 2401 E. Street, NW., L–603, Washington, DC 20522, who may be reached at (202) 663–2910.

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary to properly perform our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond,

Abstract of proposed collection: Form DS–156K is used by consular officers to determine the eligibility of an alien applicant for a non-immigrant fiancé(e) visa.

Methodology: The DS–156K is submitted to consular posts abroad.

Dated: September 8, 2010.

David T. Donahue,

Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 2010–23555 Filed 9–20–10; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 7109]

Defense Trade Advisory Group; Notice of Open Meeting

SUMMARY: The Defense Trade Advisory Group (DTAG) will meet in open session from 1:30 p.m. to 5 p.m. on Wednesday, October 20, 2010, in the Loy Henderson Conference Center at the U.S. Department of State, Harry S. Truman Building, Washington, DC. Entry and registration will begin at 12:30 p.m. Please use the building entrance located at 23rd Street, NW., Washington, DC, between C & D Streets. The membership of this advisory committee consists of private sector defense trade representatives, appointed by the Assistant Secretary of State for Political-Military Affairs, who advise the Department on policies, regulations, and technical issues affecting defense trade. The purpose of the meeting will be to discuss current defense trade issues and topics for further study. Agenda topics will be posted on the Directorate of Defense Trade Controls' Web site, at *http://www.pmddtc.state.gov* 2 weeks prior to the meeting.

Members of the public may attend this open session and will be permitted to participate in the discussion in accordance with the Chair's instructions. Members of the public may, if they wish, submit a brief statement to the committee in writing.

As access to the Department of State facilities is controlled, persons wishing to attend the meeting must notify the DTAG Alternate Designated Federal Officer (DFO) by close of business Wednesday, October 13, 2010. If notified after this date, the Department's Bureau of Diplomatic Security may not be able to complete the necessary processing required to attend the plenary session. A person requesting reasonable accommodation should notify the Alternate DFO by the same date.

Each non-member observer or DTAG member that wishes to attend this plenary session should provide: his/her name; company or organizational affiliation; phone number; date of birth; and identifying data such as driver's license number, U.S. Government ID, or U.S. Military ID, to the DTAG Alternate DFO, Patricia Slygh, via e-mail at *SlyghPC@state.gov*. A RSVP list will be provided to Diplomatic Security. One of the following forms of valid photo identification will be required for admission to the Department of State building: U.S. driver's license, passport, U.S. Government ID or other valid photo ID. Personal data is requested pursuant to Public Law 99–399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Public Law 107–56 (USA PATRIOT Act); and Executive Order 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities. The data will be entered into the Visitor Access Control System (VACS–D) database. Please see the Privacy Impact Assessment for VACS–D at *http://www.state.gov/documents/organization/100305.pdf* for additional information.

For additional information, contact Patricia Slygh, PM/DDTC, SA–1, 12th Floor, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State, Washington, DC 20522–0112; telephone (202) 663–2830; FAX (202) 261–8199; or e-mail *SlyghPC@state.gov*.

Dated: September 1, 2010.

Robert S. Kovac,

Designated Federal Officer, Defense Trade Advisory Group, Department of State.

[FR Doc. 2010–23556 Filed 9–20–10; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed under Subpart B (Formerly Subpart Q) During the Week Ending September 4, 2010

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (*See* 14 CFR 301.201 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2010–0223.

Date Filed: September 3, 2010.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 24, 2010.

Description: Joint Application of ASTAR Air Cargo, Inc. ("ASTAR") and ASTAR USA, LLC ("AUSA") requesting the transfer from ASTAR to AUSA of ASTAR's certificates of public convenience and necessity authorizing ASTAR to engage in interstate and foreign all cargo scheduled air transportation.

Docket Number: DOT–OST–2010-0225.

Date Filed: September 2, 2010.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 23, 2010.

Description: Joint Application of Atlantic Southeast Airlines, Inc. ("ASA") and ExpressJet Airlines, Inc. ("ExpressJet") (together, the "Joint Applicants") requesting approval of the de facto transfer of ExpressJet's international route authority, consisting of U.S.-Mexico designations, to ASA. In addition, the Joint Applicants ask the Department to approve the eventual de jure transfer that will occur when ExpressJet and ASA merge as anticipated.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 2010–23509 Filed 9–20–10; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending September 4, 2010

The following Agreements were filed with the Department of Transportation under the sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1382 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: DOT–OST–2010–0218.

Date Filed: August 31, 2010.

Parties: Members of the International Air Transport Association.

Subject: Finally Adopted Resolution 600i, Recommended Practice 1601, and Recommended Practice 1670.

Intended effective date: 1 October 2010.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 2010–23508 Filed 9–20–10; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

[DOT Docket No. DOT–OST–2010–0074]

The Future of Aviation Advisory Committee (FAAC) Subcommittee on Labor and World-Class Workforce; Notice of Meeting

AGENCY: Office of the Secretary of Transportation, Department of Transportation.

ACTION: The Future of Aviation Advisory Committee (FAAC) Subcommittee on Labor and World-class Workforce; Notice of Meeting.

SUMMARY: The Department of Transportation (DOT), Office of the Secretary of Transportation, announces a meeting of the FAAC Subcommittee on Labor and World-class Workforce, which will be held via teleconference. A call-in number and pass code will be issued upon registration. This notice announces the date and time of the meeting, which will be open to the public. The purpose of the FAAC is to provide advice and recommendations to the Secretary of Transportation to ensure the competitiveness of the U.S. aviation industry and its capability to effectively manage the evolving transportation needs, challenges, and opportunities of the global economy. The subcommittee is charged with ensuring the availability and quality of a workforce necessary to support a robust, expanding commercial aviation industry in light of the changing socio-economic dynamics of the world's technologically advanced economies. Among other matters, the subcommittee will examine three issues affecting the future employment requirements of the aviation industry: (1) The need for science, technology, engineering, and math skills in the industry; (2) the creation of a culture of dignity and respect in workplace; and (3) the effect of NextGen on various workforces. This teleconference meeting is solely for discussion with Joshua Mr. M. Javits, a professional arbitrator and mediator, who has mediated a number of air carrier labor-management disputes. He is a former chairman and member of the National Mediation Board. Mr. Javits is the owner of Dispute Resolution Services, an "Alternative Dispute Resolution" firm dedicated to providing clients with cost-effective resolution of disputes, as well as conflict prevention, system design, training and fact-finding services.

DATES: The meeting will be held on October 1, 2010, from 1 p.m. to 4 p.m. Eastern Daylight Time (EDT).

ADDRESSES: The meeting will be held via teleconference. A call-in number and pass code will be issued upon registration. (*See* below for registration instructions.)

Public Access: The meeting is open to the public. (*See* below for registration instructions.)

Public Comments: Persons wishing to offer written comments and suggestions concerning the activities of the advisory committee or subcommittee should file comments in the Public Docket (Docket Number DOT–OST–2010–0074 at *http://www.Regulations.Gov*) or alternatively through the *FAAC@dot.gov* e-mail. If comments and suggestions are intended specifically for the Subcommittee on Labor and World-class Workforce, the term "Labor/Workforce" should be listed in the subject line of the message. In order to ensure that such comments can be considered by the subcommittee before its October 1, 2010, meeting, public comments must be filed by 5 p.m. EDT on Tuesday, September 28, 2010.

SUPPLEMENTARY INFORMATION:

Background

Under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), we are giving notice of a meeting of the FAAC Subcommittee on Labor and World-class Workforce taking place on October 1, 2010, from 1 p.m. to 4 p.m. EDT, via teleconference. A call-in number and pass code will be issued upon registration. Background information may be found at the FAAC Web site, located at *http://www.dot.gov/faac/*. The agenda includes—

1. Discussion of topics selected by subcommittee members on the subject of labor and improving the workforce of the aviation industry.

2. Establishment of a plan and timeline for further work.

3. Identification of priority issues for the fifth subcommittee meeting.

Registration

The telephone conference can accommodate up to 50 members of the public. Persons desiring to listen to the discussion must pre-register through e-mail to *FAAC@dot.gov*. The term "Registration: Labor/Workforce" must be listed in the subject line of the message, and admission will be limited to the first 50 persons to pre-register and receive a confirmation of their pre-registration.

No arrangements are being made for audio or video transmission or for oral statements or questions from the public at the meeting. Minutes of the meeting will be taken and will be posted on the FAAC Web site at *http://www.dot.gov/faac/*.

Request for Special Accommodation

The DOT is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, please send a request to *FAAC@dot.gov* with the term "Special Accommodations" listed in the subject line of the message by close of business on Tuesday, September 28, 2010.

FOR FURTHER INFORMATION CONTACT: Terri L. Williams, Acting Executive Director for Strategic Performance and Organizational Success, Office of the Assistant Administrator for Human Resources, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; (202) 267–3456, extension 7472; or Regis P. Milan, Office of Aviation Analysis, U.S. Department of Transportation; Room 86W–309, 1200 New Jersey Avenue, SE., Washington, DC 20590; (202) 366–2349.

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

Pamela Hamilton-Powell,

Designated Federal Official, Future of Aviation Advisory Committee.

[FR Doc. 2010–23503 Filed 9–20–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

[DOT Docket No. DOT–OST–2010–0074]

The Future of Aviation Advisory Committee (FAAC) Environment Subcommittee; Notice of Meeting

AGENCY: U.S. Department of Transportation, Office of the Secretary of Transportation.

ACTION: The Future of Aviation Advisory Committee (FAAC) Environment Subcommittee; Notice of Federal Advisory Committee Meeting.

SUMMARY: The Department of Transportation (DOT), Office of the Secretary of Transportation, announces a meeting of the FAAC Environment Subcommittee, which will be held at InterContinental Chicago O'Hare Hotel, Field Room, 5300 North River Road, Rosemont, IL 60018. This notice announces the date, time, and location of the meeting, which will be open to the public. The purpose of the FAAC is to provide advice and recommendations to the Secretary of Transportation to ensure the competitiveness of the U.S. aviation industry and its capability to manage effectively the evolving transportation needs, challenges, and opportunities of the global economy. The Environment Subcommittee is charged with examining steps and strategies that can be taken by aviation-sector stakeholders and the Federal Government to reduce aviation's environmental footprint and foster sustainability gains in cost-effective ways. This includes consideration of potential approaches to promote effective international actions through the International Civil Aviation Organization.

DATES: The meeting will be held on October 5, 2010, from 10:30 a.m. to 3 p.m., Central Daylight Time (CDT).

ADDRESSES: The meeting will be held at the InterContinental Chicago O'Hare Hotel, Field Room, 5300 North River Road, Rosemont, IL 60018. Rosemont is located in the Chicago, IL, metropolitan area.

Public Access: The meeting is open to the public. (See below for registration instructions.)

Public Comments: Persons wishing to offer written comments and suggestions concerning the activities of the advisory committee or Environment Subcommittee should file comments in the Public Docket (Docket Number DOT–OST–2010–0074 at *http://www.regulations.gov*) or alternatively through the *FAAC@dot.gov* e-mail. If comments and suggestions are intended specifically for the Environment Subcommittee, the term "Environment" should be listed in the subject line of the message. To ensure such comments can be considered by the subcommittee before its October 5, 2010, meeting, public comments must be filed by 5 p.m., Eastern Daylight Time on Friday, October, 1, 2010.

SUPPLEMENTARY INFORMATION:

Background

Under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), we are giving notice of a meeting of the Environment Subcommittee of the Future of Aviation Advisory Committee taking place on October 5, 2010, from 10:30 a.m. to 3 p.m. CDT, at the InterContinental Chicago O'Hare Hotel, Field Room, 5300 North River Road, Rosemont, IL 60018. The agenda includes—

1. Discussion of operational and technology improvements, sustainable alternative fuels, and harmonized domestic and global efforts that can contribute to reducing aviation carbon emissions.
2. Consideration of public comments.
3. Identification of environmental options for presentation at the next meeting of the full committee.

Registration

The meeting room can accommodate up to 20 members of the public. Persons desiring to attend must pre-register through e-mail to *FAAC@dot.gov*. The term "Registration: Environment" should be listed in the subject line of the message and admission will be limited to the first 20 persons to pre-register and receive a confirmation of their pre-registration. The last day for registration is October 1, 2010.

Minutes of the meeting will be taken and will be made available to the public.

Requests for Special Accommodation

The DOT is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, please send a request to *FAAC@dot.gov* with the term "Special Accommodations" listed in the subject line of the message by close of business Friday, October 1, 2010.

FOR FURTHER INFORMATION CONTACT: Camille Mittelholtz, Deputy Director, Office of Safety, Energy, and Environment, Office of the Secretary of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590; telephone (202) 366–4861; fax (202) 366–7638; *Camille.Mittelholtz@dot.gov.*

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

Pamela Hamilton-Powell,

Designated Federal Official, Future of Aviation Advisory Committee.

[FR Doc. 2010–23504 Filed 9–20–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

[Docket No. FRA 2010–0005–N–18]

Notice and Request for Comments

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice and Request for Comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requirements (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describes the nature of the information collection and their expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on July 13, 2010 (75 FR 40021).

DATES: Comments must be submitted on or before October 21, 2010.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292), or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6132). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law No. 104–13, Section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On July 13, 2010, FRA published a 60-day notice in the **Federal Register** soliciting comment on ICRs for which the agency was seeking OMB approval. 75 FR 40021. FRA

received no comments in response to this notice.

Before OMB decides whether to approve a proposed collection of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507 (b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summary below describes the nature of the information collection requirements (ICRs) and the expected burden, and are being submitted for clearance by OMB as required by the PRA.

Title: Causal Analysis and Countermeasures to Reduce Rail-Related Suicides.

OMB Control Number: 2130–0572.

Type of Request: Extension without Change of a Previously Approved Information Collection.

Affected Public: 280 Railroad Personnel/Members of the Public/ Affected Families and Friends.

Abstract: Pedestrian trespassing on railroad property resulting in serious injury or death is one of the two most serious safety problems (the second being grade crossing collisions) facing the railroad industry and its regulators not only in the United States but also in other countries. It is widely believed in this country that the reported prevalence and incidence of railway suicide vastly under-represents the nature and extent of the problem. There is no central reporting system within the railroad industry or the suicide prevention field that provides verifiable information about how many trespass deaths are accidental vs. intentional. Therefore, there are no verifiable measures of the extent of rail-related suicides in the United States. While railroad companies must report trespass incidents resulting in serious injury or death to the U.S. Federal Railroad Administration (FRA), injuries or deaths that are ruled by a medical examiner or coroner to be intentional are not reported. Preliminary figures from 2006 indicate there were approximately 500 deaths and 360 injuries reported to the FRA—an increase of 100 incidents over the previous year—but suicides are not represented in these numbers. Unverifiable estimates from a number of sources range from 150 to more than 300 suicides per year on the U.S. railways.

Like any other incident on the rail system, a suicide on the tracks results in equipment and facility damage, delays to train schedules, and trauma to railroad personnel involved in the incidents. As a result, FRA last year awarded a grant for the first phase of a 5-year project to reduce suicides on the rail system to the Railroad Research Foundation (part of the Association of American Railroads) and its subcontractor, the American Association of Suicidology (AAS). In the course of five years, the research project's goals include:

- A prevalence assessment to determine verifiable numbers of suicides on the rail system,
- Development of a standardized reporting tool for industry use,
- A causal analysis and root cause analysis of suicide incidents that occur during the grant cycle, and
- Design and implementation of suicide prevention measures for the Nation's rail system to reduce suicide injuries and deaths.

This request to the Office of Management and Budget is for re-approval in order to complete Phase II of the project, the causal analysis. In order to understand as much as possible about people who intend to die by placing themselves in the path of a train, and therefore to design prevention strategies, AAS has been conducting 60 psychological autopsies over the course of two years on people who die by rail-related suicide. Psychological autopsy is a recognized and accepted method for obtaining information about physical, emotional and circumstantial contributors to a person's death. The 60 psychological autopsies for the FRA project involve interviews with informants to these incidents including family members and friends, employers and co-workers, and rail personnel involved in the incidents.

After conducting a root cause analysis of this data, AAS will then work with the industry to design, pilot test and implement effective countermeasures with the goal of reducing deaths, injuries and psychological trauma.

Form Number(s): FRA F 6180.125A; FRA F 6180.125B.

Annual Estimated Burden Hours: 537 hours.

Title: Confidential Close Call Reporting System Evaluation-Related Interview Data Collection.

OMB Control Number: 2130–0574.

Type of Request: Revision of a Previously Approved Collection.

Affected Public: Rail Employees and Key Non-railroad Stakeholders.

Abstract: In the U.S. railroad industry, injury rates have been declining over the last 25 years. Indeed, the industry incident rate fell from a high of 12.1 incidents per 100 workers per year in 1978 to 3.66 in 1996. As the number of incidents has decreased, the mix of causes has also changed toward a higher proportion of incidents that can be attributed to human and organizational factors. This combination of trends—decrease in overall rates but increasing proportion of human factors-related incidents—has left safety managers with a need to shift tactics in reducing injuries to even lower rates than they are now.

In recognition of the need for new approaches to improving safety, FRA has instituted the Confidential Close Call Reporting System (C^3RS). The operating assumption behind C^3RS is that by assuring confidentiality, employees will report events which, if dealt with, will decrease the likelihood of accidents. C^3RS, therefore, has both a confidential reporting component, and a problem analysis/solution component. C^3RS is expected to affect safety in two ways. First, it will lead to problem solving concerning specific safety conditions. Second, it will engender an organizational culture and climate that supports greater awareness of safety and a greater cooperative willingness to improve safety.

If C^3RS works as intended, it could have an important impact on improving safety and safety culture in the railroad industry. While C^3RS has been developed and implemented with the participation of FRA, railroad labor, and railroad management, there are legitimate questions about whether it is being implemented in the most beneficial way, and whether it will have its intended effect. Further, even if C^3RS is successful, it will be necessary to know if it is successful enough to implement on a wide scale. To address these important questions, FRA is implementing a formative evaluation to guide program development, a summative evaluation to assess impact, and a sustainability evaluation to determine how C^3RS can continue after the test period is over. The evaluation is needed to provide FRA with guidance as to how it can improve the program, and how it might be scaled up throughout the railroad industry.

Program evaluation is an inherently data driven activity. Its basic tenet is that as change is implemented, data can be collected to track the course and

consequences of the change. Because of the setting in which C³RS is being implemented, that data must come from the railroad employees (labor and management) who may be affected. Critical data include beliefs about safety and issues related to safety, and opinions/observations about the operation of C³RS.

The ongoing study is a five-year demonstration project to improve rail safety, and is designed to identify safety issues and propose corrective action based on voluntary reports of close calls submitted to the Bureau of Transportation Statistics. Because of the innovative nature of this program, FRA is implementing an evaluation to determine whether the program is succeeding, how it can be improved and, if successful, what is needed to spread the program throughout the railroad industry. Interviews to evaluate the close call reporting system will be conducted with two groups: (1) Key stakeholders to the process (*e.g.,* FRA officials, industry labor, and carrier management within participating railroads); and (2) Employees in participating railroads who are eligible to submit close call reports to the Confidential Close Call Reporting System. Different questions will be addressed to each of these two groups. Interviews will be semi-structured, with follow-up questions asked as appropriate depending on the respondent's initial answer.

The confidentiality of the interview data is protected by the Privacy Act of 1974. FRA fully complies with all laws pertaining to confidentiality, including the Privacy Act. Thus, information obtained by or acquired by FRA's contractor, the Volpe Center, from key stakeholders and railroad employees will be used strictly for evaluation purposes. None of the information that might be identifying will be disseminated or disclosed in any way. In addition, the participating railroad sites involved will require Volpe to establish a non-disclosure agreement that prohibits disclosure of company confidential information without the carrier's authorization. Also, the information is protected under the Department of Transportation regulation Title 49 CFR Part 9,which is in part concerned with the Department involvement in proceedings between private litigants. According to this statute, if data are subpoenaed, Volpe and Volpe contractors can not "provide testimony or produce any material contained in the files of the Department, or disclose any information or produce any material acquired as part of the performance of that employee's official duties or because of that employee's official duty status" unless authorized by agency counsel after determining that, in legal proceedings between private litigants, such testimony would be in the best interests of the Department or that of the United States Government if disclosed. Finally, the name of those interviewed will not be requested.

Annual Estimated Burden Hours: 242 hours

Addressee: Send comments regarding this information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC 20503, Attention: FRA Desk Officer. Comments may also be sent electronically via e-mail to the Office of Information and Regulatory Affairs (OIRA) at the following address: *oira_submissions@omb.eop.gov.*

Comments are invited on the following: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC, on September 15, 2010.

Kimberly Coronel,

Director, Office of Financial Management.

[FR Doc. 2010–23478 Filed 9–20–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: U.S. 64/Corridor K. The Project Begins on U.S. 64 From West of the Ocoee River to State Route 68 Near Ducktown in Polk County, TN

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent (NOI).

SUMMARY: The Federal Highway Administration (FHWA) is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway project in Polk County, Tennessee.

FOR FURTHER INFORMATION CONTACT: Mr. Charles J. O'Neill, Planning and Program Management Team Leader, Federal Highway Administration, Tennessee Division Office, Address: 404 BNA Drive, Suite 508, Nashville, Tennessee 37217, Telephone: (615) 781–5770, E-mail: *Charles.ONeill@dot.gov.*

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Tennessee Department of Transportation, will prepare an EIS for the proposed U.S. 64/Appalachian Development Corridor K project from west of the Ocoee River to State Route 68 near Ducktown, a distance of approximately 20 miles. The southern boundary of the Corridor K project study area is along the Tennessee-Georgia state line. The northern boundary, in general, is along the Hiwassee River and Ocoee River watershed boundary. A NOI for the same project corridor was previously published on August 28, 1999 and then rescinded on May 21, 2008 due to the decision that a new EIS was needed to include and evaluate new information and a new economic development study.

Alternatives to be considered include: (1) No-build; (2) a Transportation System Management (TSM) alternative; (3) a transit alternative; (4) one or more build alternatives that could include constructing a roadway on a new location, upgrading existing U.S. 64, or a combination of both, and (5) other alternatives that may arise from public input. Public scoping meetings will be held for the project corridor. As part of the scoping process, federal, state, and local agencies and officials; private organizations; citizens; and interest groups will have an opportunity to identify issues of concern and provide input on the purpose and need for the project, range of alternatives, methodology, and the development of the EIS. A Coordination Plan has been developed to include the public in the project development process. This plan utilizes the following outreach efforts to provide information and solicit input: Coordination through a Citizens Resource Team, newsletters, an Internet Web site, e-mail and direct mail, informational meetings and briefings, public hearings, and other efforts as necessary and appropriate. A public hearing will be held upon completion of the Draft EIS and public notice will be given of the time and place of the hearing. The Draft EIS will be available

for public and agency review and comment prior to the public hearings.

To ensure that the full range of issues related to this proposed action are identified and taken into account, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action should be directed to the FHWA contact person identified above at the address provided above.

(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 proposed program).

Charles J. O'Neill,

Planning & Program Mgmt. Team Leader, Nashville, TN.

[FR Doc. 2010–23527 Filed 9–20–10; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice To Rescind a Notice of Intent To Prepare a Supplemental Environmental Impact Statement (SEIS): Route 475 (Knoxville Parkway), From Interstate 75 South of Knoxville to Interstate 75 North of Knoxville, Loudon, Knox, and Anderson Counties, TN

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The Federal Highway Administration (FHWA) is issuing this notice to advise the public that the Notice of Intent published on November 4, 2005 to prepare a SEIS for the proposed Route 475 (Knoxville Parkway) from Interstate 75 south of Knoxville to Interstate 75 north of Knoxville, Loudon, Knox, and Anderson Counties, Tennessee, is being rescinded.

FOR FURTHER INFORMATION CONTACT: Mr. Charles J. O'Neill, Planning and Program Management Team Leader, Federal Highway Administration—Tennessee Division Office, 404 BNA Drive, Suite 508, Nashville, TN 37217. 615–781–5770.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Tennessee Department of Transportation, is rescinding the notice of intent to prepare a SEIS for the proposed Route 475 (Knoxville Parkway) from Interstate 75 south of Knoxville to Interstate 75 north of Knoxville, Loudon, Knox, and Anderson Counties, Tennessee. The proposed project was approximately 36 miles in length.

The project as described in the December 18, 2001 Draft Environmental Impact Statement (DEIS) was proposed to improve the regional transportation system in the area.

Since the original Draft Environmental Impact was approved, the alternative development and screening process for the project has continued through a Context Sensitive Solution Process (CSS). This CSS process identified new alternatives to follow the general alignment of the Orange alternative, but had been shifted at various locations based on input from the CSS process. In addition, the number and type of access points along the route have been modified. The purpose of the SDEIS was to study and develop the new alternatives. The No-Build and three Build Alternatives were proposed to be studied in the SDEIS.

Revised traffic projections show a much lower level of traffic using the new proposed Route 475 (Knoxville Parkway) and a smaller diversion of traffic from Interstate 40 and Interstate 75 than was originally projected. In addition, the estimated cost of approximately one billion dollars was determined to be prohibitive.

To ensure that the full range of issues related to this proposed action are identified and taken into account, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action should be directed to the FHWA contact person identified above at the address provided above.

(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 proposed program.)

Charles J. O'Neill,

Planning and Program Mgmt., Team Leader, Nashville, TN.

[FR Doc. 2010–23525 Filed 9–20–10; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2010–0069]

Fisker Automotive; Grant of Application for Temporary Exemption From Advanced Air Bag Requirements of FMVSS No. 208

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of grant of petition for temporary exemption from certain provisions of Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant Crash Protection.*

SUMMARY: This notice grants the petition of Fisker Automotive Corporation (Fisker) from certain advanced air bag requirements of FMVSS No. 208, for the Karma model. The basis for the application is that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. This action follows our publication in the **Federal Register** of a document announcing receipt of Fisker's petition and soliciting public comments.

DATES: The exemption is effective immediately and remains in effect until September 21, 2011.

FOR FURTHER INFORMATION CONTACT: Edward Glancy, Office of the Chief Counsel, NCC–112, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., West Building 4th Floor, Room W41–326, Washington, DC 20590. Telephone: (202) 366–2992; Fax: (202) 366–3820.

SUPPLEMENTARY INFORMATION:

I. Advanced Air Bag Requirements and Small Volume Manufacturers

In 2000, NHTSA upgraded the requirements for air bags in passenger cars and light trucks, requiring what are commonly known as "advanced air bags." [1] The upgrade was designed to meet the goals of improving protection for occupants of all sizes, belted and unbelted, in moderate-to-high-speed crashes, and of minimizing the risks posed by air bags to infants, children, and other occupants, especially in low-speed crashes.

The advanced air bag requirements were a culmination of a comprehensive plan that the agency announced in 1996 to address the adverse effects of air bags. This plan also included an extensive consumer education program to

[1] *See* 65 FR 30680 (May 12, 2000).

encourage the placement of children in rear seats.

The new requirements were phased in beginning with the 2004 model year. Small volume manufacturers were not subject to the advanced air bag requirements until September 1, 2006.

In recent years, NHTSA has addressed a number of petitions for exemption from the advanced air bag requirements of FMVSS No. 208. The majority of these requests have come from small manufacturers which have petitioned on the basis of substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. NHTSA has granted a number of these petitions, usually in situations where the manufacturer is supplying standard air bags in lieu of advanced air bags.[2] In addressing these petitions, NHTSA has recognized that small manufacturers may face particular difficulties in acquiring or developing advanced air bag systems.

The agency has carefully tracked occupant fatalities resulting from air bag deployment. Our data indicate that the agency's efforts in the area of consumer education and manufacturers' providing depowered air bags were successful in reducing air bag fatalities even before advanced air bag requirements were implemented.

As always, we are concerned about the potential safety implication of any temporary exemption granted by this agency. In the present case, we are addressing a petition for a temporary exemption from the advanced air bag requirements submitted by a manufacturer of a plug-in hybrid electric car. The basis of the petition was substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.

II. Statutory Basis for Requested Part 555 Exemption

The National Traffic and Motor Vehicle Safety Act, codified as 49 U.S.C. Chapter 301, provides the Secretary of Transportation authority to exempt, on a temporary basis and under specified circumstances, motor vehicles from a motor vehicle safety standard or bumper standard. This authority is set forth at 49 U.S.C. 30113. The Secretary has delegated the authority for this section to NHTSA.

NHTSA established part 555, *Temporary Exemption from Motor Vehicle Safety and Bumper Standards,* to implement the statutory provisions concerning temporary exemptions. Vehicle manufacturers may apply for temporary exemptions on several bases, one of which is that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.

A petitioner must provide specified information in submitting a petition for exemption. These requirements are specified in 49 CFR 555.5, and include a number of items. Foremost among them are that the petitioner must set forth the basis of the application under § 555.6, and the reasons why the exemption would be in the public interest and consistent with the objectives of 49 U.S.C. Chapter 301.

A manufacturer is eligible to apply for a hardship exemption if its total motor vehicle production in its most recent year of production did not exceed 10,000 vehicles, as determined by the NHTSA Administrator (49 U.S.C. 30113).

In determining whether a manufacturer of a vehicle meets that criterion, NHTSA considers whether a second vehicle manufacturer also might be deemed the manufacturer of that vehicle. The statutory provisions governing motor vehicle safety (49 U.S.C. Chapter 301) do not state that a manufacturer has substantial responsibility as manufacturer of a vehicle simply because it owns or controls a second manufacturer that assembled that vehicle. However, the agency considers the statutory definition of "manufacturer" (49 U.S.C. 30102) to be sufficiently broad to include sponsors, depending on the circumstances. Thus, NHTSA has stated that a manufacturer may be deemed to be a sponsor and thus a manufacturer of a vehicle assembled by a second manufacturer if the first manufacturer had a substantial role in the development and manufacturing process of that vehicle.

Finally, while 49 U.S.C. 30113(b) states that exemptions from a Safety Act standard are to be granted on a "temporary basis,"[3] the statute also expressly provides for renewal of an exemption on reapplication. Manufacturers are nevertheless cautioned that the agency's decision to grant an initial petition in no way predetermines that the agency will repeatedly grant renewal petitions, thereby imparting semi-permanent exemption from a safety standard. Exempted manufacturers seeking renewal must bear in mind that the agency is directed to consider financial hardship as but one factor, along with the manufacturer's on-going good faith efforts to comply with the regulation, the public interest, consistency with the Safety Act, generally, as well as other such matters provided in the statute.

III. Fisker's Petition

Fisker submitted a petition for exemption from certain requirements of FMVSS No. 208, *Occupant Crash Protection,* pursuant to 49 CFR part 555, *Temporary Exemption from Motor Vehicle Safety and Bumper Standards.* Specifically, the petition requested an exemption from paragraphs S14, S15, S17, S19, S21, S23, and S25 of FMVSS No. 208, which relate to the advanced air bag requirements. However, the petitioner stated that it will be compliant with S14.5.1(b), barrier test requirements using belted 50th percentile adult male dummies. The basis of the petition was substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.

In its petition, Fisker requested an exemption for the Karma model "for a period of one year from the date of NHTSA approval or until May 24, 2011, by which time Fisker will be able to fully comply with the requirements of Federal Motor Vehicle Safety Standard 208." In a submission dated July 30, 2010, Fisker[4] stated that due to delays in vehicle availability for air bag system development and testing, it was requesting that the exemption be for "a period of one year from the date of NHTSA approval, by which time Fisker will be able to fully comply with the requirements of Federal Motor Vehicle Safety Standard 208."

According to the petition, Fisker is a privately held company incorporated in the State of Delaware, with headquarters in California. Its total motor vehicle production during the 12 months preceding the filing of the petition was 0 vehicles. We note that Fisker Automotive was established in September 2007 as a joint venture of Fisker Coachbuild, LLC and Quantum Fuel System Technologies Worldwide, Inc.

The petitioner stated that the Fisker Karma is a completely new passenger car model. Design and development of the Karma began in late 2007. The Karma is being designed and developed to meet all applicable FMVSS and EEC regulations, including the installation of eight air bags on the coupe version and six air bags on the convertible version. Fisker stated the air bag system is being developed through cooperation with

[2] *See, e.g.,* grant of petition to Panoz, 72 FR 28759 (May 22, 2007), or grant of petition to Koenigsegg, 72 FR 17608 (April 9, 2007).

[3] 49 U.S.C. 30113(b)(1).

[4] The July 30. 2010 submission was submitted on behalf of Fisker by Global Vehicle Services Corporation.

Takata, Tass, and Bosch, which have been granted contracts to complete the development of the air bag systems. The petitioner stated that these companies were retained in 2008/2009 and are continuing the efforts to develop an air bag system that is fully compliant with the requirements of FMVSS No. 208.

Fisker stated that it subcontracted the advanced air bag system development to experienced outside companies, and that the air bag development costs represent a very significant expenditure to the company. It provided information to show that its costs total $7,714,857. Fisker stated that without a temporary exemption, which would enable the company to generate funds through the sale of vehicles, it may not be able to sustain the air bag and vehicle development programs, causing substantial economic hardship to the company.

The petitioner stated that if the exemption petition is approved, the Karma models sold under the exemption will be compliant with all FMVSSs, with the exception of certain sections of FMVSS No. 208. Fisker stated that the coupe version will be equipped with eight functional air bags (front, side, knee and curtain air bags), and the convertible version will be equipped with six functional air bags (front, side and knee air bags). Both versions will include seat belts with pretensioners and load limiters. Also, according to the petitioner, both models will be compliant with the 50th percentile adult male dummy unbelted test requirements contained in section 13 of the standard.

Fisker argued that sales of the Karma are in the public interest. It stated that the Karma "is leading the way towards the introduction of advanced low-emission vehicle technologies to the US and world markets." Fisker stated that the Karma will be the first plug-in hybrid passenger car available for purchase by the general public. It also cited benefits of employment opportunities.

IV. Notice of Receipt

On June 2, 2010 we published in the **Federal Register** (75 FR 30900) a notice of receipt of Fisker's petition for temporary exemption, and provided an opportunity for public comment. We did not receive any substantive comments.[5]

[5] Chrysler submitted a comment noting that the petition from Fisker was not posted in the docket until late in the comment period, and requested a "nominal amount of time (<10 business days)" to fully consider the petition and finalize comments. However, Chrysler did not subsequently submit a substantive comment.

V. Agency Analysis and Decision

In this section we provide our analysis and decision regarding Fisker's temporary exemption request concerning advanced air bag requirements of FMVSS No. 208.

As discussed below, we are granting Fisker's petition for the Karma to be exempted, for a period of one year, from S14 (apart from S14.5.1(b)), S15, S17, S19, S21, S23, and S25 of FMVSS No. 208. In addition to certifying compliance with the belted 50th percentile adult male dummy barrier impact requirements in S14.5.1(b), Fisker must certify to the unbelted 50th percentile adult male dummy barrier impact test requirement that applied prior to September 1, 2006 (S5.1.2(a)). For purposes of this exemption, the unbelted sled test in S13 is an acceptable option for that requirement.

a. Issues Related to Eligibility

As discussed above, a manufacturer is eligible to apply for an economic hardship exemption if its total motor vehicle production in its most recent year of production did not exceed 10,000 vehicles, as determined by the NHTSA Administrator (49 U.S.C. 30113). Moreover, in determining whether a manufacturer of a vehicle meets that criterion, NHTSA considers whether a second vehicle manufacturer also might be deemed the manufacturer of that vehicle.

While Fisker developed the Karma, the vehicle will be assembled in Finland by Valmet Automotive (Valmet). The petitioner can be considered a manufacturer of the Karma as a "sponsor," even though the vehicle will be assembled by Valmet.

In considering the issue of eligibility in the present situation, Fisker does not currently manufacture any vehicles. Therefore, there is no issue as to whether it manufactures vehicles other than the Karma.

We next consider whether persons other than Fisker can be considered to manufacture the Karma. The answer is yes. Valmet will be a manufacturer of the Karma by virtue of assembling it. See 49 U.S.C. 30102(a)(5).

Given that both Fisker and Valmet can be considered manufacturers of the Karma, there are a number of potential issues concerning how the agency should analyze the petition, e.g., whether to consider one or both companies with respect to the 10,000 vehicle limitation for eligibility, hardship, good faith efforts, etc. We note, for example, that we have in the past cited the possible situation of large manufacturers potentially avoiding the statutory 10,000 vehicle limit by engaging in joint ventures with small companies and having the small company submit the petition.[6]

Valmet is a company which is known as a contract manufacturer of specialty cars. Among other things, it has manufactured the Boxster and Cayman for Porsche.

Fisker introduced the Karma in January 2008 at the North American International Auto Show in Detroit. In July 2008, Valmet issued a press release titled "Valmet Automotive announces a Letter of Intent for an Assembly Contract with Fisker Automotive." The press release indicated that Valmet was chosen as the engineering and manufacturing supplier for Fisker after an extensive global search. In November 2008, Valmet issued a press release titled "Valmet Automotive and Fisker Automotive have signed the cooperation agreement."

As noted above, Fisker stated in its petition that the Karma is a completely new passenger car model. According to the petitioner, the chassis, body, and powertrain are being designed and developed by Fisker with assistance from a large number of suppliers, which include EDAG, Magna International, Quantum Technologies, TRW, Tass, Lear, Visteon, Rousch, Global Vehicle Services, General Motors, ESG, and Takata Holdings.

Based on the available information, we believe that Valmet's role with the Karma is primarily that of an assembly contractor, i.e., Valmet did not play a significant role in the development of the vehicle at issue. We also note that, as indicated above, the petitioner stated that the Karma is a completely new passenger car model.

Given the above, we believe Fisker should be considered eligible to apply for an economic hardship exemption without regard to the circumstances of Valmet. While Valmet is also considered a manufacturer of the Karma by virtue of assembling it, the role of an assembly contractor is a relatively limited one in the overall production of a vehicle. We believe that this particular situation does not raise concerns along the lines of a large manufacturer potentially avoiding the statutory 10,000 vehicle limit by engaging in a joint venture with a small company and having the small company submit the petition.

It is not necessary in responding to this petition to resolve all potential issues related to eligibility that may arise in a situation where more than one company can be considered a

[6] *See* grant of petition to Tesla Motors, Inc., 73 FR 4944, 4948 (Jan. 28, 2008).

manufacturer of a vehicle that is the subject of an economic hardship exemption. We will address these issues as necessary in the context of a specific petition or contemplated manufacturer relationship that is brought before us.

b. Economic Hardship

As noted earlier, Fisker stated that it subcontracted the advanced air bag system development to experienced outside companies, and that the air bag development costs represent a very significant expenditure to the company. It provided information to show that its costs total $7,714,857. Fisker stated that without a temporary exemption, which would enable the company to generate funds through the sale of vehicles, it may not be able to sustain the air bag and vehicle development programs, causing substantial financial economic hardship to the company.

Fisker estimated that if the exemption is approved, it would have net income (loss) of $ (21,724,141) in 2011 and net income of $ 188,768,234 in 2012. The petitioner estimated that without the exemption, it would have net income (loss) of $ (50,592,209) in 2011 and net income (loss) of $ (132,268,961) in 2012.

After reviewing the financial and other information provided by Fisker, we believe that company has shown substantial economic hardship. Without the exemption, Fisker will not be able to begin manufacturing and selling the Karma during the one-year period it needs to complete the design and development programs necessary to meet the advanced air bag requirements. Moreover, the company does not have any other models to sell. Considering the overall circumstances of the company, the financial impacts would represent substantial economic hardship.

c. Good Faith Efforts To Comply

As noted earlier, the petitioner stated that the Fisker Karma is a completely new passenger car model. Design and development of the Karma began in late 2007. The Karma is being designed and developed to meet all applicable FMVSSs and European Economic Community (EEC) regulations, including the installation of eight air bags on the coupe version and six air bags on the convertible version. Fisker stated the air bag system is being developed through cooperation with Takata, Tass, and Bosch, which have been granted contracts to complete the development of the air bag systems. The petitioner stated that these companies were retained in 2008/2009 and are continuing the efforts to develop an air bag system that is fully compliant with the requirements of FMVSS No. 208.

Fisker stated that it subcontracted the advanced air bag system development to experienced outside companies, and that the air bag development costs represent a very significant expenditure to the company. It provided information to show that its costs total $7,714,857. Fisker stated that without a temporary exemption, which would enable the company to generate funds through the sale of vehicles, it may not be able to sustain the air bag and vehicle development programs, causing substantial financial economic hardship to the company.

After reviewing Fisker's petition, we believe that company has made good faith efforts to comply with the advanced air bag requirements. Fisker is a new company, and the Karma is a completely new passenger car model. While the company is designing and developing the Karma to comply with all of the FMVSSs, it is requesting a one-year exemption from the advanced air bag requirements to enable it to begin manufacturing and selling vehicles while it completes the design and development programs necessary to meet the advanced air bag requirements. We note that Fisker has contracts in place for this development.

We also note that Fisker has made significant financial investments in the Karma, including the occupant protection system. Fisker stated if the exemption petition is approved, the Karma models sold under the exemption will be compliant with all FMVSSs with the exception of the advanced air bag provisions. The coupe version will be equipped with eight functional air bags (front, side, knee and curtain air bags). The convertible version will be equipped with six functional air bags (front, side and knee air bags). Both versions will include seat belts with pretensioners and load limiters. According to the petitioner, both models with be compliant with the 50th percentile male unbelted test requirements contained in S13 of FMVSS No. 208.

In sum, we believe that considering Fisker's overall situation, the efforts that company has made to date, the plans it has in place, and the fact that it intends to fully comply with the advanced air bag requirements within one year, Fisker has made good faith efforts to comply with those requirements.

d. Public Interest Considerations

NHTSA has traditionally found that the public interest is served by affording consumers a wider variety of motor vehicles, by encouraging the development of fuel-efficient and alternative-energy vehicles, and providing additional employment opportunities. We believe that all three of these public interest considerations would be served by granting Fisker's petition.

We note that on April 23, 2010, the Department of Energy (DOE) issued a press release announcing the closing of a $529 million loan to Fisker for the development and production of two lines of plug-in hybrid electric vehicles (PHEV). DOE stated that "the loan will support the Karma, a full-size, four-door sports sedan, and a line of family oriented models being developed under the company's Project NINA program."

DOE stated that Fisker expects to manufacture the Karma and Project NINA lines at a recently shuttered General Motors (GM) factory in Wilmington, Delaware, and that the company anticipates that it will employ 2,000 American assembly workers. Industry experts expect that domestic parts suppliers and service providers also will increase employment substantially.

According to the DOE press release:

- Fisker's plug-in hybrid products will be among the first to market and will help to accelerate the introduction of fuel-saving electrified vehicles in the U.S.
- Initially, Fisker will use the proceeds of the loan for qualifying engineering integration costs as it works with primarily U.S. suppliers to incorporate components into the Karma's design. The engineering integration work will be conducted in Irvine, California, where engineers will design tools and equipment and develop manufacturing processes. The Karma is scheduled to appear in showrooms in late 2010. The second stage will involve the purchase and retooling of the former GM plant to manufacture the Project NINA line of PHEVs, which is expected to begin rolling off the assembly line in late 2012.
- Fisker automobiles are driven by electric motors that get their power from a rechargeable Lithium-ion battery, or, when that is depleted, by a generator driven by an efficient gas-powered engine. The Karma and Project NINA models will have an all-electric, tailpipe-emission-free range of 40 to 50 miles on a full charge, more than most Americans drive each day. The battery can be charged at home overnight. Using gas and electric power, Fisker plug-in hybrids are expected to have a cruising range of up to 300 miles.

While some of the items discussed in the DOE press release are longer-term, the granting of Fisker's petition will

enable it to begin the manufacture and sale of the Karma earlier than it could otherwise. This will provide additional consumer choice in selecting a motor vehicle, encourage the development of fuel-efficient and alternative-energy vehicles, and provide additional employment opportunities. It will also enable Fisker to generate funds through the sale of vehicles, which will help it sustain vehicle development plans, including meeting the advanced air bag requirements.

We have also considered safety issues related to the exemption requested by Fisker. With respect to transporting children, Fisker noted that the Karma is equipped with two rear seats. Each rear seat is equipped with a child seat LATCH system.[7] Fisker stated that child seats may be safely placed in these rear seat positions. The Karma will also have the permanently affixed "sun visor air bag warning label" and a removable "warning label on the dashboard" that NHTSA developed/requires for vehicles without advanced air bags. Thus, parents and others will be able to transport children in the rear seats of the Karma without exposing them to the risks of air bags, and the vehicles will have warning labels concerning the risks of air bags. This helps minimize any safety disbenefits of the vehicle not meeting requirements for advanced air bags.

We also note again that the coupe version of the Karma will be equipped with eight functional air bags (front, side, knee and curtain air bags). The convertible version will be equipped with six functional air bags (front, side and knee air bags). Both versions will include seat belts with pretensioners and load limiters.

Given the relatively small number of vehicles that will be produced during the one-year exemption and the above discussion, we believe that the requested exemption would have a negligible effect on motor vehicle safety.

We note that, as explained below, prospective purchasers will be notified that the vehicle is exempted from the specified advanced air bag requirements of Standard No. 208. Under § 555.9(b), a manufacturer of an exempted passenger car must affix securely to the windshield or side window of each exempted vehicle a label containing a statement that the vehicle conforms to all applicable FMVSSs in effect on the date of manufacture "except for Standard Nos. [listing the standards by number and title for which an exemption has been granted] exempted pursuant to NHTSA Exemption No. _____." This label notifies prospective purchasers about the exemption and its subject. Under § 555.9(c), this information must also be included on the vehicle's certification label.

The text of § 555.9 does not expressly indicate how the required statement on the two labels should read in situations where an exemption covers part but not all of a FMVSS. In this case, we believe that a statement that the vehicle has been exempted from Standard No. 208 generally, without an indication that the exemption is limited to the specified advanced air bag provisions, could be misleading. A consumer might incorrectly believe that the vehicle has been exempted from all of Standard No. 208's requirements. Moreover, we believe that the addition of a reference to such provisions by number without an indication of its subject matter would be of little use to consumers, since they would not know the subject of those specific provisions. For these reasons, we believe the two labels should read in relevant part, "except for S14 (apart from S14.5.1(b)), S15, S17, S19, S21, S23, and S25 (Advanced Air Bag Requirements) of Standard No. 208, Occupant Crash Protection, exempted pursuant to * * *." We note that the phrase "Advanced Air Bag Requirements" is an abbreviated form of the title of S14 of Standard No. 208. We believe it is reasonable to interpret § 555.9 as requiring this language.

e. Decision

In consideration of the foregoing, we conclude that compliance with the advanced air bag requirements of FMVSS No. 208, *Occupant Crash Protection,* would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. We further conclude that granting of an exemption would be in the public interest and consistent with the objectives of traffic safety.

In accordance with 49 U.S.C. 30113(b)(3)(B)(i), Fisker is granted NHTSA Temporary Exemption No. EX 10–01, from S14 (apart from S14.5.1(b)), S15, S17, S19, S21, S23, and S25 of FMVSS No. 208. In addition to certifying compliance with the belted 50th percentile adult male dummy barrier impact requirements in S14.5.1(b), Fisker must certify to the unbelted 50th percentile adult male dummy barrier impact test requirement that applied prior to September 1, 2006 (S5.1.2(a)). For purposes of this exemption, the unbelted sled test in S13 is an acceptable option for that requirement.

The exemption is for the Karma and shall remain in effect for one year as indicated in the **DATES** section of this document.

(49 U.S.C. 30113; delegations of authority at 49 CFR 1.50. and 501.8)

Issued on: September 15, 2010.

David L. Strickland,

Administrator.

[FR Doc. 2010–23472 Filed 9–20–10; 8:45 am]

BILLING CODE 4910–59–P

[7] Lower Anchors and Tethers for Children (LATCH) Restraint System.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. CU 159]

Indexing the Annual Operating Revenues of Railroads

The Surface Transportation Board (STB) is publishing the annual inflation-adjusted index factors for 2009. These factors are used by the railroads to adjust their gross annual operating revenues for classification purposes. This indexing methodology insures that railroads are classified based on real business expansion and not from the affects of inflation. Classification is important because it determines the extent to which individual railroads must comply with STB reporting requirements.

The STB's annual inflation-adjusted factors are based on the annual average Railroad's Freight Price Index which is developed by the Bureau of Labor Statistics (BLS). The STB's deflator factor is used to deflate revenues for comparison with established revenue thresholds.

The base year for railroads is 1991. The inflation index factors are presented as follows:

STB Railroad Inflation-Adjusted Index and Deflator Factor Table

Year	Index	Deflator
1991	409.50	[1]100.00
1992	411.80	99.45
1993	415.50	98.55
1994	418.80	97.70
1995	418.17	97.85
1996	417.46	98.02
1997	419.67	97.50
1998	424.54	96.38
1999	423.01	96.72

[1] *Montana Rail Link, Inc., and Wisconsin Central Ltd., Joint Petition For Rulemaking With Respect To 49 CFR Part 1201,* 8 I.C.C. 2d 625 (1992) raised the revenue classification level for Class I railroads from $50 million (1978 dollars) to $250 million (1991 dollars), effective for the reporting year beginning January 1, 1992. The Class II threshold was also raised from $10 million (1978 dollars) to $20 million (1991 dollars).

STB RAILROAD INFLATION-ADJUSTED INDEX AND DEFLATOR FACTOR TABLE—Continued

Year	Index	Deflator
2000	428.64	95.45
2001	436.48	93.73
2002	445.03	91.92
2003	454.33	90.03
2004	473.41	86.40
2005	522.41	78.29

STB RAILROAD INFLATION-ADJUSTED INDEX AND DEFLATOR FACTOR TABLE—Continued

Year	Index	Deflator
2006	567.34	72.09
2007	588.27	69.52
2008	656.78	62.28
2009	619.73	66.00

DATES: *Effective Date:* January 1, 2009.

FOR FURTHER INFORMATION CONTACT: Scott Decker 202–245–0330. Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.

By the Board, William F. Huneke, Director, Office of Economics.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2010–23463 Filed 9–20–10; 8:45 am]

BILLING CODE 4915–01–P

Federal Register

Tuesday,
September 21, 2010

Part II

Department of Energy

10 CFR Part 430

Energy Conservation Program for Consumer Products: Test Procedure for Residential Clothes Washers; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE–2010–BT–TP–0021]

RIN 1904–AC08

Energy Conservation Program for Consumer Products: Test Procedure for Residential Clothes Washers

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

ACTION: Notice of proposed rulemaking (NOPR) and public meeting.

SUMMARY: The U.S. Department of Energy (DOE) proposes amending its test procedure for residential clothes washers under the Energy Policy and Conservation Act to provide for measuring standby mode and off mode energy consumption, and to update the active mode test procedure. DOE is also proposing to eliminate an obsolete clothes washer test procedure currently codified in the Code of Federal Regulations, and is announcing a public meeting to discuss and receive comments on the issues presented in this NOPR.

DATES: DOE will hold a public meeting on Thursday, October 28, 2010, from 9 a.m. to 4 p.m., in Washington, DC. DOE must receive requests to speak at the public meeting before 4 p.m., Thursday, October 14, 2010. DOE must receive a signed original and an electronic copy of statements to be given at the public meeting before 4 p.m., Thursday, October 21, 2010.

DOE will accept comments, data, and information regarding the NOPR before and after the public meeting, but no later than December 6, 2010. For details, see section V, "Public Participation," of this NOPR.

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

Any comments submitted must identify the NOPR on Test Procedures for Residential Clothes Washers, and provide the docket number EERE–2010–BT–TP–0021 and/or regulatory information number (RIN) 1904–AC08. Comments may be submitted using any of the following methods:

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

2. *E-mail: RES-CW-2010-TP-0021@ee.doe.gov.* Include docket number EERE–2010–BT–TP–0021 and/or RIN 1904–AC08 in the subject line of the message.

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

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 6th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024. *Telephone:* (202) 586–2945. Please submit one signed original paper copy.

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

Docket: For access to the docket to read background documents or comments received, visit the U.S. Department of Energy, Resource Room of the Building Technologies Program, 6th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at the above telephone number for additional information about visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT:

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

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I. Background and Legal Authority

Title III of the Energy Policy and Conservation Act (42 U.S.C. 6291 *et seq.*) (EPCA or the Act) sets forth a variety of provisions designed to improve energy efficiency. Part A of Title III (42 U.S.C. 6291–6309) establishes the "Energy Conservation Program for Consumer Products Other Than Automobiles," which covers consumer products and certain commercial products (all of which are referred to below as "covered products"). These include residential clothes washers, the subject of today's notice. (42 U.S.C. 6292(a)(7))

Under the Act, this program consists essentially of three parts: (1) Testing, (2) labeling, and (3) Federal energy conservation standards. The testing requirements consist of test procedures that, pursuant to EPCA, manufacturers of covered products must use as the basis for certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA and for representations about the efficiency of those products. DOE also must use these test requirements to determine whether the products comply with EPCA standards. Section 323 of EPCA (42 U.S.C. 6293) sets forth criteria and procedures for DOE's adoption and amendment of such test procedures. EPCA provides that "[a]ny test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use * * * or estimated annual operating cost of a covered product during a representative average use cycle or period of use, as determined by the Secretary [of Energy], and shall not be unduly burdensome to conduct." (42 U.S.C. 6293(b)(3)) In addition, if DOE determines that a test procedure amendment is warranted, it must publish proposed test procedures and offer the public an opportunity to present oral and written comments on them. (42 U.S.C. 6293(b)(2))

Finally, in any rulemaking to amend a test procedure, DOE must determine "to what extent, if any, the proposed test procedure would alter the measured energy efficiency * * * of any covered product as determined under the existing test procedure." (42 U.S.C. 6293(e)(1)) If DOE determines that the amended test procedure would alter the measured efficiency of a covered product, DOE must amend the applicable energy conservation standard accordingly. In determining the amended energy conservation standard, the Secretary shall measure, pursuant to the amended test procedure, the energy efficiency, energy use, or water use of a representative sample of covered products that minimally comply with the existing standard. The average of such energy efficiency, energy use, or water use levels determined under the amended test procedure shall constitute the amended energy conservation standard for the applicable covered products. (42 U.S.C. 6293(e)(2)) EPCA also states that "models of covered products in use before the date on which the amended energy conservation standard becomes effective (or revisions of such models that come into use after such date and have the same energy efficiency, energy use, or water use characteristics) that comply with the energy conservation standard applicable to such covered products on the day before such date shall be deemed to comply with the amended energy conservation standard." (42 U.S.C. 6293(e)(2))

The DOE test procedure for clothes washers currently being manufactured is found at 10 CFR part 430, subpart B, appendix J1. DOE adopted appendix J1 in 1997 to correct for changes in consumer habits that resulted in an overstatement of average annual energy consumption when using the methods specified in appendix J. 62 FR 45508 (Aug. 27, 1997). DOE added appendix J1, rather than amending appendix J, to accommodate continued use of appendix J until DOE amended the residential clothes washer conservation standards to reference the new appendix J1. On January 12, 2001, DOE published a final rule (hereinafter referred to as the January 2001 final rule), to amend the energy conservation standards for residential clothes washers to reference the efficiency metrics as defined in appendix J1. 66 FR 3314. Use of the amended J1 test procedure was required to demonstrate compliance with these amended energy conservation standards as of January 1, 2004. Since 1997, DOE has amended the test procedure in appendix J1 three times, twice substantively to address test cloth correlation procedures, and once to correct the introductory note. 63 FR 16669 (Apr. 6, 1998); 66 FR 3330 (Jan. 12, 2001); 68 FR 62204 (Oct. 31, 2003). One of these amendments also included an amendment to Appendix J. 66 FR 3330 (Jan. 12, 2001). Because appendix J applies only to clothes washers manufactured before January 1, 2004, however, appendix J is now obsolete. 10 CFR 430 appendix J1.

The current applicable test procedure includes provisions for determining the modified energy factor (MEF) for clothes washers, which is a function of the total energy used for each cubic foot (ft^3) of clothes washer capacity. The test procedure measures the total energy consumption of the clothes washer. It also accounts for the amount of energy required to heat the water and subsequently dry the load based on the remaining moisture content (RMC) of the clothes at the completion of the machine's full cycle. The test procedure does not currently address energy use in the standby or off modes.

Clothes washer energy conservation standards were originally established by the National Appliance Energy Conservation Act of 1987, which amended EPCA to prescribe that clothes washers manufactured on or after January 1, 1988, have an unheated rinse option. (42 U.S.C. 6295 (g)) The amendments to EPCA also required DOE to conduct a rulemaking by January 1, 1990, to determine if the above mentioned standards should be amended. A final rule was issued on May 14, 1991, (hereinafter referred to as the May 1991 final rule) establishing the first set of performance standards for residential clothes washers. Compliance with these standards was required for products manufactured on or after May 14, 1994. 56 FR 22279. EPCA also

required DOE to conduct a subsequent rulemaking no later than 5 years after the date of publication of the previous final rule to determine whether to amend those standards. A final rule establishing revised standards for residential clothes washers was published in the January 2001 final rule. 66 FR 3313. The January 2001 final rule required all new residential clothes washers manufactured after January 1, 2007 to be 35 percent more efficient than clothes washers minimally compliant with the efficiency standards established in the May 1991 final rule.

The Energy Independence and Security Act of 2007 (EISA 2007), Public Law 110–140, amended EPCA and, in relevant part, revised the energy conservation standards for residential clothes washers. The revised standards established a maximum water consumption factor (WF) of 9.5, effective January 1, 2011. EISA 2007 further required that DOE publish a final rule no later than December 31, 2011 determining whether to amend the standards in effect for clothes washers manufactured on or after January 1, 2015. (42 U.S.C. 6295(g)(9)) Consequently, DOE is conducting a separate standards rulemaking for these products.

The EISA 2007 amendments to EPCA also direct DOE to amend its test procedures to integrate measures of standby mode and off mode energy consumption into the overall energy efficiency, energy consumption, or other energy descriptor for each covered product unless the current test procedure already fully accounts for and incorporates standby and off mode energy consumption or such integration is technically infeasible. If an integrated test procedure is technically infeasible, DOE must prescribe a separate standby mode and off mode energy use test procedure for the covered product, if technically feasible. (42 U.S.C. 6295(gg)(2)(A))

Any such amendment must consider the most current versions of the International Electrotechnical Commission (IEC) Standard 62301, "Household electrical appliances—measurement of standby power," First Edition 2005–06, and IEC Standard 62087, "Methods of measurement for the power consumption of audio, video, and related equipment," Second Edition, 2008–09.[1] [2] In developing these test procedure amendments for clothes washers, DOE initially determined that it would consider a revised IEC Standard 62301 expected to be released in July 2009. DOE subsequently found that this revision is expected to be delayed until late-2010, so DOE determined it appropriate to proceed with an amended test procedure based on the current version of IEC Standard 62301, First Edition 2005–06. DOE is also considering a draft version of IEC Standard 62301, Final Draft International Standard (IEC Standard 62301 FDIS), for updated mode definitions, which are expected to be included in the final revised IEC Standard 62301, Second Edition.

On August 28, 2009, DOE published a notice in the **Federal Register** announcing the availability of a framework document to initiate a rulemaking to consider amended energy conservation standards for residential clothes washers (hereafter the August 2009 framework document). 74 FR 44306. In the August 2009 framework document, DOE requested comments on the merits of revising the clothes washer test procedure, and sought input regarding how the test procedure could be improved. DOE held a public meeting on September 21, 2009 (September 2009 public meeting). In addition, DOE requested written comments, data, and information on the August 2009 framework document, which it accepted through September 28, 2009.

DOE received comments in response to the August 2009 framework document stating that it should consider changes to the active mode test procedure. As a result, in addition to amending its test procedure for clothes washers to include measures for standby and off mode power consumption, DOE proposes to address issues regarding the active mode provisions of the test procedure.

II. Summary of the Proposal

In today's NOPR, DOE proposes amending the test procedure for clothes washers to assist DOE in the concurrent development and implementation of standards that address use of standby mode and off mode power by these products. Specifically, DOE proposes to integrate measures of standby mode and off mode power consumption, as well as measures of power consumption in certain additional modes determined to be part of active mode, into the test procedure. DOE also proposes, for the measurement of energy use in active mode, to: (1) Adopt technical changes and procedures for accurately measuring the energy consumption of clothes washers with technologies not covered by the current procedure; (2) more accurately reflect current consumer behavior and clothes washer capabilities; (3) address issues related to the test cloth, detergent, and certain test equipment; (4) revise and clarify the existing methods and calculations; and (5) delete obsolete appendix J to subpart B of CFR part 430 and references thereto. The following paragraphs summarize these proposed changes.

To integrate measures of standby mode and off mode power consumption into the test procedure, DOE proposes to incorporate by reference into the clothes washer test procedure specific provisions from IEC Standard 62301 regarding test conditions and test procedures for measuring standby mode and off mode power consumption. DOE also proposes to incorporate into the test procedure the definitions of "active mode," "standby mode," and "off mode" that are based on the definitions provided in IEC Standard 62301 FDIS. Further, DOE proposes to include in the test procedure additional language that would clarify the application of clauses from IEC Standard 62301 for measuring standby mode and off mode power consumption.[3] In addition, DOE proposes to incorporate energy consumption associated with delay start and cycle finished modes. Although these modes would be considered part of active mode, the measurements and calculations proposed for them are similar to those proposed for standby and off modes. DOE also proposes to: (1) Establish a new measure of energy use to calculate the per-cycle standby mode, off mode, delay start mode, and cycle finished mode energy consumption; and (2) adopt a new measure of energy efficiency (integrated modified energy factor (IMEF)) that includes the energy used in the active, standby, and off modes. As indicated above, DOE energy conservation standards currently do not address the energy use of clothes washers in the standby or off modes. Section 325(gg)(2)(C) of EPCA provides that amendments to the test procedures to include standby and off mode energy

[1] IEC standards are available online at *http://www.iec.ch*.

[2] Multiple editions of this standard are referenced in this notice. Unless otherwise indicated, the terms "IEC Standard 62301" or "IEC Standard 62301 First Edition" refer to "Household electrical appliances–measurement of standby power," First Edition 2005–06.

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

consumption will not be used to determine compliance with previously established standards. (42 U.S.C. 6295(gg)(2(C)).

For the measurement of active mode energy use other than in delay start and cycle finished modes, DOE proposes to:

(1) Update the test procedure to address technologies not covered by the current procedure, based upon comments from interested parties in response to the August 2009 framework document and further review by DOE. These technologies include steam wash and self-cleaning cycles. Steam wash cycles inject steam into the wash basket, and claim to offer more effective cleaning. Self-clean cycles enable consumers to intermittently, typically once per month, run a self-clean cycle to prevent odor, bacteria, and mildew from building up in the clothes washer. DOE proposes to amend the test procedure to measure energy use in steam and self-clean cycles. DOE also received comments regarding demand response technologies, and investigated adaptive controls other than adaptive fill control. Demand response features enable an appliance to shift its activity based on interaction with the electric grid, utilities, or user programming. Adaptive controls enable a clothes washer to adjust parameters such as agitation speed, number of rinses, wash time, and wash and rinse temperatures based on the size, fabric mix, and soil level of a wash load. However, for reasons discussed in sections III.D.1.c and III.D.1.d, DOE is not proposing to update the test procedure to include provisions for measuring the energy consumption of clothes washers offering demand response technologies or adaptive controls other than adaptive fill control.

(2) Amend the test procedure for clothes washers to reflect current usage patterns and capabilities. DOE received multiple comments on this issue in response to the August 2009 framework document, and reviewed current consumer data from surveys conducted in 2004 and 2005 to determine whether such updates are appropriate. The proposed amendments address the following specific issues: Representative average-use cycles per year for a clothes washer, test load size specifications, and consumer use factors. The proposed amendments are based on recent data that more accurately describe current consumer behavior and updated clothes washer capabilities.

(3) Amend the test procedure to update the procedure and specifications for determining test cloth correlations, change the tolerances regarding the size and weight of the test cloth, and revise the detergent and preconditioning clothes washer specifications due to obsolescence or anticipated obsolescence of the existing test materials and equipment specified in the test procedure. These proposed amendments are based on multiple comments received in response to the August 2009 framework document and at the September 2009 public meeting regarding the test cloth used in the current test procedure.

(4) Update the test procedure to clarify or revise the existing methods and calculations for measuring clothes container capacity, calculating water consumption factor, determining the energy test cycle, and setting the supply water test conditions. The current capacity measurement provisions can be interpreted in multiple ways. Different allowable interpretations of the maximum water fill level used for the measurement can produce inconsistent results that may not accurately reflect the actual usable volume of a clothes washer. The proposed revisions revise the capacity measurement specifications so that interpretations are more likely to be uniform, repeatable, and representative, thereby ensuring the data is reported consistently. DOE proposes to adopt a new measure of water consumption, integrated water consumption factor (IWF) that would include water used in self-clean cycles. The IWF would also include water consumption from all energy test cycles, rather than only from the cold wash/cold rinse cycle as the test procedure currently requires. DOE also proposes to clarify the energy test cycle definition and the supply water test conditions specification.

DOE has also investigated how each of the proposed amendments to the active mode provisions for clothes washers, discussed above would affect the measured efficiency of products. See section III.D for further details. Because of the potential for significant impacts to the measured efficiency of products, DOE proposes to codify the amended clothes washer test procedure as appendix J2 in 10 CFR part 430 subpart B. Manufacturers would not be required to use appendix J2 to demonstrate compliance with clothes washer energy conservation standards until the compliance date of new standards, which would take into account any test procedure amendments. Until that time, manufacturers would be required to use existing appendix J1.

Finally, DOE proposes to delete appendix J to subpart B of CFR part 430, along with all references to appendix J in 10 CFR part 430.23. Appendix J only applies to clothes washers manufactured before January 1, 2004, and is now obsolete. Appendix J1 would retain its current designation and not be re-designated as Appendix J.

III. Discussion

A. Products Covered by This Test Procedure Change

Today's proposed amendments to the DOE test procedure cover residential clothes washers, which DOE's regulations define as follows:

Clothes washer means a consumer product designed to clean clothes, utilizing a water solution of soap and/or detergent and mechanical agitation or other movement, and must be one of the following classes: automatic clothes washers, semi-automatic clothes washers, and other clothes washers.

Automatic clothes washer means a class of clothes washer which has a control system which is capable of scheduling a preselected combination of operations, such as regulation of water temperature, regulation of the water fill level, and performance of wash, rinse, drain, and spin functions without the need for user intervention subsequent to the initiation of machine operation. Some models may require user intervention to initiate these different segments of the cycle after the machine has begun operation, but they do not require the user to intervene to regulate the water temperature by adjusting the external water faucet valves.

Semi-automatic clothes washer means a class of clothes washer that is the same as an automatic clothes washer except that user intervention is required to regulate the water temperature by adjusting the external water faucet valves.

Other clothes washer means a class of clothes washer which is not an automatic or semi-automatic clothes washer. 10 CFR 430.2.

DOE is not proposing any amendments to these definitions in today's NOPR. The clothes washers covered by these definitions, and by today's proposed amendments, include top-loading compact (less than 1.6 ft^3 capacity); top-loading standard size (1.6 ft^3 or greater capacity); top-loading, semi-automatic; front-loading; and suds-saving clothes washers.

B. Compliance Date of Proposed Test Procedure

As stated previously, DOE originally considered reviewing a revised IEC Standard 62301, expected to be released in July 2009, in the development of these test procedure amendments. DOE received comments in response to the August 2009 framework document

jointly from the Appliance Standards Awareness Project (ASAP), the Natural Resources Defense Council (NRDC) and the National Consumer Law Center (NCLC) (Joint Comment); and the Alliance to Save Energy (ASE), stating that the IEC 62301 revision process may take longer than previously thought and that DOE should proceed with updating the clothes washer test procedure. (Joint Comment, No. 14 at p. 1 [4]; ASE, No. 22 at p. 1) Additionally, Northeast Energy Efficiency Partnerships (NEEP) commented that waiting for the IEC process to finalize could be detrimental to the standards rulemaking, and that DOE should consider quickly revising the test procedure independently after the IEC procedure is finalized. (NEEP, No. 20 at p. 1)

DOE agrees that the revision to IEC Standard 62301 is expected to be delayed; the revision is currently expected in late 2010. Therefore, DOE proposes basing the amendments to the clothes washer test on the first edition of IEC Standard 62301, as well as draft versions of the second edition, in the issuance of this NOPR. Such action is necessary to permit manufacturers to certify that their products comply with any newly established energy conservation standards that take into account standby and off mode energy use.

The amended test procedure would become effective 30 days after the date of publication in the **Federal Register** of the final rule in this test procedure rulemaking. However, DOE would clarify in the published amended test procedure in 10 CFR part 430 subpart B appendix J2 that it need not be used to determine compliance with current energy conservation standards. Instead, manufacturers would be required to begin using the test procedures in appendix J2 on the compliance date of any final rule establishing amended energy conservation standards that would, in part, address standby and off mode power consumption for these products. 42 U.S.C. 6295(gg)(2)(C).

[4] A notation in the form "Joint Comment, No. 14 at p. 1" identifies a written comment (1) made by ASAP, NRDC, and NCLC jointly; (2) recorded in document number 14 that is filed in the docket of the clothes washer energy conservation standards rulemaking (Docket No. EERE–2008–BT–STD–0019) and maintained in the Resource Room of the Building Technologies Program; and (3) which appears on page 1 of document number 14.

C. Standby Mode, Off Mode, and Additional Active Mode Test Procedures

1. Incorporating by Reference IEC Standard 62301 for Measuring Standby Mode and Off Mode Power Consumption

As required by EPCA, as amended by EISA 2007, DOE considered the most current versions of IEC Standard 62301 and IEC Standard 62087 for measuring power consumption in standby mode and off mode when developing today's proposed amendments to the clothes washer test procedure. (42 U.S.C. 6295(gg)(2)(A)) DOE noted that IEC Standard 62301 provides for measuring standby power in electrical appliances, including clothes washers, and thus is relevant here. DOE also reviewed IEC Standard 62087, which specifies methods of measuring the power consumption of TV receivers, video cassette recorders (VCRs), set top boxes, audio equipment, and multi-function equipment for consumer use. IEC Standard 62087 does not, however, include methods for measuring the power consumption of electrical appliances such as clothes washers. Therefore, DOE has determined that IEC Standard 62087 is inapplicable to this rulemaking, and has not included any of its provisions in today's proposed test procedure.

DOE proposes to incorporate by reference into this test procedure all applicable provisions from Sections 4 and 5 of IEC Standard 62301. Specifically, DOE proposes to incorporate, from section 4, ("General conditions for measurements"), paragraph 4.2, "Test room;" paragraph 4.4, "Supply voltage waveform;" paragraph 4.5, "Power measurement accuracy;" and from section 5, ("Measurements"), paragraph 5.1, "General," Note 1; and paragraph 5.3, "Procedure." These clauses provide test conditions and test procedures for measuring average standby mode and average off mode power consumption. With respect to test conditions, section 4 of IEC Standard 62301 provides specifications for the test room conditions, supply voltage waveform, and power measurement meter tolerances to ensure repeatable and precise measurements of standby mode and off mode power consumption. With respect to test procedures, section 5 of IEC Standard 62301 provides methods for measuring power consumption when the power measurement is stable and when it is unstable.

DOE invites comment on whether IEC Standard 62301 measures standby and off mode power consumption for clothes washers adequately, and whether incorporating these specific provisions into the DOE test procedure is appropriate.

2. Determination of Modes To Be Incorporated

EPCA provides the following mode definitions:

"Active mode" is defined as the condition in which an energy-using product is connected to a main power source, has been activated, and provides one or more main functions. (42 U.S.C. 6295(gg)(1)(A)(i))

"Standby mode" is defined as the condition in which an energy-using product is connected to a main power source and offers one or more of the following user-oriented or protective functions: to facilitate the activation or deactivation of other functions (including active mode) by remote switch (including remote control), internal sensor, or timer; or continuous functions, including information or status displays (including clocks) or sensor-based functions. (42 U.S.C. 6295(gg)(1)(A)(iii))

"Off mode" is defined as the condition in which an energy-using product is connected to a main power source and is not providing any standby mode or active mode function. (42 U.S.C. 6295(gg)(1)(A)(ii))

During the September 2009 Public Meeting, ASAP commented that the definitions provided in IEC Standard 62301 do not conform to the statutory definitions provided by EPCA, so ASAP believed it was not entirely clear that DOE should adopt the IEC definitions word-for-word. (ASAP, Public Meeting Transcript, No. 7 at p. 19) [5]

DOE notes that the EPCA definition of standby mode differs from the one provided in IEC Standard 62301, which defines standby mode as the "lowest power consumption mode which cannot be switched off (influenced) by the user and that may persist for an indefinite time when an appliance is connected to the main electricity supply and used in accordance with the manufacturer's instructions." However, DOE expects significant changes to the mode

[5] A notation in the form "ASAP, Public Meeting Transcript, No. 7 at p. 19" identifies an oral comment that DOE received during the September 21, 2009, Framework public meeting, was recorded in the public meeting transcript in the docket for the clothes washer energy conservation standards rulemaking (Docket No. EERE–2008–BT–STD–0019), and is maintained in the Resource Room of the Building Technologies Program. This particular notation refers to a comment (1) made by ASAP during the public meeting; (2) recorded in document number 7, which is the public meeting transcript that is filed in the docket of the clothes washer energy conservation standards rulemaking; and (3) which appears on page 19 of document number 7.

definitions included in IEC Standard 62301, based on review of IEC Standard 62301 FDIS. The definitions provided in IEC Standard 62301 FDIS are likely to be included in the final revised IEC Standard 62301, Second Edition. DOE considered the definitions provided by IEC Standard 62301 FDIS as the most current when determining the mode definitions proposed to be included in the test procedure.

EPCA authorizes DOE to amend mode definitions, as appropriate, considering the most current versions of IEC Standards 62301 and 62087. (42 U.S.C. 6295(gg)(1)(B)) DOE recognizes that the EPCA definitions for active mode, standby mode, and off mode were developed to be broadly applicable for many energy-using products. However, for specific products with multiple functions, these broad definitions could be interpreted in different ways. For these reasons, DOE proposes amending the test procedure to include definitions for these modes based on the definitions provided in IEC Standard 62301 FDIS, with added clarifications specific to clothes washers.

Active Mode

DOE proposes to define active mode as a mode in which the clothes washer is connected to a mains power source; has been activated; and is performing one or more of the main functions of washing, soaking, tumbling, agitating, rinsing, and/or removing water from the clothing, or is involved in functions necessary for these main functions, such as admitting water into the washer or pumping water out of the washer. DOE is proposing to refer to the typical clothes washing operation (*i.e.,* a complete wash cycle intended for washing a clothing load, including washing, rinsing, and spinning) as the active washing mode. DOE is aware of three additional relevant modes that it proposes to define as a part of active mode: delay start mode, cycle finished mode, and self-clean mode. DOE is proposing to include these modes in the measures of clothes washer energy consumption, as discussed in section III.C.4.

i. Delay Start Mode

DOE proposes to define delay start mode as a mode in which activation of the active washing mode is facilitated by a timer. Because delay start mode is not a mode that may persist for an indefinite time, DOE believes it would not be considered as part of a standby mode based on the proposed definition discussed below. DOE also notes that IEC Standard 62301 Committee Draft 2 (IEC Standard 62301 CD2) provides the additional clarification that "delay start mode is a one off user initiated short duration function that is associated with an active mode." The subsequent IEC Standard 62301 Committee Draft for Vote (IEC Standard 62301 CDV) removes this clarification; however, in response to comments on IEC Standard 62301 CD2 that led to IEC Standard 62301 CDV, IEC states that delay start mode is a one off function of limited duration. DOE infers that delay start mode should therefore be considered part of active mode. DOE notes that IEC 62301 FDIS classifies delay start as a secondary function and therefore not part of active mode. DOE continues to believe, however, that because delay start is of limited duration and is uniquely associated with the initiation of a main function (*i.e.,* washing cycle), it should be considered part of active mode. The proposed methods for measuring energy consumption in delay start mode are discussed in III.C.3.

ii. Cycle Finished Mode

DOE proposes to define cycle finished mode as a mode that provides continuous status display following operation in the active washing mode. However, as with delay start mode, cycle finished mode is not a mode that may persist for an indefinite time, and would therefore not be considered as a part of standby mode. Additionally, operation in cycle finished mode occurs only after operation in the active washing mode. DOE believes cycle finished mode, similar to delay start mode, would be considered a one off short duration function that is associated with an active mode. DOE is therefore proposing to define cycle finished mode as a part of active mode. The proposed methods for measuring energy consumption in cycle finished mode are discussed in III.C.3.

DOE is aware that some clothes washers currently available offer energy-consuming features in cycle finished mode other than a continuous status display. For example, certain models may employ a low-power fan to circulate air around the damp clothes to prevent odors. These models may also periodically tumble the clothes to prevent wrinkles for up to 10 hours after the completion of the wash cycle. These functions, while enabled, would use more energy than the continuous display normally associated with cycle finished mode. However, DOE does not propose amending the test procedure to address these specific cycle finished mode functions, because DOE believes measuring the energy use from these functions would significantly increase the test cycle duration to capture a negligible contributor to annual energy consumption. In addition, DOE research indicates that only eight out of the 94 residential clothes washer models currently produced by manufacturers representing more than 92 percent of the residential clothes washer market incorporate such a circulation or tumbling function. Because these models are also higher priced and recently introduced, DOE believes that the shipment-weighted percentage of residential clothes washers with a circulation or tumbling function in cycle finished mode is less than 5 percent. Therefore, DOE believes the energy consumed by these features in cycle finished mode represents a negligible portion of the overall energy consumption of clothes washers.

iii. Self-Clean Mode

DOE proposes to define self-clean mode as a clothes washer operating mode that:

- Is dedicated to cleaning, deodorizing, or sanitizing the clothes washer by eliminating sources of odor, bacteria, mold, and mildew;
- Is recommended to be run intermittently by the manufacturer; and
- Is separate from clothes washing cycles.

Self-clean mode is considered a part of the active mode because it is a function necessary for the main functions associated with washing clothes. A clothes washer with excessive bacteria, mildew, or odor cannot effectively wash clothes. A further discussion of self-clean mode, including its incorporation in the clothes washer test procedure, is included in section III.D.1.b.

Standby Mode

DOE proposes to define standby mode as any mode in which the clothes washer is connected to a mains power source and offers one or more of the following user-oriented or protective functions which may persist for an indefinite time: [6]

- Facilitation of the activation of other modes (including activation or deactivation of active mode) by remote

[6] The actual language for the standby mode definition in IEC Standard 62301 FDIS describes "* * *user oriented or protective functions which usually persist" rather than "* * * user oriented or protective functions which may persist for an indefinite time." DOE notes, however, that section 5.1 of IEC Standard 62301 FDIS states that "a mode is considered to be persistent where the power level is constant or where there are several power levels that occur in a regular sequence for an indefinite period of time." DOE believes that the proposed language, which was originally included in IEC Standard 62301 CD2, encompasses the possible scenarios foreseen by section 5.1 of IEC Standard 62301 FDIS without unnecessary specificity.

switch (including remote control), internal sensor, or timer;

- Continuous function: Information or status displays including clocks; and
- Continuous function: Sensor-based functions.

DOE proposes adding a clarification of what would be considered a timer under this definition of standby mode. DOE would clarify that a timer is a continuous clock function (which may or may not be associated with a display) that provides regular scheduled tasks (*e.g.,* switching) and that operates on a continuous basis. As noted earlier in this section, this proposed definition was developed based on the definition provided in IEC Standard 62301 FDIS. It expands on the EPCA mode definition to provide additional clarifications as to which functions are associated with standby mode.

The proposed definition of standby mode based on IEC Standard 62301 FDIS allows for multiple modes to be considered a standby mode. DOE has identified only one mode that would be considered a standby mode under the proposed definition. DOE proposes to define this "inactive mode" as a standby mode that facilitates the activation of active mode by remote switch (including remote control), internal sensor, or timer, or that provides continuous status display. DOE proposes amending the test procedure for clothes washers to include provisions for measuring energy use in inactive mode as the measurement of standby energy use. Although it identified only this one particular standby mode, DOE remains open to consideration of additional standby modes.

Off Mode

As discussed in section III.C.1, DOE proposes in today's NOPR to amend the DOE test procedure for clothes washers to define "off mode" as any mode in which the clothes washer is connected to a mains power source and is not providing any standby mode or active mode function and the mode may persist for an indefinite time. An indicator that only shows the user that the product is in the off position is included within the off mode classification. As noted in section III.C.1, this definition was developed based on the definitions provided in IEC Standard 62301 FDIS. It expands on the EPCA mode definitions to provide additional clarifications as to which functions are associated with off mode.

Under the proposed definitions, a clothes washer equipped with a mechanical on/off switch that can disconnect power to the display and/or control components would be considered as operating in the off mode when the switch is in the "off" position, provided that no other standby or active mode functions are energized. An energized light-emitting diode (LED) or other indicator that only shows the user that the product is in the off position would be considered part of off mode under the proposed definition, again provided that no other standby or active mode functions are energized. As stated above, however, if any energy is consumed by the appliance in the presence of a one-way remote control, the unit would be operating in standby mode under the proposed definition. That definition would include remote controls that facilitate the activation or deactivation of other functions (including active mode) as a feature of standby mode.

IEC Standard 62301 FDIS also provides definitions for additional modes that DOE determined are not applicable to the clothes washer test procedure. Section 3.7 of IEC Standard 62301 FDIS defines network mode as a mode category that includes "any product modes where the energy using product is connected to a mains power source and at least one network function is activated (such as reactivation via network command or network integrity communication) but where the primary function is not active." IEC Standard 62301 FDIS also provides a note, stating that "[w]here a network function is provided but is not active and/or not connected to a network, then this mode is not applicable. A network function could become active intermittently according to a fixed schedule or in response to a network requirement. A 'network' in this context includes communication between two or more separate independently powered devices or products. A network does not include one or more controls which are dedicated to a single product. Network mode may include one or more standby functions." As discussed further in section III.D.1.c, DOE is not proposing any amendments to include provisions for testing network mode energy consumption in clothes washers.

DOE also notes that section 3.9 of IEC Standard 62301 FDIS provides a definition of "disconnected mode", which is "the state where all connections to mains power sources of the energy using product are removed or interrupted." IEC Standard 62301 FDIS also adds a note that common terms such as "unplugged" or "cut off from mains" also describe this mode and that this mode is not part of the lower power mode category. DOE believes that there would be no energy use in a disconnected mode, and therefore, is not proposing a definition or testing methods for such a mode in the DOE test procedure for clothes washers.

DOE welcomes comment on the proposed establishment of the modes as discussed above, including inactive mode as the only standby mode for clothes washers. DOE also invites comment on the determination that delay start mode and cycle finished mode would be considered part of active mode. DOE further invites comment on the proposed mode definitions, including the definition of self-clean mode, and whether there are any modes that have not been identified in this NOPR that represent significant energy use and are consistent with the proposed active mode, standby mode, or off mode definitions.

3. Adding Specifications for the Test Methods and Measurements for Standby Mode, Off Mode, and Additional Active Mode Testing

This section discusses the provisions DOE proposes to include in the test procedure to clarify the IEC Standard 62301 methods when used to measure standby mode and off mode energy use in clothes washers. These proposed procedures also include provisions for measuring energy use in delay start mode and cycle finished mode. Although these modes are considered a part of active mode under the proposed definitions, the methods for measuring their associated energy consumptions are similar to those used for standby mode and off mode.

Paragraph 5.3.1 of section 5.3 of IEC Standard 62301 contains provisions for measuring power. It specifies, for products in which the power is stable (*i.e.,* power varies by not more than 5 percent from a maximum level during a period of 5 minutes), waiting at least 5 minutes for the product to stabilize and then measuring the power at the end of an additional time period of not less than 5 minutes. Paragraph 5.3.2 contains provisions for measuring average power in cases where the power is not stable (*i.e.,* power varies by more than 5 percent from a maximum level during a period of 5 minutes). In such cases, IEC Standard 62301 requires a measurement period of no less than 5 minutes, or one or more complete operating cycles of several minutes or hours. DOE notes these provisions do not preclude manufacturers from testing products with a longer stabilization period, or a longer measurement period (if the power varies by not more than 5 percent or if that period represents one or more complete cycles).

Displays on residential clothes washers may reduce power consumption by dimming or turning off after a certain period of user inactivity ("automatic power-down"). For clothes washers whose power input in standby, off, and cycle finished modes varies in this manner during testing, DOE proposes that the test be conducted after the power level has dropped to its lowest level, as discussed in IEC Standard 62301, section 5, ("Measurements"), paragraph 5.1, "General," Note 1. DOE is aware that IEC Standard 62301 does not provide guidance on how long to wait for the appliance to drop to the lower-power state. DOE observed during tests of 17 residential clothes washers that in units with an automatic power-down feature the higher-power state persists for less than 10 minutes of inactivity after the display has been energized. Thus, the energy consumption at the low-power level is most representative of standby mode, off mode, and cycle finished mode power. However, DOE notes the test sample of 17 clothes washers was relatively small. It is possible that some clothes washers may remain in the higher-power state for the duration of a 5-minute stabilization period and 5-minute measurement period, and then drop to the lower-power state that is more representative of standby mode, off mode, or cycle finished mode. In contrast, IEC Standard 62301 CDV specifies for each testing method that the product be allowed to stabilize for at least 30 minutes prior to a measurement period of not less than 10 minutes. DOE believes this method would allow sufficient time for displays that automatically dim or power down after a period of user inactivity to reach the lower-power state prior to measurement. Based on the automatic power-down time periods observed in its own testing, DOE believes that the IEC Standard 62301 CDV 30-minute stabilization and 10-minute measurement periods provide a clearer and more consistent testing procedure than the corresponding time periods specified in IEC Standard 62301. Those periods allow for representative measurements to be made among products that may have varying time periods before the power drops to a lower level more representative of standby, off, or cycle finished mode. DOE notes that IEC Standard 62301 FDIS establishes an overall test period of not less than 15 minutes for products in which power consumption in the mode being tested is not cyclic. Data collected during the first third of the total period is discarded (and thus this time could be inferred to be a stabilization period), and data from the remaining two-thirds of the total period are used to determine whether the power is stable. If stability is not achieved, the total period is extended continuously until the stability criteria are achieved, to a maximum of 3 hours. Modes that are known to be non-cyclic and of varying power consumption shall follow this same procedure, but with a total test period not less than 60 minutes. If power consumption in a mode is cyclic, measurements must be conducted with an initial operation period (analogous to a stabilization period) of at least 10 minutes, and the average power measured over at least four complete cycles. The measurement period must be at least 20 minutes. DOE believes that the specifications provided in IEC Standard 62301 FDIS would not produce power consumption measurements as accurate, repeatable, and enforceable as the specifications provided in IEC Standard 62301 CDV. Therefore, DOE proposes to require that: (1) the product be allowed to stabilize for at least 30 minutes, then (2) the power measurement be made for a period not less than 10 minutes for inactive, off, and cycle finished modes.

DOE's test procedures are developed to measure representative energy use for the typical consumer, and cannot capture all possible consumer actions and appliance usage patterns that might increase energy use. For example, certain residential clothes washer models featuring a display power-down may allow consumers to alter the display settings to increase the amount of time in the high-power state, or to make the high-power state permanent. Because DOE does not have information regarding the likelihood consumer will alter the default display settings, DOE has not proposed additional provisions in today's NOPR to address the possibility of increased energy use as a result of consumers adjusting the display power-down settings or other features. DOE welcomes comment on the suitability of using the default settings in testing standby energy consumption. It also welcomes comment on any methodologies that can account for consumer actions that might increase energy use, and requests data on the repeatability of such testing procedures.

DOE understands that clothes washers with a delay start capability may use varying amounts of power during delay start mode, depending on the delay time entered, the amount of remaining delay time displayed, and/or display indication of mode status. To ensure comparable and valid results, DOE proposes to include in its clothes washer test procedure a specification for the delay start time to be set at 5 hours, and for power to be monitored for 60 minutes after waiting at least 5 minutes for power input to stabilize. In determining the specification for delay start parameters, DOE considered the possibility that display power input would depend on the time displayed, which is typically the time in hours remaining before the start. Displays may be one or two digits. Some two-digit displays may show whole numbers for remaining delay hours of 10 or more and both the ones and tenths digits for the remaining delay hours of 9.9 or less. DOE analyzed the number of LEDs activated in LED displays of the remaining hours over a range of delay times. It concluded that the average number of LEDs lit for the range of all possible delay times would be best approximated by determining the average number of LEDs lit for either single-digit or two-digit displays in a 60-minute test if the delay time is set at 5 hours. DOE welcomes comment on this approach to measuring delay start mode.

DOE is also proposing that test room ambient temperatures for standby mode and off mode testing, as well as delay start mode and cycle finished mode testing, be specified for all clothes washers according to section 4, paragraph 4.2 of IEC Standard 62301. The current DOE test procedure includes a test room ambient air temperature specification only for water-heating clothes washers, for which the requirement is 75 ± 5 degrees Fahrenheit (°F). This falls within the range specified by IEC Standard 62301 of 73.4 ± 9 °F. Today's proposed test procedure would allow manufacturers of water-heating clothes washers to use the more stringent ambient temperature range in the current DOE test procedure if tests of active washing mode performance and standby, off, delay start, and cycle finished mode power are conducted simultaneously in the same room on multiple clothes washers. Alternatively, the proposed temperature specifications taken from IEC Standard 62301 would allow a manufacturer that opts to conduct standby, off, delay start, and cycle finished mode testing separately from active washing mode testing more latitude in maintaining ambient conditions. DOE requests comment on the appropriateness of this proposed modified test room ambient temperature range.

4. Calculation of Energy Use Associated With Each Operating Mode

To combine active washing mode energy consumption with energy

consumption from inactive, off, and additional active modes (delay start, cycle finished, and self-clean modes), DOE estimated the representative energy use for each of these modes. The total energy consumption in each of these modes depends on both the power level of that mode and the time spent in that mode. This section discusses the approach DOE proposes for calculating energy use associated with each operating mode for clothes washers and the numbers of hours proposed to be associated with each mode.

Energy use for clothes washers is expressed in terms of ft^3 of wash load capacity per total energy use per wash cycle.[7] As discussed further in section III.E.2, DOE has tentatively determined that it is technically feasible to integrate measures of standby mode and off mode energy use into the overall energy use metric, as required by the EISA 2007 amendments to EPCA. (42 U.S.C. 6295(gg)(2)(A)) Therefore, DOE has examined standby mode and off mode power consumption in terms of annual energy use apportioned on a per-cycle basis. DOE has also examined energy consumption from delay start, cycle finished, and self-clean modes on a per-cycle basis. Energy used during an active washing mode test cycle is directly measured in the current DOE test procedure, and a weighted average is calculated under different load sizes, fill levels, and wash temperature conditions according to the specific machine's capacity and features. (*See* section 4.1 of appendix J1 of subpart B of 10 CFR 430 for details.) The calculation of MEF also includes nominal energy used by a water heater to heat the water supplied to the clothes washer, and by a dryer to remove the remaining moisture after the clothes washer completes its full cycle (weighted by a dryer usage factor (DUF) to account for loads not dried in a clothes dryer).

Average cycle times can vary significantly based on the axis of basket rotation and type of load. One 1997 study compared a 37-minute normal cycle for a vertical-axis, top-loading clothes washer with 40 to 110-minute cycles for eight different front-loading, horizontal-axis machines.[8] The U.S. Environmental Protection Agency (EPA) reported in 2005 on three studies in the magazine "Consumer Reports"[9] that determined top-loading clothes washers have "normal" cycle times of 37–55 minutes, and front-loading washers have "normal" cycle times of 51–105 minutes.[10] Therefore, DOE proposes to adopt the estimate of 1 hour per cycle associated with a residential clothes washer's typical active washing mode (*i.e.,* a complete wash cycle including washing, rinsing, and spinning). DOE is proposing a single cycle duration for both top-loading and front-loading clothes washers rather than more accurate cycle times specific to each product class to simplify the test procedure and calculations. Additionally, proposing cycle times for each product class would have an insignificant effect on the calculations proposed in the test procedure because it is used only to allocate the number of annual hours associated with inactive/off mode. For example, using cycle times of 45 minutes for top-loaders and 75 minutes for front-loaders would change the number of hours allocated to inactive/off mode (the only modes affected by the number of active mode hours) by less than 1 percent.

In the January 2001 final rule, 66 FR 3314, DOE estimated the representative number of annual wash cycles per clothes washer as 392. DOE is proposing to update the number of wash cycles per year from 392 to 295 to reflect more current consumer behavior, which is discussed in detail in section III.D.2.a. One hour per cycle would result in a total of 295 hours per year associated with active mode. DOE is proposing to associate the remaining 8,465 (8,760 minus 295) hours of the year with all modes other than the active washing mode.

DOE is aware of five modes other than active washing mode in which residential clothes washers use energy: (1) Inactive mode, (2) cycle finished mode, (3) delay start mode, (4) off mode, and (5) self-clean mode. DOE is aware of only limited studies of the time clothes washers spend in these different modes. One household survey conducted by the National Appliance and Equipment Energy Efficiency Committee (NAEEEC) in Australia in 2000, for example, measured the time associated with different modes for 61 clothes washers with an average age of 9 years. The daily time spent in each mode in this study averaged 1 hour for washing (active washing mode), zero time for delay start and "active standby" modes, and the remaining time split 20 percent for "end of program" mode and 80 percent for off mode.[11] Self-clean mode was not explicitly addressed. The active standby mode of the washers in this study is equivalent to the inactive mode defined in section III.C.2 of this notice, and the end of program mode is equivalent to cycle finished mode.

The average age of the clothes washers in the study suggests that many of them have electromechanical rather than electronic controls, and thus would not likely have been capable of inactive mode. Hence, DOE does not infer from those results that more modern clothes washers spend negligible time in inactive mode. DOE believes that because current clothes washer models offer both mechanical and electronic controls, the time apportioned to off mode in this study would actually be split between off mode and inactive mode. Clothes washers with electromechanical controllers can have a delayed start feature, although its implementation appears to be market-specific. Markets with a long history of residential time-of-day electricity pricing are more likely to have appliances with delayed start features than in markets where household electricity prices are constant. The clothes washers in the NAEEEC study would have been less likely to have a delay start mode because differential power pricing is a relatively recent development in the Australian residential power market. Thus, the findings in the Australian clothes washer study regarding delayed start are inconclusive regarding the time current models of clothes washers spend in delay start mode.

To help address this uncertainty, DOE examined a more recent 2005 Australian study that noted a small number of usage hours associated with delay start mode. This study used dataloggers to monitor time clothes washers spent in different modes in Australia and New Zealand. The study showed that the average amount of time spent in delay start mode per wash cycle was approximately 5 minutes.[12] DOE

[7] *See* section III.C.5 for a detailed description of how the efficiency metric is calculated.

[8] J. Dieckmann, D. Westphalen. 1997. "Laboratory Testing of Clothes Washers." *The High-Efficiency Laundry Metering and Market Analysis (THELMA).* Volume 2. Final Report to the Electric Power Research Institute (EPRI). Report No. TR–109147–V2. December 29, 1997. Available for purchase at *http://www.epri.com.*

[9] These studies appeared in the July 1998, July 1999, and August 2000 issues of *Consumer Reports.*

[10] C. Wilkes *et al.* 2005. "Quantification of Exposure-Related Water Uses for Various U.S. Subpopulations." U.S. Environmental Protection Agency, Office of Research and Development. Report No. EPA/600/R–06/003. Washington, DC. December 2005. Available at *http://www.wilkestech.com/205edrb06_Final_Water_Use_Report.pdf.*

[11] Australia's National Appliance and Equipment Energy Efficiency Committee (NAEEEC). *Standby Product Profile—Clothes Washers.* October 2003. Available at *http://www.energyrating.gov.au/library/pubs/sb200308-washers.pdf.*

[12] Australian Electrical and Electronic Manufacturer's Association. *A Submission to NAEEEC on Mode Times for Use When Determining Standby Energy Consumption of Clothes Washers,*

expects similar low usage patterns of delayed start functionality for clothes washers in U.S. households because DOE research suggests that most U.S. residential electricity customers have fixed-rate electricity pricing (*i.e.,* the cost of electricity does not change with time of day, day of week, or time of year). However, delayed start functionality usage could increase in the United States as more electric utilities offer residential customers variable-rate pricing plans that encourage shifting electricity consumption to off-peak hours.

DOE welcomes comment on whether the sources cited provide a reasonable indication of residential clothes washer mode usage patterns, and also welcomes any additional information about such usage patterns.

Based on these two studies, DOE concludes that a typical modern residential clothes washer spends a small amount of time in delay start mode. Using an estimated 5 minutes per cycle, the total annual amount of time spent in delay start mode, using the proposed representative 295 cycles per year, is 25 hours.

The NAEEEC study suggests that 20 percent of the total use cycle time not allocated to active washing or delay start mode would be associated with cycle finished mode. However, DOE testing of multiple residential clothes washers showed that the time spent in a cycle finished mode per use cycle is very short. Several models tested had no cycle finished mode, and immediately reverted to off/inactive mode after the wash cycle completed. All of the tested units with cycle finished mode remained in that state for less than 5 minutes before switching back to off/inactive mode. Based on these results, DOE is proposing to allocate 3 minutes per average use cycle to cycle finished mode, for a total of 15 hours per year.

In addition, DOE is aware that some residential clothes washers offer a self-clean mode, as further discussed in section III.D.1.b. These self-clean cycles are not accounted for in the proposed 295 active mode washing hours per year. DOE tested seven machines that had these cycles, and found an average self-clean cycle time of 1.3 hours. DOE proposes to account for the time spent in self-cleaning cycles, if applicable, based on an estimated average manufacturer recommendation of 12 self-clean cycles per year, resulting in 16 hours per year. Therefore, machines offering a self-cleaning cycle will spend 16 fewer hours per year in standby mode or off mode.

In summary, DOE is proposing to allocate 295 hours per year to the active washing mode, 16 hours to self-clean mode (if applicable), 25 hours to delay start mode, 15 hours to cycle finished mode, and the remainder (8,409 hours for clothes washers offering other modes) to off and/or inactive mode.

Table III.1 presents DOE's estimate of the annual energy use associated with all modes for a clothes washer that is capable of each of these functions. The approximate ranges of power associated with the different modes are based on DOE testing of residential clothes washers with the exception of active washing mode, as noted below. Where ranges of average power are listed, the highest and lowest average measured values for both top- and front-loading clothes washers are provided. Active washing mode annual energy use is calculated based on the proposed 295 cycles per year in a standard-size, top-loading or front-loading clothes washer. Active washing mode per-cycle energy use is determined from a 2006 study that referenced data provided in 2005 by the Association of Home Appliance Manufacturers (AHAM) and Whirlpool Corporation (Whirlpool).[13] This study estimated that, in 2005, average per-cycle energy use was 2.23 kWh for a typical residential clothes washer in the United States with an average MEF of 1.37 and a capacity of 3.06 ft^3.

TABLE III.1—ESTIMATE OF ANNUAL ENERGY USE OF RESIDENTIAL CLOTHES WASHER MODES

Mode	Hours	Typical average power *W*	Annual energy use *kWh*
Active Washing	295	2,230	** 657.9.
Self-Clean	16	75 to 2,081	† 1.2 to 33.3
Delay Start	25	1.4 to 8.9	0.04 to 0.2.
Cycle Finished	15	0 to 5.2	0 to 0.08.
Off and Inactive	* 8,409	0 to 1.7	0 to 14.3.

* Remaining time = 8,760 − 295 − 16 − 25 − 15 = 8409.
** Includes energy consumption for water heating and moisture removal in the dryer as well as machine electrical energy consumption.
† Based on DOE testing of seven units with self-clean cycles, and 12 cycles per year. Values include energy consumption for water heating and machine electrical energy consumption.

To determine the annual hours per mode for clothes washers that do not utilize all possible modes, DOE estimated values based upon reallocating the hours for modes that are not present to off/inactive modes. Table III.2 summarizes the allocation of hours to different possible modes under each scenario.

TABLE III.2—ESTIMATE OF ANNUAL HOURS OF POSSIBLE CLOTHES WASHER MODES

Mode	All modes possible	No delay start mode	No cycle finished mode	No delay start or cycle finished modes
No Self-Clean Available				
Active Washing	295	295	295	295
Delay Start	25	0	25	0
Cycle Finished	15	15	0	0
Off and Inactive	8,425	8,450	8,440	8,465

Dishwashers, and Dryers. Appendix B. March 11, 2005. Available at *http://www.aeema.asn.au/ArticleDocuments/258/standby.pdf.*

[13] R. Bole. *Life-Cycle Optimization of Residential Clothes Washer Replacement.* Center for Sustainable Systems, University of Michigan. Report. No. CSS06–03. Appendix C. April 21, 2006. Available at *css.snre.umich.edu/css_doc/CSS06-03.pdf.*

TABLE III.2—ESTIMATE OF ANNUAL HOURS OF POSSIBLE CLOTHES WASHER MODES—Continued

Mode	All modes possible	No delay start mode	No cycle finished mode	No delay start or cycle finished modes
Self-Clean Available				
Active Washing	295	295	295	295
Self-Clean	16	16	16	16
Delay Start	25	0	25	0
Cycle Finished	15	15	0	0
Off and Inactive	8,409	8,434	8,424	8,449

DOE believes the proposed definition of off mode as applied to residential clothes washers refers to units with mechanical rather than electronic controls, or units with electronic controls combined with a mechanical switch with which the user can de-energize the electronic controls. Reactivation of the clothes washer with a pushbutton sensor, touch sensor, or other similar device that consumes power is considered to be a standby mode feature under the proposed definition. DOE believes there are few clothes washers with electronic controls that have an additional mechanical on/off switch. Therefore, the combined inactive/off hours would most likely be allocated fully either to inactive mode or off mode, depending on the type of controls present on the clothes washer. DOE does not have market share information to determine how many residential clothes washers are currently shipped with electromechanical controls. For clothes washers with electronic controls plus a mechanical on/off switch, DOE is proposing to allocate half of the inactive/off hours each to inactive and off modes. DOE welcomes comment and additional information on this point.

In conclusion, DOE is proposing to calculate residential clothes washer energy use per cycle associated with inactive, off, delay start, and cycle finished modes by (1) Calculating the product of wattage and allocated hours for all possible inactive, off, delay start and cycle finished modes; (2) summing the results; (3) dividing the sum by 1,000 to convert from Wh to kWh; and (4) dividing by the proposed 295 use cycles per year. DOE is also proposing to calculate energy use per cycle associated with self-clean mode, if available, by (1) multiplying the energy use per self-clean cycle in kWh by 12 (the number of self-clean cycles estimated per year); and (2) dividing by the proposed 295 use cycles per year.

DOE invites comments on this proposed methodology and associated factors, including accuracy, allocation of annual hours, and test burden. DOE may also consider the following alternative methodology based on comments received:

The comparison of annual energy use of different clothes washer modes shows that delay start and cycle finished modes represent a relatively small number of hours at low power consumption levels. For clothes washers currently on the market, these levels are distinct from, but comparable to, those for off/inactive modes. Thus, DOE could adopt an approach that would be limited to specifying hours for only off and inactive modes when calculating energy use. In that case, all of the hours not associated with active washing mode or self-clean mode (8,465 hours total) would be allocated to the inactive and off modes. DOE invites comment on whether such an alternative would be representative of the power consumption of clothes washers currently on the market.

5. Measures of Energy Consumption

The DOE test procedure for clothes washers currently incorporates various measures of per-cycle energy consumption including total weighted per-cycle hot water energy consumption (for electric-, gas-, or oil-heated water), total weighted per-cycle machine electrical energy consumption, and per-cycle energy consumption for removing moisture from a test load in a dryer. (*See* sections 4.1 and 4.3 of appendix J1 of subpart B of 10 CFR 430 for details.) The test procedure also provides a calculation for MEF, which is equal to the clothes container capacity in ft^3 divided by the sum, expressed in kWh, of the total weighted per-cycle hot water energy consumption, the total weighted per-cycle machine electrical energy consumption, and the per-cycle energy consumption for removing moisture from a test load. (See section 4.4 of appendix J1 of subpart B of 10 CFR 430 for details.) The current Federal energy conservation standards for clothes washers are expressed in MEF. (10 CFR 430.32(g)(3)).

In response to the August 2009 framework document, Whirlpool commented that DOE should incorporate standby power into the MEF calculation, and that standby power should not be accounted for separately. (Whirlpool, No. 21 at p. 2) Additionally, the Joint Comment and ASE commented that DOE should integrate standby and no-load mode power into a single energy metric based on the revisions to IEC Standard 62301. (Joint Comment, No. 14 at p. 1; ASE, No. 22 at p. 1).

Under 42 U.S.C. 6295(gg)(2)(A), EPCA directs that the "[t]est procedures for all covered products shall be amended pursuant to section 323 to include standby mode and off mode energy consumption * * * with such energy consumption integrated into the overall energy efficiency, energy consumption, or other energy descriptor for each covered product, unless the Secretary determines that—(i) the current test procedures for a covered product already fully account for and incorporate the standby mode and off mode energy consumption of the covered product; or (ii) such an integrated test procedure is technically infeasible for a particular covered product, in which case the Secretary shall prescribe a separate standby mode and off mode energy use test procedure for the covered product, if technically feasible."

DOE proposes to establish the following measure of energy consumption for clothes washers. It integrates energy use of standby mode and off, modes with the energy use of the product's main functions, including delay start and cycle finished modes as well as any self-clean function available. DOE would define a "per-cycle standby, off, delay start and cycle finished mode energy consumption," and a "per-cycle self-clean mode energy consumption" measure, as applicable, expressed in kWh. DOE would also define integrated modified energy factor (IMEF) as the clothes container capacity in ft^3 divided by the sum, expressed in kWh, of:

• The total weighted per-cycle hot water energy consumption;

• The total weighted per-cycle machine electrical energy consumption;

• The per-cycle energy consumption for removing moisture from a test load;

• The per-cycle standby, off, delay start and cycle finished mode energy consumption; and

• The per-cycle self-clean mode energy consumption, as applicable (discussed in III.D.1.b).

DOE proposes an amended clothes washer test procedure, appendix J2 to subpart B of 10 CFR part 430, to include the measurement of the energy consumption in these additional modes and the calculation of IMEF.

DOE does not propose to amend the estimated annual operating cost calculation in 10 CFR 430.23 to include the cost of energy consumed in the non-active washing modes because:

• DOE believes that the cost of energy consumed in self-clean, standby, off, delay start, and cycle finished modes is small relative to the total annual energy cost for clothes washers and, therefore, would make little difference in the estimated annual operating cost calculation; and

• The Federal Trade Commission's (FTC's) EnergyGuide Label for clothes washers includes as its primary indicator of product energy efficiency the estimated annual operating cost, compared to a range of annual operating costs of similar products. Appendix F1 to 16 CFR part 305. An estimated annual operating cost incorporating self-clean, standby, off, delay start, and cycle finished mode energy use would no longer be directly comparable to the minimum and maximum energy costs prescribed for the EnergyGuide Label.

D. Clothes Washer Active Mode Test Procedure

1. Technologies Not Covered by the Current Clothes Washer Test Procedure

a. Steam Wash Cycles

Multiple clothes washer models currently available on the market offer a steam function via pre-set cycles or as an optional addition to conventional wash cycles. During these cycles, steam is injected into the basket, which manufacturers claim provides enhanced cleaning and/or sterilization. The steam is produced in a generator that requires a significant amount of energy to heat and vaporize the water. The current clothes washer test procedure does not account for energy or water consumption during this type of wash cycle.

In response to the August 2009 framework document, DOE received comments from the Joint Comment and ASE supporting revisions to the test procedure to measure energy and water consumption during steam wash cycles. (Joint Comment, No. 14 at p. 3; ASE, No. 22 at p. 1).

The current clothes washer test procedure specifies methods for measuring energy and water consumption over a range of wash temperatures based on the temperature selections available on a clothes washer, as specified in Table 3.2 of the test procedure, Test Section Reference. DOE proposes amending the test procedure to include an additional measurement of energy and water consumption during a steam wash cycle for clothes washers offering this feature, included in section 3.9. In the proposed amendments, Table 3.2 of the test procedure is updated to include a column that specifies the test sections to be followed for clothes washers offering a steam wash cycle, to update the footnotes, and to correct an error in the current organization of the table. The test sections required for clothes washers without a steam wash cycle would remain unchanged. The proposed updated Table 3.2 from the test procedure is shown below as table III.3.

TABLE III.3—TEST SECTION REFERENCE

Max. wash temp. available	≤135 °F (57.2 °C)			** >135 °F (57.2 °C)	
Number of wash temp. selections	1	2	>2	3	>3
Test Sections Required to be Followed	.....	.....	.....	3.3	3.3
	.....	3.4	3.4	.....	3.4
	.....	.....	3.5	3.5	3.5
	3.6	3.6	3.6	3.6	3.6
	.....	.....	*3.7	*3.7	*3.7
	3.8	3.8	3.8	3.8	3.8
	.....	.....	.....	†3.9	†3.9

** Only applicable to machines with a warm wash/warm rinse cycle.
** Only applicable to water heating clothes washers on which the maximum wash temperature available exceeds 135 °F (57.2 °C)
† Only applicable to machines equipped with a steam wash cycle.

DOE also proposes to include the energy and water consumption from steam wash cycles in the final calculations for the energy and water use metrics. For clothes washers capable of steam wash cycles, the measurements of energy and water consumption from the steam wash cycle with the hottest wash temperature would be included in the overall energy and water use calculations based on the temperature use factor (TUF) for steam wash. Table 4.1.1 of the test procedure specifies the current weight given to the consumption measurements for the different wash cycles. DOE believes extra hot and steam cycles would be reserved for the most heavily soiled loads, and would have similar use factors. However, DOE has tentatively assumed that the steam wash cycles would be selected somewhat fewer times than the extra hot cycle because on some models steam is available only as an option on certain settings. DOE is proposing to update Table 4.1.1 to include 0.02 as the TUF of a steam wash cycle, when available. Although DOE lacks data on consumer use of steam wash cycles, DOE believes these cycles would decrease the use of extra hot cycles, but would leave the use of hot, warm, and cold cycles unchanged. DOE therefore believes the 0.02 TUF associated with steam washes would correspond to a 0.02 decrease in the current TUFs associated with extra hot cycles, from 0.05 to 0.03 or 0.14 to 0.12, for a steam-capable clothes washer Table III.4 below shows the proposed Table 4.1.1, including specifications for a steam wash cycle, and updated warm rinse TUFs, as discussed below in section III.D.2.c.

TABLE III.4—TEMPERATURE USE FACTORS

Max wash temp available	≤135 °F (57.2 °C)	≤135 °F (57.2 °C)	≤135 °F (57.2 °C)	>135 °F (57.2 °C)	>135 °F (57.2 °C)	Steam	Steam
Number wash temp selections	Single	2 Temps	>2 Temps	3 Temps	>3 Temps	3 Temps	>3 Temps
TUF_s (steam)	NA	NA	NA	NA	NA	0.02	0.02
TUF_m (extra hot)	NA	NA	NA	0.14	0.05	0.12	0.03
TUF_h (hot)	NA	0.63	0.14	NA	0.09	NA	0.09
TUF_{ww} (warm/warm)	NA	NA	*0.27	*0.27	*0.27	*0.27	*0.27
TUF_w (warm)	NA	NA	0.22	0.22	0.22	0.22	0.22
TUF_c (cold)	1.00	0.37	0.37	0.37	0.37	0.37	0.37

*Only applicable to machines offering a warm/warm cycle. For machines with no warm/warm cycle, this value would be zero and the warm/cold TUF should be increased by 0.27.

DOE requests comment on the following issues: Whether the energy and water consumption of a steam wash cycle should be included in the test procedure; whether the proposed TUF associated with steam wash cycles is appropriate; and whether any data are available regarding consumer usage patterns of such cycles.

b. Self-Clean Cycles

Many residential clothes washers currently on the market offer a self-clean cycle. These cycles are used periodically with bleach and/or detergent but no clothes load to clean, deodorize, or sanitize the components that come into contact with water by preventing or eliminating mold, bacteria, and mildew. Self-clean cycles may require higher water temperatures and greater volumes of water than a normal cycle, and therefore potentially consume a substantial amount of energy. The current test procedure does not account for energy or water consumption attributable to self-clean cycles.

In response to the August 2009 framework document, DOE received comments from the Joint Comment and ASE recommending that DOE amend the test procedure to account for energy and water consumption from these periodic cleansing or sanitizing cycles. According to both commenters, the test procedure should also be amended to credit clothes washer designs that address mold and odor issues without the use of periodic sanitizing cycles. (Joint Comment, No. 14 at p. 3; ASE, No. 22 at p. 1).

In its research, DOE noted that many clothes washer user manuals include a recommendation for how frequently the consumer should run a self-clean cycle. DOE observed that the manufacturer-recommended frequency typically is once a month. Some manufacturers also recommend a cleaning cycle every certain number of wash cycles. DOE believes that these self-clean cycles are not accounted for in the proposed 295 wash cycles per year. Because these cycles may consume a significant amount of energy and water, DOE is proposing to include them in the calculation of the efficiency metric.

DOE is proposing to define a "self-clean mode" as a clothes washer operating mode that:

- Is dedicated to cleaning, deodorizing, or sanitizing the clothes washer by eliminating sources of odor, bacteria, mold, and mildew;
- Is recommended to be run intermittently by the manufacturer; and
- Is separate from clothes washing cycles.

DOE also proposes to integrate energy and water consumption in self-clean cycles into the overall energy efficiency metric, under the assumption that these cycles are typically run once per month. As discussed in section III.C.5, DOE proposes to define IMEF as the clothes container capacity in ft^3 divided by the sum, expressed in kWh, of:

- The total weighted per-cycle hot water energy consumption,
- The total weighted per-cycle machine electrical energy consumption,
- The per-cycle energy consumption for removing moisture from a test load,
- The per-cycle standby mode and off mode energy consumption, and
- The per-cycle energy consumption from any self-clean cycles.

DOE proposes to calculate the per-cycle energy consumption from self-clean cycles by:

- Measuring the hot and cold water consumption and the electrical energy consumption for a self-clean cycle,
- Calculating the per-cycle hot water energy consumption and summing with the per-cycle machine electrical energy consumption for the self-clean cycle, and
- Multiplying by the number of self-clean cycles per year (12) divided by 295 annual active washing mode cycles.

This approach apportions the annual energy use in self-clean mode to each annual active washing mode cycle. DOE notes that it only proposes to account for self-clean cycles in the IMEF calculation for clothes washers for which the manufacturer provides and/or recommends such cycles. If a clothes washer is designed to address mold and odor problems without the need for separate dedicated cleaning cycles, the per-cycle self-clean energy consumption will be zero.

DOE proposes to use a similar approach for including self-clean water consumption in the calculation of IWF (*see* section III.D.4.b). The total measured hot and cold water consumption for a self-clean cycle would be multiplied by 12 self-clean cycles per year divided by 295 annual active washing mode cycles. This per-cycle self-clean water consumption would be summed with the total weighted per-cycle water consumption in the active washing mode, then divided by clothes container capacity to obtain IWF.

DOE requests comment on self-clean cycles, including the proposed definition, the inclusion of self-clean cycle energy and water use into the overall energy efficiency metrics, and on whether any relevant data are available regarding self-clean cycles.

c. Adaptive Control Technologies

Adaptive control technologies can adjust parameters such as agitation speed, number of rinses, wash time, and wash and rinse temperatures based on the size, fabric mix, and soil level of a wash load. The current test procedure accounts for adaptive fill technologies, but no other types of adaptive controls.

AHAM, BSH Home Appliances Corporation (BSH), and Whirlpool commented in response to the August 2009 framework document that adaptive controls are already widely used in residential clothes washers. DOE agrees that multiple models are available on the market that use adaptive control technologies to respond to measured or inferred load size and fabric mix. However, DOE lacks data on the distribution of load size and fabric

content representative of actual consumer usage. DOE is also not aware of any residential clothes washers that currently incorporate soil sensing systems. According to multiple manufacturers that DOE interviewed, implementing soil sensing systems requires overcoming several technical challenges. For example, typical soil sensors have difficulty identifying a single soiled clothing item. Also, detergent foaming can interfere with control systems using turbidity sensors to monitor the clarity of the wash water.

DOE is aware that other consumer products employ adaptive controls, and that these are addressed in their respective test procedures. For example, many dishwashers incorporate adaptive controls by means of a turbidity sensor which adjusts the number and duration of wash and rinse cycles. The dishwasher test procedure accounts for these models through the use of soiled dishware loads. (10 CFR part 430, subpart B, appendix C)

If clothes washers become available that offer adaptive controls using a turbidity sensor, DOE could consider amending the clothes washer test procedure to measure energy and water consumption with a soiled wash load. DOE is aware of other industry and international clothes washer test procedures that use a soiled wash load to determine wash performance, including AHAM HLW–1, "Performance Evaluation Procedures for Household Clothes Washers," IEC 60456, "Clothes washing machines for household use—Methods for measuring the performance," and Standards Australia/Standards New Zealand (AS/NZS) 2040.1, "Performance of household electrical appliances—Clothes washing machines—Methods for measuring performance, energy and water consumption." [14] DOE could, for example, incorporate the test cloth soiling method from one of these test procedures into the DOE clothes washer test procedure to capture the energy and water consumption effects of adaptive controls.

DOE welcomes comment on whether there are any clothes washers available on the market offering soil-sensing adaptive controls, and on its tentative decision to account for only adaptive fill controls in the test procedure. DOE further invites information on the size distribution and fabric content of wash loads typical of consumer use, and comment on using a soiled test load to determine energy and water consumption in the presence of adaptive controls.

d. Demand Response Technology

Demand response technology enables an appliance to shift its activity based on interaction with the electric grid, utilities, or user programming. Appliances that can communicate with the electric grid or any other network would be considered to have a network mode as defined by IEC Standard 62301 FDIS. This standard defines network mode as a mode category that includes "any product modes where the energy using product is connected to a mains power source and at least one network function is activated (such as reactivation via network command or network integrity communication) but where the primary function is not active." IEC Standard 62301 FDIS also provides a note stating, "[w]here a network function is provided but is not active and/or not connected to a network, then this mode is not applicable. A network function could become active intermittently according to a fixed schedule or in response to a network requirement. A 'network' in this context includes communication between two or more separate independently powered devices or products. A network does not include one or more controls which are dedicated to a single product. Network mode may include one or more standby functions."

In response to the August 2009 framework document, DOE received multiple comments regarding demand response technologies in clothes washers. Energy Solutions, Pacific Gas and Electric Company (PG&E), Southern California Gas Company (SoCal Gas), San Diego Gas and Electric Company (SDG&E), and Southern California Edison Design & Engineering Services (SoCal Edison) (jointly, the California Utilities) commented that it is important for DOE standards to give credit not only to energy conservation, but to the reduction of peak demand from demand responsive controls. (California Utilities, No. 18 at p. 6) AHAM commented that DOE should evaluate the capability of residential clothes washers to provide peak load shedding capabilities through a "smart grid" infrastructure. (AHAM, No. 15 at p. 4) General Electric (GE) also commented in support of DOE considering demand responsiveness as a technology associated with residential clothes washers. (GE, No. 19 at p. 3) Samsung Electronics America (Samsung) commented that DOE should consider smart grid or grid-enabled appliance technologies for their effect on energy use as it drafts DOE's clothes washer test procedure. (Samsung, No. 22 at p. 4)

However, as mentioned in section III.C.2, DOE does not propose amending the test procedure to include any provisions for measuring energy consumption in network mode because it is unaware of any clothes washers currently available on the market that incorporate a networking function. At this time, DOE is unaware of any data regarding network mode in clothes washers that would enable it to determine appropriate testing procedures and mode definitions for incorporation into the test procedure. In particular, DOE is unaware of:

- Data and methods for the appropriate configuration of networks;
- Whether network connection speed or the number and type of network connections affect power consumption;
- Whether wireless network devices may have different power consumptions when the device is looking for a connection and when the network connection is actually established;
- How the energy consumption for clothes washers in a network environment may be affected by their product design and user interaction as well as network interaction; and
- Whether the network function could become active intermittently according to a fixed schedule or in response to a network requirement.

For these reasons, the proposed amendments in today's NOPR do not include the measurement of energy use in network mode. Provisions for testing power consumption in network mode could be incorporated into the test procedure through future amendments, once the appropriate data and testing methodologies become available. DOE welcomes comment on whether clothes washers that incorporate a networking function are currently available, and whether definitions and testing procedures for a network mode should be incorporated into the DOE test procedure. DOE also requests comment on appropriate methodologies for measuring energy consumption in a network mode, and data on the repeatability of such testing methodology.

2. Changes To Reflect Current Usage Patterns and Capabilities

a. Representative Annual Cycles

In the January 2001 final rule, DOE estimated the representative number of annual wash cycles per clothes washer as 392. 66 FR 3314. This number is not used in the calculations for the current energy efficiency metric, because MEF is calculated on a per cycle basis. In this

[14] AHAM and AS/NZS standards are available online at *http://webstore.ansi.org/*.

NOPR, DOE is proposing to include power consumption from modes other than active washing mode in the energy efficiency metric. As discussed above, doing so requires an estimate of the time a typical clothes washer spends in active washing, inactive, off, delay start, cycle finished, and self-clean modes. The number of annual wash cycles is used to determine the time spent in the active washing mode, and determines the remaining time to be allocated to the other possible modes.

DOE received comments in response to the August 2009 framework document on the number of average clothes washer cycles per year. Alliance Laundry Systems, LLC (ALS) commented that the annual cycles value should be revised to approximately 300 cycles per year, referring to Procter & Gamble (P&G) consumer studies which have been used by DOE in prior test procedure rulemakings. (ALS, No. 12 at p. 1) The Joint Comment and ASE stated that DOE should acquire data for an updated annual number of wash cycles because the current value in the test procedure is based on outdated consumer usage patterns and machine characteristics. (Joint Comment, No. 14 at p. 1; ASE, No. 22 at p. 1) AHAM stated that it supported the use of data from the 2005 "Residential Energy Consumption Survey" (RECS) in determining the annual energy and water consumption of residential clothes washers. (AHAM, No. 15 at p. 6) Additionally, Whirlpool commented that the RECS data has limitations, but that it was unaware of any more robust alternatives to determine annual energy and water consumption of residential clothes washers. (Whirlpool, No. 21 at p. 7)

The 2005 RECS compiles data on energy use in residential buildings from households across the United States. The survey has a section devoted to appliance usage, including residential clothes washer usage. The survey asked respondents to identify the average number of loads per week that they wash, with response options of 1 or fewer, 2 to 4, 5 to 9, 10 to 15, and more than 15 loads per week. DOE assigned a representative average number of wash cycles per year to each of these response categories, and calculated the weighted average. Using this method, DOE determined that the data show an average of 295 wash cycles per year.

DOE is aware that the "California Residential Appliance Saturation Survey" (California RASS) from 2004 also provides data on the use of residential appliances. For clothes washer use, the survey asks for the number of loads washed in the household during a typical week using hot, warm, and cold wash water temperature settings. There are 11 response options, ranging from zero to 10+ per week. DOE summed the average number of wash loads per week for each water temperature and scaled this weekly value to an annual value to determine the average number of wash cycles per year. Using this method, the California RASS data show an average of 283 wash cycles per year.

P&G also supplied DOE with data on typical consumer use of clothes washers. The P&G data show an average of 308 wash cycles per year. DOE review determined that the P&G data set contains fewer single-person households and more multiple-person households than the 2005 RECS data, which more closely approximates the household sizes shown in the latest sampling performed by the U.S. Census Bureau and the American Housing Survey in 2007.[15] DOE believes that the larger average household size in the P&G study could lead to the higher average annual wash cycles value found in the P&G data.

In today's notice, DOE is proposing 295 as the representative number of wash cycles per year based on the 2005 RECS data. DOE believes this is a more representative value than the results of the California RASS because the survey is nationwide rather than limited to a single State. DOE also believes the 2005 RECS value is more representative of average use than the value based on the P&G study due to the household size distribution of the data sets. Overall, however, the relatively small variation among the three estimates of annual clothes washer cycles supports DOE's tentative conclusion that 295 cycles per year is a reasonable value to include in its clothes washer test procedure.

DOE welcomes comment on whether 295 wash cycles per year is representative of typical consumer use, and whether the 2005 RECS is an appropriate source of data for this issue. DOE also seeks any additional data relevant to the representative number of annual clothes washer cycles.

b. Test Load Size Specifications

The current DOE clothes washer test procedure specifies the test load size for the active washing mode energy tests based on the clothes washer's container volume. The table specifying the test load sizes in the test procedure, Table 5.1, currently only covers clothes washer container volumes up to 3.8 ft^3. DOE is aware that multiple clothes washers available on the market have container volumes exceeding 3.8 ft^3.

ALS commented in response to the August 2009 framework document that it supports revising Table 5.1 to account for larger capacities because larger capacity clothes washers exist in the marketplace, for which Whirlpool filed a petition for waiver on November 21, 2005. 71 FR 48913. ALS also stated that it supports Whirlpool's petition. (ALS, No. 12 at p. 1) AHAM and Whirlpool commented that DOE should expand Table 5.1 to include washer capacities up to 6 ft^3. AHAM stated that the larger capacities should be addressed by continuing the linear relationship used in the current table. (AHAM, No. 15 at p. 2; Whirlpool, No. 21 at p. 1)

DOE also received comments from the Joint Comment and ASE opposing the expansion of the test load size specifications to cover container volumes up to 6 ft^3 unless DOE verifies the validity of the calculations used in Table 5.1 with current consumer data. Specifically, these commenters request that DOE verify the average load calculations across machines of different capacities. These commenters also stated that DOE should ensure that the calculations do not introduce a bias favoring clothes washers with larger capacities. (Joint Comment, No. 14 at pp. 1–2; ASE, No. 22 at p. 1)

In response to Whirlpool's November 2005 request for waiver, DOE granted an interim test procedure waiver to Whirlpool for three of Whirlpool's clothes washer models with container capacities greater than 3.8 ft^3. 71 FR 48913 (August 22, 2006). This notice contained an alternate test procedure, which extended the linear relationship between maximum test load size and clothes washer container volume in Table 5.1 to include a maximum test load size of 15.4 pounds (lbs) for clothes washer container volumes of 3.8 to 3.9 ft^3.

DOE is aware of limited data regarding typical clothes washer load sizes. In 2003, P&G conducted a survey on load size with 510 respondents, comprising 3367 loads of laundry. The data from this survey show an average load size of 7.2 lbs for top-loading machines, and 8.4 lbs for front-loading machines. These load sizes correspond to the average test loads for the 2.7–2.8 ft^3 and 3.3–3.4 ft^3 clothes washer capacity bins, respectively, in Table 5.1. These results are consistent with the shipment-weighted average tub volume of 3.05 ft^3 from the 2005 AHAM *Factbook.*

[15] Information on the American Housing Survey can be found on the U.S. Census Bureau Web site at *http://www.census.gov/hhes/www/housing/ahs/ahs.html.*

P&G has also noted that increases in average load size tend to correlate with increases in clothes washer capacities. DOE has found that from 1993 to 2005, tub capacities have increased by 14 percent, based on AHAM data, while the number of cycles per year has decreased by 17 percent, based on RECS data. Assuming that households continued to wash the same volume of clothes each year, the data imply that, on average, the wash loads were larger.

The limited data on this subject suggest that the current values in the test load size chart are appropriate, and extending the linear relationship between test load size and container capacity to larger capacities is valid. Thus, DOE proposes amending the clothes washer test procedure to establish test load size specifications for clothes washer container volumes up to 6.0 ft^3. The amendment would be based on a continuation of the linear relationship between test load size and clothes washer container volume currently in the DOE clothes washer test procedure. DOE welcomes comment on the proposed test load sizes, including whether the linear relationship between test load size and clothes washer container volume is representative of actual consumer use, and additional consumer use data relevant to this topic.

c. Use Factors

The clothes washer test procedure relies on use factors to weight different consumer behaviors in the overall energy and water consumption calculations. The factors are based on consumer use data and represent the fraction of all cycles that are run with certain settings or characteristics. The use factors in the test procedure cover wash and rinse temperatures, load sizes, and dryer use.

DOE received comments from the Joint Comment and ASE regarding usage factors in the current clothes washer test procedure. They stated that DOE should validate the use factors for minimum, average, and maximum loads, TUFs, and the DUF based on current data. They also stated that DOE should verify that the current use factors for load size—12 percent for minimum load size, 74 percent for average load size, and 14 percent for maximum load size—do not introduce a systematic bias favoring large capacity clothes washers. These factors also might not reflect current consumer usage because they were established in the 1990s and because the assumed downward trend in the number of annual wash cycles may indicate that loads are, on average, larger. The Joint Comment and ASE also suggested that DOE should reassess the load adjustment factor (LAF) used in the RMC calculation. This factor is intended to represent the ratio of maximum load size to average load size, but a fixed value of 0.52 is used despite the ratio changing as capacity increases according to the data in Table 5.1. (Joint Comment, No. 14 at pp. 1–3; ASE, No. 22 at p. 1)

DOE's responses to these comments on use factors are discussed separately in the following sections.

i. Load Size Use Factors

The load size use factors in the DOE test procedure represent the fraction of all wash cycles a typical consumer runs for the minimum, average, and maximum load sizes. DOE is not aware of recent data characterizing such usage patterns. Therefore, DOE is not proposing in today's notice to change the load size use factors. DOE welcomes input and data on consumer selection of load sizes.

ii. Temperature Use Factors

As stated in section III.D.1.a, DOE proposes amending the TUFs in its clothes washer test procedure to account for steam wash cycles, and to revise the warm rinse TUF. DOE believes the steam wash cycle TUF only affects the extra hot TUF, leaving the other TUFs unchanged.

Among the limited data on consumer wash and rinse temperature selections, the 2005 RECS and the 2004 California RASS both provide some information on temperature selections. However, each of these surveys only disaggregate temperature use into hot, warm, and cold cycle settings, providing no information on extra hot or steam use. Further, the RECS questionnaire asks respondents only for the water temperature selections usually used for the wash and rinse cycles of a clothes washer, which may not account for the less-frequent use of the hot wash cycle. Hot wash cycles are generally used for the most heavily soiled loads, which DOE believes would not represent the water temperature selection usually used by consumers. As a result, the 2005 RECS data may support a hot wash use factor that is lower than the actual value. The California RASS questionnaire asks for the number of wash loads per week typically washed at hot, warm, and cold temperature settings. While this phrasing captures the use of all three temperature selections, the California RASS only represents one State, and may not reflect consumer use nationwide. Table III.5 compares the TUFs from these two surveys with the current values in the DOE clothes washer test procedure for hot, warm, and cold washes, and for warm rinse.

TABLE III.5—TEMPERATURE USE FACTORS

Temperature setting	TUF, current test procedure	TUF, 2005 RECS	TUF, 2004 California RASS
Hot Wash	0.14	0.062	0.2
Warm Wash	0.49	0.542	0.41
Cold Wash	0.37	0.397	0.39
Warm Rinse	0.27	0.2	N/A

Because the factors from each source demonstrate general agreement, DOE believes that the TUFs in its test procedure are a reasonable estimate of current consumer use. While DOE is therefore proposing to amend only the TUFs for clothes washers offering a steam wash cycle as discussed in section III.D.1.a and shown in Table III.4, DOE welcomes comment on the proposed TUFs.

DOE also notes that it has recently received consumer usage survey data from a manufacturer which indicate that, for one clothes washer model with no cold rinse option on the cycle recommended for cotton clothes and a default cold rinse on all other cycles, users participating in the survey reported using warm rinse for 1.6 percent of all cycles. Although DOE does not believe that this conclusion necessarily applies to all consumers and residential clothes washer models, it remains open to considering the warm rinse TUF and welcomes further data

regarding consumer usage of warm rinse.

In addition, DOE proposes to revise the methods for measuring warm rinse and incorporating the revised measurement into the test procedure's calculations. The current test procedure addresses warm rinses by applying a TUF of 0.27 to account for the incremental energy consumption of a warm rinse over that of a cold rinse. This indicates that 27 percent of all loads across all temperatures use a warm rinse. Because the test procedure incrementally accounts for warm rinses, the relevant provisions require the measurement of hot water consumption for the warm rinse only and the measurement of the electrical energy consumed by the clothes washer to heat the rinse water only. For some clothes washers, though, it is not entirely clear when water consumption for the wash cycle ends and rinse begins because multiple fill and drain events may occur in various sequences.

To address this uncertainty, DOE believes that it is more appropriate to measure energy and water consumption over an entire cycle that utilizes warm rinse. DOE believes that most clothes washers currently available on the market allow users to select a warm rinse only with a warm wash cycle. DOE is, therefore, proposing to establish a TUF for a full warm wash/warm rinse cycle and to eliminate the incremental use factor currently attributed to warm rinse. DOE believes that the value of this incremental use factor of 0.27 would represent a valid TUF for the warm wash/warm rinse cycle. For those clothes washers with such an option, DOE is also proposing to decrement the warm wash/cold rinse TUF by a corresponding amount, reducing it from 0.49 to 0.22. DOE further proposes that the warm wash/warm rinse TUF would not be applicable for clothes washers with one or two wash temperature settings because these washers would not be capable of warm wash.

DOE is not proposing to amend the TUFs for wash temperature selections other than the warm wash. Additionally, the proposed TUFs for warm/cold and warm/warm sum to the current warm wash TUF. Overall, the warm wash temperature selection would receive the same weight in the energy and water consumption calculations.

DOE recognizes that not all clothes washers offer a warm/warm temperature selection under the normal wash cycle setting recommended for washing cotton or linen clothes (hereafter, the "Normal" setting). For these clothes washers, if a warm/warm cycle is available in any other wash cycle setting that employs agitation/tumble operation, spin speed(s), wash times, and rinse times that are largely similar to the "Normal" cycle, the warm/warm cycle would be tested using the wash cycle setting that would best reflect typical consumer use. Under the current test procedure, only the hot water consumption for the warm rinse and the electrical energy consumed by the clothes washer to heat the rinse water are required to be measured for this cycle. The proposed test procedure would require measuring energy and water consumption over the complete warm wash/warm rinse cycle. As a result, MEF measured under the current test procedure could differ from the MEF measured with under the proposed revisions. During the ongoing energy conservation standards rulemaking, DOE expects to analyze potential effects of the proposed warm rinse methodology on measured MEF and incorporate any such effects, as appropriate, into any amended standards.

As stated above, DOE welcomes comment on these proposed TUFs, including steam wash and warm wash/warm rinse cycles, and on whether any other consumer use data regarding temperature setting selection is available. DOE also requests comment and any relevant data on whether the proposed method of incorporating warm rinse would affect MEF ratings.

iii. Dryer Use Factor

DOE investigated whether the DUF of 0.84 in its clothes washer test procedure reflects current consumer usage. The 2005 RECS includes data on both clothes washer and clothes dryer use. As stated previously in section III.D.2.a, AHAM and Whirlpool both commented in support of using RECS data for representative annual cycles, because they believe no other alternative data set is available. (AHAM, No. 15 at p. 6; Whirlpool, No. 21 at p. 7)

Analysis of the RECS data shows that, for households with both a clothes washer and dryer, the average DUF is 0.96. For all households with a clothes washer, the average DUF is 0.91. This use factor is lower because it includes households with only a clothes washer and no dryer. DOE also analyzed the 2004 California RASS to determine that its data show a DUF of 0.86 for households with both a clothes washer and dryer. This dryer use factor is based on 283 clothes washer cycles per year as supported by the California RASS, not the proposed 295 cycles per year in today's NOPR. Including households without a clothes dryer, the California RASS data show a DUF of 0.76.

DOE proposes amending its clothes washer test procedure to include a DUF of 0.91, based on the 2005 RECS. DOE is proposing 0.91 rather than 0.96 because the clothes washer test procedure aims to estimate the energy use of all clothes washers, regardless of clothes dryer ownership. DOE is proposing to use the value derived from the 2005 RECS rather than the 2004 California RASS to be consistent with the proposed number of wash cycles per year and because, as stated in section III.D.2.a, the RECS data represent the entire country rather than one State. DOE welcomes comment on the proposed value of 0.91 for the DUF and using the RECS data to calculate this value.

iv. Load Adjustment Factor

Load Adjustment Factor (LAF) represents the ratio of maximum load size to average load size. This ratio is used in the calculation of the energy required to remove moisture from the test load. The RMC value used in this calculation is based only on tests using the maximum test load, so the LAF is used to scale this value down to the average load size. DOE lacks information warranting adjusting this value or changing it from a fixed value to one that varies as a function of average load size, and is therefore not proposing to amend the LAF in the test procedure. DOE welcomes comments on appropriate adjustments that could be made to the LAF.

3. Test Cloth

The current clothes washer test procedure requires the use of closely-specified test cloth for the energy test cycles. The test cloth affects the calculated energy consumption largely through the RMC value. RMC is calculated as the ratio of the weight of water absorbed by the test cloth after a complete energy cycle to the initial weight of the "bone dry" test cloth, multiplied by 100 percent. The RMC is then used to calculate the per-cycle energy consumption for removal of moisture from the test load. Because the test cloth plays a central role in determining energy consumption, the test procedure includes provisions to ensure consistent and accurate results. The test cloth characteristics can vary based on production lot, or even within the same lot, so the test procedure includes a calibration procedure to provide consistent results for all test cloth.

DOE received multiple comments in response to the August 2009 framework

document regarding the test cloth used in its clothes washer test procedure. ALS commented that DOE should revise the test procedure to improve test cloth calibration auditing. (ALS, No. 12 at p. 1) AHAM submitted detailed comments on this issue, including a proposal it sent to DOE on September 22, 2008, that addresses energy test cloth tolerances, provides additional detail for determining RMC, and removes redundant sections regarding preconditioning the test cloths. AHAM also commented that DOE should provide guidance and/or support on the annual test cloth correlation work, including a proposal for the creation of a DOE Test Cloth Advisory Panel. (AHAM, No. 15 at pp. 2, 10, 14–18, 34) In a letter to DOE sent March 29, 2010, AHAM confirmed that the AHAM DOE Test Cloth Task Force, which includes AHAM members, BSH, Electrolux Home Products, GE, Samsung, Whirlpool, and SDL Atlas, supported the test cloth-related changes to the test procedure that were proposed in AHAM's comments submitted for the framework document. Whirlpool commented in support of the AHAM test cloth proposal. Whirlpool also commented that DOE should provide guidance and/or support on the test cloth issues not addressed by the current test cloth supplier, which include quality, correlation coefficients, and the availability of new fabric lots. (Whirlpool, No. 21 at pp. 1–2)

DOE believes that the test cloth specifications that AHAM proposed represent the industry's consensus on the available means to limit uncertainty in the test procedure due to variations in the test cloth properties. DOE is therefore proposing to update the sections of the test procedure regarding test cloth to reflect the changes in September 22, 2008, proposal included in the AHAM comment and supported by Whirlpool and the Test Cloth Task Force. The current test procedure does not specify any tolerances for the size and weight of the energy test cloths. DOE is proposing the following tolerances:

- In section 2.6.1, "Energy Test Cloth," the energy test cloth shall be 24 ± ½ inches by 36 ± ½ inches (61.0 ± 1.3 cm by 91.4 ± 1.3 cm) and hemmed to 22 ± ½ inches by 34 ± ½ inches (55.9 ± 1.3 cm by 86.4 ± 1.3 cm) before washing;
- In section 2.6.2, "Energy Stuffer Cloth," the energy stuffer cloth shall be 12 ± ¼ inches by 12 ± ¼ inches (30.5 ± .6 cm by 30.5 ± .6 cm) and hemmed to 10 ± ¼ inches by 10 ± ¼ inches (25.4 ± .6 cm by 25.4 ± 0.6 cm) before washing; and
- In section 2.6.4.2, the fabric weight specification shall be 5.60 ± 0.25 ounces per square yard (190.0 ± 8.4 g/m^2).

According to AHAM, these tolerances are supported by test cloth supplier data. DOE believes that manufacturers generally agree with these updated tolerances, as they were proposed through AHAM. It also believes that specified tolerances will result in consistency across lots of test cloth.

The current test procedure also contains redundant sections regarding the test cloth specifications and preconditioning. DOE proposes to delete the redundant sections 2.6.1.1–2.6.1.2.4. These sections were made obsolete in the 2001 Final Rule, which added sections 2.6.3 through 2.6.7.2 into Appendix J1. 66 FR 3314. However, DOE proposes to use in section 2.6.4.3 the thread count specification from deleted section 2.6.1.1(A), of 65 × 57 per inch (warp × fill), based on supplier data. Additionally, DOE proposes to maintain a shrinkage limit, relocated from section 2.6.1.1(B) to new section 2.6.4.7, but to increase the limit from 4 percent to 5 percent on the length and width. DOE also proposes to require the cloth shrinkage be measured as per the American Association of Textile Chemists and Colorists (AATCC) Test Method 135–2004, "Dimensional Changes of Fabrics after Home Laundering." These revisions are also supported by supplier data, according to AHAM. (AHAM, No. 15 at p. 15)

The current DOE test procedure uses extractor tests of up to 500 units of gravitational acceleration (g) in determining the RMC correlation curve for test cloth lots. Clothes washers currently available on the market are capable of higher spin speeds that achieve g-forces higher than 500 g. DOE is therefore proposing to include an additional set of extraction tests at 650 g. Because of the prevalence of higher spin speeds, DOE is also proposing to remove the requirement that the 500 g requirement be used only if a clothes washer can achieve spin speeds in the 500 g range. These proposed amendments will result in 60 extractor RMC test runs required for correlation testing rather than the currently required 48. DOE is also proposing to update Tables 2.6.5—Matrix of Extractor RMC Test Conditions, and Table 2.6.6.1—Standard RMC Values (RMC Standard) to include tests at 650 g. The proposed updated Table 2.6.6.1 is shown below in Table III.6, and it contains the additional standard RMC values at 650 g that were suggested by AHAM and supported by the AHAM DOE Test Cloth Task Force.

TABLE III.6—STANDARD RMC VALUES (RMC STANDARD)

"g Force"	RMC percentage			
	Warm soak		Cold soak	
	15 min. spin	4 min. spin	15 min. spin	4 min. spin
100	45.9	49.9	49.7	52.8
200	35.7	40.4	37.9	43.1
350	29.6	33.1	30.7	35.8
500	24.2	28.7	25.5	30.0
650	23.0	26.4	24.1	28.0

AHAM also commented on certain equipment necessary for extractor RMC tests. Specifically, AHAM suggested updating the manufacturer specified for the extractor from Bock Engineered Products to North Star Engineered Products, Inc., although the extractor model number remains the same. AHAM also suggested updating the requirements for bone drying the test cloth in preparation for determining the RMC of the test loads in the extractor tests, including a requirement for using a clothes dryer capable of heating the test cloth to over 210 degrees Fahrenheit (°F) (99 degrees Celsius (°C)). AHAM also suggested clarifications to the requirements for bundling and draining the test cloth prior to completing the extractor spin cycles. These clarifications include procedures to create loose bundles of four test clothes each, as well as a time limit of 5 seconds for gravity draining the bundles after

soaking and 1 minute for overall draining and loading of all bundles into the extractor. Whirlpool stated that it supports these revisions and clarifications. (AHAM, No. 15 at pp. 17–18; Whirlpool, No. 21 at p. 1) DOE concurs that these revisions are appropriate. In particular, DOE conducted extractor testing and observed that handling the test cloth as specified by AHAM produces consistent and repeatable RMC measurements for use in developing RMC correction curves. DOE also notes that North Star Engineered Products, Inc. operates at the same location and supplies the same model of extractor as the previously specified Bock Engineered Products, and that AHAM's proposed requirements for a bone dryer add specificity that was previously lacking in the test procedure and have general industry approval. Therefore, DOE proposes in today's notice to amend its clothes washer test procedure in sections 2.6.5.1 and 2.6.5.3 as discussed above, and add new section 2.12 with the bone dryer specifications.

AHAM also recommended that DOE add a section 2.6.5.3.1.2 to include a "Bone Drying Procedure." (AHAM, No. 15 at p. 17) DOE finds that this procedure is duplicative of the definition of "bone-dry" in section 1 of its test procedure, and, therefore, is not proposing to amend section 2.6.5.3.1 as suggested by AHAM.

DOE requests comment on the proposed updated test cloth tolerances and correlation procedure. DOE also requests any data related to the test cloth and correlation procedures.

4. Other Revisions and Clarifications

a. Clothes Washer Capacity Measurement Method

The current clothes washer test procedure requires measuring clothes container capacity as "the entire volume which a dry clothes load could occupy within the clothes container during washer operation." 10 CFR part 430, subpart B, appendix J1. The procedure involves filling the clothes washer with water, and determining the volume based on the added weight of water divided by its density. Specifically, the test procedure requires that the clothes container be filled manually with either 60 °F ± 5 °F (15.6 °C ± 2.8 °C) or 100 °F ± 10 °F (37.8 °C ± 5.5 °C) water to its "uppermost edge". *Id.*

DOE became aware that this general specification of the water fill level could lead to multiple capacity measurements that do not reflect the actual capacity available for washing clothes. DOE conducted capacity tests on a small sample of clothes washers to observe the different possible fill levels and to determine the variability associated with the current capacity test method. Comparison of measured capacities to rated values for the models in DOE's test sample showed that the majority of the reported capacities varied from DOE's measurements, some by as much as 0.5 ft^3. To provide more specific instructions on measuring the clothes container capacity, DOE issued draft guidance interpreting the maximum fill level required by the existing test procedure, available at *http://www1.eere.energy.gov/buildings/appliance_standards/residential/pdfs/frequently_asked_questions_cw_final_05-13-2010.pdf.* This draft guidance determines the maximum fill level (*i.e.,* the "uppermost edge") as the highest horizontal plane that a clothes load could occupy with the clothes container oriented vertically.

Separate from development of the guidance interpreting the fill level required by the existing test procedure, DOE sought comment in the August 2009 framework document on whether improvements to the existing test procedure were warranted. BSH commented that a performance assessment related to claimed load size would significantly benefit the consumer. According to BSH, comparing clothes container volumes between "regular efficiency" vertical-axis, high efficiency vertical-axis, and horizontal-axis clothes washers can be misleading. BSH stated that capacity should be linked to performance to better describe the utility of the appliance. (BSH, No. 9 at p. 2) The Joint Comment and ASE stated that the test procedure capacity measurement should reflect the useful volume of the clothes container that is actually available for clothes washing. The two comments noted that in 1995 DOE received information from Maytag that the clothes container volumes for vertical-axis machines could be overstated by 15 to 20 percent. The two comments stated that DOE should modify the test procedure to provide more accurate measurements if this overstatement is still occurring today. (Joint Comment, No. 14 at pp. 2–3; ASE, No. 22 at p. 1) Samsung also commented that DOE should propose to clarify how clothes container capacity for vertical-axis clothes washers is measured so that the result would reflect the usable capacity of the clothes washer. Samsung suggested the Committee Draft for Vote of IEC Standard 60456, Fifth Edition as a possible source for the clarification. That document specifies filling the clothes container with water "to its uppermost edge which may be used to fill in clothes, respecting manufacturer instructions." Samsung notes that manufacturers instruct consumers to fill clothes to the top of the clothes container's internal basket. (Samsung, No. 24 at pp. 1–2) ALS commented that DOE should revise the test procedure to clarify that, for vertical-axis clothes washers, the "uppermost edge" terminating point for the "capacity" measurement should be defined as the "top of the tub cover." (ALS, No. 12 at p. 1) ASAP expressed concern that the advertised capacity of a specific model is typically larger than the capacity that's reported to ENERGY STAR, CEC, and other public databases. (ASAP, Public Meeting Transcript, No. 7 at p. 20) According to the Joint Comment, the advertised capacity may be based on the DOE capacity, multiplied by an IEC conversion factor of 15/13, but that this conversion may not be made apparent. (Joint Comment, No. 14 at p. 2)

DOE believes that these comments indicate that improvements to the description of the fill level required by the current test procedure could result in more stable, accurate, representative, and repeatable capacity measurements. The following paragraphs describe DOE's proposed changes to the test measurements for both horizontal-axis and vertical-axis clothes washers.

For vertical-axis clothes washers, DOE proposes that the clothes container be filled to the uppermost edge of the rotating portion, including any balance ring. In tests DOE conducted on a limited sample of residential clothes washers for this rulemaking, DOE observed the maximum height to which the dry clothes could be filled in a vertical-axis clothes washer technically includes space above the upper surface of the stationary portion over the wash tub (commonly referred to as the tub cover.) However, in most cases, if clothes were placed in that region during a wash cycle, it is likely that portion of the load would not interact with water and detergent properly, and that entanglement would also likely occur. Based on its tests and review of manufacturer recommendations provided in product manuals, DOE believes the uppermost edge of the rotating portion of the clothes container for a vertical-axis clothes washer would be the highest horizontal plane that a clothes load could occupy while maintaining proper wash performance and ensuring a stable, accurate, and repeatable measurement. This would include the uppermost edge of any balance ring attached to the clothes container. Additionally, any volume

within the clothes container that a clothing load could not occupy during active washing mode operation should be excluded from the measurement.

For horizontal-axis clothes washers, DOE proposes that the clothes container be filled to the uppermost edge that is in contact with the door seal. DOE believes that the uppermost edge of the clothes container would typically be the portion of the door seal in contact with the door during operation. DOE also considered using the inner surface of the closed door as a possible definition of the uppermost edge of the clothes container. However, DOE observed during testing that small variations in the leveling of the clothes container's upper edge can make it difficult to determine in a repeatable way the water level that just meets the inner door surface. Additionally, measuring to the innermost surface of the closed door would not account for the extra volume available due to other parts of the door not projecting as far into the clothes container. Therefore, DOE believes that the uppermost edge of the clothes container that is in contact with the door seal for a horizontal-axis clothes washer would be the highest horizontal plane that a clothes load could occupy, as determined with the door open. Any volume within the clothes container that the clothing load could not occupy during active washing mode operation must be excluded.

DOE believes the proposed amendments would provide a consistent approach to determining the fill level and result in a representative capacity measurement. DOE is aware of other methods for measuring the clothes container capacity, such as those contained in IEC Standard 60456, but believes these other methods create an unnecessary test burden by using uncommon materials to measure the container capacity, and may not result in a capacity that is representative of actual use. DOE welcomes comment on whether the proposed method for measuring clothes container capacity provides a representative measurement of the volume which a dry clothes load could occupy within the clothes container during washer operation. DOE also welcomes comment on whether any other valid measurement method is available.

b. New Measure of Water Consumption

The calculation for WF currently set forth in the clothes washer test procedure is derived from only the water consumed during the cold wash/cold rinse wash cycle. 10 CFR part 430, subpart B, appendix J1. Hot water consumption is measured for all wash cycles, including warm, hot, and extra hot washes, but it is only used to determine the energy needed to heat the water. This presents an opportunity to bias the test procedure results by setting cold wash water consumption very low, while using more water at higher temperatures, in order to minimize the weighted average water consumption on which the WF is based.

To prevent such bias and to produce the most representative value of water consumption, DOE proposes to include water consumption from all energy test cycles in the calculation of the new integrated metric, IWF. DOE believes the proposed IWF calculation will provide a more representative measure of water consumption and will not substantially increase manufacturers' test burden. This is because hot water consumption is already recorded for all wash cycles and the equipment for measuring cold water consumption must be in place for the cold wash cycles. DOE believes that, in practice, manufacturers likely record the data for cold water consumption at other wash temperatures as well even though it is not required by the current test procedure.

DOE therefore proposes to measure both the hot and cold water consumption for each test cycle in order to calculate IWF. Doing so will provide total water consumption for each test cycle, including self-clean cycles. The total weighted per-cycle water consumption will equal the self-clean cycle water consumption multiplied by the number of self-clean cycles per year divided by 295 annual use cycles, plus the total water consumption for each test cycle multiplied by its TUF and load usage factor. IWF is then equal to this total weighted per-cycle water consumption divided by the clothes container volume.

DOE welcomes comment on the validity of including water consumption from all test cycles, including self-clean cycles, in the proposed calculation of IWF. DOE also requests comment on whether the IWF calculation would result in a significant test burden.

c. Energy Test Cycle

The energy test cycle is the cycle used in determining the MEF and WF for a clothes washer. The current clothes washer test procedure defines the energy test cycle as "(A) the cycle recommended by the manufacturer for washing cotton or linen clothes, and includes all wash/rinse temperature selections and water levels offered in that cycle, and (B) for each other wash/rinse temperature selection or water level available on that basic model, the portion(s) of other cycle(s) with that temperature selection or water level that, when tested pursuant to these test procedures, will contribute to an accurate representation of the energy consumption of the basic model as used by consumers. Any cycle under (A) or (B) shall include the agitation/tumble operation, spin speed(s), wash times, and rinse times applicable to that cycle, including water heating time for water heating clothes washers." 10 CFR 430, subpart B, appendix J1.

Many machines provide a "normal" cycle setting, or some equivalent, which is typically used for washing cotton or linen clothes. Testing conducted using the normal cycle setting satisfies part A of the energy test cycle definition. However, many of these normal cycle settings limit range of wash and rinse temperature selections. For example, they may offer cold and warm wash temperatures with cold rinse, but may not allow the user to select a hot or extra hot wash, or a warm wash with warm rinse. Testing only the wash temperature options available to the normal cycle, despite being able to access the other temperature options by switching out of the normal cycle, may neglect part B of the energy test cycle definition, which requires manufacturers to switch out of the normal cycle to a different setting that allows the other temperature settings to be selected and tested if such testing contributes to an accurate representation of energy consumption as used by consumers.

DOE understands that the requirement to test different temperature options "if such testing contributes to an accurate representation of energy consumption as used by consumers" has caused some confusion. As a result, DOE proposes to amend part B of the energy test cycle definition to definitively account for temperature options available only outside the normal cycle. The proposed part (B) would read "* * * (B) if the cycle described in (A) does not include all wash/rinse temperature settings available on the clothes washer, and required for testing as described in this test procedure, the energy test cycle shall also include the portions of a cycle setting offering these wash/rinse temperature settings with agitation/tumble operation, spin speed(s), wash times, and rinse times that are largely comparable to those for the cycle recommended by the manufacturer for washing cotton or linen clothes. Any cycle under (A) or (B) shall include the default agitation/tumble operation, soil level, spin speed(s), wash times, and rinse times applicable to that cycle,

including water heating time for water heating clothes washers." DOE believes that requiring manufacturers to test temperature options available outside the normal cycle would result in clear testing requirements. Combined with appropriate TUFs, the proposed test procedure would produce results that measure energy consumption of clothes washers during a representative average use cycle or period of use, as required by 42 U.S.C. 6923(b)(3).

DOE notes that it has issued draft guidance, available at *http://www1.eere.energy.gov/buildings/appliance_standards/residential/pdfs/warm_rinse_guidance_july_30.pdf,* interpreting the definition of energy test cycle under the existing clothes washer test procedure. This draft guidance states DOE's view that under the existing test procedure, the energy test cycle should include the warm rinse of the cycle most comparable to the cycle recommended by the manufacturer for washing cotton or linen clothes if warm rinse is not available on the cotton or linen cycle. In addition, DOE reiterates in the guidance that under the existing test procedure, warm rinse is to be measured as being used 27 percent of the time, regardless of whether the warm rinse is available on the cotton or linen cycle.

DOE also notes that it has received information from a manufacturer that suggests that cycles that vary from the cotton or linen cycle by means of lower spin speed result in a higher RMC than would be measured for the cotton or linen cycle, and therefore would not be largely comparable to those for the cycle recommended by the manufacturer for washing cotton or linen clothes or contribute to an accurate representation of energy consumption as used by consumers if they were included in the energy test cycle.

DOE requests comment on the proposed definition of the energy test cycle and on how manufacturers currently address wash/rinse temperature selection under the current definition, as well as the percentage of loads in which consumers use warm rinse, as represented by the TUFs discussed in section III.D.2.c.ii. DOE also requests comment on the selection of cycles to be included in the energy test cycle under section 1.7(B) of the test procedure to definitively account for temperature options available only outside the normal cycle.

d. Detergent Specifications for Test Cloth Preconditioning

The DOE clothes washer test procedure currently specifies that the test cloth be preconditioned by performing two normal wash-rinse-spin cycles using AHAM Standard detergent IIA. 10 CFR part 430, subpart B, appendix J1. This detergent is obsolete and no longer supplied by AHAM or other suppliers. The current AHAM standard detergent is identified as AHAM standard test detergent Formula 3. Because AHAM Standard detergent IIA is no longer available to manufacturers, DOE proposes amending the clothes washer test procedure to specify the use of AHAM standard test detergent Formula 3 in test cloth preconditioning.

Tests that DOE conducted with AHAM standard test detergent Formula 3 according to the existing DOE clothes washer test procedure suggest that the dosage that is specified in section 2.6.3.1 for AHAM Standard detergent IIA—6.0 grams (g) per gallon of water—may no longer be appropriate. At the end of test cloth preconditioning, undissolved clumps of detergent were observed in the cloth load. Further, DOE conducted extractor tests that indicate that detergent dosage affects RMC measurements by as much as several percent.

Instructions provided with AHAM standard test detergent Formula 3 by one supplier of standard test materials, SDL Atlas, indicate that the appropriate dosage for this detergent is 27.0 g + 4.0 g per pound of cloth load. In addition, AHAM's clothes dryer test standard, AHAM HLD–1–2009, specifies the same dosage of AHAM standard test detergent Formula 3 for test cloth pre-treatment. Due to the problems associated with the current dosage specification in the DOE clothes washer test procedure, DOE is tentatively proposing to amend the test procedure to require 27.0 g + 4.0 g/lb of AHAM standard test detergent Formula 3 for test cloth preconditioning. However, DOE is also seeking further information on the appropriate detergent concentration.

e. Clothes Washer for Test Cloth Preconditioning

Section 2.6.3.1 of the current DOE clothes washer test procedure delineates the requirements for preconditioning the test cloths using a clothes washer for which a maximum water level can be set, the load can be washed for 10 minutes, and the wash temperature can be controlled to 135 °F ± 5 °F (57.2 °C ± 2.8 °C). 10 CFR part 430, subpart B, appendix J1. In interviews with DOE, multiple manufacturers expressed concern that there are currently few clothes washers commercially available that meet these requirements. They also expressed concern that the more stringent energy conservation standards that may result from the residential clothes washer standards rulemaking may eliminate such clothes washer models from the market entirely. DOE seeks information regarding an alternative specification for the clothes washer to be used for preconditioning that would allow for the use of more recent models.

f. Water Supply Pressure

Section 2.4 of the current DOE clothes washer test procedure provides the water pressure test conditions. According to this section, "[t]he static water pressure at the hot and cold water inlet connection of the clothes washer shall be maintained at 35 pounds per square inch gauge (psig) ±/− 2.5 psig (241.3 kPa ± 17.2 kPa) during the test. The static water pressure for a single water inlet connection shall be maintained at the 35 psig ± 2.5 psig (241.3 kPa ± 17.2 kPa) during the test. A water pressure gauge shall be installed in both the hot and cold water lines to measure water pressure." 10 CFR part 430, subpart B, appendix J1. DOE believes this description is ambiguous as to whether the nominal 35 psig water pressure is to be set under static (non-flow) conditions and allowed to drop during flow due to the head losses in the line, or whether the 35 psig is to be maintained continuously under all flow conditions during the test. In addition, the test procedure does not specify where the pressure measurement is to be taken, which could lead to different results depending on the pressure drops associated with the water supply lines between the gauge and the connection to the clothes washer.

Tests conducted by DOE on a small sample of both front- and top-loading clothes washers indicate that water supply pressure can affect water consumption during a wash cycle, and the effect of water supply pressure on total water use can vary depending on the temperature settings selected. For tests at 10, 20, and 35 psig water supply pressure under flow conditions, water consumption varied by 10–30 percent among the different pressure conditions for either hot wash/cold rinse or cold wash/cold rinse cycles.

The test data suggest that a water supply pressure of 20 psig under flow conditions results in the most consistent water use among different cycles for a given clothes washer. DOE believes that 20 psig may represent typical static pressure under flow conditions that would result from 35 psig at non-flow conditions. DOE further believes that these conditions may be more representative of water supply

conditions that would be found in typical residential settings than a constant static pressure of 35 psig even under flow conditions.

However, DOE test procedures for other residential appliances more closely specify the 35 psig requirement as being applicable under flow conditions. For example, section 2.4 of the DOE test procedure for dishwashers (10 CFR part 430 subpart B, appendix C) specifies to "maintain the pressure of the water supply at 35 ± 2.5 pounds per square inch gauge (psig) when the water is flowing." Dishwashers and clothes washers would likely have the same water supply pressure when installed in a house, so the test procedures for these products should include consistent water supply pressure specifications.

DOE is uncertain about which interpretation of the water supply pressure (*i.e.,* 35 psig only for no-flow conditions, or 35 psig under all flow conditions) has been assumed by manufacturers and certification laboratories. DOE also lacks sufficient information as to which interpretation produces representative, repeatable water consumption measurements. For these reasons, DOE is not proposing in today's notice amendments to its clothes washer test procedure to more closely specify water supply pressure. DOE seeks information about the conditions under which clothes washers are currently tested and invites comment on the appropriate specification of the water supply pressure.

g. Additional Revisions and Clarifications

Section 2.6.4.5.3 of the current test procedure discusses standards incorporated by reference for verifying the absence of water repellent finishes on the energy test cloth: AATCC Test Method 118–1997, "Oil Repellency: Hydrocarbon Resistance Test" and AATCC Test Method 79–2000, "Absorbency of Bleached Textiles." 10 CFR part 430, subpart B, appendix J1. To be consistent with referenced standards in other DOE test procedures, DOE proposes to remove this paragraph from the clothes washer test procedure and, instead, include these two AATCC test procedures in 10 CFR 430.3, "Materials Incorporated by Reference." In addition, DOE proposes adding to 10 CFR 430.3 the newly referenced AATCC Test Method 135–2004, "Dimensional Changes of Fabrics after Home Laundering" for measuring shrinkage of the energy test cloth.

Section 3.8.4 provides test methods for measuring RMC for clothes washers that have options that result in different RMC values, such as multiple selection of spin speeds or spin times. The methodology requires conducting tests to measure RMC at maximum spin settings with the maximum test load size for cold rinse and, if any, for warm rinse, and then repeating the tests at minimum spin settings. These tests would result in two values of RMC at maximum load size, which are weighted to obtain final RMC. These two values are currently identified as $RMC_{max\ extraction}$ and $RMC_{min\ extraction}$, which do not correspond to the nomenclature used in the sections from which they are derived, sections 3.8.2 or section 3.8.3, respectively. In those sections, the measurement is designated as RMC_{max}. DOE proposes to modify the nomenclature in section 3.8.4 to clarify that these are the values obtained from either section 3.8.2 or section 3.8.3.

Section 4.1.4 of the current clothes washer test procedure calculates the total per-cycle hot water energy consumption using gas-heated or oil-heated water. The equation listed in this section contains a clerical error in the symbol for total weighted per-cycle hot water energy consumption. DOE proposes amending the equation to replace the incorrect symbol, H_T, with the correct symbol, HE_T. DOE would apply this amendment to both existing appendix J1 and new appendix J2 in 10 CFR part 430 subpart B.

Section 4.5 of the current clothes washer test procedure provides for the calculation of Energy Factor (EF). EF was the energy efficiency metric used to establish energy conservation standards for clothes washers manufactured before January 1, 2004. 10 CFR 430.32(g). This metric is no longer used to determine compliance with energy conservation standards, or in any other related metrics. For example, the EnergyGuide labeling requirements specify identification of annual operating costs. 16 CFR part 305, appendix F1, appendix F2. Annual operating cost is based on the per-cycle energy consumption, rather than EF or MEF. 10 CFR 430.23(j). Therefore, DOE proposes to remove the obsolete calculation of EF from the clothes washer test procedure.

5. Test Procedure Performance Specifications

The current DOE clothes washer test procedure does not include any provisions for evaluating the wash quality of a clothes washer. The intent of the test procedure is to determine the water and energy consumption of a clothes washer, regardless of its wash capabilities.

In response to the August 2009 framework document, DOE received multiple comments regarding adding performance measures to the clothes washer test procedure. AHAM and BSH commented that DOE should evaluate the feasibility of incorporating a performance measure into the test procedure because, according to both, the efficiency level 4 and max-tech MEFs and WFs proposed in the August 2009 framework document are approaching limits at which product performance and consumer satisfaction may become an issue. AHAM noted it has a standard addressing performance, AHAM HLW–1, which is harmonized with IEC Standard 60456, "Clothes washing machines for household use—Methods for measuring the performance." Additionally, AHAM and BSH stated that Europe requires a performance rating in addition to energy and water consumption requirements. BSH stated that DOE should review IEC Standard 60456 for methods of assessing performance. (AHAM, No. 15 at p. 2; BSH, No. 9 at p. 1) ALS also expressed concern that the standards have reached a point where increased efficiency levels will result in unacceptable washing, rinsing, and expected consumer utility performance, especially in the standard capacity vertical-axis product class. According to ALS, washing clothes requires both water and thermal energy, but higher efficiency standards require decreasing both. ALS commented that there already appears to be "consumer backlash" from some owners of high-efficiency clothes washers regarding the ability of these washers to clean their laundry as expected. ALS recommended that DOE examine AHAM HLW–1, IEC Standard 60456, and AS/NZS 2040.1 as possible performance test procedures. (ALS, No. 12 at pp. 1–2) Whirlpool commented that many of the candidate standard levels in the August 2009 framework document could only be met by significantly compromising product performance, and therefore provisions to ensure proper wash performance, rinse performance, and an absence of fabric damage must be added to the test procedure. The comment referenced the AHAM test procedure, HLW–1–2007, as a source for such performance criteria. (Whirlpool, No. 21 at p. 2)

DOE has carefully considered these comments and recognizes the benefits of wash performance characterization, but is not proposing to incorporate measures of wash performance into the clothes washer test procedure. As stated in EPCA, "[a]ny test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use * * * or

estimated annual operating cost of a covered product during a representative average use cycle or period of use * * * and shall not be unduly burdensome to conduct." 42 U.S.C. 6293(b)(3). DOE will, however, consider wash performance and related impacts to consumer utility in developing any future energy conservation standards for residential clothes washers.

E. Compliance With Other EPCA Requirements

1. Test Burden

As noted previously, under 42 U.S.C. 6293(b)(3), EPCA requires that "[a]ny test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use * * * or estimated annual operating cost of a covered product during a representative average use cycle or period of use * * * and shall not be unduly burdensome to conduct." For the reasons that follow, DOE has tentatively concluded that amending the relevant DOE test procedures to incorporate clauses regarding test conditions and methods found in IEC Standard 62301, along with the proposed modifications to the active washing mode test procedure, would satisfy this requirement.

The proposed amendments to the DOE test procedure incorporate a test standard that is accepted internationally for measuring power consumption in standby mode and off mode. Based on its analysis of IEC Standard 62301, DOE determined that the proposed amendments to the clothes washer test procedure will produce standby mode and off mode average power consumption measurements that are representative of an average use cycle, both when the measured power is stable and when the measured power is unstable (*i.e.,* when the measured power varies by 5 percent or more during 30 minutes.) Additionally, DOE is proposing similar provisions for measuring power in additional active modes (delay start and cycle finished modes). The test methods and equipment that the amendments would require for measuring power in these modes are not substantially different from the test methods and equipment required in the current DOE test procedure for measuring the product's energy consumption in active washing mode. Therefore, the proposed test procedure would not require manufacturers to make a major investment in test facilities and new equipment. For these reasons, DOE has tentatively concluded that the proposed amended test procedure would produce test results that measure the standby, off, delay start and cycle finished mode power consumption of a clothes washer during a representative average use cycle, and that the test procedure would not be unduly burdensome to conduct.

DOE is also proposing amendments to the active washing mode portion of the clothes washer test procedure. Because these amendments would require manufacturers to make the same measurements as specified by the current test procedure, DOE believes that manufacturers likely would not require additional investment or equipment purchases to conduct the energy testing as proposed in this notice. The proposed water pressure requirement may require some manufacturers to purchase additional pressure regulators, but DOE believes this expense would not be significant—on the order of hundreds of dollars. The proposed amendments would also require additional time to conduct, because manufacturers would need to test additional cycles not included in the current test procedure, such as self-clean or steam wash cycles. DOE believes, however, that including these additional cycles in the test procedure would provide for a more representative measurement of machine energy efficiency and water use, and that the time commitment required to test these additional cycles would not represent a significant burden on manufacturers. The current test procedure already requires multiple energy test cycles. Testing self-clean and steam wash cycles, only on clothes washers offering these features, would likely increase the total test time for these units by approximately 25 percent.

2. Integration of Standby Mode and Off Mode Energy Consumption Into the Efficiency Metrics

Section 325(gg)(2)(A) of EPCA requires that standby mode and off mode energy consumption be "integrated into the overall energy efficiency, energy consumption, or other energy descriptor for each covered product" unless the current test procedures already fully account for the standby mode and off mode energy consumption or if such an integrated test procedure is technically infeasible. (42 U.S.C. 6295(gg)(2)(A)) DOE proposes to incorporate the clothes washer standby and off mode energy consumption, in addition to energy consumption in delay start and cycle finished modes, into a "per-cycle standby, off, delay start and cycle finished mode energy consumption," expressed in kWh, and into an IMEF, as discussed in section III.C.5 of this notice.

EPCA provides that test procedure amendments adopted to comply with the new EPCA requirements for standby and off mode energy consumption will not determine compliance with previously established standards. (42 U.S.C. 6295(gg)(2)(C)) Because DOE is proposing to adopt the amendments as a new appendix J1 to 10 CFR part 430 subpart B that manufacturers would not be required to use until the compliance date of amended energy conservation standards for residential clothes washers, the test procedure amendments pertaining to standby mode and off mode energy consumption that DOE proposes to adopt in this rulemaking would not apply to, and would have no effect on, existing standards.

3. Commercial Clothes Washers

The test procedure for commercial clothes washers is required to be the same test procedure established for residential clothes washers. (42 U.S.C. 6314(a)(8)) Thus, the test procedure set forth in appendix J1 of subpart B of 10 CFR part 430 is also currently used to test commercial clothes washers. (10 CFR part 431.154) If DOE were to apply the proposed new appendix J2 to commercial clothes washers, the impacts would be limited to the proposed amendments associated with active washing mode because commercial clothes washer standards are based on MEF and WF. These include proposed changes to the test load size specification, TUFs, DUF, test cloth specification, capacity measurement, detergent specification, and water supply pressure specification, which will have some effect on the measured energy and water efficiencies of a commercial clothes washer. DOE believes that the most significant impacts could be associated with the proposed amendments for capacity measurement and usage factors, but does not have information to evaluate any impacts for commercial clothes washers. Therefore, DOE welcomes inputs on the effects of the proposed amendments in appendix J2 on the measured energy and water efficiencies of commercial clothes washers.

F. Impact of the Proposed Amendments on EnergyGuide and ENERGY STAR

DOE considered potential impacts of the proposed test procedure amendments to the FTC EnergyGuide requirements and determined that there will be no impact. DOE also considered potential impacts of the proposed test procedure amendments to the EPA/DOE

ENERGY STAR voluntary labeling program. The ENERGY STAR program for clothes washers is based on MEF and WF. DOE notes that the calculation of MEF could be affected by the proposed revisions incorporating the energy and water consumption for warm wash/warm rinse cycles. These proposed revisions should not affect the calculated MEF for the majority of clothes washers, but could have some effect on clothes washers offering a warm/warm temperature selection only for cycle setting(s) other than the cycle setting recommended by the manufacturer for cotton or linen clothing. The calculations of both MEF and WF could also be affected by the proposed revision to the clothes container capacity measurement, depending on how manufacturers are currently interpreting the nonspecific water fill level specification. As part of the current residential clothes washer energy conservation standards rulemaking, DOE would analyze any potential impact of the proposed test procedure on calculated MEF values.

G. Elimination of the Obsolete Clothes Washer Test Procedure

DOE proposes to delete appendix J to subpart B of 10 CFR part 430 along with all references to appendix J in 10 CFR 430.23. Appendix J applies only to clothes washers manufactured before January 1, 2004 and is therefore obsolete. Appendix J1 to subpart B of 10 CFR part 430 provides an applicable test procedure for all clothes washers currently available on the market. DOE proposes to maintain the current naming of appendix J1, rather than renaming it as appendix J, and to establish new appendix J2 to simplify the changes required. DOE has previously used this approach of retaining later versions of appendices to subpart B of 10 CFR part 430 when deleting the original version, including appendix A1, "Uniform Test Method for Measuring the Energy Consumption of Electric Refrigerators and Electric Refrigerator-Freezers," and appendix B1, "Uniform Test Method for Measuring the Energy Consumption of Freezers."

IV. Procedural Requirements

A. Review Under Executive Order 12866

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

B. Review Under the Regulatory Flexibility Act

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

DOE reviewed today's proposed rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. DOE has tentatively concluded that the proposed rule would not have a significant impact on a substantial number of small entities. The factual basis for this certification is as follows:

The Small Business Administration (SBA) considers a business entity to be small business, if, together with its affiliates, it employs less than a threshold number of workers specified in 13 CFR part 121. These size standards and codes are established by the North American Industry Classification System (NAICS). The threshold number for NAICS classification code 335224, which applies to household laundry equipment manufacturers and includes clothes washer manufacturers, is 1,000 employees. Searches of the SBA Web site [16] to identify clothes washer manufacturers within these NAICS codes identified, out of approximately 17 manufacturers supplying clothes washers in the United States, only one small business. This small business manufactures laundry appliances, including clothes washers. The other manufacturers supplying clothes washers are large multinational corporations.

The proposed rule would amend DOE's test procedure by incorporating testing provisions to address active mode, standby mode, and off mode energy and water consumption that will be used to demonstrate compliance with energy conservation standards. The proposed test procedure amendments for standby, off, delay start and cycle finished modes involve measuring power input when the clothes washer is in these modes. These tests can be conducted in the same facilities used for the current energy testing of these products, so it is anticipated that manufacturers would not incur any additional facilities costs as a result of the proposed test procedure amendments. The power meter required for these tests might require greater accuracy than the power meter used for current energy testing, but the investment required for a possible instrumentation upgrade is a one-time cost, expected to be approximately a few thousand dollars. The duration of each test period is roughly 40 minutes (comprising a 30-minute stabilization period and 10-minute test period). This is comparable to approximately half the time required to conduct a single energy test cycle. Each clothes washer tested requires, on average, approximately 15 test cycles for energy testing, which equates to about three days of testing. For clothes washers offering all relevant non-active washing modes—inactive, off, delay start, and cycle finished—DOE estimates roughly an 11-percent increase in total test period duration. DOE also estimates that it costs a manufacturer approximately $2,300 on average, including the cost of consumables, to conduct energy testing for a particular clothes washer. DOE further estimates that the cost of additional testing for non-active washing modes would average $200 per machine, a 9-percent increase over current test costs. DOE believes these additional requirements for equipment and time and additional cost to conduct the proposed non-active washing mode tests would not be expected to impose a significant economic burden on entities subject to the applicable testing requirements. Although the small business has significantly lower sales than other manufacturers over which to amortize these additional costs, it only produces a single platform which would be subject to the proposed non-active washing mode tests and thus the total additional cost for these tests would be on the order of $2,500.

The proposed test procedure amendments for the active washing mode would increase test burden by imposing a requirement for conducting test cycles under two additional conditions, steam and self-clean, for those clothes washers equipped with such features. The testing conditions

[16] A searchable database of certified small businesses is available online at: *http://dsbs.sba.gov/dsbs/search/dsp_dsbs.cfm.*

and equipment for these cycles are the same as already required for the other energy test cycles, and manufacturers are already required to conduct measurements for multiple energy test cycles. Additionally, as discussed in section III.E.1, the additional time required for the testing steam and self-clean cycles would increase the test period by roughly 25 percent, from approximately three days to nearly four days total duration. DOE estimates that the average test cost increment per machine for these proposed active mode amendments would be approximately $600. Test burden could potentially also be increased by the proposed amendment to the water supply pressure requirement if a manufacturer were required to install additional equipment to maintain 35 psig under flow conditions. The cost of this equipment, as discussed in section III.E.1, would not be significant, on the order of hundreds of dollars. The proposed amendments for additional extractor tests for determining RMC coefficients also represent an increased burden for the limited number of entities that conduct such tests. However, these tests are limited to qualification of a new test cloth lot, and do not need to be performed by every manufacturer because the coefficients are made available to the public on DOE's website. Therefore, DOE does not believe these proposed amendments would have a significant impact on a substantial number of small entities. Because the one small business only manufactures a single platform, it would be subject to total additional costs of approximately $1,000 associated with the proposed active washing mode amendments.

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

C. Review Under the Paperwork Reduction Act of 1995

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

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

In this proposed rule, DOE proposes test procedure amendments that it expects will be used to develop and implement future energy conservation standards for clothes washers. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this rule amends an existing rule without changing its environmental effect and, therefore, is covered by the Categorical Exclusion in 10 CFR part 1021, subpart D, paragraph A5. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, "Federalism," imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. 64 FR 43255 (August 4, 1999). The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States, and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process that it will follow in developing such regulations. 65 FR 13735. DOE examined this proposed rule and determined that it would not preempt State law and would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of today's proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) Therefore, Executive Order 13132 requires no further action.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that executive agencies make every reasonable effort to ensure that the regulation specifies the following: (1) The preemptive effect, if any; (2) any effect on existing Federal law or regulation; (3) a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) the retroactive effect, if any; (5) definitions of key terms; and (6) other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or whether it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4; 2 U.S.C. 1501 *et seq.*) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. For a proposed regulatory action likely to result in a rule that may

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

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

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

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 53 FR 8859 (March 18, 1988), that this proposed regulation would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

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

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

K. Review Under Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use if the proposal is implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's proposed regulatory action, which proposes amendments to the test procedure for measuring the energy efficiency of residential clothes washers, is not a significant regulatory action under Executive Order 12866 or any successor order; would not have a significant adverse effect on the supply, distribution, or use of energy; and has not been designated by the Administrator of OIRA as a significant energy action. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

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

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

The proposed modifications to the test procedure addressed by this action incorporate testing methods contained in the commercial standard, IEC Standard 62301. DOE has evaluated this standard and is unable to conclude whether it fully complies with the requirements of section 32(b) of the FEAA (*i.e.,* whether it was developed in a manner that fully provides for public participation, comment, and review.) DOE will consult with the Attorney General and the Chairman of the FTC about the impact on competition of using the methods contained in this standard, before prescribing a final rule.

V. Public Participation

A. Attendance at Public Meeting

The time, date, and location of the public meeting are listed in the **DATES** and **ADDRESSES** sections at the beginning of this NOPR. To attend the public meeting, please notify Ms. Brenda Edwards at (202) 586–2945. As explained in the **ADDRESSES** section, foreign nationals visiting DOE Headquarters are subject to advance security screening procedures.

B. Procedure for Submitting Requests To Speak

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

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

C. Conduct of Public Meeting

DOE will designate a DOE official to preside at the public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. After the public meeting, interested parties may submit further comments on the proceedings as well as on any aspect of the rulemaking until the end of the comment period.

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

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

DOE will make the entire record of this proposed rulemaking, including the transcript from the public meeting, available for inspection at the U.S. Department of Energy, 6th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Copies of the transcript are available for purchase from the transcribing reporter and will also be made available on DOE's Web site at *http://www1.eere.energy.gov/buildings/appliance_standards/residential/clothes_washers.html.*

D. Submission of Comments

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

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

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

E. Issues on Which DOE Seeks Comment

DOE is particularly interested in receiving comments and views of interested parties on the following issues:

1. *Incorporation of IEC Standard 62301.* DOE invites comment on the adequacy of IEC Standard 62301 to measure standby and off mode power consumption for clothes washers, and the suitability of incorporating into DOE regulations the specific provisions described in section III.C.1 of this notice;

2. *Clothes washer modes.* DOE invites comment on the proposed establishment of inactive mode as the only standby mode for clothes washers and the determination that "delay start mode" and "cycle finished mode" and "self-clean mode" would be considered additional active modes. DOE further invites comment on the proposed mode definitions, including the definition of "self-clean" mode, and on the question of whether there are any modes consistent with the "active mode," "standby mode," or "off mode" definitions that have not been identified in this NOPR that represent significant energy use (*see* section III.C.2.);

3. *Default settings.* DOE welcomes comment on the suitability of using the default settings in testing standby energy consumption, and on any methodologies that can account for consumer actions that might increase energy use and data on the repeatability of such testing procedures (*see* section III.C.3.);

4. *Delay start mode.* DOE welcomes comment on the methodology proposed for measuring delay start mode (*see* section III.C.3);

5. *Test room ambient temperature.* DOE seeks comment on the appropriateness of the proposed modified test room ambient temperature range, which would allow manufacturers to conduct standby and off mode testing separately from performance testing under the less stringent ambient conditions specified in the IEC Standard 62301 (73.4 ± 9 °F) (*see* section III.C.3.);

6. *Energy use calculation.* DOE invites comment on the approach for calculating energy use for the various operating modes for clothes washers. DOE also invites comment on the allocation of annual hours and test burden, as well as the alternative methodology for allocation of annual hours (*see* section III.C.4.);

7. *New integrated measures of energy consumption and energy efficiency.* DOE invites comment on the proposed plan to establish new integrated measures of energy consumption for clothes washers: "per-cycle standby, off, delay start, and cycle finished mode energy consumption" and "per-cycle self-clean mode energy consumption," expressed in kWh, and a new integrated measure of energy efficiency for clothes washers: "integrated modified energy

factor" expressed in ft^3 per kWh per cycle. (*see* section III.C.5);

8. *Annual energy cost calculation.* DOE invites comment on the proposed decision to maintain the existing annual energy cost calculation set forth in 10 CFR 430.23, which does not include self-clean, standby, off, delay start, or cycle finished mode energy consumption. One alternative way of incorporating self-clean, standby, off, delay start, and cycle finished mode energy consumption in the annual energy cost calculation would be to add per-cycle standby, off, delay start, and cycle finished mode energy consumption and per-cycle self-clean mode energy consumption to the total per-cycle energy consumption in the annual energy cost calculations in 10 CFR 430.23(j)(1)(i) and (ii) (*see* section III.C.5);

9. *Steam wash cycles.* DOE requests comment on the proposed inclusion of the energy and water consumption of a steam wash cycle to the clothes washer test procedure, including the associated use factor. DOE also requests any data available regarding consumer use of steam wash cycles (*see* section III.D.1.a);

10. *Self-clean cycles.* DOE invites comment on self-clean cycles for clothes washers, including the proposed definition, inclusion of self-clean cycle energy and water use into the IMEF and IWF calculations, and on whether any relevant data is available regarding availability and consumer use of self-clean cycles (*see* section III.D.1.b);

11. *Adaptive control and demand response technologies.* DOE requests comment on whether any clothes washers are currently available on the market offering soil-sensing adaptive controls or demand response features. DOE also requests information on load size and fabric content, the possible use of a soiled test load to determine energy and water use in the presence of soil-sensing adaptive controls, appropriate methodologies for measuring energy consumption in a network mode, and data on the repeatability of such testing (*see* sections III.D.1.c and III.D.1.d);

12. *Representative number of annual cycles.* DOE welcomes comment on the appropriateness of the proposed 295 clothes washer cycles per year, and on the validity of using the 2005 Residential Energy Consumption Survey (RECS) to establish this estimate. DOE also seeks any additional data available on this issue (*see* section III.D.2.a);

13. *Test load size specifications.* DOE invites comment on the proposed test load sizes, and on whether the linear relationship between test load size and clothes washer container volume is representative of actual consumer use. DOE welcomes any relevant data on this topic (*see* section III.D.2.b);

14. *Use factors.* DOE requests comment on the validity of the proposed use factors for temperature, load size, and dryer use, and of the data sources used to estimate these values. Additionally, DOE seeks comment on the proposed revision to the warm rinse measurements, including the validity of the proposed warm wash/warm rinse TUF of 0.27. DOE also welcomes comment regarding the proposed load adjustment factor to be used in the RMC calculation. Stakeholders may submit any additional relevant data regarding these use factors (*see* section III.D.2.c);

15. *Test cloth.* DOE invites comment on and data regarding the proposed updated test cloth specifications and correlation procedure (*see* section III.D.3);

16. *Capacity measurement method.* DOE welcomes comment on whether the proposed method for measuring clothes container capacity provides for a representative measurement of the volume that a dry clothes load could occupy within the clothes container during washer operation, and on whether any other valid measurement method is available (*see* section III.D.4.a);

17. *New integrated measure of water consumption.* DOE invites comment on the proposal to establish a new integrated measure of water consumption for clothes washers, "integrated water consumption factor" expressed in gallons per cubic foot. DOE requests comment on the validity of including water consumption from all test cycles, including self-clean cycles, into the proposed calculation of IWF. DOE also requests comment on whether the IWF calculation would result in a significant test burden (*see* section III.D.4.b);

18. *Energy test cycle definition.* DOE welcomes comment on the proposed definition of the energy test cycle, and on how manufacturers currently address wash and rinse temperature selection under the current definition. DOE also requests comment on the selection cycles to be included in the energy test cycle under section 1.7(B) of the test procedure to definitively account for temperature options available only outside the normal cycle. (*see* section III.D.4.c);

19. *Detergent specifications.* DOE welcomes comment on the proposed updated detergent formulation and associated dosage for test cloth preconditioning (*see* section III.D.4.d);

20. *Clothes washer for preconditioning.* DOE requests comment on the proposed revisions to the specifications for the clothes washer used in test cloth preconditioning, including whether clothes washers currently meeting the specifications may be rendered obsolete by potential new residential clothes washer energy conservation standards (*see* section III.D.4.e);

21. *Water supply pressure.* DOE seeks information about the conditions under which clothes washers are currently tested, and invites comment on the appropriate specification of the water supply pressure (*see* section III.D.4.f); and

22. *Impact on commercial clothes washers.* DOE requests comment on how the proposed amendments in new appendix J2 of subpart B to 10 CFR part 430 would impact the measured energy and water efficiencies of commercial clothes washers. DOE welcomes any relevant data on this topic (*see* section III.E.2).

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of today's notice of proposed rulemaking.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

Issued in Washington, DC, on August 27, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons stated in the preamble, DOE proposes amending part 430 of chapter II of title 10, Code of Federal Regulations, to read as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

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

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

2. Section 430.3 is amended by:

a. Redesignating paragraphs (b) through (o) as (c) through (p);

b. Adding new paragraph (b).

The additions read as follows:

§ 430.3 Materials incorporated by reference.

* * * * *

(b) *AATCC.* American Association of Textile Chemists and Colorists, P.O. Box 1215, Research Triangle Park, NC 27709, 919–549–8141, or go to *http://www.aatcc.org.*

(1) AATCC Test Method 79–2000, Absorbency of Bleached Textiles, (reaffirmed 2000), IBR approved for Appendix J1 to Subpart B.

(2) AATCC Test Method 118–1997, Oil Repellency: Hydrocarbon Resistance Test, reaffirmed (1997), IBR approved for Appendix J1 to Subpart B.

(3) AATCC Test Method 135–2004, Dimensional Changes of Fabrics after Home Laundering, reaffirmed (2004), IBR approved for Appendix J1 to Subpart B.

* * * * *

3. Section 430.23 is amended by revising paragraph (j) to read as follows:

§ 430.23 Test procedures for the measurement of energy and water consumption.

* * * * *

(j) *Clothes washers.* (1) The estimated annual operating cost for automatic and semi-automatic clothes washers shall be—

(i) When electrically heated water is used, the product of the following three factors:

(A) The representative average-use of 392 cycles per year,

(B) The total per-cycle energy consumption when electrically heated water is used, determined according to 4.1.7 of appendix J1 before appendix J2 becomes mandatory and 4.1.7 of appendix J2 when appendix J2 becomes mandatory (see the note at the beginning of appendix J2), and

(C) The representative average unit cost in dollars per kilowatt-hour as provided by the Secretary, the resulting product then being rounded off to the nearest dollar per year, and

(ii) When gas-heated or oil-heated water is used, the product of: the representative average-use of 392 cycles per year and the sum of both:

(A) The product of the per-cycle machine electrical energy consumption in kilowatt-hours per cycle, determined according to 4.1.6 of appendix J1 before appendix J2 becomes mandatory and 4.1.6 of appendix J2 when appendix J2 becomes mandatory, and the representative average unit cost in dollars per kilowatt-hours as provided by the Secretary, and

(B) The product of the per-cycle water energy consumption for gas-heated or oil-heated water in Btu per cycle, determined according to 4.1.4 of appendix J1 before appendix J2 becomes mandatory and 4.1.4 of appendix J2 when appendix J2 becomes mandatory, and the representative average unit cost in dollars per Btu for oil or gas, as appropriate, as provided by the Secretary, the resulting product then being rounded off to the nearest dollar per year.

(2)(i) The modified energy factor for automatic and semi-automatic clothes washers is determined in accordance with 4.4 of appendix J1 before appendix J2 becomes mandatory and 4.6 of appendix J2 when appendix J2 becomes mandatory. The result shall be rounded off to the nearest 0.01 cubic foot per kilowatt-hours.

(ii) The integrated modified energy factor for automatic and semi-automatic clothes washers is determined in accordance with 4.7 of appendix J2 when appendix J2 becomes mandatory. The result shall be rounded off to the nearest 0.01 cubic foot per kilowatt-hours.

(3) Other useful measures of energy consumption for automatic or semi-automatic clothes washers shall be those measures of energy consumption which the Secretary determines are likely to assist consumers in making purchasing decisions and which are derived from the application of appendix J1 before the date that appendix J2 becomes mandatory or appendix J2 upon the date that appendix J2 becomes mandatory. In addition, the annual water consumption of a clothes washer can be determined by the product of:

(A) The representative average-use of 392 cycles per year, and

(B) The total weighted per-cycle water consumption for cold wash in gallons per cycle determined according to 4.2.2 of appendix J1 before appendix J2 becomes mandatory and 4.2.12 of appendix J2 when appendix J2 becomes mandatory. The water consumption factor can be determined in accordance with 4.2.3 of appendix J1 before appendix J2 becomes mandatory and 4.2.15 of appendix J2 when appendix J2 becomes mandatory. The integrated water consumption factor can be determined in accordance with 4.2.16 of appendix J2 when appendix J2 becomes mandatory. The remaining moisture content can be determined in accordance with 3.8 of appendix J1 before appendix J2 becomes mandatory and 3.8 of appendix J2 when appendix J2 becomes mandatory.

* * * * *

Appendix J—[Removed]

4. Appendix J to subpart B of part 430 is removed.

Appendix J1—[Amended]

5. Appendix J1 to subpart B of part 430 is amended by revising the introductory text after the heading; and section 4.1.4. to read as follows.

Appendix J1 to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Automatic and Semi-Automatic Clothes Washers

Appendix J1 is effective until the compliance date of any amended standards for residential clothes washers. After this date, all residential clothes washers shall be tested using the provisions of Appendix J2 of this appendix.

* * * * *

4. Calculation of Derived Results From Test Measurements.

* * * * *

4.1.4 *Total per-cycle hot water energy consumption using gas-heated or oil-heated water.* Calculate for the energy test cycle the per-cycle hot water consumption, HE_{TG}, using gas-heated or oil-heated water, expressed in Btu per cycle (or megajoules per cycle) and defined as:

$$HE_{TG} = HE_T \times 1/e \times 3412 \text{ Btu/kWh or } HE_{TG} = HE_T \times 1/e \times 3.6 \text{ MJ/kWh}$$

Where:

e = Nominal gas or oil water heater efficiency = 0.75.

HE_T = As defined in 4.1.3.

* * * * *

6. Add a new Appendix J2 to subpart B of part 430 to read as follows:

Appendix J2 to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Automatic and Semi-Automatic Clothes Washers

Appendix J1 is effective until the compliance date of any amended standards for residential clothes washers. After this date, all residential clothes washers shall be tested using the provisions of Appendix J2.

1. Definitions and Symbols

1.1 *Active mode* means a mode in which the clothes washer is connected to a main power source, has been activated, and is performing one or more of the main functions of washing, soaking, tumbling, agitating, rinsing, and/or removing water from the clothing, or is involved in functions necessary for these main functions, such as admitting water into the washer or pumping water out of the washer. Active mode also includes delay start, cycle finished, and self-clean modes.

1.2 *Active washing mode* means a mode in which the clothes washer is performing any of the operations included in a complete cycle intended for washing a clothing load, including the main functions of washing, soaking, tumbling, agitating, rinsing, and/or removing water from the clothing.

1.3 *Adaptive control system* means a clothes washer control system, other than an adaptive water fill control system, which is capable of automatically adjusting washer operation or washing conditions based on characteristics of the clothes load placed in the clothes container, without allowing or requiring consumer intervention or actions. The automatic adjustments may, for example, include automatic selection, modification, or control of any of the following: Wash water temperature, agitation or tumble cycle time,

number of rinse cycles, and spin speed. The characteristics of the clothes load, which could trigger such adjustments, could, for example, consist of or be indicated by the presence of either soil, soap, suds, or any other additive laundering substitute or complementary product.

Note: Appendix J1 does not provide a means for determining the energy consumption of a clothes washer with an adaptive control system. Therefore, pursuant to 10 CFR 430.27, a waiver must be obtained to establish an acceptable test procedure for each such clothes washer.

1.4 *Adaptive water fill control system* means a clothes washer water fill control system which is capable of automatically adjusting the water fill level based on the size or weight of the clothes load placed in the clothes container, without allowing or requiring consumer intervention or actions.

1.5 *Bone-dry* means a condition of a load of test cloth which has been dried in a dryer at maximum temperature for a minimum of 10 minutes, removed and weighed before cool down, and then dried again for 10 minute periods until the final weight change of the load is 1 percent or less.

1.6 *Clothes container* means the compartment within the clothes washer that holds the clothes during the operation of the machine.

1.7 *Cold rinse* means the coldest rinse temperature available on the machine (and should be the same rinse temperature selection tested in 3.7 of this appendix).

1.8 *Compact* means a clothes washer which has a clothes container capacity of less than 1.6 ft^3 (45 L).

1.9 *Cycle finished mode* means an active mode which provides continuous status display following operation in active washing mode.

1.10 *Deep rinse cycle* means a rinse cycle in which the clothes container is filled with water to a selected level and the clothes load is rinsed by agitating it or tumbling it through the water.

1.11 *Delay start mode* means an active mode in which activation of active washing mode is facilitated by a timer.

1.12 *Energy test cycle* for a basic model means (A) the cycle recommended by the manufacturer for washing cotton or linen clothes, and includes all wash/rinse temperature selections and water levels offered in that cycle, and (B) if the cycle described in (A) does not include all wash/rinse temperature settings available on the clothes washer, and required for testing as described in this test procedure, the energy test cycle shall also include the portions of a cycle setting offering these wash/rinse temperature settings with agitation/tumble operation, spin speed(s), wash times, and rinse times that are largely comparable to those for the cycle recommended by the manufacturer for washing cotton or linen clothes. Any cycle under (A) or (B) shall include the default agitation/tumble operation, soil level, spin speed(s), wash times, and rinse times applicable to that cycle, including water heating time for water heating clothes washers.

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

1.14 *Inactive mode* means a standby mode that facilitates the activation of active mode by remote switch (including remote control), internal sensor, or timer, or that provides continuous status display.

1.15 *Integrated modified energy factor* means the quotient of the cubic foot (or liter) capacity of the clothes container divided by the total clothes washer energy consumption per cycle, with such energy consumption expressed as the sum of:

(a) The machine electrical energy consumption;

(b) The hot water energy consumption;

(c) The energy required for removal of the remaining moisture in the wash load;

(d) The standby mode energy consumption;

(e) The off mode energy consumption;

(f) The delay start mode energy consumption;

(g) The cycle finished mode energy consumption; and

(h) The self-clean energy consumption, as applicable.

1.16 *Integrated water consumption factor* means the quotient of the total clothes washer water consumption per cycle in gallons, with such water consumption expressed as the sum of the total weighted per-cycle water consumption and the per-cycle self-clean water consumption, divided by the cubic foot (or liter) capacity of the clothes washer.

1.17 *Load use factor* means the percentage of the total number of wash loads that a user would wash a particular size (weight) load.

1.18 *Manual control system* means a clothes washer control system which requires that the consumer make the choices that determine washer operation or washing conditions, such as, for example, wash/rinse temperature selections, and wash time before starting the cycle.

1.19 *Manual water fill control system* means a clothes washer water fill control system which requires the consumer to determine or select the water fill level.

1.20 *Modified energy factor* means the quotient of the cubic foot (or liter) capacity of the clothes container divided by the total clothes washer energy consumption per cycle, with such energy consumption expressed as the sum of the machine electrical energy consumption, the hot water energy consumption, and the energy required for removal of the remaining moisture in the wash load.

1.21 *Non-water-heating clothes washer* means a clothes washer which does not have an internal water heating device to generate hot water.

1.22 *Off mode* means a mode in which the clothes washer is connected to a mains power source and is not providing any active or standby mode function, and where the mode may persist for an indefinite time. An indicator that only shows the user that the product is in the off position is included within the classification of an off mode.

1.23 *Self-clean mode* means an active clothes washer operating mode that is:

(a) Dedicated to cleaning, deodorizing, or sanitizing the clothes washer by eliminating sources of odor, bacteria, mold, and mildew;

(b) Recommended to be run intermittently by the manufacturer; and

(c) Separate from clothes washing cycles.

1.24 *Spray rinse cycle* means a rinse cycle in which water is sprayed onto the clothes for a period of time without maintaining any specific water level in the clothes container.

1.25 *Standard* means a clothes washer which has a clothes container capacity of 1.6 ft^3 (45 L) or greater.

1.26 *Standby mode* means any modes in which the clothes washer is connected to a mains power source and offers one or more of the following user oriented or protective functions that may persist for an indefinite time:

(a) To facilitate the activation of other modes (including activation or deactivation of active mode) by remote switch (including remote control), internal sensor, or timer;

(b) Continuous functions, including information or status displays (including clocks) or sensor-based functions. A timer is a continuous clock function (which may or may not be associated with a display) that provides regular scheduled tasks (*e.g.,* switching) and that operates on a continuous basis.

1.27 *Steam cycle* means a wash cycle in which steam is injected into the clothes container.

1.28 *Symbol usage.* The following identity relationships are provided to help clarify the symbology used throughout this procedure.

E—Electrical Energy Consumption
H—Hot Water Consumption
C—Cold Water Consumption
R—Hot Water Consumed by Warm Rinse
TUF—Temperature Use Factor
HE—Hot Water Energy Consumption
F—Load Usage Factor
Q—Total Water Consumption
ME—Machine Electrical Energy Consumption
RMC—Remaining Moisture Content
WI—Initial Weight of Dry Test Load
WC—Weight of Test Load After Extraction
P—Power
S—Annual Hours
s—Steam Wash
m—Extra Hot Wash (maximum wash temp. > 135 °F (57.2 °C))
h—Hot Wash (maximum wash temp. ≤135 °F (57.2 °C))
w—Warm Wash
c—Cold Wash (minimum wash temp.)
r—Warm Rinse (hottest rinse temp.)
sc—Self Clean
x or max—Maximum Test Load
a or avg—Average Test Load
n or min—Minimum Test Load
cf—Cycle Finished Mode
ds—Delay Start Mode
ia—Inactive Mode
o—Off Mode
oi—Combined Off and Inactive Modes
so—Combined Standby and Off Modes

The following examples are provided to show how the above symbols can be used to define variables:

Em_x = "Electrical Energy Consumption" for an Extra Hot Wash" and "Maximum Test Load"
R_a = "Hot Water Consumed by Warm Rinse" for the "Average Test Load"
TUF_m = "Temperature Use Factor" for an "Extra Hot Wash"
HE_{min} = "Hot Water Energy Consumption" for the "Minimum Test Load"
Q_{sc} = "Total Water Consumption" for "Self Clean"
P_{ds} = "Power" in "Delay Start Mode"
S_o = "Annual Hours" in "Off Mode"

1.29 *Temperature use factor* means, for a particular wash/rinse temperature setting, the percentage of the total number of wash loads that an average user would wash with that setting.

1.30 *Thermostatically controlled water valves* means clothes washer controls that have the ability to sense and adjust the hot and cold supply water.

1.31 *Uniformly distributed warm wash temperature selection(s)* means (A) multiple warm wash selections for which the warm wash water temperatures have a linear relationship with all discrete warm wash selections when the water temperatures are plotted against equally spaced consecutive warm wash selections between the hottest warm wash and the coldest warm wash. If the warm wash has infinite selections, the warm wash water temperature has a linear relationship with the distance on the selection device (*e.g.* dial angle or slide movement) between the hottest warm wash and the coldest warm wash. The criteria for a linear relationship as specified above is that the difference between the actual water temperature at any warm wash selection and the point where that temperature is depicted on the temperature/selection line formed by connecting the warmest and the coldest warm selections is less than ± 5 percent. In all cases, the mean water temperature of the warmest and the coldest warm selections must coincide with the mean of the "hot wash" (maximum wash temperature ≤ 135 °F (57.2 °C)) and "cold wash" (minimum wash temperature) water temperatures within ± 3.8 °F (± 2.1 °C); or (B) on a clothes washer with only one warm wash temperature selection, a warm wash temperature selection with a water temperature that coincides with the mean of the "hot wash" (maximum wash temperature ≤ 135 °F (57.2 °C)) and "cold wash" (minimum wash temperature) water temperatures within ± 3.8 °F (± 2.1 °C).

1.32 *Warm rinse* means the hottest rinse temperature available on the machine.

1.33 *Warm wash* means all wash temperature selections that are below the maximum wash temperature ≤ 135 °F (57.2 °C) and above the minimum wash temperature.

1.34 *Water consumption factor* means the quotient of the total weighted per-cycle water consumption divided by the cubic foot (or liter) capacity of the clothes washer.

1.35 *Water-heating clothes washer* means a clothes washer where some or all of the hot water for clothes washing is generated by a water heating device internal to the clothes washer.

2. Testing Conditions

2.1 *Installation.* Install the clothes washer in accordance with manufacturer's instructions.

2.2 *Electrical energy supply.*

2.2.1 *Supply voltage and frequency.* Maintain the electrical supply at the clothes washer terminal block within 2 percent of 120, 120/240, or 120/208Y volts as applicable to the particular terminal block wiring system and within 2 percent of the nameplate frequency as specified by the manufacturer. If the clothes washer has a dual voltage conversion capability, conduct test at the highest voltage specified by the manufacturer.

2.2.2 *Supply voltage waveform.* For the standby, off, delay start, and cycle finished mode testing, maintain the electrical supply voltage waveform indicated in section 4, paragraph 4.4 of IEC 62301 (incorporated by reference; see § 430.3).

2.3 *Supply Water.*

2.3.1 *Clothes washers in which electrical energy consumption or water energy consumption are affected by the inlet water temperature. (For example, water heating clothes washers or clothes washers with thermostatically controlled water valves.).* The temperature of the hot water supply at the water inlets shall not exceed 135 °F (57.2 °C) and the cold water supply at the water inlets shall not exceed 60 °F (15.6 °C). A water meter shall be installed in both the hot and cold water lines to measure water consumption.

2.3.2 *Clothes washers in which electrical energy consumption and water energy consumption are not affected by the inlet water temperature.* The temperature of the hot water supply shall be maintained at 135 °F ± 5 °F (57.2 °C ± 2.8 °C) and the cold water supply shall be maintained at 60 °F ± 5 °F (15.6 °C ± 2.8 °C). A water meter shall be installed in both the hot and cold water lines to measure water consumption.

2.4 *Water pressure.* The static water pressure at the hot and cold water inlet connection of the clothes washer shall be maintained at 35 pounds per square inch gauge (psig) ± 2.5 psig (241.3 kPa ± 17.2 kPa) when the water is flowing. The static water pressure for a single water inlet connection shall be maintained at 35 psig ± 2.5 psig (241.3 kPa ± 17.2 kPa) when the water is flowing. A water pressure gauge shall be installed in both the hot and cold water lines to measure water pressure.

2.5 *Instrumentation.* Perform all test measurements using the following instruments as appropriate:

2.5.1 *Weighing scales.*

2.5.1.1 *Weighing scale for test cloth.* The scale shall have a resolution of no larger than 0.2 oz (5.7 g) and a maximum error no greater than 0.3 percent of the measured value.

2.5.1.2 *Weighing scale for clothes container capacity measurement.* The scale should have a resolution no larger than 0.50 lbs (0.23 kg) and a maximum error no greater than 0.5 percent of the measured value.

2.5.2 *Watt-hour meter.* The watt-hour meter shall have a resolution no larger than 1 Wh (3.6 kJ) and a maximum error no greater than 2 percent of the measured value for any demand greater than 50 Wh (180.0 kJ).

2.5.3 *Watt meter.* The watt meter used to measure standby, off, delay start, and cycle finished mode power consumption shall have the resolution specified in section 4, paragraph 4.5 of IEC 62301 (incorporated by reference, see § 430.3). The watt meter shall also be able to record a "true" average power as specified in section 5, paragraph 5.3.2(a) of IEC 62301.

2.5.4 *Temperature measuring device.* The device shall have an error no greater than ± 1 °F (± 0.6 °C) over the range being measured.

2.5.5 *Water meter.* The water meter shall have a resolution no larger than 0.1 gallons (0.4 liters) and a maximum error no greater than 2 percent for the water flow rates being measured.

2.5.6 *Water pressure gauge.* The water pressure gauge shall have a resolution of 1 pound per square inch gauge (psig) (6.9 kPa) and shall have an error no greater than 5 percent of any measured value.

2.6 *Test cloths.*

2.6.1 *Energy Test Cloth.* The energy test cloth shall be made from energy test cloth material, as specified in 2.6.4, that is 24 ± ½ inches by 36 ± ½ inches (61.0 ± 1.3 cm by 91.4 ± 1.3 cm) and has been hemmed to 22 ± ½ inches by 34 ± ½ inches (55.9 ± 1.3 cm by 86.4 ± 1.3 cm) before washing. The energy test cloth shall be clean and shall not be used for more than 60 test runs (after preconditioning as specified in 2.6.3 of this appendix). All energy test cloth must be permanently marked identifying the lot number of the material. Mixed lots of material shall not be used for testing the clothes washers.

2.6.2 *Energy Stuffer Cloth.* The energy stuffer cloth shall be made from energy test cloth material, as specified in 2.6.4, and shall consist of pieces of material that are 12 ± ¼ inches by 12 ± ¼ inches (30.5 ± 0.6 cm by 30.5 ± 0.6 cm) and have been hemmed to 10 ± ¼ inches by 10 ± ¼ inches (25.4 ± 0.6 cm by 25.4 ± 0.6 cm) before washing. The energy stuffer cloth shall be clean and shall not be used for more than 60 test runs (after preconditioning as specified in 2.6.3 of this appendix). All energy stuffer cloth must be permanently marked identifying the lot number of the material. Mixed lots of material shall not be used for testing the clothes washers.

2.6.3 *Preconditioning of Test Cloths.* The new test cloths, including energy test cloths and energy stuffer cloths, shall be pre-conditioned in a clothes washer in the following manner:

2.6.3.1 Perform 5 complete normal wash-rinse-spin cycles, the first two with current AHAM Standard detergent Formula 3 and the last three without detergent. Place the test cloth in a clothes washer set at the maximum water level. Wash the load for ten minutes in soft water (17 ppm hardness or less) using 27.0 grams + 4.0 grams per lb of cloth load of AHAM Standard detergent Formula 3. The wash temperature is to be controlled to 135 °F ± 5 °F (57.2 °C ± 2.8 °C) and the rinse temperature is to be controlled to 60 °F ± 5 °F (15.6 °C ± 2.8 °C). Repeat the cycle with detergent and then repeat the cycle three additional times without detergent, bone drying the load between cycles (total of five wash and rinse cycles).

2.6.4 *Energy test cloth material.* The energy test cloths and energy stuffer cloths shall be made from fabric meeting the following specifications. The material should come from a roll of material with a width of approximately 63 inches and approximately 500 yards per roll. However, other sizes may be used if they fall within the specifications.

2.6.4.1 *Nominal fabric type.* Pure finished bleached cloth made with a momie or granite weave, which is nominally 50 percent cotton and 50 percent polyester.

2.6.4.2 The fabric weight specification shall be 5.60 ± 0.25 ounces per square yard (190.0 ± 8.4 g/m^2).

2.6.4.3 The thread count shall be 65 × 57 per inch (warp × fill), ±2 percent.

2.6.4.4 The warp yarn and filling yarn shall each have fiber content of 50 percent ± 4 percent cotton, with the balance being polyester, and be open end spun, 15/1 ± 5 percent cotton count blended yarn.

2.6.4.5 Water repellent finishes, such as fluoropolymer stain resistant finishes shall not be applied to the test cloth. The absence of such finishes shall be verified by:

2.6.4.5.1 American Association of Textile Chemists and Colorists (AATCC) Test Method 118–1997, *Oil Repellency: Hydrocarbon Resistance Test* (incorporated by reference; *see* § 430.3), of each new lot of test cloth (when purchased from the mill) to confirm the absence of Scotchguard™ or other water repellent finish (required scores of "D" across the board).

2.6.4.5.2 American Association of Textile Chemists and Colorists (AATCC) Test Method 79–2000, *Absorbency of Bleached Textiles* (incorporated by reference; see § 430.3), of each new lot of test cloth (when purchased from the mill) to confirm the absence of Scotchguard™ or other water repellent finish (time to absorb one drop should be on the order of 1 second).

2.6.4.6 The moisture absorption and retention shall be evaluated for each new lot of test cloth by the Standard Extractor Remaining Moisture Content (RMC) Test specified in 2.6.5 of this appendix.

2.6.4.6.1 Repeat the Standard Extractor RMC Test in 2.6.5 of this appendix three times.

2.6.4.6.2 An RMC correction curve shall be calculated as specified in 2.6.6 of this appendix.

2.6.4.7 The maximum shrinkage after preconditioning shall not be more than 5 percent on the length and width. Measure per AATCC Test Method 135–2004, *Dimensional Changes of Fabrics after Home Laundering* (incorporated by reference; *see* § 430.3).

2.6.5 *Standard Extractor RMC Test Procedure.* The following procedure is used to evaluate the moisture absorption and retention characteristics of a lot of test cloth by measuring the RMC in a standard extractor at a specified set of conditions. Table 2.6.5 of this appendix is the matrix of test conditions. When this matrix is repeated 3 times, a total of 60 extractor RMC test runs are required. For the purpose of the extractor RMC test, the test cloths may be used for up to 60 test runs (after preconditioning as specified in 2.6.3 of this appendix).

TABLE 2.6.5—MATRIX OF EXTRACTOR RMC TEST CONDITIONS

	Warm soak		Cold soak	
	15 min. spin	4 min. spin	15 min. spin	4 min. spin
100				
200				
350				
500				
650				

2.6.5.1 The standard extractor RMC tests shall be run in a North Star Engineered Products Inc. (formerly Bock) Model 215 extractor (having a basket diameter of 19.5 inches, length of 12 inches, and volume of 2.1 ft^3), with a variable speed drive (North Star Engineered Products, P.O. Box 5127, Toledo, OH 43611) or an equivalent extractor with same basket design (*i.e.* diameter, length, volume, and hole configuration) and variable speed drive.

2.6.5.2 *Test Load.* Test cloths shall be preconditioned in accordance with 2.6.3 of this appendix. The load size shall be 8.4 lbs, consistent with 3.8.1 of this appendix.

2.6.5.3 *Procedure.*

2.6.5.3.1 Record the "bone-dry" weight of the test load (WI).

2.6.5.3.2 Prepare the test load for soak by grouping four test cloths into loose bundles. Bundles are created by hanging four cloths vertically from one corner and loosely wrapping the test cloth onto itself to form the bundle. Bundles are then placed into the water for soak. Eight to nine bundles will be formed depending on the test load. The ninth bundle may not equal four cloths but can incorporate energy stuffer cloths to help offset the size difference.

2.6.5.3.3 Soak the test load for 20 minutes in 10 gallons of soft (< 17 ppm) water. The entire test load shall be submerged. The water temperature shall be 100 °F ± 5 °F (38 °C ± 3 °C)

2.6.5.3.4 Remove the test load and allow each of the test cloth bundles to drain over the water bath for a maximum of 5 seconds.

2.6.5.3.5 Manually place the test cloth bundles in the basket of the extractor, distributing them evenly by eye. The draining and loading process should take less than 1 minute. Spin the load at a fixed speed corresponding to the intended centripetal acceleration level (measured in units of the acceleration of gravity, g) ± 1g for the intended time period ± 5 seconds.

2.6.5.3.6 Record the weight of the test load immediately after the completion of the extractor spin cycle (WC).

2.6.5.3.7 Calculate the RMC as (WC–WI)/WI.

2.6.5.3.8 It is not necessary to drain the soak tub if the water bath is corrected for water level and temperature before the next extraction.

2.6.5.3.9 It is not necessary to dry the test load in between extraction runs. However, the bone dry weight shall be checked after every 12 extraction runs to make sure the bone dry weight is within tolerance (8.4 ± 0.1 lb).

2.6.5.3.10 The RMC of the test load shall be measured at five g levels: 100 g, 200 g, 350 g, 500 g, and 650 g, using two different spin times at each g level: 4 minutes and 15 minutes.

2.6.5.4 Repeat 2.6.5.3 of this appendix using soft (< 17 ppm) water at 60 °F ± 5 °F.

2.6.6 *Calculation of RMC correction curve.*

2.6.6.1 Average the values of 3 test runs and fill in Table 2.6.5 of this appendix. Perform a linear least-squares fit to relate the standard RMC ($RMC_{standard}$) values (shown in Table 2.6.6.1 of this appendix) to the values measured in 2.6.5 of this appendix:

(RMC_{cloth}): $RMC_{standard} - A \times RMC_{cloth} + B$

Where A and B are coefficients of the linear least-squares fit.

TABLE 2.6.6.1—STANDARD RMC VALUES (RMC STANDARD)

"g Force"	RMC percentage			
	Warm soak		Cold soak	
	15 min. spin	4 min. spin	15 min. spin	4 min. spin
100	45.9	49.9	49.7	52.8

TABLE 2.6.6.1—STANDARD RMC VALUES (RMC STANDARD)—Continued

"g Force"	RMC percentage			
	Warm soak		Cold soak	
	15 min. spin	4 min. spin	15 min. spin	4 min. spin
200	35.7	40.4	37.9	43.1
350	29.6	33.1	30.7	35.8
500	24.2	28.7	25.5	30.0
650	23.0	26.4	24.1	28.0

2.6.6.2 Perform an analysis of variance test using two factors, spin speed and lot, to check the interaction of speed and lot. Use the values from Table 2.6.5 and Table 2.6.6.1 in the calculation. The "P" value in the variance analysis shall be greater than or equal to 0.1. If the "P" value is less than 0.1, the test cloth is unacceptable. "P" is a theoretically based probability of interaction based on an analysis of variance.

2.6.7 *Application of the RMC correction curve.*

2.6.7.1 Using the coefficients A and B calculated in 2.6.6.1 of this appendix:

$RMC_{corr} = A \times RMC + B$

2.6.7.2 Substitute RMC_{corr} values in calculations in 3.8 of this appendix.

2.7 *Test Load Sizes.* Maximum, minimum, and, when required, average test load sizes shall be determined using Table 5.1 of this appendix and the clothes container capacity as measured in 3.1.1 through 3.1.5. Test loads shall consist of energy test cloths, except that adjustments to the test loads to achieve proper weight can be made by the use of energy stuffer cloths with no more than 5 stuffer cloths per load.

2.8 *Use of Test Loads.* Table 2.8 defines the test load sizes and corresponding water fill settings which are to be used when measuring water and energy consumptions. Adaptive water fill control system and manual water fill control system are defined in section 1 of this appendix:

TABLE 2.8—TEST LOAD SIZES AND WATER FILL SETTINGS REQUIRED

Manual water fill control system		Adaptive water fill control system	
Test load size	Water fill setting	Test load size	Water fill setting
Max	Max	Max	As determined by the Clothes Washer.
Min	Min	Avg Min	

2.8.1 The test load sizes to be used to measure RMC are specified in section 3.8.1.

2.8.2 Test loads for energy and water consumption measurements shall be bone dry prior to the first cycle of the test, and dried to a maximum of 104 percent of bone dry weight for subsequent testing.

2.8.3 Load the energy test cloths by grasping them in the center, shaking them to hang loosely and then put them into the clothes container prior to activating the clothes washer.

2.9 *Pre-conditioning.*

2.9.1 *Non-water-heating clothes washer.* If the clothes washer has not been filled with water in the preceding 96 hours, pre-condition it by running it through a cold rinse cycle and then draining it to ensure that the hose, pump, and sump are filled with water.

2.9.2 *Water-heating clothes washer.* If the clothes washer has not been filled with water in the preceding 96 hours, or if it has not been in the test room at the specified ambient conditions for 8 hours, pre-condition it by running it through a cold rinse cycle and then draining it to ensure that the hose, pump, and sump are filled with water.

2.10 *Wash time setting.* If one wash time is prescribed in the energy test cycle, that shall be the wash time setting; otherwise, the wash time setting shall be the higher of either the minimum or 70 percent of the maximum wash time available in the energy test cycle.

2.11 *Test room temperature.*

2.11.1 *Non-water-heating clothes washer.* For standby, off, delay start, and cycle finished mode testing, maintain room ambient air temperature conditions as specified in section 4, paragraph 4.2 of IEC 62301 (incorporated by reference; see § 430.3).

2.11.2 *Water-heating clothes washer.* Maintain the test room ambient air temperature at 75 °F ± 5 °F (23.9 °C ± 2.8 °C). For standby, off, delay start, and cycle finished mode testing, maintain room ambient air temperature conditions as specified in section 4, paragraph 4.2 of IEC 62301 (incorporated by reference; see § 430.3).

2.12 *Bone dryer temperature.* The dryer used for bone drying must heat the test cloth and energy stuffer cloths above 210 °F (99 °C).

3. Test Measurements

3.1 *Clothes container capacity.* Measure the entire volume which a dry clothes load could occupy within the clothes container during washer operation according to the following procedures:

3.1.1 Place the clothes washer in such a position that the uppermost edge of the clothes container opening is leveled horizontally, so that the container will hold the maximum amount of water.

3.1.2 Line the inside of the clothes container with 2 mil (0.051 mm) plastic sheet. All clothes washer components which occupy space within the clothes container and which are recommended for use with the energy test cycle shall be in place and shall be lined with 2 mil (0.051 mm) plastic sheet to prevent water from entering any void space.

3.1.3 Record the total weight of the machine before adding water.

3.1.4 Fill the clothes container manually with either 60 °F ± 5 °F (15.6 °C ± 2.8 °C) or 100 °F ± 10 °F (37.8 °C ± 5.5 °C) water, with the door open. For a top-loading, vertical-axis clothes washer, fill the clothes container to the uppermost edge of the rotating portion, including any balance ring. For a front-loading, horizontal-axis clothes washer, fill the clothes container to the uppermost edge that is in contact with the door seal. For all clothes washers, any volume which cannot be occupied by the clothing load during operation must be excluded from the measurement. Measure and record the weight of water, W, in pounds.

3.1.5 The clothes container capacity is calculated as follows:

$C = W/d$

Where:

C = Capacity in cubic feet (liters).
W = Mass of water in pounds (kilograms).
d = Density of water (62.0 lbs/ft^3 for 100 °F (993 kg/m^3 for 37.8 °C) or 62.3 lbs/ft^3 for 60 °F (998 kg/m^3 for 15.6 °C)).

3.2 *Procedure for measuring water and energy consumption values on all automatic and semi-automatic washers.* All energy consumption tests shall be performed under the energy test cycle(s), unless otherwise specified. Table 3.2 of this appendix defines the sections below which govern tests of

particular clothes washers, based on the number of wash/rinse temperature selections available on the model, and also, in some instances, method of water heating. The procedures prescribed are applicable regardless of a clothes washer's washing capacity, loading port location, primary axis of rotation of the clothes container, and type of control system.

3.2.1 *Inlet water temperature and the wash/rinse temperature settings.*

3.2.1.1 For automatic clothes washers set the wash/rinse temperature selection control to obtain the wash water temperature selection control to obtain the wash water temperature desired (extra hot, hot, warm, or cold) and cold rinse, and open both the hot and cold water faucets.

3.2.1.2 For semi-automatic washers: (1) For hot water temperature, open the hot water faucet completely and close the cold water faucet; (2) for warm inlet water temperature, open both hot and cold water faucets completely; (3) for cold water temperature, close the hot water faucet and open the cold water faucet completely.

3.2.1.3 *Determination of warm wash water temperature(s) to decide whether a clothes washer has uniformly distributed warm wash temperature selections.* The wash water temperature, Tw, of each warm water wash selection shall be calculated or measured.

For non-water heating clothes washers, calculate Tw as follows:

$$Tw(°F) = ((Hw \times 135\ °F) + (Cw \times 60\ °F))/(Hw + Cw)$$

or

$$Tw(°C) = ((Hw \times 57.2\ °C) + (Cw \times 15.6\ °C))/(Hw + Cw)$$

Where:

Hw = Hot water consumption of a warm wash.

Cw = Cold water consumption of a warm wash.

For water-heating clothes washers, measure and record the temperature of each warm wash selection after fill.

3.2.2 Total water consumption during the energy test cycle shall be measured, including hot and cold water consumption during wash, deep rinse, and spray rinse.

3.2.3 *Clothes washers with adaptive water fill/manual water fill control systems.*

3.2.3.1 *Clothes washers with adaptive water fill control system and alternate manual water fill control systems.* If a clothes washer with an adaptive water fill control system allows consumer selection of manual controls as an alternative, then both manual and adaptive modes shall be tested and, for each mode, the energy consumption (HE_T, ME_T, and D_E) and water consumption (Q_T), values shall be calculated as set forth in section 4. Then the average of the two values (one from each mode, adaptive and manual) for each variable shall be used in section 4 for the clothes washer.

3.2.3.2 *Clothes washers with adaptive water fill control system.*

3.2.3.2.1 Not user adjustable. The maximum, minimum, and average water levels as defined in the following sections shall be interpreted to mean that amount of water fill which is selected by the control system when the respective test loads are used, as defined in Table 2.8 of this appendix. The load usage factors which shall be used when calculating energy consumption values are defined in Table 4.1.3 of this appendix.

3.2.3.2.2 User adjustable. Four tests shall be conducted on clothes washers with user adjustable adaptive water fill controls which affect the relative wash water levels. The first test shall be conducted with the maximum test load and with the adaptive water fill control system set in the setting that will give the most energy intensive result. The second test shall be conducted with the minimum test load and with the adaptive water fill control system set in the setting that will give the least energy intensive result. The third test shall be conducted with the average test load and with the adaptive water fill control system set in the setting that will give the most energy intensive result for the given test load. The fourth test shall be conducted with the average test load and with the adaptive water fill control system set in the setting that will give the least energy intensive result for the given test load. The energy and water consumption for the average test load and water level shall be the average of the third and fourth tests.

3.2.3.3 *Clothes washers with manual water fill control system.* In accordance with Table 2.8 of this appendix, the water fill selector shall be set to the maximum water level available on the clothes washer for the maximum test load size and set to the minimum water level for the minimum test load size. The load usage factors which shall be used when calculating energy consumption values are defined in Table 4.1.3 of this appendix.

TABLE 3.2—TEST SECTION REFERENCE

Max. Wash Temp. Available	≤ 135 °F (57.2 °C)			**>135 °F (57.2 °C)	
Number of Wash Temp. Selections	1	2	> 2	3	>3
Test Sections Required to be Followed	.....	.....	.....	3.3	3.3
	.....	3.4	3.4	.....	3.4
	.....	.....	3.5	3.5	3.5
	3.6	3.6	3.6	3.6	3.6
	.....	.....	*3.7	*3.7	*3.7
	3.8	3.8	3.8	3.8	3.8
	.....	.....	.....	†3.9	†3.9

* Only applicable to machines with warm rinse.
** Only applicable to water heating clothes washers on which the maximum wash temperature available exceeds 135 °F (57.2 °C).
† Only applicable to machines equipped with a steam cycle.

3.3 *"Extra Hot Wash" (Max Wash Temp >135 °F (57.2 °C)) for water heating clothes washers only.* Water and electrical energy consumption shall be measured for each water fill level and/or test load size as specified in 3.3.1 through 3.3.3 for the hottest wash setting available.

3.3.1 *Maximum test load and water fill.* Hot water consumption (Hm_x), cold water consumption (Cm_x), and electrical energy consumption (Em_x) shall be measured for an extra hot wash/cold rinse energy test cycle, with the controls set for the maximum water fill level. The maximum test load size is to be used and shall be determined per Table 5.1 of this appendix.

3.3.2 *Minimum test load and water fill.* Hot water consumption (Hm_n), cold water consumption (Cm_n), and electrical energy consumption (Em_n) shall be measured for an extra hot wash/cold rinse energy test cycle, with the controls set for the minimum water fill level. The minimum test load size is to be used and shall be determined per Table 5.1 of this appendix.

3.3.3 *Average test load and water fill.* For clothes washers with an adaptive water fill control system, measure the values for hot water consumption (Hm_a), cold water consumption (Cm_a), and electrical energy consumption (Em_a) for an extra hot wash/cold rinse energy test cycle, with an average test load size as determined per Table 5.1 of this appendix.

3.4 *"Hot Wash" (Max Wash Temp ≤135 °F (57.2 °C)).* Water and electrical energy consumption shall be measured for each water fill level or test load size as specified in 3.4.1 through 3.4.3 for a *135 °F (57.2 °C)* wash, if available, or for the hottest selection less than *135 °F (57.2 °C).*

3.4.1 *Maximum test load and water fill.* Hot water consumption (Hh_x), cold water consumption (Ch_x), and electrical energy consumption (Eh_x) shall be measured for a hot wash/cold rinse energy test cycle, with the controls set for the maximum water fill level. The maximum test load size is to be used and shall be determined per Table 5.1 of this appendix.

3.4.2 *Minimum test load and water fill.* Hot water consumption (Hh_n), cold water consumption (Ch_n), and electrical energy consumption (Eh_n) shall be measured for a

hot wash/cold rinse energy test cycle, with the controls set for the minimum water fill level. The minimum test load size is to be used and shall be determined per Table 5.1 of this appendix.

3.4.3 *Average test load and water fill.* For clothes washers with an adaptive water fill control system, measure the values for hot water consumption (Hh_a), cold water consumption (Ch_a), and electrical energy consumption (Eh_a) for a hot wash/cold rinse energy test cycle, with an average test load size as determined per Table 5.1 of this appendix.

3.5 "*Warm Wash.*" Water and electrical energy consumption shall be determined for each water fill level and/or test load size as specified in 3.5.1 through 3.5.2.3 for the applicable warm water wash temperature(s) with a cold rinse.

3.5.1 *Clothes washers with uniformly distributed warm wash temperature selection(s).* The reportable values to be used for the warm water wash setting shall be the arithmetic average of the measurements for the hot and cold wash selections. This is a calculation only, no testing is required.

3.5.2 *Clothes washers that lack uniformly distributed warm wash temperature selections.* For a clothes washer with fewer than four discrete warm wash selections, test all warm wash temperature selections. For a clothes washer that offers four or more warm wash selections, test at all discrete selections, or test at 25 percent, 50 percent, and 75 percent positions of the temperature selection device between the hottest hot (≤135 °F (57.2 °C)) wash and the coldest cold wash. If a selection is not available at the 25, 50 or 75 percent position, in place of each such unavailable selection use the next warmer setting. Each reportable value to be used for the warm water wash setting shall be the arithmetic average of all tests conducted pursuant to this section.

3.5.2.1 *Maximum test load and water fill.* Hot water consumption (Hw_x), cold water consumption (Cw_x), and electrical energy consumption (Ew_x) shall be measured with the controls set for the maximum water fill level. The maximum test load size is to be used and shall be determined per Table 5.1 of this appendix.

3.5.2.2 *Minimum test load and water fill.* Hot water consumption (Hw_n), cold water consumption (Cw_n), and electrical energy consumption (Ew_n) shall be measured with the controls set for the minimum water fill level. The minimum test load size is to be used and shall be determined per Table 5.1 of this appendix.

3.5.2.3 *Average test load and water fill.* For clothes washers with an adaptive water fill control system, measure the values for hot water consumption (Hw_a), cold water consumption (Cw_a), and electrical energy consumption (Ew_a) with an average test load size as determined per Table 5.1 of this appendix.

3.6 "*Cold Wash*" *(Minimum Wash Temperature Selection).* Water and electrical energy consumption shall be measured for each water fill level or test load size as specified in 3.6.1 through 3.6.3 for the coldest wash temperature selection available.

3.6.1 *Maximum test load and water fill.* Hot water consumption (Hc_x), cold water consumption (Cc_x), and electrical energy consumption (Ec_x) shall be measured for a cold wash/cold rinse energy test cycle, with the controls set for the maximum water fill level. The maximum test load size is to be used and shall be determined per Table 5.1 of this appendix.

3.6.2 *Minimum test load and water fill.* Hot water consumption (Hc_n), cold water consumption (Cc_n), and electrical energy consumption (Ec_n) shall be measured for a cold wash/cold rinse energy test cycle, with the controls set for the minimum water fill level. The minimum test load size is to be used and shall be determined per Table 5.1 of this appendix.

3.6.3 *Average test load and water fill.* For clothes washers with an adaptive water fill control system, measure the values for hot water consumption (Hc_a), cold water consumption (Cc_a), and electrical energy consumption (Ec_a) for a cold wash/cold rinse energy test cycle, with an average test load size as determined per Table 5.1 of this appendix.

3.7 "*Warm Wash/Warm Rinse.*" Water and electrical energy consumption shall be determined for each water fill level and/or test load size as specified in 3.7.2.1 through 3.7.2.3 for the applicable warm wash temperature selection as described in 3.7.1 or 3.7.2 and the hottest available rinse temperature selection.

3.7.1 *Clothes washers with uniformly distributed warm wash temperature selection(s).* Test the warm wash warm rinse cycle at the wash temperature selection with the temperature selection device at the 50 percent position between the hottest hot (≤135 °F (57.2 °C)) wash and the coldest cold wash.

3.7.2 *Clothes washers that lack uniformly distributed warm wash temperature selections.* For a clothes washer with fewer than four discrete warm wash selections, test all warm wash temperature selections. For a clothes washer that offers four or more warm wash selections, test at all discrete selections, or test at 25 percent, 50 percent, and 75 percent positions of the temperature selection device between the hottest hot (≤135 °F (57.2 °C)) wash and the coldest cold wash. If a selection is not available at the 25, 50, or 75 percent position, in place of each such unavailable selection use the next warmer setting. Each reportable value to be used for the warm water wash setting shall be the arithmetic average of all tests conducted pursuant to this section.

3.7.2.1 *Maximum test load and water fill.* Hot water consumption (Hww_x), cold water consumption (Cww_x), and electrical energy consumption (Eww_x) shall be measured with the controls set for the maximum water fill level. The maximum test load size is to be used and shall be determine per Table 5.1 of this appendix.

3.7.2.2 *Minimum test load and water fill.* Hot water consumption (Hww_n), cold water consumption (Cww_n), and electrical energy consumption (Eww_n) shall be measured with the controls set for the minimum water fill level. The minimum test load size is to be used and shall be determine per Table 5.1 of this appendix.

3.7.2.3 *Average test load and water fill.* For clothes washers with an adaptive water fill control system, measure the values for hot water consumption (Hww_a), cold water consumption (Cww_a), and electrical energy consumption (Eww_a) with an average test load size as determined per Table 5.1 of this appendix.

3.8 *Remaining Moisture Content:*

3.8.1 The wash temperature will be the same as the rinse temperature for all testing. Use the maximum test load as defined in Table 5.1 of this appendix and section 3.1 for testing.

3.8.2 *For clothes washers with cold rinse only:*

3.8.2.1 Record the actual "bone dry" weight of the test load (WI_{max}), then place the test load in the clothes washer.

3.8.2.2 Set water level selector to maximum fill.

3.8.2.3 Run the energy test cycle.

3.8.2.4 Record the weight of the test load immediately after completion of the energy test cycle (WC_{max}).

3.8.2.5 Calculate the remaining moisture content of the maximum test load, RMC_{max}, expressed as a percentage and defined as:

$$RMC_{max} = ((WC_{max} - WI_{max})/WI_{max}) \times 100\%$$

3.8.3 *For clothes washers with cold and warm rinse options:*

3.8.3.1 Complete steps 3.8.2.1 through 3.8.2.4 for cold rinse. Calculate the remaining moisture content of the maximum test load for cold rinse, RMC_{COLD}, expressed as a percentage and defined as:

$$RMC_{COLD} = ((WC_{max} - WI_{max})/WI_{max}) \times 100\%$$

3.8.3.2 Complete steps 3.8.2.1 through 3.8.2.4 for warm rinse. Calculate the remaining moisture content of the maximum test load for warm rinse, RMC_{WARM}, expressed as a percentage and defined as:

$$RMC_{WARM} = ((WC_{max} - WI_{max})/WI_{max}) \times 100\%$$

3.8.3.3 Calculate the remaining moisture content of the maximum test load, RMC_{max}, expressed as a percentage and defined as:

$$RMC_{max} = RMC_{COLD} \times (1 - TUF_r) + RMC_{WARM} \times (TUF_r)$$

Where:

TUF_r is the temperature use factor for warm rinse as defined in Table 4.1.1 of this appendix.

3.8.4 Clothes washers that have options such as multiple selections of spin speeds or spin times that result in different RMC values and that are available in the energy test cycle, shall be tested at the maximum and minimum extremes of the available options, excluding any "no spin" (zero spin speed) settings, in accordance with requirements in 3.8.2 or 3.8.3. The calculated $RMC_{max,max\ extraction}$ and $RMC_{max,min\ extraction}$ at the maximum and minimum settings, respectively, shall be combined as follows and the final RMC to be used in section 4.3 shall be:

$$RMC = 0.75 \times RMC_{max,max\ extraction} + 0.25 \times RMC_{max,min\ extraction}$$

3.9 "*Steam Wash*" *for clothes washers equipped with a steam cycle.* Water and electrical energy consumption shall be measured for each water fill level and/or test load size as specified in 3.9.1 through 3.9.3 for the hottest wash setting available with steam.

3.9.1 *Maximum test load and water fill.* Hot water consumption (Hs_x), cold water consumption (Cs_x), and electrical energy consumption (Es_x) shall be measured for a steam energy test cycle, with the controls set for the maximum water fill level. The maximum test load size is to be used and shall be determined per Table 5.1 of this appendix.

3.9.2 *Minimum test load and water fill.* Hot water consumption (Hs_n), cold water consumption (Cs_n), and electrical energy consumption (Es_n) shall be measured for a steam energy test cycle, with the controls set for the minimum water fill level. The minimum test load size is to be used and shall be determined per Table 5.1 of this appendix.

3.9.3 *Average test load and water fill.* For clothes washers with an adaptive water fill control system, measure the values for hot water consumption (Hs_a), cold water consumption (Cs_a), and electrical energy consumption (Es_a) for a steam energy test cycle using an average test load size as determined per Table 5.1 of this appendix.

3.10 *Self-clean.* Set the controls to obtain the self-clean cycle. Hot water consumption (H_{sc}), cold water consumption (C_{sc}), and electric energy consumption (E_{sc}) shall be measured for the self-clean cycle. Do not use a test load.

3.11 *Standby mode, off mode, delay start mode, and cycle finished mode power.* Establish the testing conditions set forth in sections 2.2 and 2.11. For clothes washers that drop from a higher power state to a lower power state as discussed in section 5, paragraph 5.1, note 1 of IEC 62301, (incorporated by reference; see § 430.3), allow sufficient time for the clothes washer to reach the lower power state before proceeding with the test measurement. Follow the test procedure specified in section 5, paragraph 5.3 of IEC 62301 for testing in each possible mode as described in 3.11.1 through 3.11.4. For units in which power varies over a cycle, as described in section 5, paragraph 5.3.2 of IEC 62301, use the average power approach described in Paragraph 5.3.2(a) of IEC 62301.

3.11.1 If a clothes washer has a cycle finished mode as defined in section 1.9, measure and record its average cycle finished mode power, P_{cf}, in watts, allowing the product to stabilize for at least 30 minutes and using a measurement period in which the energy use is not less than 10 minutes.

3.11.2 If a clothes washer has a delay start mode as defined in section 1.11, measure and record its average delay start mode power, P_{ds}, in watts by setting it to a delay start time of 5 hours, allowing at least 5 minutes for the power input to stabilize. Then measure and record the average delay start mode power of the clothes washer, P_{ds}, in watts, for the following 60 minutes.

3.11.3 If a clothes washer has an inactive mode as defined in section 1.14, measure and record the average inactive mode power of the clothes washer, P_{ia}, in watts, allowing the product to stabilize for at least 30 minutes and using a measurement period of not less than 10 minutes.

3.11.4 If a clothes washer has an off mode as defined in section 1.22, measure and record its average off mode power, P_o, in watts, allowing the product to stabilize for at least 30 minutes and using a measurement period of not less than 10 minutes.

4. Calculation of Derived Results From Test Measurements

4.1 *Hot water and machine electrical energy consumption of clothes washers.*

4.1.1 *Per-cycle temperature-weighted hot water consumption for maximum, average, and minimum water fill levels using each appropriate load size as defined in section 2.8 and Table 5.1* of this appendix. Calculate for the cycle under test the per-cycle temperature weighted hot water consumption for the maximum water fill level, Vh_x, the average water fill level, Vh_a, and the minimum water fill level, Vh_n, expressed in gallons per cycle (or liters per cycle) and defined as:

(a) $Vh_x = [Hs_x \times TUF_s] + [Hm_x \times TUF_m] + [Hh_x \times TUF_h] + [Hw_x \times TUF_w] + [Hww_x \times TUF_{ww}] + [Hc_x \times TUF_c]$

(b) $Vh_a = [Hs_a \times TUF_s] + [Hm_a \times TUF_m] + [Hh_a \times TUF_h] + [Hw_a \times TUF_w] + [Hww_a \times TUF_{ww}] + [Hc_a \times TUF_c]$

(c) $Vh_n = [Hs_n \times TUF_s] + [Hm_n \times TUF_m] + [Hh_n \times TUF_h] + [Hw_n \times TUF_w] + [Hww_n \times TUF_{ww}] + [Hc_n \times TUF_c]$

Where:

Hs_x, Hs_a, and Hs_n, are reported hot water consumption values, in gallons per cycle (or liters per cycle), at maximum, average, and minimum water fill, respectively, for the steam cycle with the appropriate test loads as defined in section 2.8.

Hm_x, Hm_a, and Hm_n, are reported hot water consumption values, in gallons per-cycle (or liters per cycle), at maximum, average, and minimum water fill, respectively, for the extra hot wash cycle with the appropriate test loads as defined in section 2.8.

Hh_x, Hh_a, and Hh_n, are reported hot water consumption values, in gallons per-cycle (or liters per cycle), at maximum, average, and minimum water fill, respectively, for the hot wash cycle with the appropriate test loads as defined in section 2.8.

Hw_x, Hw_a, and Hw_n, are reported hot water consumption values, in gallons per-cycle (or liters per cycle), at maximum, average, and minimum water fill, respectively, for the warm wash cycle with the appropriate test loads as defined in section 2.8.

Hww_x, Hww_a, and Hww_n, are reported hot water consumption values, in gallons per-cycle (or liters per cycle), at maximum, average, and minimum water fill, respectively, for the warm wash/warm rinse cycle with the appropriate test loads as defined in section 2.8.

Hc_x, Hc_a, and Hc_n, are reported hot water consumption values, in gallons per-cycle (or liters per cycle), at maximum, average, and minimum water fill, respectively, for the cold wash cycle with the appropriate test loads as defined in section 2.8.

TUF_s, TUF_m, TUF_h, TUF_w, TUF_{ww}, and TUF_c are temperature use factors for steam wash, extra hot wash, hot wash, warm wash, warm wash/warm rinse, and cold wash temperature selections, respectively, and are as defined in Table 4.1.1 of this appendix.

TABLE 4.1.1—TEMPERATURE USE FACTORS

Max Wash Temp Available	≤135 °F (57.2 °C)	≤135 °F (57.2 °C)	≤135 °F (57.2 °C)	>135 °F (57.2 °C)	>135 °F (57.2 °C)	Steam	Steam
No. Wash Temp Selections	Single	2 Temps	>2 Temps	3 Temps	>3 Temps	3 Temps	>3 Temps
TUF_s (steam)	NA	NA	NA	NA	NA	0.02	0.02
TUF_m (extra hot)	NA	NA	NA	0.14	0.05	0.12	0.03
TUF_h (hot)	NA	0.63	0.14	NA	0.09	NA	0.09
TUF_{ww} (warm/warm)	NA	NA	0.27*	0.27*	0.27*	0.27*	0.27*
TUF_w (warm)	NA	NA	0.22	0.22	0.22	0.22	0.22
TUF_c (cold)	1.00	0.37	0.37	0.37	0.37	0.37	0.37

*Only applicable to machines offering a warm/warm cycle. For machines with no warm/warm cycle, this value should be zero and TUF_w (warm) should be 0.49.

4.1.2 *Total per-cycle hot water energy consumption for all maximum, average, and minimum water fill levels tested.* Calculate the total per-cycle hot water energy consumption for the maximum water fill level, HE_{max}, the minimum water fill level, HE_{min}, and the average water fill level, HE_{avg}, expressed in kilowatt-hours per cycle and defined as:

(a) $HE_{max} = [Vh_x \times T \times K]$ = Total energy when a maximum load is tested.

(b) $HE_{avg} = [Vh_a \times T \times K]$ = Total energy when an average load is tested.

(c) $HE_{min} = [Vh_n \times T \times K]$ = Total energy when a minimum load is tested.

Where:

T = Temperature rise = 75 °F (41.7 °C).

K = Water specific heat in kilowatt-hours per gallon degree F = 0.00240 (0.00114 kWh/L – °C).

Vh_x, Vh_a, and Vh_n are as defined in 4.1.1.

4.1.3 *Total weighted per-cycle hot water energy consumption.* Calculate the total weighted per-cycle hot water energy consumption, HE_T, expressed in kilowatt-hours per cycle and defined as:

$HE_T = [HE_{max} \times F_{max}] + [HE_{avg} \times F_{avg}] + [HE_{min} \times F_{min}]$

Where:

HE_{max}, HE_{avg}, and HE_{min} are as defined in 4.1.2.

F_{max}, F_{avg}, and F_{min} are the load usage factors for the maximum, average, and minimum test loads based on the size and type of the control system on the washer being tested. The values are as shown in Table 4.1.3 of this appendix.

TABLE 4.1.3—LOAD USAGE FACTORS

Water fill control system	Manual	Adaptive
F_{max} =	[1]0.72	[2]0.12
F_{avg} =		[2]0.74
F_{min} =	[1]0.28	[2]0.14

[1] Reference 3.2.3.3.
[2] Reference 3.2.3.2.

4.1.4 *Total per-cycle hot water energy consumption using gas-heated or oil-heated water.* Calculate for the energy test cycle the per-cycle hot water consumption, HE_{TG}, using gas-heated or oil-heated water, expressed in Btu per cycle (or megajoules per cycle) and defined as:

$HE_{TG} = HE_T \times 1/e \times 3412$ Btu/kWh or $HE_{TG} = HE_T \times 1/e \times 3.6$ MJ/kWh

Where:

e = Nominal gas or oil water heater efficiency = 0.75.

HE_T = As defined in 4.1.3.

4.1.5 *Per-cycle machine electrical energy consumption for all maximum, average, and minimum test load sizes.* Calculate the total per-cycle machine electrical energy consumption for the maximum water fill level, ME_{max}, the average water fill level, ME_{avg}, and the minimum water fill level, ME_{min}, expressed in kilowatt-hours per cycle and defined as:

(a)

$ME_{max} = [Es_x \times TUF_s] + [Em_x \times TUF_m] + [Eh_x \times TUF_h] + [Ew_x \times TUF_w] + [Eww_x \times TUF_{ww}] + [Ec_x \times TUF_c]$

(b)

$ME_{avg} = [Es_a \times TUF_s] + [Em_a \times TUF_m] + [Eh_a \times TUF_h] + [Ew_a \times TUF_w] + [Eww_a \times TUF_{ww}] + [Ec_a \times TUF_c]$

(c)

$ME_{min} = [Es_n \times TUF_s] + [Em_n \times TUF_m] + [Eh_n \times TUF_h] + [Ew_n \times TUF_w] + [Eww_n \times TUF_{ww}] + [Ec_n \times TUF_c]$

Where:

Es_x, Es_a, and Es_n, are reported electrical energy consumption values, in kilowatt-hours per cycle, at maximum, average, and minimum test loads, respectively, for the steam cycle.

Em_x, Em_a, and Em_n, are reported electrical energy consumption values, in kilowatt-hours per cycle, at maximum, average, and minimum test loads, respectively, for the extra hot wash cycle.

Eh_x, Eh_a, and Eh_n, are reported electrical energy consumption values, in kilowatt-hours per cycle, at maximum, average, and minimum test loads, respectively, for the hot wash cycle.

Ew_x, Ew_a, and Ew_n, are reported electrical energy consumption values, in kilowatt-hours per cycle, at maximum, average, and minimum test loads, respectively, for the warm wash cycle.

Eww_x, Eww_a, and Eww_n, are reported electrical energy consumption values, in kilowatt-hours per cycle, at maximum, average, and minimum test loads, respectively, for the warm wash/warm rinse cycle.

Ec_x, Ec_a, and Ec_n, are reported electrical energy consumption values, in kilowatt-hours per cycle, at maximum, average, and minimum test loads, respectively, for the cold wash cycle.

TUF_s, TUF_m, TUF_h, TUF_w, TUF_{ww}, and TUF_c are as defined in Table 4.1.1 of this appendix.

4.1.6 *Total weighted per-cycle machine electrical energy consumption.* Calculate the total per-cycle load size weighted energy consumption, ME_T, expressed in kilowatt-hours per cycle and defined as:

$ME_T = [ME_{max} \times F_{max}] + [ME_{avg} \times F_{avg}] + [ME_{min} \times F_{min}]$

Where:

ME_{max}, ME_{avg}, and ME_{min} are as defined in 4.1.5.

F_{max}, F_{avg}, and F_{min} are as defined in Table 4.1.3 of this appendix.

4.1.7 *Total per-cycle energy consumption when electrically heated water is used.* Calculate for the energy test cycle the total per-cycle energy consumption, E_{TE}, using electrically heated water, expressed in kilowatt-hours per cycle and defined as:

$E_{TE} = HE_T + ME_T$

Where:

ME_T = As defined in 4.1.6.

HE_T = As defined in 4.1.3.

4.1.8 *Per-cycle self-clean hot water energy consumption.* Calculate the per-cycle self-clean hot water energy consumption, HE_{sc}, expressed in kilowatt-hours per cycle, and defined as:

$HE_{sc} = [H_{sc} \times T \times K]$

Where:

H_{sc} = reported hot water consumption value, in gallons per-cycle, for the self-clean cycle as defined in section 3.10.

T = Temperature rise = 75 °F (41.7 °C).

K = Water specific heat in kilowatt-hours per gallon degree F = 0.00240 (0.00114 kWh/L – °C).

4.2 *Water consumption of clothes washers.* (The calculations in this Section need not be performed to determine compliance with the energy conservation standards for clothes washers manufactured before January 1, 2011.)

4.2.1 *Per-cycle water consumption for steam wash.* Calculate the maximum, average, and minimum total water consumption, expressed in gallons per cycle (or liters per cycle), for the steam cycle and defined as:

$Qs_{max} = [Hs_x + Cs_x]$
$Qs_{avg} = [Hs_a + Cs_a]$
$Qs_{min} = [Hs_n + Cs_n]$

Where:

Hs_x, Cs_x, Hs_a, Cs_a, Hs_n, and Cs_n are defined in 3.9.

4.2.2 *Per-cycle water consumption for extra hot wash.* Calculate the maximum, average, and minimum total water consumption, expressed in gallons per cycle (or liters per cycle), for the extra hot wash cycle and defined as:

$Qm_{max} = [Hm_x + Cm_x]$
$Qm_{avg} = [Hm_a + Cm_a]$
$Qm_{min} = [Hm_n + Cm_n]$

Where:

Hm_x, Cm_x, Hm_a, Cm_a, Hm_n, and Cm_n are defined in 3.3.

4.2.3 *Per-cycle water consumption for hot wash.* Calculate the maximum, average, and minimum total water consumption, expressed in gallons per cycle (or liters per cycle), for the hot wash cycle and defined as:

$Qh_{max} = [Hh_x + Ch_x]$
$Qh_{avg} = [Hh_a + Ch_a]$
$Qh_{min} = [Hh_n + Ch_n]$

Where:

Hh_x, Ch_x, Hh_a, Ch_a, Hh_n, and Ch_n are defined in 3.4.

4.2.4 *Per-cycle water consumption for warm wash with cold rinse.* Calculate the maximum, average, and minimum total water consumption, expressed in gallons per cycle (or liters per cycle), for the warm wash cold rinse cycle and defined as:

$Qw_{max} = [Hw_x + Cw_x]$
$Qw_{avg} = [Hw_a + Cw_a]$
$Qw_{min} = [Hw_n + Cw_n]$

Where:

Hw_x, Cw_x, Hw_a, Cw_a, Hw_n, and Cw_n are defined in 3.5.

4.2.5 *Per-cycle water consumption for warm wash with warm rinse.* Calculate the maximum, average, and minimum total water consumption, expressed in gallons per cycle (or liters per cycle), for the warm wash/warm rinse cycle and defined as:

$Qww_{max} = [Hww_x + Cww_x]$
$Qww_{avg} = [Hww_a + Cww_a]$
$Qww_{min} = [Hww_n + Cww_n]$

Where:

Hww_x, Cww_x, Hww_a, Cww_a, Hww_n, and Cww_n are defined in 3.7.

4.2.6 *Per-cycle water consumption for cold wash.* Calculate the maximum, average, and minimum total water consumption, expressed in gallons per cycle (or liters per cycle), for the cold wash cycle and defined as:

$Qc_{max} = [Hc_x + Cc_x]$
$Qc_{avg} = [Hc_a + Cc_a]$
$Qc_{min} = [Hc_n + Cc_n]$

Where:

Hc_x, Cc_x, Hc_a, Cc_a, Hc_n, and Cc_n are defined in 3.6.

4.2.7 *Total weighted per-cycle water consumption for steam wash.* Calculate the total weighted per cycle consumption, Qs_T, expressed in gallons per cycle (or liters per cycle) and defined as:

$Qs_T = [Qs_{max} \times F_{max}] + [Qs_{avg} \times F_{avg}] + [Qs_{min} \times F_{min}]$

Where:

Qs_{max}, Qs_{avg}, Qs_{min} are defined in 4.2.1.

F_{max}, F_{avg}, F_{min} are defined in Table 4.1.3 of this appendix.

4.2.8 *Total weighted per-cycle water consumption for extra hot wash.* Calculate the total weighted per cycle consumption, Qm_T, expressed in gallons per cycle (or liters per cycle) and defined as:

$Qm_T = [Qm_{max} \times F_{max}] + [Qm_{avg} \times F_{avg}] + [Qm_{min} \times F_{min}]$

Where:

Qm_{max}, Qm_{avg}, Qm_{min} are defined in 4.2.2.

F_{max}, F_{avg}, F_{min} are defined in Table 4.1.3 of this appendix.

4.2.9 *Total weighted per-cycle water consumption for hot wash.* Calculate the total weighted per cycle consumption, Qh_T, expressed in gallons per cycle (or liters per cycle) and defined as:

$Qh_T = [Qh_{max} \times F_{max}] + [Qh_{avg} \times F_{avg}] + [Qh_{min} \times F_{min}]$

Where:

Qh_{max}, Qh_{avg}, Qh_{min} are defined in 4.2.3.

F_{max}, F_{avg}, F_{min} are defined in Table 4.1.3 of this appendix.

4.2.10 *Total weighted per-cycle water consumption for warm wash with cold rinse.* Calculate the total weighted per cycle consumption, Qw_T, expressed in gallons per cycle (or liters per cycle) and defined as:

$Qw_T = [Qw_{max} \times F_{max}] + [Qw_{avg} \times F_{avg}] + [Qw_{min} \times F_{min}]$

Where:

Qw_{max}, Qw_{avg}, Qw_{min} are defined in 4.2.4.

F_{max}, F_{avg}, F_{min} are defined in Table 4.1.3 of this appendix.

4.2.11 *Total weighted per-cycle water consumption for warm wash with warm rinse.* Calculate the total weighted per cycle consumption, Qw_T, expressed in gallons per cycle (or liters per cycle) and defined as:

$Qww_T = [Qww_{max} \times F_{max}] + [Qww_{avg} \times F_{avg}] + [Qww_{min} \times F_{min}]$

Where:

Qww_{max}, Qww_{avg}, Qww_{min} are defined in 4.2.5.

F_{max}, F_{avg}, F_{min} are defined in Table 4.1.3 of this appendix.

4.2.12 *Total weighted per-cycle water consumption for cold wash.* Calculate the total weighted per cycle consumption, Qc_T, expressed in gallons per cycle (or liters per cycle) and defined as:

$Qc_T = [Qc_{max} \times F_{max}] + [Qc_{avg} \times F_{avg}] + [Qc_{min} \times F_{min}]$

Where:

Qc_{max}, Qc_{avg}, Qc_{min} are defined in 4.2.6.

F_{max}, F_{avg}, F_{min} are defined in Table 4.1.3 of this appendix.

4.2.13 *Total weighted per-cycle water consumption for all wash cycles.* Calculate the total weighted per cycle consumption, Q_T, expressed in gallons per cycle (or liters per cycle) and defined as:

$Q_T = [Qs_T \times TUF_s] + [Qm_T \times TUF_m] + [Qh_T \times TUF_h] + [Qw_T \times TUF_w] + [Qww_T \times TUF_{ww}] + [Qc_T \times TUF_c]$

Where:

Qs_T, Qm_T, Qh_T, Qw_T, Qww_T, and Qc_T are defined in 4.2.7 through 4.2.12.

TUF_s, TUF_m, TUF_h, TUF_w, TUF_{ww}, and TUF_c are defined in Table 4.1.1 of this appendix.

4.2.14 *Per-cycle self-clean water consumption.* Calculate the total per-cycle self-clean water consumption, Q_{sc}, in gallons per cycle (or liters per cycle) and defined as:

$Q_{sc} = [H_{sc} + C_{sc}]$

Where:

H_{sc} = As defined in 3.10.

C_{sc} = As defined in 3.10.

4.2.15 *Water consumption factor.* Calculate the water consumption factor, WCF, expressed in gallons per cycle per cubic feet (or liter per cycle per liter), as:

$WCF = Qc_T/C$

Where:

Qc_T = As defined in 4.2.12.

C = As defined in 3.1.5.

4.2.16 *Integrated water consumption factor.* Calculate the integrated water consumption factor, IWF, expressed in gallons per cycle per cubic feet (or liter per cycle per liter), as:

$IWF = [Q_T + Q_{sc}]/C$

Where:

Q_T = As defined in 4.2.13.

Q_{sc} = As defined in 4.2.14.

C = As defined in 3.1.5.

4.3 *Per-cycle energy consumption for removal of moisture from test load.* Calculate the per-cycle energy required to remove the moisture of the test load, D_E, expressed in kilowatt-hours per cycle and defined as:

$D_E = (LAF) \times (\text{Maximum test load weight}) \times (RMC–4\%) \times (DEF) \times (DUF)$

Where:

LAF = Load adjustment factor = 0.52.

Test load weight=As required in 3.8.1, expressed in lbs/cycle.

RMC = As defined in 3.8.2.5, 3.8.3.3, or 3.8.4.

DEF = Nominal energy required for a clothes dryer to remove moisture from clothes = 0.5 kWh/lb (1.1 kWh/kg).

DUF = Dryer usage factor, percentage of washer loads dried in a clothes dryer = 0.91.

4.4 *Per-cycle standby mode, off mode, delay start mode, and cycle finished mode energy consumption.* Calculate the clothes washer combined standby mode, off mode, delay start mode, and cycle finished energy consumption per cycle, E_{TSO}, expressed in kilowatt-hours per cycle and defined as:

$E_{TSO} = [(P_{cf} \times S_{cf}) + (P_{ds} \times S_{ds}) + (P_{ia} \times S_{ia}) + (P_o \times S_o)] \times K_p/295$

Where:

P_{cf} = Washer cycle finished mode power, in watts, as defined in 3.11.1 for clothes washers capable of operating in cycle finished mode; otherwise, $P_{cf} = 0$.

P_{ds} = Washer delay start mode power, in watts, as defined in 3.11.2 for clothes washers capable of operating in delay start mode; otherwise, $P_{ds} = 0$.

P_{ia} = Washer inactive mode power, in watts, as defined in 3.11.3 for clothes washers capable of operating in inactive mode; otherwise, $P_{ia} = 0$.

P_o = Washer off mode power, in watts, as defined in 3.11.4 for clothes washers capable of operating in off mode; otherwise, $P_o = 0$.

S_{cf} = 15 annual hours in cycle finished mode for clothes washers capable of operating in inactive mode; otherwise, $S_{cf} = 0$.

S_{ds} = 25 annual hours in delay start mode for clothes washers capable of operating in inactive mode; otherwise, $S_{ds} = 0$.

S_{ia} = Annual hours in inactive mode as defined as S_{oi} if no off mode is possible, $[S_{oi}/2]$ if both inactive mode and off mode are possible, and 0 if no inactive mode is possible, where S_{oi} is the combined annual hours for off and inactive mode as defined in Table 4.4.1 of this appendix.

S_o = Annual hours in off mode as defined as S_{oi} if no inactive mode is possible, $[S_{oi}/2]$ if both inactive mode and off mode are possible, and 0 if no off mode is possible, where S_{oi} is the combined annual hours for off and inactive mode as defined in Table 4.4.1 of this appendix.

K_p = Conversion factor of watt-hours to kilowatt-hours = 0.001.

295 = Representative average number of clothes washer cycles in a year.

TABLE 4.4.1—ANNUAL OFF AND INACTIVE MODE HOURS

	All modes possible	No delay start mode	No cycle finished mode	No delay start or cycle finished modes
No Self-Clean Cycle:				
S_{oi}	8,425	8,450	8,440	8,465
Self-Clean Cycle Possible:				

TABLE 4.4.1—ANNUAL OFF AND INACTIVE MODE HOURS—Continued

	All modes possible	No delay start mode	No cycle finished mode	No delay start or cycle finished modes
S_{oi}	8,409	8,434	8,424	8,449

4.5 *Per-cycle self-clean energy consumption.* Calculate the clothes washer self-clean energy per cycle, E_{TSC}, expressed in kilowatt-hours per cycle and defined as:

$E_{TSC} = [HE_{sc} + E_{sc}] \times 12/295$

Where:

HE_{sc} = As defined in 4.1.8.
E_{sc} = Reported electrical energy consumption value, in kilowatt hours per cycle, for the self-clean cycle as defined in 3.10.
12 = Representative average number of clothes washer self-clean cycles in a year.
295 = Representative average number of clothes washer cycles in a year.

4.6 *Modified energy factor.* Calculate the modified energy factor, MEF, expressed in cubic feet per kilowatt-hour per cycle (or liters per kilowatt-hour per cycle) and defined as:

$MEF = C/(E_{TE} + D_E)$

Where:

C = As defined in 3.1.5.
E_{TE} = As defined in 4.1.7.
D_E = As defined in 4.3.

4.7 *Integrated modified energy factor.* Calculate the integrated modified energy factor, IMEF, expressed in cubic feet per kilowatt-hour per cycle (or liters per kilowatt-hour per cycle) and defined as:

$IMEF = C/(E_{TE} + D_E + E_{TSO} + E_{TSC})$

Where:

C = As defined in 3.1.5.
E_{TE} = As defined in 4.1.7.
D_E = As defined in 4.3.
E_{TSO} = As defined in 4.4.
E_{TSC} = As defined in 4.5.

5. Test Loads

TABLE 5.1—TEST LOAD SIZES

Container volume		Minimum load		Maximum load		Average load	
cu. ft.	liter	lb	kg	lb	kg	lb	kg
<	<						
0–0.8	0–22.7	3	1.36	3.00	1.36	3	1.36
0.80–0.90	22.7–25.5	3	1.36	3.50	1.59	3.25	1.47
0.90–1.00	25.5–28.3	3	1.36	3.90	1.77	3.45	1.56
1.00–1.10	28.3–31.1	3	1.36	4.30	1.95	3.65	1.66
1.10–1.20	31.1–34.0	3	1.36	4.70	2.13	3.85	1.75
1.20–1.30	34.0–36.8	3	1.36	5.10	2.31	4.05	1.84
1.30–1.40	36.8–39.6	3	1.36	5.50	2.49	4.25	1.93
1.40–1.50	39.6–42.5	3	1.36	5.90	2.68	4.45	2.02
1.50–1.60	42.5–45.3	3	1.36	6.40	2.9	4.7	2.13
1.60–1.70	45.3–48.1	3	1.36	6.80	3.08	4.9	2.22
1.70–1.80	48.1–51.0	3	1.36	7.20	3.27	5.1	2.31
1.80–1.90	51.0–53.8	3	1.36	7.60	3.45	5.3	2.4
1.90–2.00	53.8–56.6	3	1.36	8.00	3.63	5.5	2.49
2.00–2.10	56.6–59.5	3	1.36	8.40	3.81	5.7	2.59
2.10–2.20	59.5–62.3	3	1.36	8.80	3.99	5.9	2.68
2.20–2.30	62.3–65.1	3	1.36	9.20	4.17	6.1	2.77
2.30–2.40	65.1–68.0	3	1.36	9.60	4.35	6.3	2.86
2.40–2.50	68.0–70.8	3	1.36	10.00	4.54	6.5	2.95
2.50–2.60	70.8–73.6	3	1.36	10.50	4.76	6.75	3.06
2.60–2.70	73.6–76.5	3	1.36	10.90	4.94	6.95	3.15
2.70–2.80	76.5–79.3	3	1.36	11.30	5.13	7.15	3.24
2.80–2.90	79.3–82.1	3	1.36	11.70	5.31	7.35	3.33
2.90–3.00	82.1–85.0	3	1.36	12.10	5.49	7.55	3.42
3.00–3.10	85.0–87.8	3	1.36	12.50	5.67	7.75	3.52
3.10–3.20	87.8–90.6	3	1.36	12.90	5.85	7.95	3.61
3.20–3.30	90.6–93.4	3	1.36	13.30	6.03	8.15	3.7
3.30–3.40	93.4–96.3	3	1.36	13.70	6.21	8.35	3.79
3.40–3.50	96.3–99.1	3	1.36	14.10	6.4	8.55	3.88
3.50–3.60	99.1–101.9	3	1.36	14.60	6.62	8.8	3.99
3.60–3.70	101.9–104.8	3	1.36	15.00	6.8	9	4.08
3.70–3.80	104.8–107.6	3	1.36	15.40	6.99	9.2	4.17
3.80–3.90	107.6–110.4	3	1.36	15.80	7.16	9.4	4.26
3.90–4.00	110.4–113.3	3	1.36	16.20	7.34	9.6	4.35
4.00–4.10	113.3–116.1	3	1.36	16.60	7.53	9.8	4.45
4.10–4.20	116.1–118.9	3	1.36	17.00	7.72	10.0	4.54
4.20–4.30	118.9–121.8	3	1.36	17.40	7.90	10.2	4.63
4.30–4.40	121.8–124.6	3	1.36	17.80	8.09	10.4	4.72
4.40–4.50	124.6–127.4	3	1.36	18.20	8.27	10.6	4.82
4.50–4.60	127.4–130.3	3	1.36	18.70	8.46	10.8	4.91
4.60–4.70	130.3–133.1	3	1.36	19.10	8.65	11.0	5.00
4.70–4.80	133.1–135.9	3	1.36	19.50	8.83	11.2	5.10
4.80–4.90	135.9–138.8	3	1.36	19.90	9.02	11.4	5.19
4.90–5.00	138.8–141.6	3	1.36	20.30	9.20	11.6	5.28

TABLE 5.1—TEST LOAD SIZES—Continued

Container volume		Minimum load		Maximum load		Average load	
cu. ft.	liter	lb	kg	lb	kg	lb	kg
<	<						
5.00–5.10	141.6–144.4	3	1.36	20.70	9.39	11.9	5.38
5.10–5.20	144.4–147.2	3	1.36	21.10	9.58	12.1	5.47
5.20–5.30	147.2–150.1	3	1.36	21.50	9.76	12.3	5.56
5.30–5.40	150.1–152.9	3	1.36	21.90	9.95	12.5	5.65
5.40–5.50	152.9–155.7	3	1.36	22.30	10.13	12.7	5.75
5.50–5.60	155.7–158.6	3	1.36	22.80	10.32	12.9	5.84
5.60–5.70	158.6–161.4	3	1.36	23.20	10.51	13.1	5.93
5.70–5.80	161.4–164.2	3	1.36	23.60	10.69	13.3	6.03
5.80–5.90	164.2–167.1	3	1.36	24.00	10.88	13.5	6.12
5.90–6.00	167.1–169.9	3	1.36	24.40	11.06	13.7	6.21

Notes: (1) All test load weights are bone dry weights.
(2) Allowable tolerance on the test load weights are ±0.10 lbs (0.05 kg).

6. Waivers and Field Testing

6.1 *Waivers and Field Testing for Non-conventional Clothes Washers.* Manufacturers of nonconventional clothes washers, such as clothes washers with adaptive control systems, must submit a petition for waiver pursuant to 10 CFR 430.27 to establish an acceptable test procedure for that clothes washer. For these and other clothes washers that have controls or systems such that the DOE test procedures yield results that are so unrepresentative of the clothes washer's true energy consumption characteristics as to provide materially inaccurate comparative data, field testing may be appropriate for establishing an acceptable test procedure. The following are guidelines for field testing which may be used by manufacturers in support of petitions for waiver. These guidelines are not mandatory and the Department may determine that they do not apply to a particular model. Depending upon a manufacturer's approach for conducting field testing, additional data may be required. Manufacturers are encouraged to communicate with the Department prior to the commencement of field tests which may be used to support a petition for waiver. Section 6.3 provides an example of field testing for a clothes washer with an adaptive water fill control system. Other features, such as the use of various spin speed selections, could be the subject of field tests.

6.2 *Nonconventional Wash System Energy Consumption Test.* The field test may consist of a minimum of 10 of the nonconventional clothes washers ("test clothes washers") and 10 clothes washers already being distributed in commerce ("base clothes washers"). The tests should include a minimum of 50 energy test cycles per clothes washer. The test clothes washers and base clothes washers should be identical in construction except for the controls or systems being tested. Equal numbers of both the test clothes washer and the base clothes washer should be tested simultaneously in comparable settings to minimize seasonal or consumer laundering conditions or variations. The clothes washers should be monitored in such a way as to accurately record the total energy consumption per cycle. At a minimum, the following should be measured and recorded throughout the test period for each clothes washer: Hot water usage in gallons (or liters), electrical energy usage in kilowatt-hours, and the cycles of usage.

The field test results would be used to determine the best method to correlate the rating of the test clothes washer to the rating of the base clothes washer. If the base clothes washer is rated at A kWh per year, but field tests at B kWh per year, and the test clothes washer field tests at D kWh per year, the test unit would be rated as follows:

$A \times (D/B) = G$ kWh per year

6.3 *Adaptive water fill control system field test.* Section 3.2.3.1 defines the test method for measuring energy consumption for clothes washers which incorporate control systems having both adaptive and alternate cycle selections. Energy consumption calculated by the method defined in section 3.2.3.1 assumes the adaptive cycle will be used 50 percent of the time. This section can be used to develop field test data in support of a petition for waiver when it is believed that the adaptive cycle will be used more than 50 percent of the time. The field test sample size should be a minimum of 10 test clothes washers. The test clothes washers should be totally representative of the design, construction, and control system that will be placed in commerce. The duration of field testing in the user's house should be a minimum of 50 energy test cycles, for each unit. No special instructions as to cycle selection or product usage should be given to the field test participants, other than inclusion of the product literature pack which would be shipped with all units, and instructions regarding filling out data collection forms, use of data collection equipment, or basic procedural methods. Prior to the test clothes washers being installed in the field test locations, baseline data should be developed for all field test units by conducting laboratory tests as defined by section 1 through section 5 of these test procedures to determine the energy consumption, water consumption, and remaining moisture content values. The following data should be measured and recorded for each wash load during the test period: wash cycle selected, the mode of the clothes washer (adaptive or manual), clothes load dry weight (measured after the clothes washer and clothes dryer cycles are completed) in pounds, and type of articles in the clothes load (*e.g.,* cottons, linens, permanent press). The wash loads used in calculating the in-home percentage split between adaptive and manual cycle usage should be only those wash loads which conform to the definition of the energy test cycle.

Calculate:

T = The total number of energy test cycles run during the field test.

T_a = The total number of adaptive control energy test cycles.

T_m = The total number of manual control energy test cycles.

The percentage weighting factors:

$P_a = (T_a/T) \times 100$ (the percentage weighting for adaptive control selection)

$P_m = (T_m/T) \times 100$ (the percentage weighting for manualcontrol selection)

Energy consumption (HE_T, ME_T, and D_E) and water consumption (Q_T), values calculated in section 4 for the manual and adaptive modes, should be combined using P_a and P_m as the weighting factors.

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Part III

Department of Transportation

Federal Railroad Administration

49 CFR Parts 209, 213, 214, et al.

Revised Proposal for Revisions to the Schedules of Civil Penalties for a Violation of a Federal Railroad Safety Law or Federal Railroad Administration Safety Regulation or Order; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 209, 213, 214, 215, 217, 218, 219, 220, 221, 222, 223, 224, 225, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 238, 239, 240, and 241

[Docket No. FRA–2006–25274, Notice No. 2]

RIN 2130–ZA00

Revised Proposal for Revisions to the Schedules of Civil Penalties for a Violation of a Federal Railroad Safety Law or Federal Railroad Administration Safety Regulation or Order

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

ACTION: Revised proposal for revisions to schedules of civil penalties, with request for comments.

SUMMARY: FRA is issuing for comment a revised proposal (New Proposal) that, if adopted, would amend, line-by-line, FRA's schedules of civil penalties ("Schedules") issued as appendices to FRA's rail safety regulations, as well as other guidance, in order to reflect more accurately the degree of safety risk associated with a violation of each regulatory requirement and to ensure that the civil monetary penalty amounts are consistent across all FRA safety regulations. The New Proposal represents a revision of FRA's December 2006 proposal to amend the Schedules for the same purposes (December 2006 Proposal or Initial Proposal).

DATES: Written comments must be received by October 21, 2010. Comments received after that date will be considered to the extent possible without incurring additional delay or expense.

ADDRESSES: *Comments:* Comments related to this Docket No. FRA 2006–25274, Notice No. 2, may be submitted by any of the following methods:

- *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.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to *http://www.regulations.gov* including any personal information provided.

Docket: For access to the docket to read background documents or comments received go to *http://www.regulations.gov* at any time or to U.S. Department of Transportation, Docket Operations, M–30, 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.

FOR FURTHER INFORMATION CONTACT: Edward Pritchard, Director, Office of Safety Assurance and Compliance, Office of Railroad Safety, FRA, 1200 New Jersey Avenue, SE., Washington, DC 20590 (telephone 202–493–6247), *edward.pritchard @dot.gov;* or Brian Roberts, Trial Attorney, Office of the Chief Counsel, FRA, 1200 New Jersey Avenue, SE., Mail Stop 10, Washington, DC 20590 (telephone 202–493–6052), *brian.roberts@dot.gov.*

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I. General Background

FRA last published comprehensive, line-by-line final revisions to the Schedules of its safety regulations on December 29, 1988. 53 FR 52918. The revisions reflected the higher maximum penalty amounts made available by the enactment of the Rail Safety Improvement Act of 1988 (Pub. L. 100–342). With the exception of the penalties relating to the hours of service laws (49 U.S.C. chapter 211), the Rail Safety Improvement Act of 1988 raised the maximum penalty for any ordinary violation from $2,500 to $10,000 ("the ordinary maximum") and to $20,000 for a grossly negligent violation or a pattern of repeated violations that has created an imminent hazard of death or injury or caused death or injury ("the aggravated maximum"). Therefore, FRA published amendments to the Schedules in order to "give effect to the full range of civil penalties * * * permitted to be assessed for violation of specific regulations." 53 FR 52918. These amendments revised not only the maximum civil penalty amount for any violation, but also the individual line-item penalties for specific sections or subsections of the regulations.

The Rail Safety Enforcement and Review Act ("RSERA") (Pub. L. 102–365), which was enacted September 3, 1992, increased the maximum penalty for a violation of the hours of service laws, from $1,000 to $10,000 and in some cases to $20,000, making these penalty amounts uniform with those of FRA's other regulatory provisions. RSERA also increased the minimum penalty from $250 to $500 for all of FRA's regulatory provisions.

Since the publication of the Schedules in 1988, FRA has periodically adjusted its minimum and its ordinary or aggravated maximum penalty to conform to the mandates of the Federal Civil Penalties Inflation Adjustment Act of 1990. 28 U.S.C. 2461 note, as amended ("Inflation Act"). The Inflation Act requires that an agency adjust by regulation each maximum penalty, or range of minimum and maximum penalties, within that agency's jurisdiction periodically to reflect inflation. In the Inflation Act, Congress found a way to counter the effect that inflation has had on the penalties by having the agencies

charged with enforcement responsibility administratively adjust the penalties. Currently FRA's minimum penalty is $650, the ordinary maximum is $25,000 and the aggravated maximum is $100,000 (for when a "grossly negligent violation or pattern of repeated violations has caused an imminent hazard or death or injury to individuals, or has caused death or injury").

The Inflation Act requires only that the minimum, the ordinary maximum, and the aggravated maximum civil penalty for a violation be adjusted, not that the guideline penalty amounts for a specific type of violation (*e.g.,* a section of a particular regulation) be adjusted. As a result, FRA has not adjusted the line-item guideline penalties found in the Schedules in conjunction with its adjustments of the minimum, maximum and aggravated maximum civil penalties. FRA's practice has been to issue Schedules assigning to each section or subsection of the regulations specific dollar amounts for initial penalty assessments. These Schedules (and all line-item penalty amounts found within them) are statements of agency policy that specify the penalty that FRA will ordinarily assess for the violation of a particular section or subsection of a safety regulation, and are published to inform members of the regulated community of the amount that they are likely to be assessed for a given violation within the range of $650 to $25,000. The Schedules are "meant to provide guidance as to FRA's policy in predictable situations, not to bind FRA from using the full range of penalty authority where extraordinary circumstances warrant." 49 CFR part 209, appendix A. Thus, regardless of the amounts shown in the Schedules, FRA continues to reserve the right to assess, within the range established by the rail safety statutes (49 U.S.C. chapter 213) or by regulation pursuant to the Inflation Act, an amount other than that listed in the Schedules based on the circumstances of the alleged violation. 73 FR 79698, Dec. 30, 2008.

II. Proceedings to Date, Provision of Opportunity for Comment, and Comparison of Initial and New Proposals

A. Initial Proposal

FRA published 25 proposed Schedules with a request for comments on December 5, 2006, which first presented the agency's intention of once again comprehensively revising the civil penalty amounts. 71 FR 70590. In this Initial Proposal, FRA explained its approach to reevaluating the Schedules and explained the severity scale that was developed for setting line-item penalty amounts in the Schedules. The severity scale's penalty amounts were assessed within the statutory range for civil penalties at that time, which was from the minimum of $550 to the ordinary maximum of $11,000, as follows:

Severity level (explained in the Initial Proposal and below)	Ordinary violations	Willful violations
Level A	$8,500	$11,000
Level B	6,500	9,000
Level C	5,000	7,500
Level D	3,000	4,500
Level E	1,500	2,500

B. Subsequent Changes in the Minimum and Ordinary Maximum Civil Penalties

Subsequently, in 2007, pursuant to the requirements of the Inflation Act, FRA recalculated the ordinary maximum penalty and raised it from $11,000 to $16,000. 71 FR 51194, Sept. 6, 2007. Then, on October 16, 2008, the Rail Safety Improvement Act of 2008 (Pub. L. 110–432, Div. A) ("RSIA") was enacted; Section 302 of the RSIA increased the ordinary and aggravated maximum penalty amounts to $25,000 and $100,000, respectively. In a final rule published on December 30, 2008, FRA adjusted its minimum penalty from $550 to $650 pursuant to Inflation Act requirements. 73 FR 79698. In that rule FRA also evaluated whether it needed to increase the ordinary and aggravated maximum penalties pursuant to the Inflation Act; however, the enactment of the RSIA statutorily changed the ordinary and aggravated maximum penalties to $25,000 and $100,000, respectively, and therefore rendered any inflationary adjustments to either figure unnecessary. Instead, FRA adopted $25,000 as the ordinary maximum and $100,000 as the aggravated maximum required by the RSIA. (*See also* correcting amendment to the Schedule for 49 CFR part 232. 74 FR 15387, April 6, 2009.)

C. Provision of Opportunity for Comment, With Comparison of the Initial and New Proposals

Given the large statutorily mandated increase in the ordinary maximum civil penalty from $11,000 to $25,000 after publication of the Initial Proposal, FRA is offering the public an opportunity to review and comment on the new higher civil penalty amounts assessed for violations on each severity scale level in the New Proposal.[1] In the New Proposal, FRA is issuing another set of proposed Schedules and seeking comments from the general public. Comments on the new proposed Schedules will be useful to the agency's decision making process.

FRA has also slightly modified the severity scale in the New Proposal from the severity scale in the Initial Proposal. In the New Proposal, FRA has used a targeted enforcement approach for establishing the civil penalties for ordinary (non-willful) violations of railroad safety regulations. As part of the targeted enforcement approach,

[1] For example, the severity scale in this New Proposal has five levels like the severity scale proposed in the Initial Proposal. However, the severity scale in the New Proposal differs from the severity scale in the Initial Proposal in several ways. First, FRA has adding the word "materially" to the description of what constitutes a Level E violation in the New Proposal. Therefore, Level E violations in the New Proposal are violations that do not materially increase the likelihood that a rail equipment accident/incident or other accident/incident will occur. This is a clarification from the previous definition for Level E violations in the Initial Proposal where Level E violations were defined as violations that did not increase the likelihood that a rail equipment accident/incident or other accident/incident would occur. This definition did not make sense because failure to follow any FRA safety regulation would have some direct or indirect impact on railroad safety and thereby increase, even infinitesimally, the likelihood of an accident or incident. As a result, the word "materially" was added to the criteria for a Level E violation in the severity scale in this New Proposal. Second, FRA has provided more transparency and referenced the regulatory language found in 49 CFR 225.19(d) to explain what FRA means when it says "Other accident/incident" in Levels A–D in the severity scale in the New Proposal. Third, FRA has clarified in the New Proposal that civil monetary penalties associated with violations of FRA Orders or railroad safety statutes will be assessed according to severity scale criteria. Finally, as stated below, FRA has modified its approach for establishing civil penalties in the severity scale in this New Proposal. FRA is taking a graduated approach to assessing civil penalties for ordinary (non-willful) violations while increasing the civil penalty amounts in steady increments for willful violations.

ordinary violations occurring at the middle and lower levels of the severity scale are assessed smaller civil penalties in relation to the ordinary maximum while the highest penalty amounts are assessed for ordinary Level A violations where serious injuries, deaths, or other railroad accidents or incidents are most likely to occur. FRA did not take a targeted enforcement approach for establishing the civil penalty amounts for willful violations in the New Proposal. Instead, the civil penalty amounts for willful violations increase up the severity scale in steady dollar amounts, not in graduated percentage increases like the civil penalties for ordinary violations.

Higher penalty amounts for violations of Federal railroad safety laws and regulations are necessary because many of FRA's civil penalties have not been changed in real terms for many years. As a result, inflation has somewhat eroded the deterrent effects of most of FRA's civil penalties because the amounts have not been increased to account for the effects of inflation. While many of the penalty amounts in the New Proposal would represent large increases in penalty amounts even after adjusting for inflation, some penalty amounts for violations would remain unchanged (*e.g.,* 49 CFR 219.205(b), 222.49(b), 229.71, and 239.301(c)(1)) if adopted by FRA because of the uniform rating of FRA's existing penalties on the severity scale. The new penalty amounts in this New Proposal will maintain the deterrent effects of FRA's rail safety penalties, aiding the success of FRA's mission to make the United States rail system safer.

FRA has also reexamined how it had ranked individual rail safety violations on the severity scale in the Initial Proposal. Upon second review of the severity scale rankings, FRA is proposing to move certain regulatory provisions to higher or lower levels on the severity scale in order to refine the agency's application of the severity scale to the various violations. For example, FRA is proposing to raise the severity scale ranking of 49 CFR 219.3 ("Application: Railroad does not have required program"), in this New Proposal from a "C" level penalty to a "B" level penalty. This change is necessary because the failure of a railroad covered by 49 CFR part 219 to have an alcohol and drug testing program is more likely than not to cause a rail equipment accident/incident or other accident/incident involving death, injury, or occupational illness rather than just substantially increase the likelihood that one of these events could occur. Conversely, in this New Proposal, FRA would lower the severity scale ranking of 49 CFR 225.35 ("Access to records and reports"), from an "A" level penalty to a "D" level penalty. This proposed change in severity scale level reflects FRA's judgment that denying its inspectors access to records and reports required by 49 CFR part 225 is not extremely likely to lead to a railroad accident/incident or other accident/injury including death, injury, or occupational illness, but could slightly increase the likelihood of one of the above mentioned occurrences if FRA is not provided access to accident reporting records and reports. FRA expects that these proposed changes to the severity scale rankings of some of its violations in the Initial Proposal better refine the agency's application of the Severity Scale to the various violations.

In addition, FRA is proposing minor changes to its Schedules in this New Proposal to correct errors and omissions and to reflect more accurately FRA's current enforcement practices. Such errors include obvious spelling or typographical errors that were caught during the review process. Omissions corrected include line-item penalties for any existing section or subsection that had been inadvertently omitted from an existing Schedule, such as 49 CFR 213.110. Other proposed minor revisions to the Schedules include, but are not limited to, adding or deleting a suggested penalty for a violation (*e.g.,* 49 CFR 213.109(c), 214.343(a)(2), 220.38, and 240.201(b)), rewording a line-item description for a violation (*e.g.,* 49 CFR 219.23(f) and 233.9), renumbering violation subsections (*e.g.,* 49 CFR 214.343(b)(1), 236.587, 236.905(d), and 236.913(j)), and adding or revising footnotes to the Schedules (*e.g.,* 49 CFR parts 214, 232, and 239). For example, FRA is proposing to add a footnote 3 to the Schedule for 49 CFR part 214 to clarify that FRA will consult the suggested penalty amounts under 49 CFR 214.343 ("Training and qualification, general:") when assessing penalties for the training violations in 49 CFR 214.345 through 214.355, as the suggested penalty amounts for these sections had been left blank in previous versions of part 214's penalty schedule. FRA is hopeful these proposed minor changes updating its Schedules would provide a more accurate picture to the regulated community of FRA's actual enforcement practices.

New suggested penalty amounts have also been proposed for violations of subparts that had not been mentioned in the existing penalty schedules: 49 CFR part 218, subpart E ("Protection of Occupied Camp Cars"); 49 CFR part 228, subpart D ("Electronic Recordkeeping"); 49 CFR part 232, subpart G ("Electronically Controlled Pneumatic (ECP) Braking Systems"); and 49 CFR part 236, subpart I ("Positive Train Control Systems") are also included. FRA is also suggesting new penalty amounts for 49 CFR part 227 ("Occupational Noise Exposure") which was not ranked in the severity scale in the Initial Proposal because the final rule creating part 227 was published on October 27, 2006, but not effective until February 26, 2007. 71 FR 63066. In addition, FRA will also be accepting comments on the new penalties in 49 CFR part 237 that were published in a bridge safety standards final rule on July 15, 2010 and will become effective on September 13, 2010. 75 FR 41282.

Further, FRA is proposing to add language to 49 CFR part 228, appendix A, to state its proposed guideline penalty amounts for both non-willful and willful violations of the hours of service laws (49 U.S.C. chapter 211). In addition, this New Proposal would also add or change language in the portion of 49 CFR part 209, appendix A, entitled "Penalty Schedules: Assessment of Maximum Penalties," to reflect the new minimum, ordinary maximum, and aggravated maximum civil penalties of $650, $25,000, and $100,000 respectively. Finally, FRA is also proposing to add the language "or orders" in two places within this portion of part 209, appendix A to update the language to reflect FRA's already existing policy of establishing civil penalty schedules and recommended civil penalty amounts applicable to violations of various orders issued by FRA (such as emergency orders under 49 U.S.C. 20104) when necessary to advance the agency's safety mission.

III. FRA's New Proposed Approach to Reevaluating the Schedules of Civil Penalties

The Federal Railroad Administrator is authorized as the delegate of the Secretary of Transportation to enforce the Federal railroad safety statutes (49 U.S.C. chapters 201–213) regulations, and orders, including the statutory civil penalty provisions at 49 U.S.C. chapter 213. 49 CFR 1.49. FRA currently has 26 parts of regulations that contain Schedules.[2] With this New Proposal,

[2] However, as previously stated, FRA recently published a final rule on bridge safety standards on July 15, 2010. 75 FR 41282. As part of that final rule, FRA created new regulations and penalties under 49 CFR part 237, which was previously an unused part of the CFR. Therefore after the September 13, 2010 effective date for the final rule, FRA will have 27 parts of regulations that contain Schedules. In this New Proposal, FRA is also accepting comments on the new penalties contained in the final rule.

FRA is proposing to amend each of the line-item guideline penalty amounts contained within the Schedules for each of the regulations and to add guideline penalty amounts for violations of the hours of service laws to 49 CFR part 228, appendix A (collectively, Penalty Guidelines). In reevaluating the penalty amounts in the Schedules, FRA has developed a new proposed severity scale ("New Proposed Severity Scale") for setting the line-item penalty amounts for each violation of the safety regulations and for violations of the hours of service laws. The severity scale FRA is proposing to adopt in this New Proposal is described in the following section.

New Proposed Severity Scale for Setting Line-Item Penalty Amounts in FRA Penalty Guidelines

FRA's rail safety regulations and the rail safety statutes are intended either to prevent a railroad accident/incident or to mitigate the consequences if one were to occur. For the most severe ratings on the scale, FRA concentrated on the *degrees of likelihood* that an accident/incident [3] will occur or that graver consequences of an accident/incident will occur as a result of failing to comply with the section. The following New Proposed Severity Scale is intended to reflect this focus:

Level A–Very High Probability—Failure of a railroad to comply with this section or subsection of the Code of Federal Regulations ("CFR"), this FRA order, or this rail safety statute *is extremely likely to result* in one or more of the following events, but does not create an imminent hazard of death or injury to individuals or cause an actual death or injury [4]:

1. Rail equipment accident/incident
2. Other accident/incident (including death, injury, or occupational illness)[5]

FRA is proposing to issue a penalty guideline for Level "A" of $19,500 for an ordinary violation and $25,000 for a willful violation of the regulation, order, or statute.

Level B—High Probability—Failure of railroad to comply with this section or subsection of the CFR, this FRA order, or this rail safety statute *is more likely than not to result* in the occurrence of:

1. Rail equipment accident/incident; or
2. Other accident/incident (including death, injury, or occupational illness).

FRA is proposing to issue a penalty guideline for Level "B" of $13,000 for an ordinary violation and $20,500 for a willful violation of the regulation, order, or statute.

For the following levels, FRA is not only addressing the likelihood that noncompliance will or could contribute to an accident or aggravated consequences if an accident occurred, but also the importance of maintaining compliance in order to prevent violations of these regulatory or statutory sections or subsections from becoming leading accident causes in the future.

Level C—Moderate Probability—Failure of railroad to comply with this section or subsection of the CFR, this FRA order, or this rail safety statute *substantially increases* the likelihood that one of the following will occur:

1. Rail equipment accident/incident; or
2. Other accident/incident (including death, injury, or occupational illness).

FRA is proposing to issue a penalty guideline for Level "C" of $9,500 for an ordinary violation and $17,000 for a willful violation of the regulation, order, or statute.

Level D—Minor Probability—Failure of the railroad to comply with this section or subsection of the CFR, this FRA order, or this rail safety statute *slightly increases* the likelihood that one of the following will occur:

1. Rail equipment accident/incident; or
2. Other accident/incident (including death, injury, or occupational illness).

FRA is proposing to issue a penalty guideline for Level "D" of $5,500 for an ordinary violation and $10,000 for a willful violation of the regulation, order, or statute.

Level E—Minimal Probability—Failure to comply with this section or subsection of the CFR, this FRA order, or this rail safety statute *does not materially increase the likelihood* that a rail equipment accident/incident or other accident/incident will occur, except in special circumstances, such as if the noncompliance is willful or widespread. Nevertheless, noncompliance with any one of these provisions undercuts the effectiveness of the Federal railroad safety program, and could compromise the safety of rail operations.

Example: Violation of § 225.13—Late Reports—Submitting a late accident/incident report to FRA does not increase the likelihood that a rail equipment accident/incident or other accident/incident will occur. Widespread noncompliance with that provision, however, could lead to inaccuracies in Federal accident databases, which in turn could delay FRA's response to emerging safety problems.

FRA is proposing to issue a penalty guideline for Level "E" of $2,500 for an ordinary violation and $5,000 for a willful violation of the regulation, order, or statute.

Like the Initially Proposed Severity Scale, the New Proposed Severity Scale shows, there are five different levels of probabilities, ranging from "A" (the most severe) to "E" (the least severe of the types of violations). In developing the rankings ("A" through "E"), FRA concentrated on the degrees of likelihood that an accident/incident will occur or that graver consequences will occur as a result of the failure to comply with the particular section or subsection of the safety regulations or with the statute. Using the New Proposed Severity Scale, FRA then assigned a ranking (from "A" to "E") to each of the provisions of the particular rail safety regulations and to the hours of service statute, which the agency has responsibility for administering and enforcing. The resulting proposed line-item penalty amounts for violations of each of the sections or subsections of the safety regulations affected and for violations of the hours of service laws reflect FRA's determination, based on safety data and industry knowledge, of how likely the violation of a particular provision is to result in a rail equipment accident/incident or another type of accident/incident. Due to the increase in the ordinary maximum from $11,000 to $25,000 since the Initial Proposal, the new proposed civil penalty amounts have increased in most instances, but in some cases the new proposed civil penalty amount would remain the same (*e.g.,* 49 CFR 219.205(b), 222.49(b), 229.71, and 239.301(c)(1)) if adopted by FRA. Nonetheless, a determination by FRA that violation of a provision does not increase the likelihood that a rail equipment accident/incident or other accident will occur, however, does not mean that the provision is inconsequential to the effectiveness of

[3] "Accident/incident" is defined at 49 CFR 225.5. Accidents/incidents are divided into three categories: highway-rail grade crossing accidents/incidents, rail equipment accidents/incidents; and accidents/incidents resulting in death, injury, or occupational illness. 49 CFR 225.19(c). A highway-rail grade crossing accident/incident is "[a]ny impact between railroad on-track equipment and an automobile, bus, truck, motorcycle, bicycle, farm vehicle, or pedestrian at a highway-rail grade crossing." 49 CFR 225.5, read in light of 49 CFR 225.19(c). Rail equipment accidents/incidents are defined in 49 CFR 225.19(c) to include "collisions, derailments, fires, explosions, acts of God, and other events involving the operation of on-track equipment (standing or moving) * * * that result in damage to railroad property that is greater than the reporting threshold." Currently the reporting threshold is $9,200. 74 FR 65458 (Dec. 10, 2009).

[4] FRA has statutory authority to assess civil penalties in the range of $650 (minimum) to $25,000 (ordinary maximum) for ordinary violations of its regulations. FRA may assess a penalty at the statutory aggravated maximum of $100,000 only "when a grossly negligent violation or a pattern of repeated violations has caused an imminent hazard of death or injury to individuals, or has caused death or injury." A $100,000, statutory aggravated maximum penalty is the equivalent of a Level A Plus and is, therefore, off the scale. The standard of "imminent hazard" of death or injury (the standard for a civil penalty at the aggravated maximum penalty) is different from the standard of "extremely likely" to result in death or injury (the standard for Level A penalties on the severity scale). Imminent hazards are hazards that are likely to occur without delay or that actually may be occurring at the time the violation is taken. In contrast, a hazard that is extremely likely to result in a railroad accident/incident or another accident/incident causing death, injury, or occupational disease has a high probability of causing one or more of those adverse events sooner or later, but is not necessarily likely to occur without delay or contemporaneously when the violation is taken.

[5] *See* 49 CFR 225.19(d).

the Federal railroad safety program or to the overall safety of railroad operations.

Currently, each Schedule is in the form of a table consisting of three columns with one or more footnotes. Like the initially proposed Schedules, the new proposed Schedules would continue to be structured in this fashion and to provide guideline penalty amounts for two categories of violations: Ordinary (non-willful) and willful. Each new proposed Schedule lists the CFR section or subsection in the left-hand column, sometimes with additional designations to distinguish different types of violations (penalty codes) of the section or subsection in order to facilitate the assessment of civil penalties. The only exception continues to be 49 CFR part 231; the left-hand column of the new proposed Schedule lists the FRA defect codes [6] for that part, and not the corresponding CFR sections. The reason for this continues to be the fact that the defect codes are organized by the type of safety appliance, which makes them easier to use, than the section numbers of part 231, which are organized primarily by car or locomotive type. Nevertheless, if necessary, every defect code can be traced to a specific regulatory provision in part 231 or statutory provision in 49 U.S.C. chapter 203, or both. The corresponding penalties for each violation are listed in the middle and right-hand columns: The guideline penalty amount for an ordinary violation and then the guideline penalty amount for a willful violation. The ordinary penalties apply to railroads or other respondents, except individuals, while the "willful" column applies to willful violations committed by railroads or individuals.

The following chart summarizes the new proposed guideline amounts for ordinary and willful violations by severity level:

Severity level under new Proposal	Ordinary violations	Willful violations
Level A	$19,500	$25,000
Level B	13,000	20,500
Level C	9,500	17,000
Level D	5,500	10,000
Level E	2,500	5,000

IV. Rankings of the Rail Safety Regulatory Provisions and the Hours of Service Laws in the New Proposal

Although the railroad industry's overall safety record has improved over the last decade, significant train accidents/incidents continue to occur. As a result, the FRA's safety program is being guided by careful analysis of accident/incident, inspection, and other safety data. FRA has also directed both its regulatory and compliance efforts toward the areas that involve the highest of safety risks, in order to reduce the number and severity of accidents/incidents caused by a failure to comply with those safety regulations. Therefore, the goal of the new proposed line-item penalty amounts for each of the Schedules and the new proposed penalty amount for violations of the hours of service statute is to reflect the different degrees of probability that a violation of a particular regulatory section or subsection, order, or statute will result in a rail equipment accident/incident or other accident/incident, in order to improve the overall safety of railroad operations.

A. Motive Power and Equipment Regulations (MP&E) (49 CFR Parts 215, 218 (Partially), 223, 224, 227, 229, 230, 231, 232, 238, and 239 (Partially))

In reevaluating the current line-item penalty amounts for each of the CFR sections or subsections found in 49 CFR parts 215, 218 (partially), 223, 224, 227, 229, 230, 231, 232, 238, and 239 (partially) of the CFR, FRA took into consideration, among other factors, the nationwide list of "Top 10" MP&E defects. The defects are listed in the table below, in descending order, according to the number of times that each defect was determined to have caused a rail equipment accident/incident, excluding highway-rail grade crossing accidents/incidents that are also classified as rail equipment accidents/incidents ("train accidents"), between January 2005 and December 2009.

Journal (roller bearing) overheated—(143)	Damaged flange or tread (build up)—(60)
Pantograph defect (locomotive)—(121)	Coupler retainer pin/cross key missing—(57)
Side bearing clearance insufficient—(86)	Rigging down or dragging—(49)
Broken rim—(80)	Other coupler/draft system defects; Worn Flange (tie)—(38)
Truck bolster stiff—(67)	Center sill broken or bent—(36)

The CFR sections or subsections that relate to these defects have received higher proposed rankings in the Schedules compared to other MP&E defects and as such now carry higher penalty amounts. For example, a violation of 49 CFR 215.103(d)(3), which involves a defective wheel rim with a crack of one inch or more, received a proposed "A" severity ranking (and a proposed guideline penalty amount of $19,500) because of the high safety risk that the defect will cause a broken rim that, in turn, causes a derailment. In addition, FRA applied the New Proposed Severity Scale in order to determine the degrees of likelihood that any type of accident/incident will occur as a result of noncompliance with the regulations.

B. Track and Workplace Safety Regulations (49 CFR Parts 213 and 214)

In recent years, most of the serious accidents/incidents (train collisions or derailments resulting in a release of hazardous materials or harm to rail passengers, rail employees, or the general public) resulted from human factor or track causes. Over the last five years, 31.9 percent of train accidents were caused by track defects. In an effort to reduce track accidents, FRA is focusing its track inspections on the areas of highest risks and encouraging inspectors to recommend enforcement action on the kinds of violations that are considered leading causes of track-caused train accidents. Therefore, in evaluating the line-item penalty amounts for all the sections or subsections, FRA took into consideration the leading causes of track-related train accidents when applying the New Proposed Severity Scale to the Track Safety Standards. For example, violations of 49 CFR 213.53 "Gage" received a new proposed "A" ranking (and new proposed penalty guideline amounts of $19,500 for an ordinary violation and $25,000 for a willful violation) because improper gage is one of the leading causes of track-related train accidents.

In ranking the sections or subsections of 49 CFR part 214 ("Railroad Workplace Safety"), FRA took into consideration not only the probability that an accident/incident could result if a violation occurred, but also the fact that

[6] Defect codes were developed by FRA in order to facilitate computerization of inspection data generated by FRA inspectors by providing a digital format for every CFR section. Defect codes are analytical tools only and are subject to change without notice.

the accident/incident could result in serious injury or death. One example of the rankings for part 214 is the ranking for the second type of violation of 49 CFR 214.103, coded 214.103(ii), "Failure to use fall protection." This violation designated 214.103(ii) received a proposed ranking of "A" (and a proposed guideline penalty of $19,500 for an ordinary violation and $25,000 for a willful violation) because the violation could result in serious injury or death, as evidenced by the several bridge worker fatalities in the past 10 years due to the failure to use fall protection.

C. Grade Crossing Signal Systems and Signal and Train Control Regulations (49 CFR Parts 233, 234, 235, and 236)

FRA applied the New Proposed Severity Scale to each of the sections in 49 CFR parts 233, 234, 235, and 236, in order to determine the appropriate proposed rankings for each of the sections or subsections of the regulations. In the area of signal and train control (S&TC), FRA followed the New Proposed Severity Scale, which concentrates on the potential for an accident/incident resulting from noncompliance. S&TC systems are vital to the safe functioning of the general railroad system because train crews and highway motorists rely on the accuracy of the information provided by these systems to make safe movements on the railway system and through highway-rail grade crossings. While there are relatively few train accidents and highway-rail grade crossing accidents/incidents associated with S&TC causes that have occurred in recent years, the consequences of an S&TC-caused accident can be catastrophic. Therefore, it is imperative that the Schedules put into effect by FRA reflect the levels of risks associated with the violation of these CFR sections or subsections, in order to prevent future S&TC-caused accidents.

D. Operating Practices Regulations (49 CFR Parts 217, 218 (Partially), 219, 220, 221, 222, 225, 228, 239 (Partially), 240, and 241) and Hours of Service Laws (49 U.S.C. Chapter 211)

Over the five years from January 2005 to December 2009, human-factor-related causes accounted for 34.2 percent of all train accidents. A review of the FRA's Office of Railroad Safety database indicated that in 2009 the top four human factor causes contributing to train accidents were improperly lined switches; employees absent on, at, or ahead of a shoving movement; failure to control during a shoving movement; and failure to comply with restricted speed or its equivalent when not in connection with a block or interlocking signal. These top causes are often involved in violations of such regulations as 49 CFR part 220 ("Railroad Communications"). A review of the top four causes for human factor train accidents between January 2005 and December 2009 showed that these causes accounted for 1,812 reportable train accidents/incidents (including 13 employee fatalities, 463 employee injuries, and over $96 million in damages). Therefore, when applying the New Proposed Severity Scale to the regulatory provision or statute, FRA considered all of this safety information in order to ensure that each new proposed line-item penalty amount reflected the likelihood that noncompliance would result in a train accident/incident, or that graver consequences would occur as a result of failing to comply with the statute or section or subsection of the regulations.

V. Response to Public Comment on the Schedules Proposed in December 2006

As previously stated, the existing Schedules are statements of agency policy, which FRA has authority to amend or replace without having to provide prior notice and opportunity for comment under the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(A). Nevertheless, FRA provided members and representatives of the regulated community and the general public with an opportunity to comment on the proposed line-item penalty amounts published on December 5, 2006. FRA received six comments on the Schedules proposed in December 2006. FRA has considered the comments received and now responds to the questions and concerns raised in them.

A. Concerns Related to Respondents That Are Small Businesses

The Small Railroad Business Owners of America ("SRBOA") commented that FRA's December 2006 proposed civil penalty policy does not adequately take into account the interests of small businesses. The commenter suggested that doubling certain civil penalties for smaller railroads is unfair, especially because most of the accidents/incidents occur on larger railroads. The commenter also asked that FRA provide additional training and assistance to smaller railroads in comprehension and application of the rail safety regulations.

In addition, the American Short Line and Regional Railroad Association ("ASLRRA") commented that the proposed statement of agency policy ignores the effect that proposed amounts would have on small railroads. ASLRRA suggested that FRA move instead, towards a sliding scale system of civil penalties based on the class of track under 49 CFR part 213 that is involved in the violation. In the alternative, ASLRRA suggested that FRA take the time to codify a second, lower schedule of penalties for small railroads.

In response to these concerns, FRA would like to emphasize appendix C to 49 CFR part 209, where FRA has published its policy statement concerning small business entities. FRA understands that small entities in the rail industry have significantly different characteristics from larger carriers and shippers. Therefore, FRA has developed programs to respond to compliance-related inquiries of small entities, and to ensure proper handling of civil penalty and other enforcement actions against small businesses. FRA inspectors provide training on the requirements of all railroad safety statutes for new and existing small businesses upon request. Also, it is FRA's policy to maintain frequent and open communications with the national representatives of the primary small entity associations and to consult with these organizations before embarking on new policies that may impact the interests of small businesses. Additionally, FRA has posted all of its manuals electronically for compliance with the rail safety disciplines at *http://www.fra.dot.gov*.

FRA employs an enforcement policy that addresses the unique nature of small entities in the imposition of civil penalties and resolution of those assessments. Pursuant to appendix A to 49 CFR part 209, it is FRA's policy to consider a variety of factors in determining whether to take enforcement action against persons, including small entities, who have violated the safety laws and regulations. In general, the presence of both good faith and prompt remedial action on the part of the small entity militates against taking a civil penalty action, especially if the violation is an isolated event. Once FRA has assessed a civil penalty, FRA may adjust or compromise the initial penalty claim based on a wide variety of mitigating factors. The mitigating criteria that FRA applies are found in the railroad safety statutes at 49 U.S.C. ch. 213 and in the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) ("SBREFA"); these factors include the severity of the safety or health risk presented; the existence of alternative methods of eliminating the safety hazard; the entity's culpability; the entity's compliance history; the entity's ability to pay the assessment; the impact an assessment might exact on the

entity's continued business; and evidence that the entity acted in good faith. 49 CFR part 209, appendix C.

FRA's enforcement policy with respect to small entities is flexible and comprehensive, but FRA's first priority in its compliance and enforcement activities is public and employee safety. FRA notes that an accident on a small railroad could have the same consequences as an accident on a large railroad. Therefore, small railroads are responsible for compliance with the railroad safety statutes and regulations.

Finally, the Small Railroad Business Owners' Association of America ("SRBOA") commented that FRA's civil penalties were higher than those used by the Federal Motor Carrier Safety Administration ("FMCSA") for enforcing commercial motor vehicle driver and trucking safety, and suggested that FRA should impose civil penalties for smaller railroads only if discussing the situation with them does not work first.

As explained above, FRA's rail safety inspectors take into account a variety of factors in determining whether to take enforcement actions. They have the option of citing the railroads for defects, which in their judgment do not merit civil penalties before citing them for violations, which do carry civil penalty recommendations. Also, FRA does not believe it is appropriate to compare FRA's rail safety penalties to FMCSA's penalties for driver and trucking safety. The safety considerations in the trucking and rail industries are very different. An accident involving a train is potentially far more catastrophic and costly than a similar accident involving a truck. For example, one railroad tank car could contain many truckloads of hazardous material, and one train could consist of many such railroad tank cars.

B. Concerns About Initially Proposed Penalty Amounts for Violations of 49 CFR Parts 222, 225, and 229

The Association of American Railroads ("AAR") stated that, in several cases, the penalties proposed in December 2006 are disproportionate to the severity of the violation. Specifically, AAR took exception to penalties proposed for noncompliance with 49 CFR parts 222, 225, and 229.

With regard to part 222 (the train horn rule), AAR contended that a "D" level penalty for a violation of § 222.21(b) is unsubstantiated, as the sounding of a horn for more than 20 seconds will not increase the likelihood of an accident or incident.

FRA provides that the train horn rule focuses on public and community interests. To remain true to the intention of the rule, FRA must take the interests of the community into account when determining the penalty amount that a violation merits. FRA believes that it is important that sufficient warning be provided to the motorist who needs time to recognize the audible signal, understand its message, initiate a reaction, and take appropriate action when at a grade crossing. *See* 71 FR 47618, Aug. 17, 2006. If the train horn is sounded more than 25 seconds before the train enters the train crossing, motorists might well begin to doubt the credibility of the train horn as an indicator of the train's immediacy to the grade crossing. As a result, motorists will be more likely to take the risk of traveling through the crossing even when the train horn is sounded.

The rule text for § 222.21(b) also provides a "good faith" exception for the required length of time that the horn is sounded. The section permits additional flexibility by stating that the engineer shall not be in violation of § 222.21(b) if the engineer sounds the horn not more than 25 seconds before the crossing, if in good faith the engineer cannot precisely estimate the arrival time of the train at the crossing. FRA has determined that the interests of avoiding an accident or incident as well as the interests of the community have been taken into account in assessing violations of § 222.21(b) as a proposed "D" level penalty with the exception of "failure to sound the horn at least 15 seconds and less than ¼-mile before a crossing," which is assessed as a proposed "C" level penalty.

Additionally, AAR stated that routine sounding of the horn at a grade crossing within a quiet zone, pursuant to § 222.45, will not increase the likelihood of an accident or incident.

With regard to AAR's comment on § 222.45, although sounding the train horn in a quiet zone may not substantially increase the likelihood of an accident the first time or the first few times, trains that routinely sound their horns at quiet-zone grade crossings might cause motorists to doubt the credibility of signs marking a grade crossing as a quiet-zone grade crossing and whether a particular grade crossing is actually a quiet-zone grade crossing. Therefore, if routine violations of a quiet zone continue, motorists will begin to expect the warning of a train horn when a train is preparing to enter quiet-zone grade crossings where routine violations of the quiet zone occur. That could predictably lead to fatal accidents.

In addition, violations of § 222.45 increase the annoyance level of the communities surrounding the grade crossing. A fundamental feature of this rule was to balance driver and pedestrian safety with community noise concerns. Decreasing the civil monetary penalty would reduce the incentive to comply with the part and potentially increase noise for the surrounding communities. FRA maintains that the initial and new proposed "D" level penalty for a violation of § 222.45 sufficiently addresses the concerns that brought about the part 222 rulemaking. *See* 71 FR 47614, Aug. 17, 2006.

AAR also argued that a "B" level penalty for a violation of 49 CFR 225.13 was unmerited, as a railroad's filing of a report one day late would not be more likely to cause an accident or incident.

FRA has taken into consideration AAR's comments involving FRA's regulations on accident/incident reporting, 49 CFR part 225. FRA acknowledges the merits in AAR's comments with regard to § 225.13, and FRA has revised the proposed penalty ranking for a violation of § 225.13 from a "B" to an "E." Upon reevaluating how part 225 violations were ranked on the severity scale in the Initial Proposal, FRA has lowered many of the proposed severity scale rankings for violations of this part. For example, FRA has determined to change the ranking of a § 225.11 violation (failure to submit monthly report of accidents/incidents) from a proposed "B" to a proposed "D" level penalty. At the same time, FRA has determined that a violation of § 225.9, failure to report certain accidents or incidents, immediately via telephone to the National Response Center, would be more detrimental to railroad safety, because the failure could prevent FRA from learning about the event and deciding whether or not the agency should commence an investigation. Even delayed notification could compromise such an investigation and prevent FRA from obtaining information that could identify safety problems that could cause future accidents or incidents. FRA has, therefore, changed the penalty amount from a proposed "E" to a proposed "C" level penalty.

Finally, AAR stated that a "C" level penalty for a violation of a provision of the Locomotive Safety Standards, 49 CFR 229.137(a)(3), was uncalled for, as the lack of a toilet in the lead locomotive will not "substantially increase the likelihood of an accident or incident."

When FRA promulgated the notice of proposed rulemaking for the locomotive cab sanitation standards, FRA determined that serious health consequences may result if railroad employees are exposed to unsanitary conditions or lack access to facilities. In fact, it is widely known that exposure to

human fecal matter or untreated sewage waste can lead to diarrheal diseases such as amebiasis, giardiasis, shigellosis, and viral diseases such as hepatitis. *See* 66 FR 137, Jan. 2, 2001. FRA notes that any one of these mentioned conditions would fulfill the reporting requirements under the definition of an "occupational illness" pursuant to 49 CFR 225.19(d) and therefore be considered an accident/incident within the meaning of the initially proposed Severity Scale and the New Proposed Severity Scale. FRA also notes that an engineer who contracts one of those diseases on duty might well be unable to operate his or her train safely.

C. Concerns Related to Respondents Who Are Cited as Individuals

The Brotherhood of Locomotive Engineers and Trainmen ("BLET") had a number of comments on civil penalties against individuals for rail safety violations. The BLET raised concern that FRA's conclusions on the data indicate a "lack of discipline by the workers." Also, the commenter suggested that the December 2006 proposed statement of agency policy suffers from "the same infirmity as the railroad operating rules NPRM (notice of proposed rulemaking)." Overall, the BLET seemed very concerned with the effect that a larger penalty would have on an individual as opposed to a railroad.

FRA responds that civil penalties assessed against individuals pursuant to the rail safety statutes, regulations, and orders may be assessed administratively only if FRA determines that the individual's conduct was willful in nature. 49 U.S.C. 21304. "FRA considers a 'willful' violation to be one that is an intentional, voluntary act committed either with knowledge of the relevant law or reckless disregard for whether the act violated the requirements of the law." 49 CFR part 209, appendix A. FRA continues to hold that the higher penalties for a willful violation serve to deter an individual from engaging in this type of egregious behavior. Further, FRA assesses rail safety civil penalties against railroads at a substantially higher frequency than against individuals. As neither the Initial Proposal nor the New Proposal addresses the issues covered in "Railroad Operating Rules: Program of Operational Tests and Inspections; Railroad Operating Practices: Handling Equipment, Switches and Fixed Derails," FRA declines to respond in this proposal to comments regarding that rulemaking, in which a final rule was published on June 16, 2008. 73 FR 33888.

D. Concerns About Effects on FRA's Confidential Close Call Reporting Project

The BLET also provided comments exhibiting a concern as to how the proposed penalty schedule in the Initial Proposal would impact FRA's Confidential Close Call Reporting Pilot Project ("Close Call Project"). The Close Call Project involves encouraging employees from its participating railroads to report "close call" incidents voluntarily and anonymously. A "close call" is an event in which a death, a personal injury, or property damage is narrowly averted. Thus, a "close call" presents an opportunity to improve safety practices in a situation or incident that has potential for more serious consequences by allowing the people involved to report the event in detail without fear of adverse consequences, thereby providing FRA with vital data about precursors to accidents or incidents that FRA might otherwise not receive. The information collected from the Close Call Project provides an opportunity to identify and correct weaknesses in a railroad's safety system before an accident/incident or other unsafe event occurs. The system can also be used to monitor changes in safety over time and to uncover hidden unsafe conditions that were previously unreported.

FRA does not agree with BLET's comment that the Initial Proposal would nullify the incentive for voluntary submission of information in this pilot program. The employees participating in the Close Call Project are protected from carrier discipline, decertification, and FRA enforcement action in the same manner regardless of whether the civil penalties are increased. Before a Close Call Project may be initiated, the employing railroad and the employees' union representatives sign a memorandum of understanding ("MOU") that specifies each party's rights and responsibilities. Revising the Schedules would not impact any MOU that has been implemented, and would not affect any MOU that is to be implemented in the future, as they would not expand FRA's enforcement authority.

E. Concerns About Proposed Monetary Increases in the Civil Penalty Amounts

Commenters measured the change between the current penalties and the initially proposed penalties in nominal terms. That is, commenters calculated the price change between the initially proposed penalties and the current penalties without first adjusting the current penalty amounts for inflation. Inflation erodes the purchasing power of money over time. As previously stated in this New Proposal, the enforcement and deterrent effects of the current penalties have decreased over time as they had not been increased line by line to account for the effects of inflation. A better, "apples-to-apples" comparison would be to compare the proposed penalties to the inflation-adjusted, or real, current penalties. Adjusting for inflation allows comparison of the penalties using dollars with the same purchasing power.

Given that inflation-adjusted, current penalties serve as the proper baseline for measuring change, it is significant that many of the current penalties have not changed in nominal terms for many years.

As previously stated, in undertaking this effort to revise the Schedules comprehensively after many years, FRA is focusing on areas that pose greater safety risks, and maintaining enforcement in other regulatory areas per its authority to set penalty guidelines within the minimum, ordinary maximum, and aggravated maximum statutory penalties. With the New Proposal, some of the proposed penalty amounts if adopted by FRA will indeed show large increases, even after adjusting for inflation.[7] However, as previously stated, some newly proposed penalty amounts for violations would remain unchanged (*e.g.,* 49 CFR 219.205(b), 222.49(b), 229.71, and 239.301(c)(1)). Again, the penalty amounts in the New Proposal reflect the

[7] For example, BLET stated that the penalty for 49 CFR 214.103(ii) ("Failure to use fall protection") would increase 340 percent. Expressing the original penalty amounts in 2006 dollars (for consistency with the first proposed penalty schedules that were published on December 5, 2006), the increase would actually have been 204 percent; however, with the proposed penalties in this notice, the increase in real dollars would be 559 percent. Similarly, for 49 CFR 218.22(c)(5) ("Utility employees: Assignment conditions: Performing functions not listed"), BLET found an 87.5 percent increase. Measured in 2006 dollars, the difference between the current penalties and the originally-proposed revised penalties would have been 15 percent, and with the proposed penalties in this notice, the real difference would be about 46 percent. For 49 CFR 219.11(b)(1) ("General conditions for chemical tests: Employee unlawfully refuses to participate in testing"), BLET calculated a 120 percent increase, the change in real dollars from the original proposal would have been 41 percent. With the proposed penalties in this New Proposal, the increase would be about 22 percent (Upon reevaluating the severity scale rankings in the Initial Proposal, FRA lowered the severity scale ranking for violations of § 219.11(b)(1) from a proposed "A" to a proposed "D" level penalty.) In each of these examples, the rules concern areas of significant risk. Consequentially, FRA has determined that higher proposed penalties are necessary and justified.

reanalyzed risk basis for the penalty amounts and the new ordinary maximum statutory penalty. FRA believes that these new proposed Schedules will maintain and increase the effect of the civil monetary penalties, fostering a higher overall level of safety.

List of Subjects

49 CFR Part 209

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

49 CFR Part 213

Bridges, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 214

Bridges, Occupational safety and health, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 215

Freight, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 217

Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 218

Occupational safety and health, Penalties, Railroad employees, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 219

Alcohol abuse, Drug abuse, Drug testing, Penalties, Railroad safety, Reporting and recordkeeping requirements, Safety, Transportation.

49 CFR Part 220

Penalties, Radio, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 221

Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 222

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

49 CFR Part 223

Glass and glass products, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 224

Penalties, Railroad locomotive safety, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 225

Investigations, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 227

Locomotives, Noise control, Occupational safety and health, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 228

Administrative practice and procedures, Buildings and facilities, Hazardous materials transportation, Noise control, Penalties, Railroad employees, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 229

Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 230

Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 231

Penalties, Railroad safety.

49 CFR Part 232

Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 233

Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 234

Highway safety, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 235

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

49 CFR Part 236

Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 238

Fire prevention, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 239

Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 240

Administrative practice and procedure, Penalties, Railroad employees, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 241

Communications, Penalties, Railroad safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, FRA proposes to amend parts 209, 213, 214, 215, 217, 218, 219, 220, 221, 222, 223, 224, 225, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 238, 239, 240, and 241 of subtitle B, chapter II of title 49 of the Code of Federal Regulations to read 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.

2. Appendix A to part 209 is revised to read as follows:

Appendix A to Part 209—Statement of Agency Policy Concerning Enforcement of the Federal Railroad Safety Laws

Penalty Schedules: Assessment of Maximum Penalties

As recommended by the Department of Transportation in its initial proposal for rail safety legislative revisions in 1987, the RSIA raised the maximum civil penalties for violations of the safety regulations or orders. Under the Hours of Service Act, the penalty was changed from a flat $500 to a penalty of "up to $1,000, as the Secretary of Transportation deems reasonable." Under all the other statutes, the maximum penalty was raised from $2,500 to $10,000 per violation, except that "where a grossly negligent violation or pattern of repeated violations has created an imminent hazard of death or injury," the penalty was raised to a maximum of $20,000 per violation.

The Rail Safety Enforcement and Review Act (RSERA), enacted in 1992, increased the maximum penalty from $1,000 to $10,000 and in some cases, $20,000 for a violation of the hours of service laws, making these penalty amounts uniform with those of FRA's other regulatory provisions and orders. RSERA also increased the minimum civil monetary penalty from $250 to $500 for all of FRA's regulatory provisions and orders. The Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101–410, 104 Stat. 890, note, as amended by Section 31001(s)(1) of the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, 110 Stat. 1321–373, April 26, 1996) (Inflation Act) required that agencies adjust by regulation each minimum and maximum civil monetary penalty within the agency's jurisdiction for inflation and make subsequent adjustments once every four years after the initial adjustment. Accordingly, FRA's minimum and maximum civil monetary penalties have been adjusted.

In 2008, the Rail Safety Improvement Act of 2008 (RSIA of 2008) was enacted raising

FRA's civil monetary ordinary and aggravated maximum penalties to $25,000 and $100,000 respectively. FRA amended the civil penalty provisions in its regulations so as to make $25,000 the ordinary maximum penalty per violation and $100,000 the aggravated maximum penalty per violation, as authorized by the RSIA of 2008, in a final rule published on December 30, 2008 in the **Federal Register**. 73 FR 79700. The December 30, 2008 final rule also adjusted the minimum civil penalty from $550 to $650 pursuant to Inflation Act requirements. *Id.* A correcting amendment to the civil penalty provisions in 49 CFR part 232 was published on April 6, 2009. 74 FR 15388.

FRA's traditional practice has been to issue penalty schedules assigning to each particular regulation or order specific dollar amounts for initial penalty assessments. The schedule (except where issued after notice and an opportunity for comment) constitutes a statement of agency policy, and is ordinarily issued as an appendix to the relevant part of the Code of Federal Regulations. For each regulation or order, the schedule shows two amounts within the $650 to $25,000 range in separate columns, the first for ordinary violations, the second for willful violations (whether committed by railroads or individuals). In one instance—part 231—the schedule refers to sections of the relevant FRA defect code rather than to sections of the CFR text. Of course, the defect code, which is simply a reorganized version of the CFR text used by FRA to facilitate computerization of inspection data, is substantively identical to the CFR text.

Accordingly, under each of the schedules (ordinarily in a footnote), and regardless of the fact that a lesser amount might be shown in both columns of the schedule, FRA reserves the right to assess the statutory maximum penalty of up to $100,000 per violation where a grossly negligent violation has created an imminent hazard of death or injury. This authority to assess a penalty for a single violation above $25,000 and up to $100,000 is used only in very exceptional cases to penalize egregious behavior. FRA indicates in the penalty demand letter when it uses the higher penalty amount instead of the penalty amount listed in the schedule.

PART 213—[AMENDED]

3. The authority citation for part 213 continues to read as follows:

Authority: 49 U.S.C. 20102–20114 and 20142; 28 U.S.C. 2461, note; and 49 CFR 1.49(m).

4. Appendix B to part 213 is revised to read as follows:

APPENDIX B TO PART 213—SCHEDULE OF CIVIL PENALTIES [1]

Section [2 3]	Violation	Willful violation
Subpart A—General		
213.4(a) Excepted track [2]	$9,500	$17,000
213.4(b) Excepted track [2]	13,000	20,500
213.4(c) Excepted track [2]	13,000	20,500
213.4(d) Excepted track [2]	13,000	20,500
213.4(e):		
(1) Excepted track	13,000	20,500
(2) Excepted track	13,000	20,500
(3) Excepted track	13,000	20,500
(4) Excepted track	13,000	20,500
213.4(f) Excepted track	5,500	10,000
213.7 Designation of qualified persons to supervise certain renewals and inspect track	9,500	17,000
213.9 Classes of track: Operating speed limits	19,500	25,000
213.11 Restoration or renewal of track under traffic conditions	9,500	17,000
213.13 Measuring track not under load	13,000	20,500
Subpart B—Roadbed		
213.33 Drainage	13,000	20,500
213.37 Vegetation	9,500	17,000
Subpart C—Track Geometry		
213.53 Gage	19,500	25,000
213.55 Alignment	13,000	20,500
213.57 Curves; elevation and speed limitations	13,000	20,500
213.59 Elevation of curved track; runoff	13,000	20,500
213.63 Track surface	13,000	20,500
Subpart D—Track Structure		
213.103 Ballast; general	9,500	17,000
213.109 Crossties:		
(a) Material used	5,500	10,000
(b) Distribution of ties	13,000	20,500
(d) Sufficient number of nondefective ties	9,500	17,000
(f) Joint ties	9,500	17,000
(g) Track constructed without crossties	9,500	17,000
213.110 Gage restraint measurement systems:		
(a) through (b) Notification	9,500	17,000
(c) Design requirements	13,000	20,500
(g) through (i) Exception reports	9,500	17,000
(j) Data integrity	13,000	20,500
(k) Training	9,500	17,000
(l) Remedial actions	19,500	25,000
(m) PTLF	13,000	20,500
(n) Recordkeeping	9,500	17,000
(o) Inspection frequency	19,500	25,000
213.113 Defective rails	19,500	25,000
213.115 Rail end mismatch	9,500	17,000
213.118(a) CWR plan in effect	13,000	20,500
213.118(b) CWR plan filed with FRA	13,000	20,500
213.119 Continuous welded rail:		

APPENDIX B TO PART 213—SCHEDULE OF CIVIL PENALTIES [1]—Continued

Section [2 3]	Violation	Willful violation
(a) CWR installation/adjustment procedures	13,000	20,500
(b) CWR fastening requirements	13,000	20,500
(c) CWR joint installation/maintenance procedures	13,000	20,500
(d) CWR rail temperature requirements	13,000	20,500
(e) CWR alinement	13,000	20,500
(f) Procedures for controlling train speed on CWR track	13,000	20,500
(g) CWR track inspections	13,000	20,500
(h) CWR joint bar inspections	13,000	20,500
(i) CWR training	13,000	20,500
(j) CWR records	9,500	17,000
(k) CWR manual at job site	9,500	17,000
213.121(a) Rail joints	13,000	20,500
213.121(b) Rail joints	13,000	20,500
213.121(c) Rail joints	19,500	25,000
213.121(d) Rail joints	13,000	20,500
213.121(e) Rail joints	13,000	20,500
213.121(f) Rail joints	13,000	20,500
213.121(g) Rail joints	13,000	20,500
213.121(h) Rail joints	13,000	20,500
213.122 Torch cut rail	13,000	20,500
213.123 Tie plates	9,500	17,000
213.127 Rail fastenings	13,000	20,500
213.133 Turnouts and track crossings, generally	9,500	17,000
213.135 Switches:		
(a) through (g)	13,000	20,500
(h) chipped or worn points	13,000	20,500
213.137 Frogs	13,000	20,500
213.139 Spring rail frogs	13,000	20,500
213.141 Self-guarded frogs	9,500	17,000
213.143 Frog guard rails and guard faces; gage	13,000	20,500
Subpart E—Track Appliances and Track-Related Devices		
213.205 Derails	9,500	17,000
Subpart F—Inspection		
213.233 Track inspections	9,500	17,000
213.235 Switches, crossings, transition devices	9,500	17,000
213.237 Inspection of rail	13,000	20,500
213.239 Special inspections	9,500	17,000
213.241 Inspection records	9,500	17,000
Subpart G—Train Operations at Track Classes 6 and Higher		
213.305 Designation of qualified individuals; general qualifications	19,500	25,000
213.307 Class of track; operating speed limits	19,500	25,000
213.309 Restoration or renewal of track under traffic conditions	19,500	25,000
213.311 Measuring track not under load	13,000	20,500
213.319 Drainage	9,500	17,000
213.321 Vegetation	9,500	17,000
213.323 Track gage	19,500	25,000
213.327 Alignment	19,500	25,000
213.329 Curves, elevation and speed limits	19,500	25,000
213.331 Track surface	19,500	25,000
213.333 Automated vehicle inspection systems	19,500	25,000
213.335 Crossties:		
(a) Material used	9,500	17,000
(b) Distribution of ties	13,000	20,500
(c) Sufficient number of nondefective ties, non-concrete	9,500	17,000
(d) Sufficient number of nondefective, concrete ties	19,500	25,000
(e) Joint ties	19,500	25,000
(f) Track constructed without crossties	19,500	25,000
(g) Non-defective ties surrounding defective ties	19,500	25,000
(h) Tie plates	19,500	25,000
(i) Tie plates	19,500	25,000
213.337 Defective rails	19,500	25,000
213.339 Inspection of rail in service	19,500	25,000
213.341 Inspection of new rail	19,500	25,000
213.343 Continuous welded rail (a) through (h)	19,500	25,000
213.345 Vehicle qualification testing (a) through (b)	19,500	25,000
(c) through (e)	19,500	25,000
213.347 Automotive or railroad crossings at grade	13,000	20,500
213.349 Rail end mismatch	13,000	20,500
213.351(a) Rail joints	19,500	25,000

APPENDIX B TO PART 213—SCHEDULE OF CIVIL PENALTIES [1]—Continued

Section [2 3]	Violation	Willful violation
213.351(b) Rail joints	19,500	25,000
213.351(c) Rail joints	19,500	25,000
213.351(d) Rail joints	19,500	25,000
213.351(e) Rail joints	13,000	20,500
213.351(f) Rail joints	19,500	25,000
213.351(g) Rail joints	19,500	25,000
213.352 Torch cut rails	9,500	17,000
213.353 Turnouts, crossovers, transition devices	19,500	25,000
213.355 Frog guard rails and guard faces; gage	13,000	20,500
213.357 Derails	9,500	17,000
213.359 Track stiffness	19,500	25,000
213.361 Right of way	9,500	17,000
213.365 Visual inspections	19,500	25,000
213.367 Special inspections	19,500	25,000
213.369 Inspections records	9,500	17,000

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $100,000 for any violation where circumstances warrant. *See* 49 CFR part 209, appendix A.

[2] In addition to assessment of penalties for each instance of noncompliance with the requirements identified by this footnote, track segments designated as excepted track that are or become ineligible for such designation by virtue of noncompliance with any of the requirements to which this footnote applies are subject to all other requirements of part 213 until such noncompliance is remedied.

[3] The penalty schedule uses section numbers from 49 CFR part 213. If more than one item is listed as a type of violation of a given section, each item is also designated by a "penalty code," which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

PART 214—[AMENDED]

5. The authority citation for part 214 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.49.

6. Appendix A to part 214 is revised to read as follows:

APPENDIX A TO PART 214—SCHEDULE OF CIVIL PENALTIES [1]

Section [2]	Violation	Willful violation
Subpart B—Bridge Worker Safety Standards		
214.103 Fall protection:		
(i) Failure to provide fall protection	$13,000	$20,500
(ii) Failure to use fall protection	19,500	25,000
214.105 Standards and practices:		
(a) General:		
(1) Fall protection used for other purposes	9,500	17,000
(2) Failure to remove from service	9,500	17,000
(3) Failure to protect from deterioration	9,500	17,000
(4) Failure to inspect and remove	13,000	20,500
(5) Failure to train	13,000	20,500
(6) Failure to provide for prompt rescue	13,000	20,500
(7) Failure to prevent damage	9,500	17,000
(8) Failure to use proper connectors	9,500	17,000
(9) Failure to use proper anchorages	9,500	17,000
(b) Fall arrest system:		
(1)–(17) Failure to provide conforming equipment	9,500	17,000
(c) Safety net systems:		
(1) Failure to install close to workplace	9,500	17,000
(2) Failure to provide fall arrest if over 30 feet	13,000	20,500
(3) Failure to provide for unobstructed fall	13,000	20,500
(4) Failure to test	9,500	17,000
(5) Failure to use proper equipment	9,500	17,000
(6) Failure to prevent contact with surface below	13,000	20,500
(7) Failure to properly install	13,000	20,500
(8) Failure to remove defective nets	13,000	20,500
(9) Failure to inspect	13,000	20,500
(10) Failure to remove objects	5,500	10,000
(11)–(13) Failure to use conforming equipment	9,500	17,000
214.107 Working over water:		
(a)(i) Failure to provide life vest	13,000	20,500
(ii) Failure to use life vest	13,000	20,500
(c) Failure to inspect	9,500	17,000
(e)(i) Failure to provide ring buoys	13,000	20,500

APPENDIX A TO PART 214—SCHEDULE OF CIVIL PENALTIES [1]—Continued

Section [2]	Violation	Willful violation
(ii) Failure to use ring buoys		17,000
(f)(i) Failure to provide skiff	9,500	17,000
(ii) Failure to use skiff		17,000
214.109 Scaffolding:		
(a)–(f) Failure to provide conforming equipment	13,000	20,500
214.113 Head protection:		
(a)(i) Failure to provide	13,000	20,500
(ii) Failure to use	13,000	20,500
(b) or (c) Failure to provide conforming equipment	9,500	17,000
214.115 Foot protection:		
(a)(i) Failure to require use of	9,500	17,000
(ii) Failure to use	9,500	17,000
214.117 Eye and face protection:		
(a)(i) Failure to provide	9,500	17,000
(ii) Failure to use	5,500	10,000
(b) Failure to use conforming equipment	9,500	17,000
(c) Use of defective equipment	9,500	17,000
(d) Failure to provide for corrective lenses	9,500	17,000
Subpart C—Roadway Worker Protection Rule		
214.303 Railroad on-track safety programs, generally:		
(a) Failure of a railroad to implement an On-track Safety Program	19,500	25,000
(b) On-track Safety Program of a railroad includes no internal monitoring procedure	9,500	17,000
214.305 Compliance Dates:		
Failure of a railroad to comply by the specified dates	9,500	17,000
214.307 Review and approval of individual on-track safety programs by FRA:		
(a)(i) Failure to notify FRA of adoption of On-track Safety Program	2,500	5,000
(ii) Failure to designate primary person to contact for program review	2,500	5,000
214.309 On-track safety program documents:		
(1) On-track Safety Manual not provided to prescribed employees	9,500	17,000
(2) On-track Safety Program documents issued in fragments	5,500	10,000
214.311 Responsibility of employers:		
(b) Roadway worker required by employer to foul a track during an unresolved challenge	19,500	25,000
(c) Roadway workers not provided with written procedure to resolve challenges of on-track safety procedures	9,500	17,000
214.313 Responsibility of individual roadway workers:		
(a) Failure to follow railroad's on-track safety rules		25,000
(b) Roadway worker fouling a track when not necessary in the performance of duty		25,000
(c) Roadway worker fouling a track without ascertaining that provision is made for on-track safety		25,000
(d) Roadway worker failing to notify employer of determination of improper on-track safety provisions		25,000
214.315 Supervision and communication:		
(a) Failure of employer to provide job briefing	19,500	25,000
(b) Incomplete job briefing	13,000	20,500
(c)(i) Failure to designate roadway worker in charge of roadway work group	13,000	20,500
(ii) Designation of more than one roadway worker in charge of one roadway work group	9,500	17,000
(iii) Designation of non-qualified roadway worker in charge of roadway work group	13,000	20,500
(d)(i) Failure to notify roadway workers of on-track safety procedures in effect	13,000	20,500
(ii) Incorrect information provided to roadway workers regarding on-track safety procedures in effect	13,000	20,500
(iii) Failure to notify roadway workers of change in on-track safety procedures	13,000	20,500
(e)(i) Failure of lone worker to communicate with designated employee for daily job briefing	9,500	17,000
(ii) Failure of employer to provide means for lone worker to receive daily job briefing	13,000	20,500
214.317 On-track safety procedures, generally:		
On-track safety rules conflict with this part	19,500	25,000
214.319 Working limits, generally:		
(a) Nonqualified roadway worker in charge of working limits	13,000	20,500
(b) More than one roadway worker in charge of working limits on the same track segment	13,000	20,500
(c)(1) Working limits released without notifying all affected roadway workers	19,500	25,000
(2) Working limits released before all affected roadway workers are otherwise protected	19,500	25,000
214.321 Exclusive track occupancy:		
(b) Improper transmission of authority for exclusive track occupancy	9,500	17,000
(b)(1) Failure to repeat authority for exclusive track occupancy to issuing employee	9,500	17,000
(2) Failure to retain possession of written authority for exclusive track occupancy	5,500	10,000
(3) Failure to record authority for exclusive track occupancy when issued	13,000	20,500
(c) Limits of exclusive track occupancy not identified by proper physical features	19,500	25,000
(d)(1) Movement authorized into limits of exclusive track occupancy without authority of roadway worker in charge	19,500	25,000
(2) Movement authorized within limits of exclusive track occupancy without authority of roadway worker in charge	19,500	25,000
(3) Movement within limits of exclusive track occupancy exceeding restricted speed without authority of roadway worker in charge	19,500	25,000

APPENDIX A TO PART 214—SCHEDULE OF CIVIL PENALTIES [1]—Continued

Section [2]	Violation	Willful violation
214.323 Foul time:		
(a) Foul time authority overlapping movement authority of train or equipment	19,500	25,000
(b) Failure to repeat foul time authority to issuing employee	9,500	17,000
214.325 Train coordination:		
(a) Train coordination limits established where more than one train is authorized to operate	13,000	20,500
(b)(1) Train coordination established with train not visible to roadway worker at the time	9,500	17,000
(2) Train coordination established with moving train	9,500	17,000
(3) Coordinated train moving without authority of roadway worker in charge	13,000	20,500
(4) Coordinated train releasing movement authority while working limits are in effect	13,000	20,500
214.327 Inaccessible track:		
(a) Improper control of entry to inaccessible track	13,000	20,500
(5) Remotely controlled switch not properly secured by control operator	13,000	20,500
(b) Train or equipment moving within inaccessible track limits without permission of roadway worker in charge	13,000	20,500
(c) Unauthorized train or equipment located within inaccessible track limits	13,000	20,500
214.329 Train approach warning provided by watchmen/lookouts:		
(a) Failure to give timely warning of approaching train	19,500	25,000
(b)(1) Failure of watchman/lookout to give full attention to detecting approach of train	13,000	20,500
(2) Assignment of other duties to watchman/lookout	19,500	25,000
(c) Failure to provide proper warning signal devices	9,500	17,000
(d) Failure to maintain position to receive train approach warning signal	13,000	20,500
(e) Failure to communicate proper warning signal	13,000	20,500
(f)(1) Assignment of nonqualified person as watchman/lookout	13,000	20,500
(2) Nonqualified person accepting assignment as watchman/lookout	9,500	17,000
(g) Failure to properly equip a watchman/lookout	9,500	17,000
214.331 Definite train location:		
(a) Definite train location established where prohibited	13,000	20,500
(b) Failure to phase out definite train location by required date	9,500	17,000
(d)(1) Train location information issued by unauthorized person	13,000	20,500
(2) Failure to include all trains operated on train location list	19,500	25,000
(5) Failure to clear track 10 minutes before earliest departure time of train at last station prior to work location, or failure to remain clear until such train passed	13,000	20,500
(6) Train passing station before time shown in train location list	19,500	25,000
(7) Nonqualified person using definite train location to establish on-track safety	13,000	20,500
214.333 Informational line-ups of trains:		
(a) Informational line-ups of trains used for on-track safety where prohibited	19,500	25,000
(b) Informational line-up procedures inadequate to protect roadway workers	19,500	25,000
(c) Failure to discontinue informational line-ups by required date	9,500	17,000
214.335 On-track safety procedures for roadway work groups:		
(a) Failure to provide on-track safety for a member of a roadway work group	19,500	25,000
(b) Member of roadway work group fouling a track without authority of employee in charge	13,000	20,500
(c) Failure to provide train approach warning or working limits on adjacent track where required	19,500	25,000
214.337 On-track safety procedures for lone workers:		
(b) Failure by employer to permit individual discretion in use of individual train detection	19,500	25,000
(c)(1) Individual train detection used by nonqualified employee	13,000	20,500
(2) Use of individual train detection while engaged in heavy or distracting work	19,500	25,000
(3) Use of individual train detection in controlled point or manual interlocking	19,500	25,000
(4) Use of individual train detection with insufficient visibility	19,500	25,000
(5) Use of individual train detection with interfering noise	19,500	25,000
(6) Use of individual train detection while a train is passing	19,500	25,000
(d) Failure to maintain access to place of safety clear of live tracks	19,500	25,000
(e) Lone worker unable to maintain vigilant lookout	19,500	25,000
(f)(1) Failure to prepare written statement of on-track safety	5,500	10,000
(2) Incomplete written statement of on-track safety	2,500	5,000
(3) Failure to produce written statement of on-track safety to FRA	2,500	5,000
214.339 Audible warning from trains:		
(a) Failure to require audible warning from trains	9,500	17,000
(b) Failure of train to give audible warning where required	9,500	17,000
214.341 Roadway maintenance machines:		
(a) Failure of on-track safety program to include provisions for safety near roadway maintenance machines	19,500	25,000
(b) Failure to provide operating instructions	9,500	17,000
(1) Assignment of nonqualified employee to operate machine	13,000	20,500
(2) Operator unfamiliar with safety instructions for machine	13,000	20,500
(3) Roadway worker working with unfamiliar machine	13,000	20,500
(c) Roadway maintenance machine not clear of passing trains or operation of machine component closer than four feet to adjacent track without procedural instructions	19,500	25,000
214.343 Training and qualification, general:		
(a)(1) Assignment of roadway worker duties to employee that is not trained or qualified	13,000	20,500
(a)(2) Acceptance of roadway worker assignment by employee that is not trained or qualified	13,000	20,500
(b)(1) Failure to provide initial training	13,000	20,500

APPENDIX A TO PART 214—SCHEDULE OF CIVIL PENALTIES [1]—Continued

Section [2]	Violation	Willful violation
(b)(2) Failure to provide annual training	9,500	17,000
(c) Failure to provide training to employee other than a roadway worker on functions related to on-track safety	13,000	20,500
(d)(1) Failure to maintain records of qualifications	9,500	17,000
(2) Incomplete records of qualifications	5,500	10,000
(3) Failure to provide records of qualifications to FRA	2,500	5,000
214.345 Training for all roadway workers	[3]	[3]
214.347 Training and qualification for lone workers	[3]	[3]
214.349 Training and qualification of watchmen/lookouts	[3]	[3]
214.351 Training and qualification of flagmen	[3]	[3]
214.353 Training and qualification of roadway workers who provide on-track safety for roadway work groups	[3]	[3]
214.355 Training and qualification in on-track safety for operators of roadway maintenance machines	[3]	[3]
Subpart D—On-Track Roadway Maintenance Machines and Hi-Rail Vehicles		
214.503 Good-faith challenges; procedures for notification and resolution:		
(a) Failure of employee to notify employer that the machine or vehicle does not comply with this subpart or has a condition inhibiting safe operation		20,500
(b) Roadway worker required to operate machine or vehicle when good-faith challenge not resolved	19,500	25,000
(c) Failure of employer to have or follow written procedures to resolve good-faith challenges	19,500	25,000
214.505 Required environmental control and protection systems for new on-track roadway maintenance machines with enclosed cabs:		
(a) Failure to equip new machines with required systems	19,500	25,000
(b) Failure of new or existing machines to protect employees from exposure to air contaminants	19,500	25,000
(c) Failure of employer to maintain required list of machines or make list available	9,500	17,000
(d) Removal of "designated machine" from list before retired or sold	9,500	17,000
(e) Personal respiratory protective equipment not provided when ventilation system fails	19,500	25,000
(f) Personal respiratory protective equipment fails to meet required standards	19,500	25,000
(g) Other new machines with enclosed cabs not equipped with operable heating and ventilation systems	19,500	25,000
(h) Nonenclosed station not equipped with covering, where feasible	19,500	25,000
214.507 Required safety equipment for new on-track roadway maintenance machines:		
(a)(1)–(5) Failure to equip new machine or provide protection as specified in these paragraphs	19,500	25,000
(a)(6)–(7) Failure to equip new machine with first-aid kit or operative and charged fire extinguisher	13,000	20,500
(b) Position for operator to stand not properly equipped to provide safe and secure position	19,500	25,000
(c) New machine not equipped with accurate speed indicator, as required	13,000	20,500
(d) As-built light weight not conspicuously displayed on new machine	13,000	20,500
214.509 Required visual illumination and reflective devices for new on-track roadway maintenance machines	13,000	20,500
214.511 Required audible warning devices for new on-track roadway maintenance machines	19,500	25,000
214.513 Retrofitting of existing on-track roadway maintenance machines; general:		
(a) Failure to provide safe and secure position and protection from moving parts inside cab for each roadway worker transported on machine	19,500	25,000
(b) Horn or other audible warning device is missing, inoperable, or has noncompliant triggering mechanism	13,000	20,500
(c) Illumination device or portable light missing, inoperable, improperly secured, or incapable of illuminating track as required	13,000	20,500
214.515 Overhead covers for existing on-track roadway maintenance machines:		
(a) Failure to repair, reinstall, or maintain overhead cover as required	19,500	25,000
(b) Failure to provide written response to operator's request within 60 days	9,500	17,000
214.517 Retrofitting of existing on-track roadway maintenance machines manufactured on or after January 1, 1991:		
(a) Failure to equip machine with change-of-direction alarm or rearward viewing device	19,500	25,000
(b) Failure to equip machine with operative heater	19,500	25,000
(c) Failure to display light weight of machine as required	13,000	20,500
(d) Failure to equip machine with reflective material, reflective device, or operable brake lights	19,500	25,000
(e) Failure to install or replace safety glass as required	19,500	25,000
(f) Failure to equip machine with turntable restraint device or warning light as required	19,500	25,000
214.518 Safe and secure position for riders	19,500	25,000
214.519 Floors, decks, stairs, and ladders for on-track roadway maintenance machines	19,500	25,000
214.521 Flagging equipment for on-track roadway maintenance machines and hi-rail vehicles	13,000	20,500
214.523 Hi-rail vehicles:		
(a) Failure to inspect hi-rail gear annually	19,500	25,000
(b) Failure to maintain inspection record or make record available to FRA	9,500	17,000
(c) Failure to equip new hi-rail vehicle with alarm and light or beacon as required	13,000	20,500
(d)(2) Failure of operator to tag, date, or report noncomplying condition	9,500	17,000
(d)(3) Failure to repair or replace noncomplying alarms, lights, or beacons as required	13,000	20,500
214.525 Towing with on-track roadway maintenance machines or hi-rail vehicles	19,500	25,000
214.527 On-track roadway maintenance machines; inspection for compliance and schedule for repairs:		
(a) Failure of operator to check on-track roadway maintenance machine for compliance	9,500	17,000
(b) Failure of operator to tag, date, or report noncomplying condition	9,500	17,000

APPENDIX A TO PART 214—SCHEDULE OF CIVIL PENALTIES [1]—Continued

Section [2]	Violation	Willful violation
(c)(1)–(4) Failure to meet requirements for operating on-track roadway maintenance machine with noncomplying headlights, work lights, horn, fire extinguisher, alarm, warning light, or beacon	13,000	20,500
(c)(5) Failure to repair or replace defective or missing operator's seat within required time period	19,500	25,000
214.529 In-service failure of primary braking system	19,500	25,000
214.531 Schedule of repairs; general	13,000	20,500
214.533 Schedule of repairs subject to availability of parts:		
(a)–(c) Failure to order necessary part(s), make repair(s), or remove on-track roadway maintenance machine or hi-rail vehicle from service as required	13,000	20,500
(d) Failure to maintain record or make record available to FRA	9,500	17,000

[1] A penalty may be assessed against an individual only for a willful violation. In addition, there are certain sections of the penalty schedule for which no penalty is listed in the ordinary violation column. These sections may only be cited as willful violations. The Administrator reserves the right to assess a penalty of up to $100,000 for any violation where circumstances warrant. *See* 49 CFR part 209, appendix A.

[2] The penalty schedule uses section numbers from 49 CFR part 214. If more than one item is listed as a type of violation of a given section, each item is also designated by a "penalty code," which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

[3] *See* § 214.343 (Training and qualification, general).

PART 215—[AMENDED]

7. The authority citation for part 215 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.49.

8. Appendix B to part 215 is revised to read as follows:

APPENDIX B TO PART 215—SCHEDULE OF CIVIL PENALTIES [1]

Section [2]	Violation	Willful Violation
Subpart A—General		
215.9 Movement for repair:		
(a), (c)	[1]	[1]
(b)	$5,500	$10,000
215.11 Designation of qualified persons	9,500	17,000
215.13 Pre-departure inspection	9,500	17,000
Subpart B—Freight Car Components		
Suspension System		
215.103 Defective wheel:		
(a) Flange thickness of:		
(1) 7/8″ or less but more than 13/16″	9,500	17,000
(2) 13/16″ or less	13,000	20,500
(b) Flange height of:		
(1) 1½″ or greater but less than 15/8″	9,500	17,000
(2) 15/8″ or more	13,000	20,500
(c) Rim thickness of:		
(1) 11/16″ or less but more than 5/8″	9,500	17,000
(2) 5/8″ or less	13,000	20,500
(d) Wheel rim, flange plate hub width:		
(1) Crack of less than 1″	9,500	17,000
(2) Crack of 1″ or more	13,000	20,500
(3) Break	19,500	25,000
(e) Chip or gouge in flange of:		
(1) 1½″ or more but less than 15/8″ in length; and ½″ or more but less than 5/8″ in width	5,500	10,000
(2) 15/8″ or more in length; or 5/8″ or more in width	9,500	17,000
(f) Slid flat or shelled spot(s):		
(1)(i) One spot more than 2½″, but less than 3″, in length	5,500	10,000
(ii) One spot 3″ or more in length	9,500	17,000
(2)(i) Two adjoining spots each of which is more than 2″ but less than 2½″ in length	5,500	10,000
(ii) Two adjoining spots both of which are at least 2″ in length, if either spot is 2½″ or more in length	9,500	17,000
(g) Loose on axle	19,500	25,000
(h) Overheated; discoloration extending:		
(1) More than 4″ but less than 4½″	9,500	17,000(
(2) 4½″ or more	13,000	20,500
(i) Welded	13,000	20,500
215.105 Defective axle:		
(a)(1) Crack of 1″ or less	9,500	17,000
(2) Crack of more than 1″	13,000	20,500
(3) Break	19,500	25,000

APPENDIX B TO PART 215—SCHEDULE OF CIVIL PENALTIES [1]—Continued

Section [2]	Violation	Willful Violation
(b) Gouge in surface that is between the wheel seats and is more than ⅛″ in depth	5,500	10,000
(c) End collar with crack or break	9,500	17,000
(d) Journal overheated	19,500	25,000
(e) Journal surface has: A ridge; a depression; a circumferential score; corrugation; a scratch; a continuous streak; pitting; rust; or etching	9,500	17,000
215.107 Defective plain bearing box: general:		
(a)(1) No visible free oil	5,500	10,000
(2) Lubricating pad dry (no expression of oil observed when pad is compressed)	13,000	20,500
(b) Box lid is missing, broken, or open except to receive servicing	5,500	10,000
(c) Contains foreign matter that can be expected to damage the bearing or have a detrimental effect on the lubrication of the journal and bearing	9,500	17,000
215.109 Defective plain bearing box: journal lubrication system:		
(a) Lubricating pad has a tear	5,500	10,000
(b) Lubricating pad scorched, burned, or glazed	9,500	17,000
(c) Lubricating pad contains decaying or deteriorating fabric	9,500	17,000
(d) Lubricating pad has an exposed center core or metal parts contacting the journal	9,500	17,000
(e) Lubricating pad is missing or not in contact with the journal	13,000	20,500
215.111 Defective plain bearing:		
(a) Missing	19,500	25,000
(b) Bearing liner is loose or has piece broken out	9,500	17,000
(c) Overheated	19,500	25,000
215.113 Defective plain bearing wedge:		
(a) Missing	19,500	25,000
(b) Cracked	9,500	17,000
(c) Broken	13,000	20,500
(d) Not located in its design position	9,500	17,000
215.115 Defective roller bearing:		
(a)(1) Overheated	19,500	25,000
(2)(i) Cap screw(s) loose	13,000	20,500
(ii) Cap screw lock broken, missing or improperly applied	5,500	10,000
(3) Seal is loose or damaged, or permits leakage of lubricant	5,500	10,000
(b)(1) Not inspected and tested after derailment	13,000	20,500
(2) Not disassembled after derailment	9,500	17,000
(3) Not repaired or replaced after derailment	13,000	20,500
215.117 Defective roller bearing adapter:		
(a) Cracked or broken	9,500	17,000
(b) Not in its design position	13,000	20,500
(c) Worn on the crown	9,500	17,000
215.119 Defective freight car truck:		
(a)(1) A side frame or bolster that is broken	19,500	25,000
(2)(i) Side frame or bolster with crack of: ¼″ or more, but less than 1″	9,500	17,000
(ii) 1″ or more	13,000	20,500
(b) A snubbing device that is ineffective or missing	9,500	17,000
(c) Side bearing(s):		
(1) Assembly missing or broken	19,500	25,000
(2) In contact except by design	13,000	20,500
(3), (4) Total clearance at one end or at diagonally opposite sides of:		
(i) More than ¾″ but not more than 1″	9,500	17,000
(ii) More than 1″	13,000	20,500
(d) Truck spring(s):		
(1) Do not maintain travel or load	9,500	17,000
(2) Compressed solid	9,500	17,000
(3) Outer truck springs broken or missing:		
(i) Two outer springs	9,500	17,000
(ii) Three or more outer springs	13,000	20,500
(e) Truck bolster-center plate interference	13,000	20,500
(f) Brake beam shelf support worn	9,500	17,000
Car Bodies		
215.121 Defective car body:		
(a) Has less than 2½″ clearance from the top of rail	9,500	17,000
(b) Car center sill is:		
(1) Broken	19,500	25,000
(2) Cracked more than 6″	9,500	17,000
(3) Bent or buckled more than 2½″ in any 6′ length	9,500	17,000
(c) Coupler carrier that is broken or missing	9,500	17,000
(d) Car door not equipped with operative safety hangers	19,500	25,000
(e)(1) Center plate not properly secured	19,500	25,000
(2) Portion missing	9,500	17,000
(3) Broken	19,500	25,000
(4) Two or more cracks	9,500	17,000

APPENDIX B TO PART 215—SCHEDULE OF CIVIL PENALTIES [1]—Continued

Section [2]	Violation	Willful Violation
(f) Broken sidesill, crossbearer, or body bolster	9,500	17,000
Draft System		
215.123 Defective couplers:		
(a) Shank bent out of alignment	5,500	10,000
(b) Crack in highly stressed junction area	9,500	17,000
(c) Coupler knuckle broken or cracked	9,500	17,000
(d) Coupler knuckle pin or thrower that is missing or inoperative	9,500	17,000
(e) Coupler retainer pin lock that is missing or broken	5,500	10,000
(f) Coupler with following conditions: Locklift inoperative; no anticreep protection; or coupler lock is missing, inoperative, bent, cracked, or broken	9,500	17,000
215.125 Defective uncoupling device	9,500	17,000
215.127 Defective draft arrangement:		
(a) Draft gear that is inoperative	9,500	17,000
(b) Yoke that is broken	9,500	17,000
(c) End of car cushioning unit is leaking or inoperative	9,500	17,000
(d) Vertical coupler pin retainer plate missing or has missing fastener	19,500	25,000
(e) Draft key or draft key retainer that is inoperative or missing	19,500	25,000
(f) Follower plate that is missing or broken	9,500	17,000
215.129 Defective cushioning device	9,500	17,000
Subpart C—Restricted Equipment		
215.203 Restricted cars	9,500	17,000
Subpart D—Stenciling		
215.301 General	5,500	10,000
215.303 Stenciling of restricted cars	5,500	10,000
215.305 Stenciling of maintenance-of-way	5,500	10,000

[1] A penalty may be assessed against an individual only for a willful violation. Generally, when two or more violations of these regulations are discovered with respect to a single freight car that is placed or continued in service by a railroad, the appropriate penalties set forth above are aggregated up to a maximum of $25,000 per day. A failure to perform, with respect to a particular freight car, the predeparture inspection required by § 215.13 of this part will be treated as a violation separate and distinct from, and in addition to, any substantive violative conditions found on the car. The Administrator reserves the right to assess a penalty of up to $100,000 for any violation where circumstances warrant. *See* 49 CFR part 209, appendix A. Failure to observe any condition for movement set forth in paragraphs (a) and (c) of § 215.9 will deprive the railroad of the benefit of the movement-for-repair provision and make the railroad and any responsible individuals liable for penalty under the particular regulatory section(s) concerning the substantive defect(s) present on the freight car at the time of movement. Maintenance-of-way equipment not stenciled in accordance with § 215.305 is subject to all requirements of this part. *See* § 215.3(c)(3).

[2] The penalty schedule uses section numbers from 49 CFR part 215. If more than one item is listed as a type of violation of a given section, each item is also designated by a "penalty code," which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

PART 217—[AMENDED]

9. The authority citation for part 217 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.49.

10. Appendix A to part 217 is revised to read as follows:

Appendix A to Part 217—Schedule Of Civil Penalties [1]

Section [2]	Violation	Willful Violation
Subpart A—General		
217.7 Operating Rules:		
(a)	$5,500	$10,000
(b)	5,500	10,000
(c)	5,500	10,000
217.9 Operational tests and inspections:		
(a) Failure to implement a program	9,500–19,500	17,000–25,000
(b) Railroad and railroad testing officer responsibilities:		
(1) Failure to provide instruction, examination, or field training, or failure to conduct tests in accordance with program	13,000	20,500
(2) Records	9,500	17,000
(c) Record of program; program incomplete	9,500–19,500	17,000–25,000
(d) Records of individual tests and inspections	9,500	17,000
(e) Failure to retain copy of or conduct:.		
(1)(i) Quarterly review	13,000	20,500
(1)(ii) and (2) Six month review	13,000	20,500
(3) Records	9,500	17,000

Section [2]	Violation	Willful Violation
(f) Annual summary	9,500	17,000
(h) Failure to timely or appropriately amend program after disapproval	13,000–19,500	20,500–25,000
217.11 Program of instruction on operating rules:		
(a)	5,500–13,000	10,000–20,500
(b)	5,500–13,000	10,000–20,500

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $100,000 for any violation where circumstances warrant. *See* 49 CFR part 209, appendix A.

[2] The penalty schedule uses section numbers from 49 CFR part 217. If more than one item is listed as a type of violation of a given section, each item is also designated by a "penalty code," which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

PART 218—[AMENDED]

11. The authority citation for part 218 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.49.

12. Appendix A to part 218 is revised to read as follows:

APPENDIX A TO PART 218—SCHEDULE OF CIVIL PENALTIES [1]

Section [2]	Violation	Willful violation
Subpart B—Blue Signal Protection of Workmen		
218.22 Utility employees:		
(a) Employee qualifications	$5,500	$10,000
(b) Concurrent service	9,500	17,000
(c) Assignment conditions:		
(1) No controlling locomotive	9,500	17,000
(2) Empty cab	9,500	17,000
(3)(4) Improper communication	9,500	17,000
(5) Performing functions not listed	5,500	10,000
(d) Improper release	5,500	10,000
(f) More than three utility employees with one crew	5,500	10,000
218.23 Blue signal display	9,500	17,000
218.24 One-person crew:		
(a)(1) Equipment not coupled or insufficiently separated	5,500	10,000
(a)(2) Unoccupied locomotive cab not secured	9,500	17,000
(b) Helper service	5,500	10,000
218.25 Workmen on a main track	9,500	17,000
218.27 Workmen on track other than main track:		
(a) Protection provided except that signal not displayed at switch	5,500	10,000
(b) through (e)	9,500	17,000
218.29 Alternate methods of protection:		
(a)(1) Protection provided except that signal not displayed at switch	5,500	10,000
(a)(2) through (a)(8)	9,500	17,000
(b)(1) Protection provided except that signal not displayed at switch	5,500	10,000
(b)(2) through (b)(4)	9,500	17,000
(c) Use of derails	9,500	17,000
(d) Emergency repairs	9,500	17,000
218.30 Remotely controlled switches:		
(a) and (b)	9,500	17,000
(c)	2,500	5,000
Subpart C—Protection of Trains and Locomotives		
218.35 Yard limits:		
(a) and (b)	9,500	17,000
(c)	2,500	5,000
218.37 Flag protection:		
(a)	9,500	17,000
(b) and (c)	9,500	17,000
218.39 Hump operations	9,500	17,000
218.41 Noncompliance with hump operations rule	9,500	17,000
Subpart D—Prohibition against Tampering with Safety Devices		
218.55 Tampering		17,000
218.57		
(i) Knowingly operating or permitting operation of disabled equipment	5,500	
(ii) Willfully operating or permitting operation of disabled equipment		10,000
218.59 Operation of disabled equipment	5,500	10,000

APPENDIX A TO PART 218—SCHEDULE OF CIVIL PENALTIES [1]—Continued

Section [2]	Violation	Willful violation
Subpart E—Protection of Occupied Camp Cars		
218.71 Warning Signal Display:		
(a) Warning signals	5,500	10,000
(1) Cars may not be moved	9,500	17,000
(2) Rolling equipment may not be on same track reducing view of warning signal	5,500	10,000
(3) Rolling equipment may not pass a warning signal	9,500	17,000
(4) Signal will be displayed immediately and only removed prior to departure	5,500	10,000
218.75 Methods of protection for camp cars on main track:		
(a) Warning signals near each switch with access	5,500	10,000
(b) Immediate notification of occupation	9,500	17,000
(c) Alerting affected personnel of cars	5,500	10,000
(d) Manual switched lined and locked	9,500	17,000
(e) Remote switches protected	9,500	17,000
218.77 Remotely controlled switches:		
(a) Remote switch lined and locked	9,500	17,000
(b) Operator may not remove locking device without permission	9,500	17,000
(c) Recordkeeping	2,500	5,000
(d) Derail and signal when located on main track	9,500	17,000
218.79 Alternative methods for protection:		
(a) Other than main track:		
(1) Warning signal at each switch providing access	9,500	17,000
(2) Switches lined and locked	9,500	17,000
(3) Derails 50 feet away when speed is 5MPH	9,500	17,000
(b) Except as provided in (a) on other than main track:		
(1) Derails 150 feet away from equipment	9,500	17,000
(2) Derails must be locked in derailing position with signal	9,500	17,000
Subpart F—Handling Equipment, Switches and Derails		
218.95 Instruction, Training and Examination:		
(a) Program	9,500–13,000	17,000–20,500
(b) Records	9,500	17,000
(c) Failure to timely or appropriately amend program after disapproval	9,500–13,000	17,000–20,500
218.97 Good Faith Challenge Procedures:		
(a) Employee Responsibility Failure	.....	5,000
(b) through (d) Failure to adopt or implement procedures	9,500	17,000
218.99 Shoving or Pushing Movements:		
(a) Failure to implement required operating rule	13,000	20,500
(b) Failure to conduct job briefing, use a qualified employee, or establish proper protection	9,500–13,000	17,000–20,500
(c) Failure to observe equipment direction	9,500	17,000
(d) Failure to properly establish point protection within a remote control zone	9,500	17,000
(e) Failure to abide by operational exception requirements	9,500	17,000
218.101 Leaving Equipment in the Clear:		
(a) Failure to implement required operating rule	9,500	17,000
(b) Equipment left improperly fouling	9,500	17,000
(c) Failure to implement procedures for identifying clearance points	9,500	17,000
218.103 Hand-operated switches, including crossover switches:		
(a) Failure to implement required operating rule	9,500	17,000
(b) through (d) Railroad employee failures	9,500	17,000
218.105 Additional operational requirements for hand-operated main track switches:		
(a) Failure to implement required operating rule	13,000	20,500
(b) and (c) Railroad and employee failures	9,500	17,000
(d) Failure to properly release authority limits	13,000	20,500
218.107 Additional operational requirements for hand-operated crossover switches:		
(a) Failure to implement required operating rule	9,500	17,000
(b) and (c) Railroad and employee failures	9,500	17,000
218.109 Hand-operated fixed derails:		
(a) Failure to implement required operating rule	9,500	17,000
(b) and (c) Railroad and employee failures	9,500	17,000

[1] Except as provided for in § 218.57, a penalty may be assessed against an individual only for a willful violation. In addition, there are certain sections of the penalty schedule for which no penalty is listed in the ordinary violation column. These sections may only be cited as willful violations. The Administrator reserves the right to assess a penalty of up to $100,000 for any violation where the circumstances warrant. *See* 49 CFR part 209, appendix A.

[2] The penalty schedule uses section numbers from 49 CFR part 218. If more than one item is listed as a type of violation of a given section, each item is also designated by a "penalty code," which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

PART 219—[AMENDED]

13. The authority citation for part 219 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20140, 21301, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.49(m).

14. Appendix A to part 219 is revised to read as follows:

APPENDIX A TO PART 219—SCHEDULE OF CIVIL PENALTIES [1]

Section [2]	Violation	Willful violation
Subpart A—General		
219.3 Application: Railroad does not have required program	$13,000	$20,500
219.11 General conditions for chemical tests:		
(b)(1) Employee unlawfully refuses to participate in testing	5,500	10,000
(b)(2) Employer fails to give priority to medical treatment	13,000	20,500
(b)(3) Employee fails to remain available	5,500	10,000
(b)(4) Employee tampers with specimen	5,500	10,000
(d) Employee unlawfully required to execute a waiver of rights	5,500	10,000
(e) Railroad used or authorized the use of coercion to obtain specimens		10,000
(g) Failure to meet supervisory training requirements or program of instruction not available or program not complete	9,500	17,000
(h) Urine or blood specimens provided for Federal testing were used for nonauthorized testing	5,500	10,000
219.23 Railroad policies:		
(a) Failure to provide written notice of FRA test	5,500	10,000
(b) Failure to provide written notice of basis for FRA test	2,500	5,000
(c) Use of Subpart C form for other test	2,500	5,000
(d) Failure to provide educational materials	2,500	5,000
(e) Educational materials fail to explain requirements of this part and/or include required content	2,500	5,000
(f) Non-Federal provisions are not clearly described as independent authority	5,500	10,000
Subpart B—Prohibitions		
219.101 Alcohol and drug use prohibited:		
Employee violates prohibition(s)	19,500	25,000
219.103 Prescribed and over-the-counter drugs:		
(a) Failure to train employee properly on requirements	5,500	10,000
219.104 Responsive action:		
(a) Failure to remove employee from covered service immediately	19,500	25,000
(b) Failure to provide notice for removal	5,500	10,000
(c) Failure to provide prompt hearing	5,500	10,000
(d) Employee improperly returned to service	13,000	20,500
219.105 Railroad's duty to prevent violations:		
(a) Employee improperly permitted to remain in covered service	19,500	25,000
(b) Failure to exercise due diligence to assure compliance with prohibition	9,500	17,000
219.107 Consequences of unlawful refusal:		
(a) Failure to disqualify an employee for nine months following a refusal	13,000	20,500
(e) Employee unlawfully returned to service	13,000	20,500
Subpart C—Post-Accident Toxicological Testing		
219.201 Events for which testing is required:		
(a) Failure to test after qualifying event (each employee not tested is a violation)	13,000	20,500
(c)(1)(i) Failure to make good faith determination	5,500	10,000
(c)(1)(ii) Failure to provide requested decision report to FRA	2,500	5,000
(c)(2) Testing performed after nonqualifying event	9,500	17,000
219.203 Responsibilities of railroads and employees:		
(a)(1)(i) and (a)(2)(i) Failure to properly test/exclude from testing	5,500	10,000
(a)(1)(ii) and (a)(2)(ii) Noncovered service employee tested	5,500	10,000
(b)(1) Delay in obtaining specimens due to failure to make every reasonable effort	5,500	10,000
(c) Independent medical facility not utilized	5,500	10,000
(d) Failure to report event or contact FRA when intervention required	2,500	5,000
219.205 Specimen collection and handling:		
(a) Failure to observe requirements with respect to specimen collection, marking and handling	5,500	10,000
(b) Failure to provide properly prepared forms with specimens	2,500	5,000
(d) Failure to promptly or properly forward specimens	5,500	10,000
219.207 Fatality:		
(a) Failure to test	13,000	20,500
(a)(1) Failure to ensure timely collection and shipment of required specimens	2,500	5,000
(b) Failure to request assistance when necessary	5,500	10,000
219.209 Reports of tests and refusals:		
(a)(1) Failure to provide telephonic report	2,500	5,000
(b) Failure to provide written report of refusal to test	2,500	5,000
(c) Failure to maintain report explaining why test not conducted within four hours	2,500	5,000
219.211 Analysis and follow-up:		
(c) Failure of MRO to report review of positive results to FRA	5,500	10,000
Subpart D—Testing for Cause		
219.300 Mandatory reasonable suspicion testing:		
(a)(1) Failure to test when reasonable suspicion criteria met	19,500	25,000

APPENDIX A TO PART 219—SCHEDULE OF CIVIL PENALTIES [1]—Continued

Section [2]	Violation	Willful violation
(a)(2) Tested when reasonable suspicion criteria not met	9,500	17,000
219.301 Testing for reasonable cause:		
(a) Event did not occur during daily tour	5,500	10,000
(b)(2) Tested when accident/incident criteria not met	9,500	17,000
(b)(3) Tested when operating rules violation criteria not met	9,500	17,000
219.302 Prompt specimen collection:		
(a) Specimen collection not conducted promptly	5,500	10,000
Subpart E—Identification of Troubled Employees		
219.401 Requirement for policies:		
(b) Failure to publish and/or implement required policy	5,500	10,000
219.407 Alternate policies:		
(c) Failure to file agreement or other document or provide timely notice or revocation	5,500	10,000
Subpart F—Pre-Employment Tests		
219.501 Pre-employment tests:		
(a) Failure to perform pre-employment drug test before first time employee performs covered service	13,000	20,500
Subpart G—Random Testing Programs		
219.601 Railroad random drug programs:		
(a)(1) Failure to file a random program	13,000	20,500
(a)(2) Failure to file amendment to program	5,500	10,000
(b) Failure to meet random testing criteria	9,500	17,000
(b)(1)(i) Failure to use a neutral selection process	9,500	17,000
(b)(2)(i)(B) Testing not spread throughout the year	5,500	10,000
(b)(3) Testing not distributed throughout the day	5,500	10,000
(b)(4) Advance notice provided to employee	9,500	17,000
(b)(6) Testing when employee not on duty	5,500	10,000
219.601 A Failure to include covered service employee in pool	9,500	17,000
219.602 Administrator's determination of drug testing rate:		
(f) Total number of tests below minimum random drug testing rate	13,000	20,500
219.603 Participation in drug testing:		
Failure to document reason for not testing selected employee	5,500	10,000
219.607 Railroad random alcohol programs:		
(a)(1) Failure to file a random alcohol program	13,000	20,500
(a)(2) Failure to file amendment to program	5,500	10,000
(b) Failure to meet random testing criteria	9,500	17,000
(b)(1) Failure to use a neutral selection process	9,500	17,000
(b)(5) Testing when employee not on duty	5,500	10,000
(b)(8) Advance notice provided to employee	9,500	17,000
219.607 A Failure to include covered service employee in pool	9,500	17,000
219.608 Administrator's determination of random alcohol testing rate:		
(e) Total number of tests below minimum random alcohol testing rate	13,000	20,500
219.609 Participation in alcohol testing: Failure to document reason for not testing selected employee	5,500	10,000
Subpart H—Drug and Alcohol Testing Procedures		
219.701 Standards for drug and alcohol testing:		
(a) Failure to comply with part 40 procedures in Subpart B, D, F, or G testing	5,500	10,000
(b) Testing not performed in a timely manner	5,500	10,000
Subpart I—Annual Report		
219.800 Reporting alcohol and drug misuse prevention program results in a management information system:		
(a) Failure to submit MIS report on time	5,500	10,000
(c) Failure to submit accurate MIS report	5,500	10,000
(d) Failure to include required data	5,500	10,000
Subpart J—Recordkeeping Requirements		
219.901 Retention of Alcohol Testing Records:		
(a) Failure to maintain records required to be kept by part 40	5,500	10,000
(b) Failure to maintain records required to be kept for five years	5,500	10,000
(c) Failure to maintain records required to be kept for two years	5,500	10,000
219.903 Retention of Drug Testing Records:		
(a) Failure to maintain records required to be kept by part 40	5,500	10,000
(b) Failure to maintain records required to be kept for five years	5,500	10,000
(c) Failure to maintain records required to be kept for two years	5,500	10,000
219.905 Access to facilities and records:		
(a) Failure to release records in this subpart in accordance with part 40	9,500	17,000
(b) Failure to permit access to facilities	9,500	17,000
(c) Failure to provide access to results of railroad alcohol and drug testing programs	9,500	17,000

[1] A penalty may be assessed against an individual only for a willful violation. The FRA Administrator reserves the right to assess a penalty of up to $100,000 for any violation, including ones not listed in this penalty schedule, where circumstances warrant. *See* 49 CFR part 209, appendix A.

[2] The penalty schedule uses section numbers from 49 CFR part 219. If more than one item is listed as a type of violation of a given section, each item is also designated by a "penalty code," which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

PART 220—[AMENDED]

15. The authority citation for part 220 continues to read as follows:

Authority: 49 U.S.C. 20102–20103, 20107, 21301–21302, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.49.

16. Appendix C to part 220 is revised to read as follows:

APPENDIX C TO PART 220—SCHEDULE OF CIVIL PENALTIES [1]

Section [2]	Violation	Willful violation
Subpart A—General		
220.9 Requirements for trains	$13,000	$20,500
220.11 Requirements for roadway workers	13,000	20,500
Subpart B—Radio and Wireless Communication Procedures		
220.21 Railroad operating rules; radio communications:		
(a)	9,500	17,000
(b)	9,500	17,000
220.23 Publication of radio information	9,500	17,000
220.25 Instruction of employees	9,500	17,000
220.27 Identification	9,500	17,000
220.29 Statement of letters and numbers	9,500	17,000
220.31 Initiating a transmission	5,500	10,000
220.33 Receiving a transmission	9,500	17,000
220.35 Ending a transmission	9,500	17,000
220.37 Voice test	13,000	20,500
220.38 Failed equipment	2,500	5,000
220.39 Continuous monitoring	9,500	17,000
220.41 [Reserved].		
220.43 Communication consistent with the rules	13,000	20,500
220.45 Complete communications	13,000	20,500
220.47 Emergencies	19,500	25,000
220.49 Switching, backing or pushing	19,500	25,000
220.51 Signal indications	13,000	20,500
220.61 Radio transmission of mandatory directives	19,500	25,000

[1] A penalty may be assessed against and only for a willful violation. The Administrator reserves the right to assess a penalty of up to $100,000 for any violation where circumstances warrant. *See* 49 CFR part 209, appendix A.

[2] The penalty schedule uses section numbers from 49 CFR part 220. If more than one item is listed as a type of violation of a given section, each item is also designated by a "penalty code," which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

PART 221—[AMENDED]

17. The authority citation for part 221 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.49.

18. Appendix C to part 221 is revised to read as follows:

APPENDIX C TO PART 221—SCHEDULE OF CIVIL PENALTIES [1]

Section [2]	Violation	Willful violation
Subpart B—Marking Devices		
221.13 Marking device display:		
(a) Device not present, not displayed, or not properly illuminated	$9,500	$17,000
(d) Device too close to rail	2,500	5,000
221.14 Marking devices: Use of unapproved or noncomplying device	5,500	10,000
221.15 Marking device inspection:		
(a) Failure to inspect at crew change	5,500	10,000
(b), (c) Improper inspection	5,500	10,000
221.16 Inspection procedure:		
(a) Failure to obtain protection	9,500	17,000
(b) Improper protection	5,500	10,000
221.17 Movement of defective equipment	(1)	(1)

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $100,000 for any violation where circumstances warrant. *See* 49 CFR part 209, appendix A. Where the conditions for movement of defective equipment set forth in § 221.17 of this part are not met, the movement constitutes a violation of § 221.13 of this part.

[2] The penalty schedule uses section numbers from 49 CFR part 221. If more than one item is listed as a type of violation of a given section, each item is also designated by a "penalty code," which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

PART 222—[AMENDED]

19. The authority citation for part 222 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20153, 21301, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49.

20. Appendix H to part 222 is revised to read as follows:

APPENDIX H TO PART 222—SCHEDULE OF CIVIL PENALTIES [1]

Section [2]	Violation	Willful violation
Subpart B—Use of Locomotive Horns		
222.21 Use of locomotive horn:		
(a) Failure to sound horn at grade crossing	$9,500	$17,000
Failure to sound horn in proper pattern	5,500	10,000
(b) Failure to sound horn at least 15 seconds and less than ¼ mile before crossing	9,500	17,000
Sounding the horn more than 25 seconds before the crossing	5,500	10,000
Sounding the horn more than ¼ mile in advance of crossing	5,500	10,000
Subpart C—Exceptions to the Use of the Locomotive Horn		
Silenced Horns at Individual Crossings		
222.33 Failure to sound horn when conditions of § 222.33 are not met	9,500	17,000
Silenced Horns at Groups of Crossings—Quiet Zones		
222.45 Routine sounding of the locomotive horn at a quiet zone crossing	5,500	10,000
222.49(b) Failure to provide Grade Crossing Inventory Form information	2,500	5,000
222.59(d) Routine sounding of the locomotive horn at a grade crossing equipped with wayside horn	2,500	5,000

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $100,000 for any violation where circumstances warrant. *See* 49 CFR part 209, appendix A.

[2] The penalty schedule uses section numbers from 49 CFR part 222. If more than one item is listed as a type of violation of a given section, each item is also designated by a "penalty code," which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

PART 223—[AMENDED]

21. The authority citation for part 223 continues to read as follows:

Authority: 49 U.S.C. 20102–03, 20133, 20701–20702, 21301–02, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49.

22. Appendix B to part 223 is revised to read as follows:

APPENDIX B TO PART 223—SCHEDULE OF CIVIL PENALTIES [1]

Section [2]	Violation	Willful violation
Subpart B—Specific Requirements		
223.9 New or rebuilt equipment:		
(a) Locomotives	$5,500	$10,000
(b) Cabooses	5,500	10,000
(c) Passenger cars	5,500	10,000
223.11(c) Existing locomotives	5,500	10,000
(d) Repair of window	2,500	5,000
223.13(c) Existing cabooses	5,500	10,000
(d) Repair of window	2,500	5,000
223.15(c) Existing passenger cars	5,500	10,000
(d) Repair of window	2,500	5,000
223.17 Identification of units	2,500	5,000

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $100,000 for any violation where circumstances warrant. *See* 49 U.S.C. 21301, 21304, and 49 CFR part 209, appendix A.

[2] The penalty schedule uses section numbers from 49 CFR part 223. If more than one item is listed as a type of violation of a given section, each item is also designated by a "penalty code," which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

PART 224—[AMENDED]

23. The authority citation for part 224 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20148 and 21301; 28 U.S.C. 2461; and 49 CFR 1.49.

24. Appendix A to part 224 is revised to read as follows:

APPENDIX A TO PART 224—SCHEDULE OF CIVIL PENALTIES [1]

Section [2]	Violation	Willful violation
Subpart B—Application, Inspection, and Maintenance of Retroreflective Material		
224.103 Characteristics of retroreflective sheeting:		
(a)–(d) Retroreflective sheeting applied does not meet the requirements of § 224.103	$5,500	$10,000
224.105 Sheeting dimensions and quantity:		
(a) Failure to apply minimum amount of retroreflective sheeting in accordance with Table 2	5,500	10,000
(b) Applying retroreflective sheeting of wrong dimensions	5,500	10,000
224.106 Location of retroreflective sheeting:		
(a), (b) Applying retroreflective sheeting in nonconforming pattern	5,500	10,000
224.107 Implementation schedule:		
(a)(1), (b)(1) Failure to apply retroreflective sheeting to new freight car or locomotive before equipment placed in service	5,500	10,000
(a)(2), (b)(2), (b)(4) Failure to apply retroreflective sheeting to existing freight car or locomotive in accordance with minimum schedule of paragraphs (a)(2), (b)(2), or (b)(4)	5,500	10,000
224.109 Inspection, repair, and replacement:		
(1) Failure to perform inspection	5,500	10,000
(2) Failure to properly notify car owner of defect	5,500	10,000
(3) Failure to retain written notification of defect for two years	2,500	5,000
(4) Failure to repair defect after notification	5,500	10,000

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $100,000 for any violation where circumstances warrant. *See* 49 CFR part 209, appendix A.

[2] The penalty schedule uses section numbers from 49 CFR part 224. If more than one item is listed as a type of violation of a given section, each item is also designated by a "penalty code," which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

PART 225—[AMENDED]

25. The authority citation for part 225 continues to read as follows:

Authority: 49 U.S.C. 103, 322(a), 20103, 20107, 20901–02, 21301, 21302, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.49.

26. Appendix A to part 225 is revised to read as follows:

APPENDIX A TO PART 225—SCHEDULE OF CIVIL PENALTIES [1]

Section [2]	Violation	Willful violation
225.9 Telephonic reports of certain accidents/incidents	$9,500	$17,000
225.11 Reports of accidents/incidents	5,500	10,000
225.12(a): Failure to file Railroad Employee Human Factor Attachment properly:		
(1) Employee identified	2,500	5,000
(2) No employee identified	2,500	5,000
225.12(b):		
(1) Failure to notify employee properly	5,500	10,000
(2) Notification of employee not involved in accident	2,500	5,000
225.12(c): Failure of employing railroad to provide requested information properly	2,500	5,000
225.12(d):		
(1) Failure to revise report when identity becomes known	2,500	5,000
(2) Failure to notify after late identification	5,500	10,000
225.12(f)(1): Submission of notice if employee dies as result of the reported accident	2,500	5,000
225.12(g): Willfully false accident statement by employee		20,500
225.13 Late reports	2,500	5,000
225.17(d) Alcohol or drug involvement	9,500	17,000
225.23 Joint operations	(1)	(1)
225.25 Recordkeeping	5,500	10,000
225.27 Retention of records	2,500	5,000
225.33:		
(1) Failure to adopt the Internal Control Plan	9,500	17,000
(2) Inaccurate reporting due to failure to comply with the Internal Control Plan	9,500	17,000
(3) Failure to comply with the intimidation/harassment policy in the Internal Control Plan	9,500	17,000

APPENDIX A TO PART 225—SCHEDULE OF CIVIL PENALTIES [1]—Continued

Section [2]	Violation	Willful violation
225.35 Access to records and reports	5,500	10,000

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $100,000 for any violation where circumstances warrant. *See* 49 CFR part 209, appendix A. A failure to comply with § 225.23 constitutes a violation of § 225.11. For purposes of §§ 225.25 and 225.27 of this part, each of the following constitutes a single act of noncompliance: (1) A missing or incomplete log entry for a particular employee's injury or illness; or (2) a missing or incomplete log record for a particular rail equipment accident or incident. Each day a violation continues is a separate offense.

[2] The penalty schedule uses section numbers from 49 CFR part 225. If more than one item is listed as a type of violation of a given section, each item is also designated by a "penalty code," which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

PART 227—[AMENDED]

27. The authority citation for part 227 continues to read as follows:

Authority: 49 U.S.C. 20103, 20103 (note), 20701–20702; and 49 CFR 1.49.

28. Appendix G to part 227 is revised to read as follows:

APPENDIX G TO PART 227—SCHEDULE OF CIVIL PENALTIES [1]

Section [2]	Violation	Willful violation
Subpart A—General		
227.3 Application:		
(b)(4) Failure to meet the required conditions for foreign railroad operations	$5,500	$10,000
Subpart B—Occupational Noise Exposure for Railroad Operating Employees		
227.103 Noise monitoring program:		
(a) Failure to develop and/or implement a noise monitoring program	19,500	25,000
(b) Failure to use sampling as required	5,500	10,000
(c) Failure to integrate sound levels and/or make noise measurements as required	5,500	10,000
(d) Failure to repeat noise monitoring where required	5,500	10,000
(e) Failure to consider work environments where hearing protectors may be omitted	5,500	10,000
(f) Failure to provide opportunity to observe monitoring	2,500	5,000
(g) Reporting of monitoring results:		
(1) Failure to notify monitored employee	5,500	10,000
(2) Failure to post results as required	5,500	10,000
227.105 Protection of employees:		
(a) Failure to provide appropriate protection to exposed employee	19,500	25,000
(b) Failure to observe and document sources of noise exposure	5,500	10,000
(c)–(d) Failure to protect employee from impermissible continuous noise	13,000	20,500
227.107 Hearing conservation program:		
(a) Failure to administer an HCP	19,500	25,000
(b) Failure to compute noise exposure as required	9,500	17,000
227.109 Audiometric testing program:		
(a) Failure to establish and/or maintain an audiometric testing program	19,500	25,000
(b) Failure to provide audiometric test at no cost to employee	5,500	10,000
(c) Failure to have qualified person perform audiometric test	5,500	10,000
(d) [Reserved]		
(e) Failure to establish baseline audiogram as required	9,500	17,000
(f) Failure to offer and/or require periodic audiogram as required	5,500	10,000
(g) Failure to evaluate audiogram as required	5,500	10,000
(h) Failure to comply with follow-up procedures as required	5,500	10,000
(i) Failure to use required method for revising baseline audiograms	5,500	10,000
227.111 Audiometric test requirements:		
(a) Failure to conduct test as required	5,500	10,000
(b) Failure to use required equipment	5,500	10,000
(c) Failure to administer test in room that meets requirements	5,500	10,000
(d) Complete failure to calibrate	13,000	20,500
(1) Failure to perform daily calibration as required	2,500	5,000
(2) Failure to perform annual calibration as required	2,500	5,000
(3) Failure to perform exhaustive calibration as required	2,500	5,000
227.115 Hearing protectors (HP):		
(a) Failure to comply with general requirements	9,500	17,000
(b) Failure to make HP available as required	5,500	10,000
(c) Failure to require use of HP at action level	13,000	20,500
(d) Failure to require use of HP at TWA of 90 dB(A)	13,000	20,500
227.117 Hearing protector attenuation:		
(a) Failure to evaluate attenuation as required	2,500	5,000
(b)–(c) Failure to attenuate to required level	2,500	5,000
(d) Failure to reevaluate attenuation	2,500	5,000

APPENDIX G TO PART 227—SCHEDULE OF CIVIL PENALTIES [1]—Continued

Section [2]	Violation	Willful violation
227.119 Training program:		
(a) Failure to institute a training program as required	9,500	17,000
(b) Failure to provide training within required time frame	2,500	5,000
(c) Failure of program and/or training materials to include required information	2,500	5,000
227.121 Recordkeeping:		
(a) General Requirements:		
(1) Failure to make record available as required	2,500	5,000
(3) Failure to transfer or retain records as required	2,500	5,000
(b)–(f) Records:		
(1) Failure to maintain record or failure to maintain record with required information	2,500	5,000
(2) Failure to retain records for required time period	2,500	5,000

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $100,000 for any violation where circumstances warrant. *See* 49 CFR part 209, appendix A.

[2] The penalty schedule uses section numbers from 49 CFR part 227. If more than one item is listed as a type of violation of a given section, each item is also designated by a "penalty code," which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

PART 228—[AMENDED]

29. The authority citation for part 228 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 21101–21109; Sec. 108, Div. A, Pub. L. 110–432, 122 Stat. 4860–4866; 49 U.S.C. 21301, 21303, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.49; and 49 U.S.C. 103.

30. In appendix A to part 228, the ninth paragraph below the heading "General Provisions", entitled "*Penalty*" is revised to read as follows:

Appendix A to Part 228—Requirements of the Hours of Service Act: Statement of Agency Policy and Interpretation

* * * * *

General Provisions

* * * * *

Penalty. * * * Effective October 9, 2007, the ordinary maximum penalty of $11,000 was raised to $16,000 as required under law. Effective March 2, 2009, the minimum penalty, ordinary maximum penalty and aggravated maximum penalty were raised again. The minimum penalty was increased from $550 to $650 pursuant to the law's requirement. Meanwhile, the ordinary maximum penalty was increased from $16,000 to $25,000 and the aggravated maximum was increased from $27,000 to $100,000 in accordance with the authority provided under the Rail Safety Improvement Act of 2008. FRA's guideline civil penalty amounts for violations of the substantive hours of service statute are $9,500 for an ordinary violation of the hours of service statute and $17,000 for a willful violation of the hours of service statute. The Administrator reserves the right to assess a penalty of up to $100,000 for a violation where circumstances warrant. *See* 49 CFR part 209, appendix A.

* * * * *

31. Appendix B to part 228 is revised to read as follows:

APPENDIX B TO PART 228—SCHEDULE OF CIVIL PENALTIES [1]

Section [2]	Violation	Willful violation
Subpart B—Records and Reporting		
228.9 Railroad records	$5,500	$10,000
228.11 Hours of duty records	2,500	5,000
Error on record reflect pattern of inaccurate recordkeeping	13,000	20,500
228.17 Dispatcher's record	2,500	5,000
228.19 Monthly reports of excess service	9,500	17,000
Subpart D—Electronic Recordkeeping		
228.203 Program components	9,500	17,000
228.205 Access to electronic records	9,500	17.000
228.207 Training	5,500	10,000

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $100,000 for any violation where circumstances warrant. *See* 49 CFR part 209, appendix A.

[2] The penalty schedule uses section numbers from 49 CFR part 228. If more than one item is listed as a type of violation of a given section, each item is also designated by a "penalty code," which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

PART 229—[AMENDED]

32. The authority citation for part 229 continues to read as follows:

Authority: 49 U.S.C. 20102–20103, 20107, 20133, 20137–20138, 20143, 20701–20703, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49(c), (m).

33. Appendix B to part 229 is revised to read as follows:

APPENDIX B TO PART 229—SCHEDULE OF CIVIL PENALTIES [1]

Section [2]	Violation	Willful violation
Subpart A—General		
229.7 Prohibited acts: Safety deficiencies not governed by specific regulations: To be assessed on relevant facts	$2,500–13,000	$5,000–20,500
229.9 Movement of noncomplying locomotives	(1)	(1)
229.11 Locomotive identification	2,500	5,000
229.13 Control of locomotives	9,500	17,000
229.17 Accident reports	15,500	10,000
219.19 Prior waivers	(1)	(1)
Subpart B—Inspection and Tests		
229.21 Daily inspection:		
(a)(b):		
(1) Inspection overdue	5,500	10,000
(2) Inspection report not made, improperly executed, or not retained	2,500	5,000
(c) Inspection not performed by a qualified person	2,500	5,000
229.23 Periodic inspection General		
(a)(b):		
(1) Inspection overdue	5,500	10,000
(2) Inspection performed improperly or at a location where the underneath portion cannot be safely inspected	5,500	10,000
(c)(d):		
(1) Form missing	2,500	5,000
(2) Form not properly displayed	2,500	5,000
(3) Form improperly executed	2,500	5,000
(e) Replace Form FRA F 6180–49A by April 2	2,500	5,000
(f) Secondary record of the information reported on Form FRA F 6180.49A	2,500	5,000
229.25:		
(a) through (e)(4) Tests: Every periodic inspection	5,500	10,000
(e)(5) Ineffective maintenance	13,000	20,500
229.27 Annual tests	5,500	10,000
229.29 Biennial tests	5,500	10,000
229.31:		
(a) Biennial hydrostatic tests of main reservoirs	5,500	10,000
(b) Biennial hammer tests of main reservoirs	5,500	10,000
(c) Drilled telltale holes in welded main reservoirs	5,500	10,000
(d) Biennial tests of aluminum main reservoirs	5,500	10,000
229.33 Out-of-use credit	2,500	5,000
Subpart C—Safety Requirements		
General Requirements		
229.41 Protection against personal injury	9,500	17,000
229.43 Exhaust and battery gases	9,500	17,000
229.45 General condition: To be assessed based on relevant facts	2,500–13,000	5,000–20,500
Brake System		
229.46 Brakes: General	9,500	17,000
229.47 Emergency brake valve	9,500	17,000
229.49 Main reservoir system:		
(a)(1) Main reservoir safety valve	9,500	17,000
(2) Pneumatically actuated control reservoir	9,500	17,000
(b)(c) Main reservoir governors	9,500	17,000
229.51 Aluminum main reservoirs	9,500	17,000
229.53 Brake gauges	9,500	17,000
229.55 Piston travel	9,500	17,000
229.57 Foundation brake gear	9,500	17,000
229.59 Leakage	9,500	17,000
Draft System		
229.61 Draft system	5,500	10,000
Suspension System		
229.63 Lateral motion	5,500	10,000
229.64 Plain bearing	5,500	10,000
229.65 Spring rigging	5,500	10,000
229.67 Trucks	9,500	17,000
229.69 Side bearings	9,500	17,000
229.71 Clearance above top of rail	2,500	5,000
229.73 Wheel sets	9,500	17,000
229.75 Wheel and tire defects:		
(a), (d) Slid flat or shelled spot(s):		
(1) One spot 2½″ or more but less than 3″ in length	9,500	17,000
(2) One spot 3″ or more in length	13,000	20,500
(3) Two adjoining spots each of which is 2″ or more in length but less than 2½″ in length	9,500	17,000

APPENDIX B TO PART 229—SCHEDULE OF CIVIL PENALTIES [1]—Continued

Section [2]	Violation	Willful violation
(4) Two adjoining spots each of which are at least 2″ in length, if either spot is 2½″ or more in length	13,000	20,500
(b) Gouge or chip in flange of:		
(1) More than 1½″ but less than 1⅝″ in length; and more than ½″ but less than ⅝″ in width	9,500	17,000
(2) 1⅝″ or more in length and ⅝″ or more in width	13,000	20,500
(c) Broken rim	19,500	25,000
(e) Seam in tread	9,500	17,000
(f) Flange thickness of:.		
(1) ⅞″ or less but more than 13/16″	9,500	17,000
(2) 13/16″ or less	13,000	20,500
(g) Tread worn hollow	9,500	17,000
(h) Flange height of:		
(1) 1½″ or greater but less than 1⅝″	9,500	17,000
(2) 1⅝″ or more	13,000	20,500
(i) Tire thickness	9,500	17,000
(j) Rim thickness:		
(1) Less than 1″ in road service and ¾″ in yard service	9,500	17,000
(2) 15/16″ or less in road service and 11/16″ in yard service	13,000	20,500
(k):		
(1) Crack of less than 1″	9,500	17,000
(2) Crack of 1″ or more	13,000	20,500
(3) Break	19,500	25,000
(l) Loose wheel or tire	19,500	25,000
(m) Welded wheel or tire	9,500	17,000
Electrical System		
229.77 Current collectors	5,500	10,000
229.79 Third rail shoes and beams	5,500	10,000
229.81 Emergency pole; shoe insulation	9,500	17,000
229.83 Insulation or grounding	13,000	20,500
229.85 Door and cover plates marked “Danger”	5,500	10,000
229.87 Hand operated switches	5,500	10,000
229.89 Jumpers; cable connections:		
(a) Jumpers and cable connections; locked and guarded	9,500	17,000
(b) Condition of jumpers and cable connections	9,500	17,000
229.91 Motors and generators	9,500	17,000
Internal Combustion Equipment		
229.93 Safety cut-off device	9,500	17,000
229.95 Venting	9,500	17,000
229.97 Grounding fuel tanks	9,500	17,000
229.99 Safety hangers	9,500	17,000
229.101 Engines:		
(a) Temperature and pressure alarms, controls, and switches	5,500	10,000
(b) Warning notice	9,500	17,000
(c) Wheel slip/slide protection	5,500	10,000
Steam Generators		
229.103 Safe working pressure; factor of safety	9,500	17,000
229.105 Steam generator number	2,500	5,000
229.107 Pressure gauge	9,500	17,000
229.109 Safety valves	9,500	17,000
229.111 Water-flow indicator	9,500	17,000
229.113 Warning notice	9,500	17,000
Cabs and Cab Equipment		
229.115 Slip/slide alarms	9,500	17,000
229.117 Speed indicators	9,500	17,000
229.119 Cabs, floors, and passageways:		
(a)(1) Cab set not securely mounted or braced	5,500	10,000
(2) Insecure or improper latching device	5,500	10,000
(b) Cab windows of lead locomotive	5,500	10,000
(c) Floors, passageways, and compartments	5,500	10,000
(d) Ventilation and heating arrangement	9,500	17,000
(e) Continuous barrier	9,500	17,000
(f) Containers for fuses and torpedoes	9,500	17,000
229.121 Locomotive cab noise:		
(a) Performance Standards		
(1) Failure to meet sound level	13,000	20,500
(2) Improper maintenance alterations	5,500	10,000
(3) Failure to comply with static test protocols	5,500	10,000
(b) Maintenance of Locomotives:		
(1) Failure to maintain excessive noise report record or respond to report as required	5,500	10,000

APPENDIX B TO PART 229—SCHEDULE OF CIVIL PENALTIES [1]—Continued

Section [2]	Violation	Willful violation
(3) Failure to make good faith effort as required	5,500	10,000
(4) Failure to maintain record as required	2,500	5,000
229.123 Pilots, snowplows, end plates	5,500	10,000
229.125:		
(a) Headlights	9,500	17,000
(d) Auxiliary lights	9,500	17,000
229.127 Cab lights	5,500	10,000
229.129 Locomotive horn:		
(a) Prescribed sound levels	9,500	17,000
Arrangement of horn	9,500	17,000
(b) Failure to perform sound level test	9,500	17,000
(c) Sound level test improperly performed	9,500	17,000
Record of sound level test improperly executed, or not retained	5,500	10,000
229.131 Sanders	2,500	5,000
229.135 Event Recorders:		
(a) Lead locomotive without in-service event recorder	9,500	17,000
(b) Failure to meet equipment requirements	9,500	17,000
(c) Unauthorized removal or failure to remove from service	9,500	17,000
(d) Improper response to out of service event recorder	9,500	17,000
(e) Failure to preserve data or unauthorized extraction of data	9,500	17,000
(g) Tampering with device or data	9,500	17,000
229.137 Sanitation, general:		
(a) Sanitation compartment in lead unit, complete failure to provide required items	9,500	17,000
(1) Ventilation	5,500	10,000
(2) Door missing	5,500	10,000
(2)(i) Door doesn't close	5,500	10,000
(2)(ii) No modesty lock	2,500	5,000
(3) Not equipped with toilet in lead	9,500	17,000
(4) Not equipped with washing system	5,500	10,000
(5) Lack of paper	5,500	10,000
(6) Lack of trash receptacle	5,500	10,000
(b) Exceptions:		
(1)(i) Commuter service, failure to meet conditions of exception	2,500	5,000
(1)(ii) Switching service, failure to meet conditions of exception	2,500	5,000
(1)(iii) Transfer service, failure to meet conditions of exception	2,500	5,000
(1)(iv) Class III, failure to meet conditions of exception	2,500	5,000
(1)(v) Tourist, failure to meet conditions of exception	2,500	5,000
(1)(vi) Control cab locomotive, failure to meet conditions of exception	2,500	5,000
(2) Noncompliant toilet	5,500	10,000
(c) Defective/unsanitary toilet in lead unit	5,500	10,000
(1)–(5) Failure to meet conditions of exception	5,500	10,000
(d) Defective/unsanitary unit; failure to meet conditions for trailing position	5,500	10,000
(e) Defective/sanitary unit; failure to meet conditions for switching/transfer service	5,500	10,000
(f) Paper, washing, trash holder; failure to equip prior to departure	5,500	10,000
(g) Inadequate ventilation; failure to repair or move prior to departure	5,500	10,000
(h) Door closure/modesty lock; failure to repair or move	2,500	5,000
(i) Failure to retain/maintain of equipped units	5,500	10,000
(j) Failure to equip new units/in-cab facility	5,500	10,000
(k) Failure to provide potable water	5,500	10,000
229.139 Servicing requirements:		
(a) Lead occupied unit not sanitary	5,500	10,000
(b) Components not present/operating	2,500	5,000
(c) Occupied unit in switching, transfer service, in trailing position not sanitary	2,500	5,000
(d) Defective unit used more than ten days	5,500	10,000
(e) Failure to repair defective modesty lock	2,500	5,000
Subpart D—Locomotive Crashworthiness Design Requirements		
229.141 Body structure, MU locomotives	9,500	17,000
229.205 General requirements:		
(a)(1) Wide-nose locomotive not designed in compliance with AAR S–580–2005	19,500	25,000
(2) Wide-nose locomotive not designed in compliance with new approved design standard	19,500	25,000
(3) Wide-nose locomotive not designed in compliance with alternate approved design standard	19,500	25,000
(b) Monocoque or semi-monocoque locomotive not in compliance with design requirements	19,500	25,000
(c) Narrow-nose not in compliance with design requirements	19,500	25,000
229.206 Design requirements:		
Locomotive fails to meet—		
(1) Emergency egress requirements	19,500	25,000
(2) Emergency interior lighting requirements	19,500	25,000
(3) Interior configuration requirements	19,500	25,000
229.213 Locomotive manufacturing information:		
(a) Failure to retain required information	9,500	17,000
(b) Failure to produce required information	9,500	17,000

APPENDIX B TO PART 229—SCHEDULE OF CIVIL PENALTIES [1]—Continued

Section [2]	Violation	Willful violation
229.215 Retention and inspection of designs:		
(a) Failure to retain required design records	9,500	17,000
(b) Failure to retain required repair or modification records	9,500	17,000
(c) Failure to make records available when requested	9,500	17,000
229.217 Fuel tank:		
(a) External fuel tank	19,500	25,000
(b) Internal fuel tank	19,500	25,000

[1] A penalty may be assessed against an individual only for a willful violation. Generally, when two or more violations of these regulations are discovered with respect to a single locomotive that is used by a railroad, the appropriate penalties set forth above are aggregated up to a maximum of $25,000 per day. However, a failure to perform, with respect to a particular locomotive, any of the inspections and tests required under subpart B of this part will be treated as a violation separate and distinct from, and in addition to, any substantive violative conditions found on that locomotive. Moreover, the Administrator reserves the right to assess a penalty of up to $100,000 for any violation where circumstances warrant. *See* 49 CFR part 209, appendix A. Failure to observe any condition for movement set forth in § 229.9 will deprive the railroad of the benefit of the movement-for-repair provision and make the railroad and any responsible individuals liable for penalty under the particular regulatory section(s) concerning the substantive defect(s) present on the locomotive at the time of movement. Failure to comply with § 229.19 will result in the lapse of any affected waiver.

[2] The penalty schedule uses section numbers from 49 CFR part 229. If more than one item is listed as a type of violation of a given section, each item is also designated by a "penalty code," which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

PART 230—[AMENDED]

34. The authority citation for part 230 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20702; 28 U.S.C. 2461, note; and 49 CFR 1.49.

35. Appendix D to part 230 is revised to read as follows:

APPENDIX D TO PART 230—SCHEDULE OF CIVIL PENALTIES

Section [2]	Violation	Willful violation
Subpart A—General		
General Inspection Requirements		
230.11 Repair of non-complying conditions:		
(a) Failure to repair noncomplying steam locomotive prior to use in service	$5,500	$10,000
(b) Failure of owner and/or operator to approve repairs made prior to use of steam locomotive	5,500	10,000
230.12 Movement of noncomplying steam locomotive	(1)	(1)
230.13 Daily inspection:		
(a)(b):		
(1) Inspection overdue	9,500	17,000
(2) Inspection not performed by qualified person	5,500	10,000
(c) Inspection report not made, improperly executed or not retained	5,500	10,000
230.14 Thirty-one service day inspection:		
(a):		
(1) Inspection overdue	9,500	17,000
(2) Inspection not performed by qualified person	5,500	10,000
(b) Failure to notify FRA	5,500	10,000
(c) Inspection report not made, improperly executed, not properly filed	5,500	10,000
230.15 Ninety-two service day inspection:		
(a):		
(1) Inspection overdue	9,500	17,000
(2) Inspection not performed by qualified person	5,500	10,000
(b) Inspection report not made, improperly executed, not properly filed	5,500	10,000
230.16 Annual inspection:		
(a):		
(1) Inspection overdue	9,500	17,000
(2) Inspection not performed by qualified person	5,500	10,000
(b) Failure to notify FRA	5,500	10,000
(c) Inspection report not made, improperly executed, not properly filed	5,500	10,000
230.17 One thousand four hundred seventy-two service day inspection:		
(a):		
(1) Inspection overdue	9,500	17,000
(2) Inspection not performed by qualified person	5,500	10,000
(b) Inspection report not made, improperly executed, not properly maintained, not properly filed	5,500	10,000
Recordkeeping Requirements		
230.18 Service days:		
(a) Service day record not available for inspection	5,500	10,000
(b) Failure to file service day report with FRA Regional Administrator	5,500	10,000
(c) Failure to complete all 1,472 service day inspection items prior to returning retired steam locomotive to service	9,500	17,000

APPENDIX D TO PART 230—SCHEDULE OF CIVIL PENALTIES—Continued

Section [2]	Violation	Willful violation
230.19 Posting of forms:		
(a) FRA Form No. 1:		
(1) FRA Form No. 1 not properly filled out	5,500	10,000
(2) FRA Form No. 1 not properly displayed	5,500	10,000
(b) FRA Form No. 3:		
(1) FRA Form No. 3 not properly filled out	5,500	10,000
(2) FRA Form No. 3 not properly displayed	5,500	10,000
230.20 Alteration and repair reports:		
(a) Alterations:		
(1) Failure to properly file FRA Form No. 19 with FRA Regional Administrator	5,500	10,000
(2) FRA Form No. 19 not properly filled out	5,500	10,000
(3) FRA Form No. 19 not properly maintained	5,500	10,000
(b) Repairs to unstayed portions of the boiler:		
(1) FRA Form No. 19 not properly filled out	5,500	10,000
(2) FRA Form No. 19 not properly maintained	5,500	10,000
(c) Repairs to stayed portions of the boiler:		
(1) FRA Form No. 19 not properly filled out	5,500	10,000
(2) FRA Form No. 19 not properly maintained	5,500	10,000
230.21 Failure to properly document steam locomotive number change	5,500	10,000
230.22 Failure to properly report accident resulting from failure of steam locomotive boiler or part or appurtenance thereof	9,500	17,000
Subpart B—Boilers and Appurtenances		
230.23 Responsibility for general construction and safe working pressure:		
(a) Failure to properly establish safe working pressure for steam locomotive boiler	19,500	25,000
(b) Placing steam locomotive in service before safe working pressure for boiler has been established	19,500	25,000
Allowable Stress		
230.24 Maximum allowable stress values on boiler components:		
(a) Use of materials not of sufficient tensile strength	5,500	10,000
(b) Use of a safety factor value of less than four when using the code of original construction in boiler calculations	13,000	20,500
230.25 Maximum allowable stresses on stays and braces:		
(a) Exceeding allowable stress values on fire box and/or combustion chamber	5,500	10,000
(b) Exceeding allowable stress values on round, rectangular or gusset braces	5,500	10,000
Inspection and Repair		
230.29 Inspection and repair:		
(a):		
(1) Failure of owner and/or operator to inspect and repair any steam locomotive boiler and/or appurtenance under control thereof	9,500	17,000
(2) Failure to remove steam locomotive from service when considered necessary to do so	13,000	20,500
(b):		
(1) Failure of perform repairs in accordance with accepted industry standards	13,000	20,500
(2) Owner and/or operator returning steam locomotive boiler and/or appurtenances to service before they are in good condition and safe and suitable for service	13,000	20,500
230.30 Lap-joint seam boilers, failure to properly inspect	13,000	20,500
230.31 Flues to be removed:		
(a):		
(1) Failure to remove all flues when inspecting boiler	9,500	17,000
(2) Failure to enter boiler and clean and inspect	9,500	17,000
(b) Failure to remove superheater flues when deemed necessary to do so	5,500	10,000
230.32 Time and method of inspection:		
(a) Failure to perform 1,472 service day inspection when required to do so	9,500	17,000
(b) Failure to properly inspect boiler during 1,472 service day inspection	9,500	17,000
230.33 Welded repairs and alterations:		
(a) Failure to obtain permission before welding on unstayed portions of boiler containing alloy or carbon steel with carbon content over .25 percent carbon	9,500	17,000
(b) Failure to perform welding on unstayed portions of boiler containing carbon steel not exceeding .25 percent carbon in accordance with a nationally accepted standard for boiler repairs	9,500	17,000
(c):		
(1) Failure to submit written request for approval before performing weld buildup on wasted areas of unstayed boiler surfaces that exceed 100 square inches or the smaller of 25 percent of minimum required wall thickness or ½ inch	9,500	17,000
(2) Repairing wasted sheets	9,500	17,000
230.34 Riveted repairs and alterations:		
(a) Failure to obtain approval before making riveted alterations on unstayed portions of the boiler; failure to do riveting in accordance with established railroad practices or accepted national standards for boiler repairs	9,500	17,000
(b) Failure to perform riveted repairs on unstayed boiler portions in accordance with established railroad practices or accepted national standards for boiler repairs	9,500	17,000

APPENDIX D TO PART 230—SCHEDULE OF CIVIL PENALTIES—Continued

Section [2]	Violation	Willful violation
(c) Failure to perform riveted repairs on stayed boiler portions in accordance with established railroad practices or accepted national standards for boiler repairs	5,500	10,000
Pressure Testing of Boilers		
230.35 Failure to raise temperature of steam locomotive boiler to 70 degrees F. before applying hydrostatic pressure to the boiler	5,500	10,000
230.36 Hydrostatic testing of boilers:		
(a) Failure to perform hydrostatic test of boiler as required	9,500	17,000
(b) Failure to properly perform hydrostatic test	9,500	17,000
(c) Failure to properly inspect boiler after conducting hydrostatic test above MAWP	9,500	17,000
230.37 Failure to perform proper steam test or inspection of boiler after completion of repair or alteration to boiler	5,500	10,000
Staybolts		
230.38 Telltale holes:		
(a) Failure to have telltale holes as required in staybolts	5,500	10,000
(b) Failure to have proper telltale holes in reduced body staybolts	5,500	10,000
(c) Failure to keep telltale holes when so required	5,500	10,000
230.39 Broken staybolts:		
(a) Boiler in service with excess number of broken staybolts	9,500	17,000
(b) Failure to replace staybolts when required to do so; to properly replace staybolts when so required; to inspect adjacent staybolts when replacing broken staybolts	9,500	17,000
(c) Failure to count leaking, plugged, or missing telltale holes as broken staybolts	9,500	17,000
(d) Closing telltale holes by prohibited means	9,500	17,000
230.40 Time and method of staybolt testing:		
(a) Failure to hammer test staybolts when so required	5,500	10,000
(b) Failure to properly hammer test staybolts	5,500	10,000
230.41 Flexible staybolts with caps:		
(a) Failure to inspect flexible staybolts as required	5,500	10,000
(b) Failure to replace broken flexible staybolts; failure to close inner ends of telltale holes as required	5,500	10,000
(c) Failure to report removal of flexible staybolts caps and other tests on FRA Form No. 3 when so required	5,500	10,000
(d) Failure to remove staybolt caps or otherwise test when FRA inspector or steam locomotive owner and/or operator consider it necessary to do so	5,500	10,000
Steam Gauges		
230.42 Failure to have accurate boiler steam gauge where engine crew can conveniently read	13,000	20,500
230.43 Failure to have gauge siphon of proper capacity on steam gauge supply pipe; failure to properly clean, maintain the steam gauge supply pipe	5,500	10,000
230.44 Failure to test steam gauge when so required	5,500	10,000
230.45 Failure to properly test and/or set steam gauge	5,500	10,000
230.46 Failure to attach to boiler backhead metal badge plate showing allowable steam pressure	5,500	10,000
230.47 Boiler Number:		
(a) (b) (c) Failure to stamp builder's number on boiler when number is known	5,500	10,000
Safety Relief Valves		
230.48 Number and capacity of safety relief valves:		
(a) Failure to equip steam locomotive boiler with proper safety relief valves	13,000	20,500
(b) Failure to provide additional safety relief valve capacity when so required	13,000	20,500
230.49 Setting of safety relief valves:		
(a) Safety relief valve(s) set and/or adjusted by person not competent to do so	13,000	20,500
(b) Safety relief valve(s) not set to open at prescribed pressure(s)	13,000	20,500
(c) Safety relief valve(s) not properly set	13,000	20,500
(d) Set pressure of lowest safety relief valve not properly indicated	5,500	10,000
230.50 Failure to test and adjust safety relief valves when required to do so	9,500	17,000
Water Glasses and Gauge Cocks		
230.51 Failure to equip steam locomotive boiler with at least two properly installed water glasses	5,500	10,000
230.52 Failure to properly equip water glasses	13,000	20,500
230.53 Failure to properly clean water glass valves and/or gauge cocks when required to do so	5,500	10,000
230.54 Testing and maintenance:		
(a) Failure to properly test water glasses and/or gauge cocks	5,500	10,000
(b) Failure to properly maintain gauge cocks, water column drain valves, and/or water glass valves	9,500	17,000
230.55 Tubular type water and lubricator glasses and shields:		
(a) Failure to renew tubular type water glasses as required	5,500	10,000
(b) Failure to properly shield tubular water glasses and/or lubricator glasses	5,500	10,000
(c) Failure to properly locate and/or maintain water glasses and/or water glass shields	5,500	10,000
230.56 Failure to equip water glass with suitable lamp	5,500	10,000
Injectors, Feedwater Pumps, and Flue Plugs		
230.57 Injectors and feedwater pumps:		
(a) Failure to equip steam locomotive with proper means for delivering water to the boiler	13,000	20,500

APPENDIX D TO PART 230—SCHEDULE OF CIVIL PENALTIES—Continued

Section [2]	Violation	Willful violation
(b) Failure to properly test and/or maintain injectors, feedwater pumps, boiler checks, delivery pipes, feed water pipes, tank hose, tank valves	13,000	20,500
(c) Failure to properly brace injectors, feedwater pumps, and/or associated piping	5,500	10,000
230.58 Flue plugs:		
(a) Plugging flue plugs when not otherwise permitted	5,500	10,000
(b) Improperly plugging flue plugs, when otherwise permitted	5,500	10,000
Fusible Plugs		
230.59 Failure to remove and properly clean fusible boiler plugs when required to do so; failure to properly note removal	9,500	17,000
Washing Boilers		
230.60 Time of washing:		
(a) Failure to thoroughly wash boiler when required to do so	5,500	10,000
(b) Failure to remove washout plugs, arch tube plugs, thermic siphon plugs, circulator plugs, water bar plugs when washing locomotive boiler	9,500	17,000
(c) Failure to examine and/or properly maintain washout plugs washout plug sleeves, threaded openings	9,500	17,000
(d) Failure to clean fusible plugs when required to do so	9,500	17,000
230.61 Arch tubes, water bar tubes, circulators and thermic siphons:		
(a) Failure to clean, wash, inspect arch tubes, water bar tubes, circulators and thermic siphons as required	5,500	10,000
(b) Failure to renew arch tubes, water bar tubes; failure to repair or renew circulators, thermic siphons when required	9,500	17,000
(c) Failure to properly inspect and/or replace as necessary arch tubes, water bar tubes, circulators	9,500	17,000
Steam Pipes		
230.62 Failure to properly inspect and/or repair or replace as necessary dry pipes subject to pressure	13,000	20,500
230.63 Failure to properly inspect smoke box, steam pipes, pressure parts when required to do so	9,500	17,000
Steam Leaks		
230.64 Failure to remove from service steam locomotive boiler leaking under lagging from condition which may reduce safety and/or repair the boiler before returning to service	9,500	17,000
230.65 Failure to keep steam locomotive boiler, piping, appurtenances in repair so steam does not obscure vision	5,500	10,000
Subpart C—Steam Locomotives and Tenders		
230.66 Failure to properly oversee general design, construction, maintenance of steam locomotive(s) and tender(s)	5,500	10,000
230.67 Failure to ensure all steam locomotives and tenders are properly inspected and repaired and/or all defects are properly repaired and steam locomotive and/or tender are in good condition, safe and suitable for service before being returned to service	13,000	20,500
Speed Indicators		
230.68 Failure to equip steam locomotive that operates in excess of 20 miles per hour over the general system with speed indicator maintained to ensure accurate functioning	5,500	10,000
Ash Pans		
230.69 Failure to equip steam locomotive with properly supported ash pan with operating mechanism that may be safely operated and securely closed	5,500	10,000
Brake and Signal Equipment		
230.70 Safe condition:		
(a) Failure to perform proper pre-departure inspection when so required	5,500	10,000
(b) Failure to properly equip steam locomotive with brake pipe valve clearly identified as "Emergency Brake Valve"	5,500	10,000
230.71 Orifice testing of air compressors:		
(a)(b): Failure to properly test and/or maintain air compressor(s) capacity	5,500	10,000
230.72 Testing main reservoirs:		
(a) Failure to properly test main reservoir(s) when required	5,500	10,000
(b) Impermissibly or improperly drilling main reservoir	5,500	10,000
(c) Impermissibly using NDE method to measure wall thickness of main reservoir	5,500	10,000
(d) Failure to use appropriate method of NDE testing of wall thickness of welded or riveted longitudinal lap seam main reservoir(s); failure to withdraw main reservoir(s) from service when testing reveals insufficient wall thickness	9,500	17,000
230.73 Air gauges:		
(a) Failure to equip steam locomotive with properly located air gauge(s) that are no more than three psi in error	5,500	10,000
(b) Failure to test air gauge(s) when so required	5,500	10,000
(c) Failure to properly test air gauge(s)	5,500	10,000
230.74 Failure to properly clean and/or test all air brake valves, related dirt collectors, filters when required to do so	5,500	10,000

APPENDIX D TO PART 230—SCHEDULE OF CIVIL PENALTIES—Continued

Section [2]	Violation	Willful violation
230.75 Failure to properly stencil or display date of testing and cleaning and initials of shop or station performing work	5,500	10,000
230.76 Piston travel:		
(a) Insufficient minimum piston travel	5,500	10,000
(b) Excessive piston travel when steam locomotive is stationary	5,500	10,000
230.77 Foundation brake gear:		
(a) Failure to properly maintain foundation brake gear	5,500	10,000
(b) Foundation brake gear less than 2.5 inches above rail	5,500	10,000
230.78 Leakage:		
(a):		
(1) Failure to test for leakage from main reservoir or related piping as required	5,500	10,000
(2) Failure to repair excessive leakage from main reservoir or related piping leakage	5,500	10,000
(b) Failure to test for brake cylinder as required	5,500	10,000
(c):		
(1) Failure to test for leakage from steam locomotive brake pipe as required	5,500	10,000
(2) Failure to repair excessive brake pipe leakage	5,500	10,000
230.79 Train signal system:		
(1) Failure to test the train signal system or other form of on-board communication as required	5,500	10,000
(2) Failure to repair train signal system or other on-board communication when not safe or suitable for service	5,500	10,000
Cabs, Warning Signals, Sanders and Lights		
230.80 Cabs:		
(a) Steam locomotive cab not safe and suitable for service	5,500	10,000
(b) Steam pipes: Construction, attachment	5,500	10,000
(c) Oil-burning steam locomotive, cab-enclosed	5,500	10,000
230.81 Cab aprons:		
(a) Cab apron, general provisions	5,500	10,000
(b) Cab apron, insufficient width	5,500	10,000
230.82 Fire doors:		
(a) Safe and suitable for service, general provisions	5,500	10,000
(b) Construction and maintenance of mechanically operated fire doors	5,500	10,000
(c) Construction and maintenance of hand-operated fire doors	5,500	10,000
230.83 Cylinder cocks:		
(1) Failure to properly equip with cylinder cocks	5,500	10,000
(2) Failure to properly maintain cylinder cocks	5,500	10,000
230.84 Sanders:		
(1) Inoperable sanders	5,500	10,000
(2) Failure to test sanders	5,500	10,000
230.85 Audible warning devices:		
(a) General provisions	5,500	10,000
(b) Sound level measurements, Failure to properly take	5,500	10,000
230.86 Required illumination:		
(a) General provisions	5,500	10,000
(b) Dimming device, failure to properly equip with	5,500	10,000
(c) Multiple locomotives, failure of lead locomotive to display headlight	5,500	10,000
230.87 Cab lights: Failure to properly equip with	5,500	10,000
Throttles and Reversing Gear		
230.88 Throttles: Failure to properly maintain, equip	5,500	10,000
230.89 Reverse gear:		
(a) General provisions	5,500	10,000
(b) Air-operated power reverse gear	5,500	10,000
(c) Power reverse gear reservoirs	5,500	10,000
Draw Gear and Draft Systems		
230.90 Draw gear and draft systems:		
(a) Maintenance and testing	5,500	10,000
(b) Safety bars and chains, general	5,500	10,000
(c) Safety bars and chains, minimum length	5,500	10,000
(d) Lost motion between steam locomotive and tender	5,500	10,000
(e) Spring buffers: Improper application, compression	5,500	10,000
230.91 Chafing irons: Improper application, maintenance	5,500	10,000
230.92 Draw gear, draft systems: Improperly maintained, fastened	5,500	10,000
Driving Gear		
230.93 Pistons and piston rods:		
(a) Failure to properly inspect, maintain, renew	5,500	10,000
(b) Fasteners: Failure to keep tight, properly equip	5,500	10,000
230.94 Crossheads: Improperly maintained, excess clearance	5,500	10,000
230.95 Guides: Failure to securely fasten, properly maintain	5,500	10,000
230.96 Main, side, valve motion rods:	5,500	10,000

APPENDIX D TO PART 230—SCHEDULE OF CIVIL PENALTIES—Continued

Section [2]	Violation	Willful violation
(a) General	5,500	10,000
(b) Repairs	5,500	10,000
(1) Failure to make in accordance with accepted national standard	5,500	10,000
(2) Failure to submit written request for approval prior to welding	5,500	10,000
(c) Bearings and bushings	5,500	10,000
(d) Rod side motion: Excessive motion	5,500	10,000
(e) Oil, grease cups: Failure to securely fasten, properly equip	5,500	10,000
(f) Main rod bearings:		
(1) Excessive bore	5,500	10,000
(2) Excessive lost motion	5,500	10,000
(g) Side rod bearings, excessive bore	5,500	10,000
230.97 Crank pins:		
(a) General provisions	5,500	10,000
(b) Maintenance: Failure to maintain in safe, suitable condition	5,500	10,000
Running Gear		
230.98 Driving, trailing, engine truck axles:		
(a) Condemning defects	5,500	10,000
(b) Journal diameter: Failure to stamp on end of axle	2,500	5,000
230.99 Tender truck axle: Insufficient diameter	5,500	10,000
230.100 Defects in tender truck axles and journals:		
(a) Tender truck axle condemning defects	5,500	10,000
(b) Tender truck journal condemning defects	5,500	10,000
230.101 Steam locomotive driving journal boxes:		
(a) Driving journal boxes: Failure to properly maintain	5,500	10,000
(b) Broken bearings: Failure to renew	5,500	10,000
(c) Loose bearings: Failure to repair or renew	5,500	10,000
230.102 Tender plain bearing journal boxes: Failure to repair	5,500	10,000
230.103 Tender roller bearing journal boxes: Failure to properly maintain	5,500	10,000
230.104 Driving box shoes and wedges: Failure to properly maintain	5,500	10,000
230.105 Lateral motion:		
(a) Condemning limits: Total lateral motion in excess of	5,500	10,000
(b) Limits exceeded, failure to demonstrate conditions require additional lateral motion	5,500	10,000
(c) Interferes with other parts of steam locomotive	5,500	10,000
Trucks, Frames and Equalizing System		
230.106 Steam locomotive frame:		
(a) Failure to properly inspect and/or maintain	5,500	10,000
(b) Broken frames, not properly patched or secured	13,000	20,500
230.107 Tender frame and body:		
(a) Failure to properly maintain	5,500	10,000
(b) Height difference between tender deck and steam locomotive cab floor or deck excessive	5,500	10,000
(c) Gangway minimum width excessive	5,500	10,000
(d) Tender frame condemning defects	9,500	17,000
230.108 Steam locomotive leading and trailing trucks:		
(a) Failure to properly maintain	5,500	10,000
(b) Safety chain, suitable safety chain not provided	5,500	10,000
(c) Insufficient truck clearance	5,500	10,000
230.109 Tender trucks:		
(a):		
(1) Tender truck frames	5,500	10,000
(2) Tender truck center plate	5,500	10,000
(b) Tender truck bolsters: Failure to properly maintain	9,500	17,000
(c) Condemning defects, springs and/or spring rigging	5,500	10,000
(d) Truck securing arrangement: Not properly maintained	5,500	10,000
(e) Side bearings, truck centering devices	5,500	10,000
(f) Friction side bearings: Run in contact	5,500	10,000
(g):		
(1) Side bearings, failure to equip rear trucks with	5,500	10,000
(2) Insufficient clearance of	5,500	10,000
230.110 Pilots:		
(a) General provisions	5,500	10,000
(b) Clearance, insufficient or excessive	5,500	10,000
230.111 Spring rigging:		
(a) Arrangement of springs and equalizers	5,500	10,000
(b) Spring or spring rigging condemning defects	5,500	10,000
Wheels and Tires		
230.112 Wheels and tires:		
(a) Improperly mounted, excess variance in axle diameter	9,500	17,000
(b) Out of gage	5,500	10,000
(c) Flange distance variance, excessive	5,500	10,000

APPENDIX D TO PART 230—SCHEDULE OF CIVIL PENALTIES—Continued

Section [2]	Violation	Willful violation
(d) Tire thickness, insufficient	5,500	10,000
(e) Tire width, insufficient	5,500	10,000
230.113 Wheels and tire defects:		
(1) Failure to repair	5,500	10,000
(2) Welding on, except as otherwise provided for	9,500	17,000
(a) Cracks or breaks in	5,500	10,000
(b) Flat spots	5,500	10,000
(c) Chipped flange	5,500	10,000
(d) Broken rim	5,500	10,000
(e) Shelled-out spots	5,500	10,000
(f) Seams	5,500	10,000
(g) Worn flanges, excessive wear	5,500	10,000
(h) Worn treads, excessive wear	5,500	10,000
(i) Flange height, insufficient or excessive	5,500	10,000
(j) Rim thickness, insufficient	5,500	10,000
(k) Wheel diameter, excessive variance	5,500	10,000
230.114 Wheel centers:		
(a) Filling blocks and shims	5,500	10,000
(b) Wheel center condemning limits, failure to repair	5,500	10,000
(c) Wheel center repairs	5,500	10,000
(d) Counterbalance maintenance	5,500	10,000
Steam Locomotive Tanks		
230.115 Feed water tanks:		
(a) General provisions	5,500	10,000
(b) Inspection frequency, failure to inspect as required	5,500	10,000
(c) Top of tender: Improperly maintained and/or equipped	5,500	10,000
230.116 Oil tanks:		
(1) Failure to properly maintain	13,000	20,500
(2) Failure to equip with complying safety cut-off device	19,500	25,000

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $100,000 for any violation where circumstances warrant. *See* 49 CFR part 209, appendix A. Failure to observe any condition for movement set forth in § 230.12 will deprive the railroad of the benefit of the movement-for-repair provision and make the railroad and any responsible individuals liable for penalty under the particular regulatory section(s) concerning the substantive defect(s) present on the locomotive at the time of movement. Failure to comply with § 230.12 will result in the lapse of any affected waiver. Generally, when two or more violations of these regulations are discovered with respect to a single locomotive that is used by a railroad, the appropriate penalties set forth are aggregated up to a maximum of $25,000 per day. However, a failure to perform, with respect to a particular locomotive, any of the inspections and tests required under this part, will be treated as a violation separate and distinct from, and in addition to, any substantive violative conditions found on that locomotive.

[2] The penalty schedule uses section numbers from 49 CFR part 230. If more than one item is listed as a type of violation of a given section, each item is also designated by a "penalty code," which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

PART 231—[AMENDED]

36. The authority citation for part 231 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20702; 28 U.S.C. 2461, note; and 49 CFR 1.49.

37. Appendix A to part 231 is revised to read as follows:

APPENDIX A TO PART 231—SCHEDULE OF CIVIL PENALTIES [1]

Section [2]	Violation	Willful violation
110.A1 Hand brake or hand brake part missing	$13,000	$20,500
110.A2 Hand brake or hand brake part broken	13,000	20,500
110.A3 Hand brake or hand brake part loose or worn	9,500	17,000
110.B1 Hand brake inoperative	13,000	20,500
110.B2 Hand brake inefficient	9,500	17,000
110.B3 Hand brake improperly applied	9,500	17,000
110.B4 Hand brake incorrectly located	5,500	10,000
110.B5 Hand brake shaft welded or wrong dimension	5,500	10,000
110.B6 Hand brake shaft not retained in operating position	5,500	10,000
110.B8 Hand brake or hand brake parts wrong design	5,500	10,000
114.B2 Hand brake wheel or lever has insufficient clearance around rim or handle	5,500	10,000
114.B3 Hand brake wheel/lever clearance insufficient to vertical plane through inside face of knuckle	5,500	10,000
120.A1 Brake step missing except by design	13,000	20,500
120.A2 Brake step or brace broken or decayed	13,000	20,500
120.A3 Brake step or brace loose	9,500	17,000
120.B1 Brake step or brace bent	9,500	17,000

APPENDIX A TO PART 231—SCHEDULE OF CIVIL PENALTIES [1]—Continued

Section [2]		Violation	Willful violation
120.B2	Brake step or brace wrong dimensions	5,500	10,000
120.C1	Brake step improperly applied	5,500	10,000
120.C2	Brake step improperly located	5,500	10,000
120.C3	Brake step with less than 4″ clearance to vertical plane through inside face of knuckle	5,500	10,000
120.C4	Brake step obstructed or otherwise unsafe	9,500	17,000
124.A1	Running board missing or part missing except by design	13,000	20,500
124.A2	Running board broken or decayed	13,000	20,500
124.A3	Running board loose presents a tripping hazard or other unsafe condition	9,500	17,000
124.A4	Running board wrong material	5,500	10,000
124.B1	Running board bent to the extent that it is unsafe	9,500	17,000
124.B2	Running board wrong dimensions	5,500	10,000
124.B3	Running board wrong location	5,500	10,000
124.C1	Running board improperly applied	5,500	10,000
124.C2	Running board obstructed	9,500	17,000
126.A1	End platform missing or part except by design	13,000	20,500
126.A2	End platform broken or decayed	13,000	20,500
126.A3	End platform loose	9,500	17,000
126.B1	End platform or brace bent	5,500	10,000
126.B2	End platform wrong dimensions	5,500	10,000
126.C1	End platform improperly applied	5,500	10,000
126.C2	End platform with less than required clearance to vertical plane through inside knuckle	5,500	10,000
126.C3	End platform improperly located	5,500	10,000
126.C4	End platform obstructed	9,500	17,000
128.A1	Platform or switching step missing	13,000	20,500
128.A2	Platform or switching step broken or decayed	13,000	20,500
128.A3	Platform or switching step loose	9,500	17,000
128.B1	Platform or switching step bent	9,500	17,000
128.B2	Platform or switching step does not meet the required location or dimensions	5,500	10,000
128.C1	Platform or switching step improperly applied or repaired	9,500	17,000
128.C2	Platform or switching step obstructed	9,500	17,000
128.D1	Switching step back stop or kick plate missing	5,500	10,000
128.D2	Switching step not illuminated when required	5,500	10,000
128.D3	Non-illuminated step not painted contrasting color	5,500	10,000
130.A1	Sill step or additional tread, missing	13,000	20,500
130.A2	Sill step or additional tread, broken	13,000	20,500
130.A3	Sill step or additional tread, loose	9,500	17,000
130.B1	Sill step or additional tread, bent	9,500	17,000
130.B2	Sill step or additional tread, having wrong dimensions or improperly located	5,500	10,000
130.B3	Sill step improperly applied	5,500	10,000
132.A1	Side door step missing step	13,000	20,500
132.A2	Side door step broken	13,000	20,500
132.A3	Side door step loose	9,500	17,000
132.B1	Side door step bent	9,500	17,000
132.B2	Side door step having wrong dimensions	5,500	10,000
134.A1	Ladder missing	13,000	20,500
134.A2	Ladder broken	13,000	20,500
134.A3	Ladder loose	9,500	17,000
134.B1	Ladder bent	9,500	17,000
134.B2	Ladder having wrong dimensions	5,500	10,000
134.C1	Ladder improperly applied	5,500	10,000
134.C2	Ladder having insufficient clearance or improperly located	5,500	10,000
134.C3	Ladder wrong design	5,500	10,000
134.C4	Ladder wrong material	5,500	10,000
134.D1	End clearance insufficient	5,500	10,000
136.A1	Ladder tread or handholds missing	13,000	20,500
136.A2	Ladder tread or handhold broken	13,000	20,500
136.A3	Ladder tread or handhold loose except by design	9,500	17,000
136.B1	Ladder tread or handhold bent to the extent that it may be unsafe	9,500	17,000
136.B2	Ladder tread or handhold wrong dimensions	5,500	10,000
136.C1	Ladder tread or handhold improperly applied	5,500	10,000
136.C2	Ladder tread or handhold having wrong clearance	5,500	10,000
136.C3	Ladder or handhold improperly located	5,500	10,000
136.C4	Ladder tread or handhold obstructed	9,500	17,000
136.C5	Ladder tread without footguards	9,500	17,000
138.A1	Hand or safety railing missing	13,000	20,500
138.A2	Hand or safety railing broken	13,000	20,500
138.A3	Hand or safety railing loose except by design	9,500	17,000
138.B1	Hand or safety railing bent	9,500	17,000
138.B2	Hand or safety railing wrong dimensions	5,500	10,000
138.C1	Hand or safety railing improperly applied	5,500	10,000
138.C2	Hand or safety railing having less than the required clearance	5,500	10,000

APPENDIX A TO PART 231—SCHEDULE OF CIVIL PENALTIES [1]—Continued

Section [2]	Violation	Willful violation
138.C3 Hand or safety railing improperly located	5,500	10,000
140.A1 Uncoupling lever missing	9,500	17,000
140.A2 Uncoupling lever broken or disconnected	9,500	17,000
140.B1 Uncoupling lever bent will not safely and reasonably function as intended	9,500	17,000
140.C1 Uncoupling lever bracket bent lever will not function properly	9,500	17,000
140.C2 Uncoupling lever bracket broken or missing	9,500	17,000
140.D1 Uncoupling lever wrong dimension	5,500	10,000
140.D2 Uncoupling lever with improper handle clearance	5,500	10,000
144.A1 Coupler missing	13,000	20,500
144.B1 Coupler height incorrect	5,500	10,000
144.C1 Coupler inoperative	9,500	17,000
145.A1 Kick plates missing	5,500	10,000
145.A2 Kick plates broken	5,500	10,000
145.B1 Kick plates wrong dimensions	5,500	10,000
145.B2 Kick plates improper clearance	5,500	10,000
145.B3 Kick plates insecure or improperly applied	5,500	10,000
146.A Notice or stencil not posted on cabooses with running boards removed	2,500	5,000
146.B Safe means not provided to clean or maintain windows of caboose	2,500	5,000
231.31 Drawbars, standard height	9,500	17,000

[1] A penalty may be assessed against an individual only for a willful violation. Generally, when two or more violations of these regulations are discovered with respect to a single unit of equipment that is used by a railroad, the appropriate penalties set forth above are aggregated up to a maximum of $25,000 per day. The Administrator reserves the right to assess a penalty of up to $100,000 for any violation where circumstances warrant. *See* 49 CFR part 209, appendix A.

[2] This schedule uses section numbers from FRA's Safety Appliance Defect Code, a restatement of the CFR text in a reorganized format. For convenience, and as an exception to FRA's general policy, penalty citations will cite the defect code rather than the CFR. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR and/or statutory citation in place of the defect code section cited in the penalty demand letter.

PART 232—[AMENDED]

38. The authority citation for part 232 continues to read as follows:

Authority: 49 U.S.C. 20102–20103, 20107, 20133, 20141, 20301–20303, 20306, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49.

39. Appendix A to part 232 is revised to read as follows:

APPENDIX A TO PART 232—SCHEDULE OF CIVIL PENALTIES [1]

Section [2]	Violation	Willful violation
Subpart A—General		
232.15 Movement of power brake defects:		
(a) Improper movement, general	([1])	([1])
(11) Failure to make determinations and provide notification of en route defect	$9,500	$17,000
(b) Complete failure to tag	9,500	17,000
(1) Insufficient tag or record	2,500	5,000
(2), (4) Improper removal of tag	9,500	17,000
(3) Failure to retain record of tag	9,500	17,000
(c) Improper loading or purging	9,500	17,000
(e) Improper placement of defective equipment	9,500	17,000
232.19 Availability of records	([1])	([1])
Subpart B—General Requirements		
232.103 All train brake systems:		
(a)–(c), (h)–(i) Failure to meet general design requirements	9,500	17,000
(d) Failure to have proper percentage of operative brakes from Class I brake test	13,000	20,500
(e) Operating with less than 85 percent operative brakes	13,000	20,500
(f) Improper use of car with inoperative or ineffective brakes	9,500	17,000
(g) Improper display of piston travel	9,500	17,000
(m) Failure to stop train with excess air flow or gradient	9,500	17,000
(n) Securement of unattended equipment:		
(1) Failure to apply sufficient number of hand brakes; failure to develop or implement procedure to verify number applied	13,000	20,500
(2) Failure to reduce to zero or vent brake pipe	9,500	17,000
(3) Failure to apply hand brakes on locomotives	9,500	17,000
(4) Failure to adopt or comply with procedures for securing unattended locomotive	13,000	20,500
(o) Improper adjustment of air regulating devices	9,500	17,000
(p) Failure to hold supervisors jointly responsible	9,500	17,000
232.105 Locomotives:		
(a) Air brakes not in safe and suitable condition	13,000	20,500
(b) Not equipped with proper hand or parking brake	13,000	20,500

APPENDIX A TO PART 232—SCHEDULE OF CIVIL PENALTIES [1]—Continued

Section [2]	Violation	Willful violation
(c)(1) Failure to inspect/repair hand or parking brake	9,500	17,000
(2) Failure to properly stencil, tag, or record	5,500	10,000
(d) Excess leakage from equalizing reservoir	9,500	17,000
(e) Improper use of feed or regulating valve braking	9,500	17,000
(f) Improper use of passenger position	9,500	17,000
(g) Brakes in operative condition	13,000	20,500
232.107 Air sources/cold weather operations:		
(a)(1), (2) Failure to adopt or comply with monitoring program for yard air sources	13,000	20,500
(3) Failure to maintain records	9,500	17,000
(b) Failure to blow condensation	13,000	20,500
(c) Use of improper chemicals	13,000	20,500
(d) Failure to equip or drain yard air reservoirs	13,000	20,500
(e) Failure to adopt or comply cold weather operating procedures	13,000	20,500
232.109 Dynamic brakes:		
(a) Failure to provide information	9,500	17,000
(b) Failure to make repairs	9,500	17,000
(c) Failure to properly tag	5,500	10,000
(d) Failure to maintain record of repair	2,500	5,000
(e) Improper deactivation	9,500	17,000
(f) Improper use of locomotive as controlling unit	9,500	17,000
(g) Locomotive not properly equipped with indicator	9,500	17,000
(h) Rebuilt locomotive not properly equipped	9,500	17,000
(j) Failure to adopt or comply with dynamic brake operating rules	13,000	20,500
(k) Failure to adopt or comply with training on operating procedures	13,000	20,500
232.111 Train handling information:		
(a) Failure to adopt and comply with procedures	13,000	20,500
(b) Failure to provide specific information	9,500	17,000
Subpart C—Inspection and Testing Requirements		
232.203 Training requirements:		
(a) Failure to develop or adopt program	19,500	25,000
(b)(1)–(9) Failure to address or comply with specific required item or provision of program	9,500	17,000
(c) Failure to adopt or comply with two-way EOT program	13,000	20,500
(d) Failure to adopt or comply with retaining valve program	13,000	20,500
(e) Failure to maintain adequate records	13,000	20,500
(f) Failure to adopt and comply with periodic assessment plan	19,500	25,000
232.205 Class I brake test—initial terminal inspection:		
(a) Complete failure to perform inspection	([1]) 19,500	25,000
(c)(1)–(4), (6)–(8) Partial failure to perform inspection	13,000	20,500
(c)(5) Failure to properly adjust piston travel (per car)	9,500	17,000
(d) Failure to use carman when required	5,500	10,000
(e) Failure to provide proper notification	9,500	17,000
(f) Failure to void compressed air	9,500	17,000
232.207 Class IA brake tests—1,000-mile inspection:		
(a) Complete failure to perform inspection	([1]) 13,000	20,500
(b)(1)–(6) Partial failure to perform inspection	9,500	17,000
(c) Failure to properly designate location	9,500	17,000
(c)(1) Failure to perform at designated location	9,500	17,000
(c)(2) Failure to provide notification	9,500	17,000
232.209 Class II brake tests—intermediate inspection:		
(a) Complete failure to perform inspection	([1]) 13,000	20,500
(b)(1)–(5), (c) Partial failure to perform inspection	9,500	17,000
(c) Failure to conduct Class I after Class II pick-up	([1])	([1])
232.211 Class III brake tests—trainline continuity inspection:		
(a) Complete failure to perform inspection	13,000	20,500
(b)(1)–(4), (c) Partial failure to perform inspection	9,500	17,000
(d) Failure to restore air pressure at rear	9,500	17,000
232.213 Extended haul trains:		
(a)(1) Failure to properly designate an extended haul train	13,000	20,500
(a)(2)–(3), (5)(i), (8) Failure to perform inspections	([1])	([1])
(a)(4) Failure to remove defective car (per car)	5,500	10,000
(a)(5)(ii), (6) Failure to conduct inbound inspection	13,000	20,500
(a)(7) Failure to maintain record of defects (per car)	5,500	10,000
(b) Improper movement or use of extended haul train	13,000	20,500
232.215 Transfer train brake tests:		
(a) Failure to perform inspection	13,000	20,500
(b) Failure to perform on cars added	9,500	17,000
232.217 Train brake system tests conducted using yard air:		
(a) Failure to use suitable device	9,500	17,000
(b) Improper connection of air test device	13,000	20,500
(c) Failure to properly perform inspection	([1])	([1])

APPENDIX A TO PART 232—SCHEDULE OF CIVIL PENALTIES [1]—Continued

Section [2]	Violation	Willful violation
(d) Failure to calibrate test device	9,500	17,000
(e) Failure to use accurate device	9,500	17,000
232.219 Double heading and helper service:		
(a) Failure to perform inspection or inability to control brakes	9,500	17,000
(b) Failure to make visual inspection	9,500	17,000
(c) Use of improper helper link device	9,500	17,000
Subpart D—Periodic Maintenance and Testing Requirements		
232.303 General requirements:		
(b)–(d) Failure to conduct inspection or test when car on repair track	9,500	17,000
(e) Improper movement of equipment for testing	9,500	17,000
(e)(1) Failure to properly tag equipment for movement	5,500	10,000
(e)(2)–(4) Failure to retain record or improper removal of tag or card	5,500	10,000
(f) Failure to stencil or track test information	9,500	17,000
232.305 Single car tests:		
(a) Failure to test in accord with required procedure	9,500	17,000
(b)–(c) Failure to perform test	9,500	17,000
232.309 Single car air brake test equipment and devices:		
(a)–(f) Failure to properly test or calibrate	9,500	17,000
Subpart E—End-of-Train Devices		
232.403 Design standards for one-way devices:		
(a)–(g) Failure to meet standards	9,500	17,000
232.405 Design standards for two-way devices:		
(a)–(i) Failure to meet standards	9,500	17,000
232.407 Operating requirements for two-way devices:		
(b) Failure to equip a train	13,000	20,500
(c) Improper purchase	9,500	17,000
(f)(1) Failure of device to be armed and operable	13,000	20,500
(f)(2) Insufficient battery charge	9,500	17,000
(f)(3) Failure to activate the device	9,500	17,000
(g) Improper handling of en route failure, freight or other non-passenger	13,000	20,500
(h) Improper handling of en route failure, passenger	13,000	20,500
232.409 Inspection and testing of devices:		
(a) Failure to have unique code	9,500	17,000
(b) Failure to compare quantitative values	9,500	17,000
(c) Failure to test emergency capability	13,000	20,500
(d) Failure to properly calibrate	9,500	17,000
Subpart F—Introduction of New Brake System Technology		
232.503 Process to introduce new technology:		
(b) Failure to obtain FRA approval	19,500	25,000
232.505 Pre-revenue service acceptance testing plan:		
(a) Failure to obtain FRA approval	13,000	20,500
(b) Failure to comply with plan	9,500	17,000
(f) Failure to test previously used technology	13,000	20,500
Subpart G—Electronically Controlled Pneumatic (ECP) Braking Systems		
232.603 Design, interoperability, and configuration management requirements:		
(a) Failure to meet minimum standards	5,500	10,000
(b) Using ECP brake equipment without approval	9,500	17,000
(c) Failure to adopt and comply with a proper configuration management plan	13,000	20,500
232.605 Training Requirements:		
(a) Failure to adopt and comply with a proper training, qualification, and designation program for employees that perform inspection, testing or maintenance	(1)	(1)
(b) Failure to amend operating rules	13,000	20,500
(c) Failure to adopt and comply with proper training criteria for locomotive engineers	13,000	20,500
232.607 Inspection and testing requirements:		
(a)(1), (b), (c)(1) Complete or partial failure to perform inspection	(1)	(1)
(a)(2) Complete or partial failure to perform pre-departure inspection	9,500	17,000
(c)(1)(iv), (c)(2) Failure to perform visual inspection on a car added en route	9,500	17,000
(d) Failure to perform inspection	(1)	(1)
(e)(1), (2) Failure to properly initialize the train	9,500	17,000
(e)(3) Failure to ensure identical consist and system information	9,500	17,000
(f)(1) Failure to apply a proper brake pipe service reduction	(1)	(1)
(f)(2) Failure to properly adhere to the proper piston travel ranges	(1)	(1)
(g)(1)–(4) Improperly located and guarded cable	13,000	20,500
(g)(5) Condition of cable and connections	9,500	17,000
232.609 Handling of defective equipment with ECP brake systems:		
(a) Failure to have proper percentage of operative brakes from Class I brake test	(1)	(1)
(b) Failure to prevent a car known to arrive with defective brakes to depart location where a Class I brake test is required	9,500	17,000

APPENDIX A TO PART 232—SCHEDULE OF CIVIL PENALTIES [1]—Continued

Section [2]	Violation	Willful violation
(c) Improper movement of a car equipped with conventional pneumatic brakes	9,500	17,000
(d) Operating with less than 85 percent operative brakes	(1)	(1)
(f)(2)(i) Improper placement of defective conventional brake equipment	(1)	(1)
(f)(2)(ii) Improper placement of defective ECP brake equipment	9,500	17,000
(g) Improper movement of defective stand-alone ECP brake equipment in a train operating with conventional pneumatic brakes	(1)	(1)
(h) Improper movement from initial terminal of stand-alone ECP brake equipment in a conventional brake operated train	(1)	(1)
(i) Failure to tag equipment	(1)	(1)
(j)(1) Failure to adopt and comply with procedures for the movement of defective equipment	5,500	10,000
(j)(2) Failure to submit list of ECP brake system repair locations	9,500	17,000
232.611 Periodic maintenance:		
(a) Failure to ensure the proper and safe condition of car	9,500	17,000
(b)–(d) Failure to perform test	9,500	17,000
232.613 End-of-train devices:		
(a) Failure to meet design standards for ECP–EOT devices	9,500	17,000
(b) Moving with an improper or improperly connected ECP-EOT device	9,500	17,000

[1] A penalty may be assessed against an individual only for a willful violation. Generally, when two or more violations of these regulations are discovered with respect to a single unit of equipment that is placed or continued in service by a railroad, the appropriate penalties set forth above are aggregated up to a maximum of $25,000 per day. Although the penalties listed for failure to perform the brake inspections and tests under § 232.205 through § 232.209 may be assessed for each train that is not properly inspected, failure to perform any of the inspections and tests required under those sections will be treated as a violation separate and distinct from, and in addition to, any substantive violative conditions found on the equipment contained in the train consist. Moreover, the Administrator reserves the right to assess a penalty of up to $100,000 for any violation where circumstances warrant. *See* 49 CFR part 209, appendix A.

Failure to observe any condition for movement of defective equipment set forth in § 232.15(a) will deprive the railroad of the benefit of the movement-for-repair provision and make the railroad and any responsible individuals liable for penalty under the particular regulatory section(s) concerning the substantive defect(s) present on the equipment at the time of movement.

Failure to provide any of the records or plans required by this part pursuant to § 232.19 will be considered a failure to maintain or develop the record or plan and will make the railroad liable for penalty under the particular regulatory section(s) concerning the retention or creation of the document involved.

Failure to properly perform any of the inspections specifically referenced in §§ 232.209, 232.213, and 232.217 may be assessed under each section of this part or this chapter, or both, that contains the requirements for performing the referenced inspection.

[2] The penalty schedule uses section numbers from 49 CFR part 232. If more than one item is listed as a type of violation of a given section, each item is also designated by a "penalty code," which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

PART 233—[AMENDED]

40. The authority citation for part 233 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.49.

41. Appendix A to part 233 is revised to read as follows:

APPENDIX A TO PART 233—SCHEDULE OF CIVIL PENALTIES [1]

Section [2]	Violation	Willful violation
233.5 Accidents resulting from signal failure	$9,500	$17,000
233.7 Signal failure reports	5,500	10,000
233.9 Reports	2,500	5,000

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $100,000 for any violation where circumstances warrant. *See* 49 CFR part 209, appendix A.

[2] The penalty schedule uses section numbers from 49 CFR part 233. If more than one item is listed as a type of violation of a given section, each item is also designated by a "penalty code," which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

PART 234—[AMENDED]

42. The authority citation for part 234 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.49.

43. Appendix A to part 234 is revised to read as follows:

APPENDIX A TO PART 234—SCHEDULE OF CIVIL PENALTIES [1]

Section [2]	Violation	Willful violation
Subpart B—Reports		
234.7 Accidents involving grade crossing signal failure	$9,500	$17,000
234.9 Grade crossing signal system failure reports	5,500	10,000
Subpart C—Response to Reports of Warning System Malfunction		
234.101 Employee notification rules	5,500	10,000
234.103 Timely response to report of malfunction	13,000	20,500
234.105 Activation failure:		
(a) Failure to notify—train crews	19,500	25,000
Other railroads	19,500	25,000
(b) Failure to notify law enforcement agency	5,500	10,000
(c) Failure to comply with—flagging requirements	13,000	20,500
Speed restrictions	13,000	20,500
(d) Failure to activate horn or whistle	5,500	10,000
234.106 Partial activation:		
(a) Failure to notify—train crews	9,500	17,000
Other railroads	9,500	17,000
(b) Failure to notify law enforcement agency	5,500	10,000
(c) Failure to comply with—flagging requirements speed restrictions	9,500	17,000
(d) Failure to activate horn or whistle	5,500	10,000
234.107 False activation:		
(a) Failure to notify—train crews	13,000	20,500
Other railroads	13,000	20,500
(b) Failure to notify law enforcement agency	5,500	10,000
(c) Failure to comply with—flagging requirements	9,500	17,000
Speed restrictions	9,500	17,000
(d) Failure to activate horn or whistle	5,500	10,000
234.109 Recordkeeping	2,500	5,000
Subpart D—Maintenance, Inspection, and Testing		
Maintenance Standards		
234.201 Location of plans	5,500	10,000
234.203 Control circuits	9,500	17,000
234.205 Operating characteristics of warning system apparatus	13,000	20,500
234.207 Adjustment, repair, or replacement of component	13,000	20,500
234.209 Interference with normal functioning of system	19,500	25,000
234.211 Locking of warning system apparatus	5,500	10,000
234.213 Grounds	9,500	17,000
234.215 Standby power system	19,500	25,000
234.217 Flashing light units	5,500	10,000
234.219 Gate arm lights and light cable	5,500	10,000
234.221 Lamp voltage	9,500	17,000
234.223 Gate arm	5,500	10,000
234.225 Activation of warning system	19,500	25,000
234.227 Train detection apparatus	19,500	25,000
234.229 Shunting sensitivity	19,500	25,000
234.231 Fouling wires	13,000	20,500
234.233 Rail joints	13,000	20,500
234.235 Insulated rail joints	19,500	25,000
234.237 Switch equipped with circuit controller	5,500	10,000
234.239 Tagging of wires and interference of wires or tags with signal apparatus	5,500	10,000
234.241 Protection of insulated wire; splice in underground wire	9,500	17,000
234.243 Wire on pole line and aerial cable	9,500	17,000
234.245 Signs	5,500	10,000
Inspections and Tests		
234.247 Purpose of inspections and tests; removal from service of relay or device failing to meet test requirements	13,000	20,500
234.249 Ground tests	13,000	20,500
234.251 Standby power	9,500	17,000
234.253 Flashing light units and lamp voltage	5,500	10,000
234.255 Gate arm and gate mechanism	5,500	10,000
234.257 Warning system operation	13,000	20,500
234.259 Warning time	9,500	17,000
234.261 Highway traffic signal pre-emption	9,500	17,000
234.263 Relays	9,500	17,000
234.265 Timing relays and timing devices	9,500	17,000
234.267 Insulation resistance tests, wires in trunking and cables	9,500	17,000
234.269 Cut-out circuits	19,500	25,000
234.271 Insulated rail joints, bond wires, and track connections	9,500	17,000
234.273 Results of tests	2,500	5,000

APPENDIX A TO PART 234—SCHEDULE OF CIVIL PENALTIES [1]—Continued

Section [2]	Violation	Willful violation
Requirements for Processor-Based Systems		
234.275 Processor-Based Systems	13,000	20,500

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $100,000 for any violation where circumstances warrant. *See* 49 CFR part 209, appendix A.

[2] The penalty schedule uses section numbers from 49 CFR part 234. If more than one item is listed as a type of violation of a given section, each item is also designated by a "penalty code," which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

PART 235—[AMENDED]

44. The authority citation for part 235 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.49.

45. Appendix A to part 235 is revised to read as follows:

APPENDIX A TO PART 235—SCHEDULE OF CIVIL PENALTIES [1]

Section [2]	Violation	Willful violation
235.5 Changes requiring filing of application	$5,500	$10,000

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $100,000 for any violation where circumstances warrant. *See* 49 CFR part 209, appendix A.

[2] The penalty schedule uses section numbers from 49 CFR part 235. If more than one item is listed as a type of violation of a given section, each item is also designated by a "penalty code," which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

PART 236—[AMENDED]

46. The authority citation for part 236 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note and 49 CFR 1.49.

47. Appendix A to part 236 is revised to read as follows:

APPENDIX A TO PART 236—SCHEDULE OF CIVIL PENALTIES [1]

Section [2]	Violation	Willful violation
236.0 Applicability, minimum requirements	$9,500	$17,000
Subpart A—Rules and Instructions—All Systems		
General		
236.1 Plans, where kept	13,000	20,500
236.2 Grounds	13,000	20,500
236.3 Locking of signal apparatus housings:		
Power interlocking machine cabinet not secured against unauthorized entry	5,500	10,000
Other violations	5,500	10,000
236.4 Interference with normal functioning of device	19,500	25,000
236.5 Design of control circuits on closed circuit principle	19,500	25,000
236.6 Hand-operated switch equipped with switch circuit controller	13,000	20,500
236.7 Circuit controller operated by switch-and-lock movement	13,000	20,500
236.8 Operating characteristics of electro-magnetic, electronic, or electrical apparatus	9,500	17,000
236.9 Selection of circuits through indicating or annunciating instruments	5,500	10,000
236.10 Electric locks, force drop type; where required	5,500	10,000
236.11 Adjustment, repair, or replacement of component	13,000	20,500
236.12 Spring switch signal protection; where required	9,500	17,000
236.13 Spring switch; selection of signal control circuits through circuit controller	9,500	17,000
236.14 Spring switch signal protection; requirements	9,500	17,000
236.15 Timetable instructions	5,500	10,000
236.16 Electric lock, main track releasing circuit:		
Electric lock releasing circuit on main track extends into fouling circuit where turnout not equipped with derail at clearance point either pipe-connected to switch or independently locked, electrically	13,000	20,500
Other violations	13,000	20,500
236.17 Pipe for operating connections, requirements	5,500	10,000
236.18 Software management control plan:		
(a) Failure to develop and adopt a plan	9,500	17,000
(b) Failure to fully implement plan	9,500	17,000
(c) Inadequate plan	9,500	17,000

APPENDIX A TO PART 236—SCHEDULE OF CIVIL PENALTIES [1]—Continued

Section [2]	Violation	Willful violation
Roadway Signals and Cab Signals		
236.21 Location of roadway signals	13,000	20,500
236.22 Semaphore signal arm; clearance to other objects	5,500	10,000
236.23 Aspects and indications	9,500	17,000
236.24 Spacing of roadway signals	13,000	20,500
236.26 Buffing device, maintenance	13,000	20,500
Track Circuits		
236.51 Track circuit requirements:		
(a) Shunt fouling circuit used where permissible speed through turnout greater than 45 m.p.h	13,000	20,500
(b) Track relay not in de-energized position or device that functions as track relay not in its most restrictive state when train, locomotive, or car occupies any part of track circuit, except fouling section of turnout of hand-operated main-track crossover	19,500	25,000
Other violations	13,000	20,500
236.52 Relayed cut-section	13,000	20,500
236.53 Track circuit feed at grade crossing	13,000	20,500
236.54 Minimum length of track circuit	13,000	20,500
236.55 Dead section; maximum length	13,000	20,500
236.56 Shunting sensitivity	13,000	20,500
236.57 Shunt and fouling wires:		
(a) Shunt or fouling wires do not consist of at least two discrete conductors	13,000	20,500
Other violations	9,500	17,000
236.58 Turnout, fouling section:		
Rail joint in shunt fouling section not bonded	13,000	20,500
Other violations	9,500	17,000
236.59 Insulated rail joints	13,000	20,500
236.60 Switch shunting circuit; use restricted	13,000	20,500
Wires and Cables		
236.71 Signal wires on pole line and aerial cable	13,000	20,500
236.73 Open-wire transmission line; clearance to other circuits	9,500	17,000
236.74 Protection of insulated wire; splice in underground wire	9,500	17,000
236.76 Tagging of wires and interference of wires or tags with signal apparatus	5,500	10,000
Inspections and Tests; All Systems		
236.101 Purpose of inspection and tests; removal from service or relay or device failing to meet test requirements	9,500	17,000
236.102 Semaphore or search-light signal mechanism	13,000	20,500
236.103 Switch circuit controller or point detector	13,000	20,500
236.104 Shunt fouling circuit	9,500	17,000
236.105 Electric lock	9,500	17,000
236.106 Relays	9,500	17,000
236.107 Ground tests	9,500	17,000
236.108 Insulation resistance tests, wires in trunking and cables:		
(c) Circuit permitted to function on a conductor having insulation resistance value less than 200,000 ohms	13,000	20,500
Other violations	9,500	17,000
236.109 Time releases, timing relays and timing devices	9,500	17,000
236.110 Results of tests	2,500	5,000
Subpart B—Automatic Block Signal Systems		
Standards		
236.201 Track circuit control of signals	13,000	20,500
236.202 Signal governing movements over hand-operated switch	13,000	20,500
236.203 Hand-operated crossover between main tracks; protection	13,000	20,500
236.204 Track signaled for movements in both directions, requirements	13,000	20,500
236.205 Signal control circuits; requirements	19,500	25,000
236.206 Battery or power supply with respect to relay; location	9,500	17,000
236.207 Electric lock on hand-operated switch; control:		
Approach or time locking of electric lock on hand-operated switch can be defeated by unauthorized use of emergency device which is not kept sealed in the non-release position	13,000	20,500
Other violations	9,500	17,000
Subpart C—Interlocking		
Standards		
236.301 Where signals shall be provided	9,500	17,000
236.302 Track circuits and route locking	13,000	17,000
236.303 Control circuits for signals, selection through circuit controller operated by switch points or by switch locking mechanism	13,000	20,500
236.304 Mechanical locking or same protection effected by circuits	13,000	20,500
236.305 Approach or time locking	13,000	20,500
236.306 Facing point lock or switch-and-lock movement	9,500	17,000
236.307 Indication locking:	13,000	20,500

APPENDIX A TO PART 236—SCHEDULE OF CIVIL PENALTIES [1]—Continued

Section [2]	Violation	Willful violation
236.308 Mechanical or electric locking or electric circuits; requisites	13,000	20,500
236.309 Loss of shunt protection; where required:		
Loss of shunt of five seconds or less permits release of route locking of power-operated switch, movable point frog, or derail	13,000	20,500
Other violations	9,500	17,000
236.310 Signal governing approach to home signal	9,500	17,000
236.311 Signal control circuits, selection through track relays or devices functioning as track relays and through signal mechanism contacts and time releases at automatic interlocking	13,000	20,500
236.312 Movable bridge, interlocking of signal appliances with bridge devices:		
Emergency bypass switch or device not locked or sealed	13,000	20,500
Other violations	13,000	20,500
236.314 Electric lock for hand-operated switch or derail:		
Approach or time locking of electric lock at hand-operated switch or derail can be defeated by unauthorized use of emergency device which is not kept sealed in non-release position	13,000	20,500
Other violations	13,000	20,500
Rules and Instructions		
236.326 Mechanical locking removed or disarranged; requirement for permitting train movements through interlocking	9,500	17,000
236.327 Switch, movable-point frog or split-point derail	13,000	20,500
236.328 Plunger of facing-point	9,500	17,000
236.329 Bolt lock	13,000	20,500
236.330 Locking dog of switch and lock movement	9,500	17,000
236.334 Point detector	13,000	20,500
236.335 Dogs, stops and trunnions of mechanical locking	5,500	10,000
236.336 Locking bed	5,500	10,000
236.337 Locking faces of mechanical locking; fit	5,500	10,000
236.338 Mechanical locking required in accordance with locking sheet and dog chart	5,500	10,000
236.339 Mechanical locking; maintenance requirements	5,500	10,000
236.340 Electromechanical interlocking machine; locking between electrical and mechanical levers	5,500	10,000
236.341 Latch shoes, rocker links, and quadrants	5,500	10,000
236.342 Switch circuit controller	13,000	20,500
Inspection and Tests		
236.376 Mechanical locking	9,500	17,000
236.377 Approach locking	9,500	17,000
236.378 Time locking	9,500	17,000
236.379 Route locking	9,500	17,000
236.380 Indication locking	9,500	17,000
236.381 Traffic locking	9,500	17,000
236.382 Switch obstruction test	13,000	20,500
236.383 Valve locks, valves, and valve magnets	9,500	17,000
236.384 Cross protection	9,500	17,000
236.386 Restoring feature on power switches	9,500	17,000
236.387 Movable bridge locking	13,000	20,500
Subpart D—Traffic Control Systems Standards		
Standards		
236.401 Automatic block signal system and interlocking standards applicable to traffic control systems:		
236.402 Signals controlled by track circuits and control operator	19,500	25,000
236.403 Signals at controlled point	19,500	25,000
236.404 Signals at adjacent control points	19,500	25,000
236.405 Track signaled for movements in both directions, change of direction of traffic	19,500	25,000
236.407 Approach or time locking; where required	19,500	25,000
236.408 Route locking	19,500	25,000
236.410 Locking, hand-operated switch; requirements:		
(a) Hand-operated switch on main track not electrically or mechanically locked in normal position where signal not provided to govern movement to main track, movements made at speeds in excess of 20 m.p.h., or train and engine movements may clear main track	13,000	20,500
Hand-operated switch on signaled siding not electrically or mechanically locked in normal position where maximum authorized speed on the siding exceeds 30 m.p.h	13,000	20,500
(b) Approach or time locking of electric lock at hand-operated switch can be defeated by use of emergency release device of electric lock which is not kept sealed in non-release position	13,000	20,500
Other violations	9,500	17,000
Rules and Instructions		
236.426 Interlocking rules and instructions applicable to traffic control systems	2,500	5,000
Inspection and Tests		
236.476 Interlocking inspections and tests applicable to traffic control systems	2,500	5,000
Subpart E—Automatic Train Stop, Train Control and Cab Signal Systems Standards		
Standards		
236.501 Forestalling device and speed control	9,500	17,000

APPENDIX A TO PART 236—SCHEDULE OF CIVIL PENALTIES [1]—Continued

Section [2]	Violation	Willful violation
236.502 Automatic brake application, initiation by restrictive block conditions stopping distance in advance	13,000	20,500
236.503 Automatic brake application; initiation when predetermined rate of speed exceeded	13,000	20,500
236.504 Operations interconnected with automatic block-signal system	9,500	17,000
236.505 Proper operative relation between parts along roadway and parts on locomotive	5,500	10,000
236.506 Release of brakes after automatic application	13,000	20,500
236.507 Brake application; full service	9,500	17,000
236.508 Interference with application of brakes by means of brake valve	9,500	17,000
236.509 Two or more locomotives coupled	5,500	10,000
236.511 Cab signals controlled in accordance with block conditions stopping distance in advance	9,500	17,000
236.512 Cab signal indication when locomotive enters blocks	13,000	20,500
236.513 Audible indicator	9,500	17,000
236.514 Interconnection of cab signal system with roadway signal system	5,500	10,000
236.515 Visibility of cab signals	9,500	17,000
236.516 Power supply	5,500	10,000
Rules and Instructions; Roadway		
236.526 Roadway element not functioning properly	5,500	10,000
236.527 Roadway element insulation resistance	5,500	10,000
236.528 Restrictive condition resulting from open hand-operated switch; requirement	9,500	17,000
236.529 Roadway element inductor; height and distance from rail	5,500	10,000
236.531 Trip arm; height and distance from rail	5,500	10,000
236.532 Strap iron inductor; use restricted	5,500	10,000
236.534 Entrance to equipped territory; requirements	9,500	17,000
Rules and Instructions; Locomotives		
236.551 Power supply voltage	5,500	10,000
236.552 Insulation resistance	5,500	10,000
236.553 Seal, where required	5,500	10,000
236.554 Rate of pressure reduction; equalizing reservoir or brake pipe	9,500	17,000
236.555 Repaired or rewound receiver coil	2,500	5,000
236.556 Adjustment of relay	5,500	10,000
236.557 Receiver; location with respect to rail	5,500	10,000
236.560 Contact element, mechanical trip type; location with respect to rail	5,500	10,000
236.562 Minimum rail current required	5,500	10,000
236.563 Delay time	9,500	17,000
236.564 Acknowledging time	5,500	10,000
236.565 Provision made for preventing operation of pneumatic brake-applying apparatus by double-heading clock; requirement	5,500	10,000
236.566 Locomotive of each train operating in train stop, train control or cab signal territory; equipped	5,500	10,000
236.567 Restrictions imposed when device fails and/or is cut out en route:		
Report not made to designated officer at next available point of communication after automatic train stop, train control, or cab signal device fails and/or is cut en route	9,500	17,000
Trains permitted to proceed at speed exceeding 79 m.p.h. where automatic train stop, train control, or cab signal device fails and/or is cut out en route when absolute block established in advance of train on which device is inoperative	9,500	17,000
Other violations	5,500	10,000
236.568 Difference between speeds authorized by roadway signal and cab signal; action	5,500	10,000
Inspection and Tests; Roadway		
236.576 Roadway element	5,500	10,000
236.577 Test, acknowledgement, and cut-in circuits	5,500	10,000
Inspection and Tests; Locomotive		
236.586 Daily or after trip test	9,500	17,000
236.587 Departure test:		
(b) Test of automatic train stop, train control, or cab signal apparatus on locomotive not made on departure of locomotive from initial terminal if equipment on locomotive not cut out between initial terminal and equipped territory	13,000	20,500
Test of automatic train stop, train control, or cab signal apparatus on locomotive not made immediately on entering equipped territory, if equipment on locomotive cut out between initial terminal and equipped territory	13,000	20,500
(c) Automatic train stop, train control, or cab signal apparatus on locomotive making more than one trip within 24-hour period not given departure test within corresponding 24-hour period	13,000	20,500
(d) Failure to certify, post, or retain test results as required	2,500	5,000
Other violations	2,500	5,000
236.588 Periodic test	13,000	20,500
236.589 Relays	9,500	17,000
236.590 Pneumatic apparatus:		
Automatic train stop, train control, or cab signal apparatus not inspected and cleaned at least once every 736 days	9,500	17,000
Other violations	9,500	17,000

APPENDIX A TO PART 236—SCHEDULE OF CIVIL PENALTIES [1]—Continued

Section [2]	Violation	Willful violation
Subpart F—Dragging Equipment and Slide Detectors and Other Similar Protective Devices; Standards		
Standards		
236.601 Signals controlled by devices; location	13,000	20,500
Subpart H—Standards for Processor-Based Signal and Train Control Systems		
236.905 Railroad Safety Program Plan (RSPP).		
(a) Failure to develop and submit RSPP when required	9,500	17,000
(d) Failure to obtain FRA approval for a modification to RSPP	9,500	17,000
236.907 Product Safety Plan (PSP):		
(a) Failure to address required PSP elements	9,500	17,000
(b) Failure to identify or implement product configuration/revision control measures	9,500	17,000
(d) Failure to communicate identified safety critical hazard	19,500	25,000
236.909 Minimum Performance Standard:		
(a) Failure to make analyses or documentation available	9,500	17,000
(b) Failure to determine or demonstrate that the minimum performance standard has been met	13,000	20,500
236.913 Notification to FRA of PSPs:		
(a) Failure to prepare a PSP or PSP amendment as required	9,500	17,000
(b) Failure to submit a PSP or PSP amendment as required	9,500	17,000
(c) Failure to submit an informational filing	9,500	17,000
(j) Field testing without authorization or approval	19,500	25,000
236.915 Implementation and operation:		
(a) Operation of product without authorization or approval	19,500	25,000
(b) Failure to comply with PSP	9,500	17,000
(c) Interference with normal functioning safety-critical product	19,500	25,000
(d) Failure to determine cause and adjust, repair or replace without undue delay or take appropriate action pending repair	9,500	17,000
236.917 Retention of records:		
(a) Failure to maintain records as required	9,500	17,000
(b)(1) Failure to report inconsistency	13,000	20,500
(b)(2) Failure to take prompt countermeasures	5,500	10,000
(b)(3) Failure to provide final report	5,500	10,000
236.919 Operations and Maintenance Manual	5,500	10,000
236.921 Training and qualification program, general	9,500	17,000
236.923 Task analysis and basic requirements:		
(a) Failure to develop an acceptable training program	9,500	17,000
(a)(6) Failure to train persons as required	9,500	17,000
(a)(8) Failure to conduct evaluation of training program as required	5,500	10,000
(b) Failure to maintain records as required	2,500	5,000
236.925 Training specific to control office personnel	9,500	17,000
236.927 Training specific to locomotive engineers and other operating personnel	9,500	17,000
236.929 Training specific to roadway workers	9,500	17,000
Subpart I—Positive Train Control Systems		
236.1005 Positive Train Control System Requirements:		
Failure to complete PTC system installation on track segment where PTC is required prior to 12/31/2015	5,500	10,000
Commencement of revenue service prior to obtaining PTC System Certification	13,000	20,500
Failure of the PTC system to perform a safety-critical function required by this section	19,500	25,000
Failure to provide notice, obtain approval, or follow a condition for temporary rerouting when required	13,000	20,500
Exceeding the allowed percentage of controlling locomotives operating out of an initial terminal after receiving a failed initialization	2,500	5,000
236.1006 Equipping locomotives operating in PTC territory:		
Operating in PTC territory a controlling locomotive without a required and operative PTC onboard apparatus	19,500	25,000
Failure to report as prescribed by this section	2,500	5,000
Non-compliant operation of unequipped trains in PTC territory	13,000	20,500
236.1007 Additional requirements for high-speed service:		
Operation of passenger trains at a speed equal to or greater than 60 m.p.h. on non-PTC-equipped territory where required	9,500	17,000
Operation of freight trains at a speed equal to or greater than 50 m.p.h. on non-PTC-equipped territory where required	9,500	17,000
Failure to fully implement incursion protection where required	9,500	17,000
236.1009 Procedural requirements:		
Failure to file PTCIP when required	2,500	5,000
Failure to amend PTCIP when required	2,500	5,000
Failure to obtain Type Approval when required	2,500	5,000
Failure to update NPI	2,500	5,000
Operation of PTC system prior to system certification	13,000	20,500
236.1011 PTCIP content requirements:		
Failure to install a PTC system in accordance with subpart I when so required	2,500	5,000
236.1013 PTCDP content requirements and Type Approval:		

APPENDIX A TO PART 236—SCHEDULE OF CIVIL PENALTIES [1]—Continued

Section [2]	Violation	Willful violation
Failure to maintain quality control system	2,500	5,000
Inappropriate use of Type Approval	2,500	5,000
236.1015 PTCSP content requirements and PTC System Certification:		
Failure to implement PTC system in accordance with the associated PTCSP and resultant system certification	9,500	17,000
Failure to maintain PTC system in accordance with the associated PTCSP and resultant system certification	9,500	17,000
Failure to maintain required supporting documentation	2,500	5,000
236.1017 Independent third party Verification and Validation:		
Failure to conduct independent third party Verification and Validation when ordered	13,000	20,500
236.1019 Main line track exceptions:		
Revenue operations conducted in non-compliance with the passenger terminal exception	5,500	10,000
Revenue operations conducted in non-compliance with the limited operations exception	5,500	10,000
Failure to request modification of the PTCIP or PTCSP when required	5,500	10,000
Revenue operations conducted in violation of (c)(2)	9,500	17,000
Revenue operations conducted in violation of (c)(3)	9,500	17,000
236.1021 Discontinuances, material modifications, and amendments:		
Failure to update PTCDP when required	2,500	5,000
Failure to update PTCSP when required	2,500	5,000
Failure to immediately adopt and comply with approved RFA	2,500	5,000
Discontinuance or modification of a PTC system without approval when required	2,500	5,000
236.1023 Errors and malfunctions:		
Railroad failure to provide proper notification of PTC system error or malfunction	2,500	5,000
Failure to maintain PTCPVL	2,500	5,000
Supplier failure to provide proper notification of previously identified PTC system error or malfunction	2,500	5,000
Failure to provide timely notification	2,500	5,000
Failure to provide appropriate protective measures in the event of PTC system failure	5,500	10,000
236.1027 Exclusions:		
Integration of primary train control system with locomotive electronic system without approval	9,500	17,000
236.1029 PTC system use and en route failures:		
Failure to determine cause of PTC system component failure without undue delay	5,500	10,000
Failure to adjust, repair, or replace faulty PTC system component without undue delay	5,500	10,000
Failure to take appropriate action pending adjustment, repair, or replacement of faulty PTC system component	5,500	10,000
Non-compliant train operation within PTC-equipped territory with inoperative PTC onboard apparatus	9,500	17,000
Interference with the normal functioning of safety-critical PTC system	9,500	17,000
Improper arrangement of the PTC system onboard apparatus	5,500	10,000
236.1033 Communications and security requirements:		
Failure to provide cryptographic message integrity and authentication	2,500	5,000
Improper use of revoked cryptographic key	2,500	5,000
Failure to protect cryptographic keys from unauthorized disclosure, modification, or substitution	2,500	5,000
Failure to establish prioritized service restoration and mitigation plan for communication services	2,500	5,000
236.1035 Field testing requirements:		
Field testing without authorization or approval	5,500	10,000
236.1037 Records retention:		
Failure to maintain records and databases as required	2,500	5,000
Failure to report inconsistency	5,500	10,000
Failure to take prompt countermeasures	5,500	10,000
Failure to provide final report	2,500	5,000
236.1039 Operations and Maintenance Manual:		
Failure to implement and maintain Operations and Maintenance Manual as required	2,500	5,000
236.1043 Task analysis and basic requirements:		
Failure to develop and maintain an acceptable training program	5,500	10,000
Failure to train persons as required	2,500	5,000
Failure to conduct evaluation of training program as required	2,500	5,000
Failure to maintain records as required	2,500	5,000
236.1045 Training specific to office control personnel:		
Failure to conduct training unique to office control personnel	2,500	5,000
236.1047 Training specific to locomotive engineers and other operations personnel:		
Failure to conduct training unique to locomotive engineers and other operating personnel	2,500	5,000
236.1049 Training specific to roadway workers:		
Failure to conduct training unique to roadway workers	2,500	5,000

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $100,000 for any violation where circumstances warrant. *See* 49 CFR part 209, appendix A.

[2] The penalty schedule uses section numbers from 49 CFR part 236. If more than one item is listed as a type of violation of a given section, each item is also designated by a "penalty code," which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

PART 238—[AMENDED]

48. The authority citation for part 238 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20133, 20141, 20302–20303, 20306, 20701–20702, 21301–21302, 21304; 28 U.S.C. 2461, note; 49 CFR 1.49.

49. Appendix A to part 238 is revised to read as follows:

APPENDIX A TO PART 238—SCHEDULE OF CIVIL PENALTIES [1]

Section [2]	Violation	Willful violation
Subpart A—General		
238.15 Movement of power brake defects:		
(b) Improper movement from Class I or IA brake test	$13,000	$20,500
(c) Improper movement of en route defect	9,500	17,000
(2), (3) Insufficient tag or record	2,500	5,000
(4) Failure to determine percent operative brakes	9,500	17,000
(d) Failure to follow operating restrictions	13,000	20,500
(e) Failure to follow restrictions for inoperative front or rear unit	9,500	17,000
238.17 Movement of other than power brake defects: [1]		
(c)(4), (5) Insufficient tag or record	2,500	5,000
(d) Failure to inspect or improper use of roller bearings	9,500	17,000
(e) Improper movement of defective safety appliances	9,500	17,000
238.19 Reporting and tracking defective equipment:		
(a) Failure to have reporting or tracking system	19,500	25,000
(b) Failure to retain records	5,500	10,000
(c) Failure to make records available	2,500	5,000
(d) Failure to list power brake repair points	5,500	10,000
Subpart B—Safety Planning and General Requirements		
238.103 Fire protection plan/fire safety:		
(a) Failure to use proper materials	13,000	20,500
(b) Improper certification	5,500	10,000
(c) Failure to consider fire safety on new equipment	13,000	20,500
(d) Failure to perform fire safety analysis	13,000	20,500
(e) Failure to develop, adopt or comply with procedures	13,000	20,500
238.105 Train electronic hardware and software safety:		
(a), (b), (c) Failure to develop and maintain hardware and software safety	13,000	20,500
(d) Failure to include required design features	13,000	20,500
(e) Failure to comply with hardware and software safety program	9,500	17,000
238.107 Inspection, testing, and maintenance plan:		
(b) Failure to develop plan	13,000	20,500
(b)(1)–(5) Failure of plan to address specific item	9,500	17,000
(d) Failure to conduct annual review	9,500	17,000
238.109 Training, qualification, and designation program:		
(a) Failure to develop or adopt program	13,000	20,500
(b)(1)–(4) Failure of plan to address specific item	9,500	17,000
(b)(5)–(12) Failure to comply with specific required provisions of the program	9,500	17,000
(b)(13) Failure to maintain adequate records	5,500	10,000
238.111 Pre-revenue service acceptance testing plan:		
(a) Failure to properly test previously used equipment	13,000	20,500
(b)(1) Failure to develop plan	13,000	20,500
(b)(2) Failure to submit plan to FRA	9,500	17,000
(b)(3) Failure to comply with plan	9,500	17,000
(b)(4) Failure to document results of testing	5,500	10,000
(b)(5) Failure to correct safety deficiencies or impose operating limits	9,500	17,000
(b)(6) Failure to maintain records	5,500	10,000
(b)(7) Failure to obtain FRA approval	9,500	17,000
238.113 Emergency window exits	9,500	17,000
238.114 Rescue access windows	9,500	17,000
238.115 Emergency lighting	9,500	17,000
238.117 Protection against personal injury	9,500	17,000
238.119 Rim-stamped straight-plate wheels	9,500	17,000
238.121 Emergency communication	9,500	17,000
238.123 Emergency roof access	9,500	17,000
Subpart C—Specific Requirements for Tier I Passenger Equipment		
238.203 Static end strength	9,500	17,000
238.205 Anti-climbing mechanism	9,500	17,000
238.207 Link between coupling mechanism and car body	9,500	17,000
238.209 Forward end structure of locomotives	9,500	17,000
238.211 Collision posts	9,500	17,000
238.213 Corner posts	9,500	17,000
238.215 Rollover strength	9,500	17,000
238.217 Side structure	9,500	17,000
238.219 Truck-to-car-body attachment	9,500	17,000
238.221 Glazing	9,500	17,000
238.223 Fuel tanks	9,500	17,000
238.225 Electrical system	9,500	17,000

APPENDIX A TO PART 238—SCHEDULE OF CIVIL PENALTIES [1]—Continued

Section [2]	Violation	Willful violation
238.227 Suspension system	9,500	17,000
238.229 Safety appliances—general:		
(e) Failure to properly identify equipment (per car)	9,500	17,000
(g) Failure to adopt or comply with inspection plan	9,500	17,000
(h) Failure to use qualified person (per car)	9,500	17,000
(i) Failure to properly conduct initial or periodic inspection (per car)	9,500	17,000
(j) Failure to take proper remedial action (per car)	9,500	17,000
(k) Failure to maintain records (per car)	5,500	10,000
238.230 Safety appliances—new equipment:		
(b)(2) Failure to identify welded appliance (per car)	9,500	17,000
(b)(3) Failure to receive approval for use (per car)	9,500	17,000
(c)(2) Failure to make proper repair (per car)	9,500	17,000
238.231 Brake System (a)–(g), (i)–(n)	9,500	17,000
(h)(1), (2) Hand or parking brake missing or inoperative	13,000	20,500
(h)(3) Hand or parking brake inspection or record (per car)	5,500	10,000
(h)(4) Hand or parking brake not applied to hold equipment unattended on grade or prematurely released	13,000	20,500
238.233 Interior fittings and surfaces	9,500	17,000
238.235 Doors	9,500	17,000
238.237 Automated monitoring	9,500	17,000
Subpart D—Inspection, Testing, and Maintenance Requirements for Tier I Passenger Equipment		
238.303 Exterior mechanical inspection of passenger equipment:		
(a)(1) Failure to perform mechanical inspection	[1] 9,500	17,000
(a)(2) Failure to inspect secondary brake system	9,500	17,000
(b) Failure to perform inspection on car added to train	[1] 9,500	17,000
(c) Failure to utilize properly qualified personnel	9,500	17,000
(e)(1) Products of combustion not released outside cab	9,500	17,000
(e)(2) Battery not vented or gassing excessively	9,500	17,000
(e)(3) Coupler not in proper condition	9,500	17,000
(e)(4) No device under drawbar pins or connection pins	9,500	17,000
(e)(5) Suspension system and spring rigging not in proper condition	9,500	17,000
(e)(6) Truck not in proper condition	9,500	17,000
(e)(7) Side bearing not in proper condition	9,500	17,000
(e)(8) Wheel not in proper condition:		
(i), (iv) Flat spot(s) and shelled spot(s):		
(A) One spot 2½″ or more but less than 3″ in length	9,500	17,000
(B) One spot 3″ or more in length	13,000	20,500
(C) Two adjoining spots each of which is 2″ or more in length but less than 2½″ in length	9,500	17,000
(D) Two adjoining spots each of which are at least 2″ in length, if either spot is 2½″ or more in length	13,000	20,500
(ii) Gouge or chip in flange:		
(A) More than 1½″ but less than 1⅝″ in length; and more than ½″ but less than ⅝″ in width	9,500	17,000
(B) 1⅝″ or more in length and ⅝″ or more in width	13,000	20,500
(iii) Broken rim	13,000	20,500
(v) Seam in tread	9,500	17,000
(vi) Flange thickness of:		
(A) ⅞″ or less but more than	9,500	17,000
(B) 13/16″ or less	13,000	20,500
(vii) Tread worn hollow	9,500	17,000
(viii) Flange height of:		
(A) 1½″ or greater but less than 1⅝″	9,500	17,000
(B) 1⅝″ or more	13,000	20,500
(ix) Rim thickness:		
(A) Less than 1″	9,500	17,000
(B) 15/16″ or less	13,000	20,500
(x) Crack or break in flange, tread, rim, plate, or hub:		
(A) Crack of less than 1″	9,500	17,000
(B) Crack of 1″ or more	13,000	20,500
(C) Break	13,000	20,500
(xi) Loose wheel	13,000	20,500
(xii) Welded wheel	13,000	20,500
(e)(10) Improper grounding or insulation	13,000	20,500
(e)(11) Jumpers or cable connections not in proper condition	9,500	17,000
(e)(12) Door or cover plate not properly marked	9,500	17,000
(e)(13) Buffer plate not properly placed	9,500	17,000
(e)(14) Diaphragm not properly placed or aligned	9,500	17,000
(e)(15) Secondary braking system not in operating mode or contains known defect	9,500	17,000
(e)(16) Roller bearings:		
(i) Overheated	13,000	20,500
(ii) Cap screw loose or missing	9,500	17,000

APPENDIX A TO PART 238—SCHEDULE OF CIVIL PENALTIES [1]—Continued

Section [2]	Violation	Willful violation
(iii) Cap screw lock broken or missing	5,500	10,000
(iv) Seal loose, damaged, or leaks lubricant	9,500	17,000
(e)(17) Air compressor inoperative	9,500	17,000
(g) Record of inspection:		
(1), (4) Failure to maintain record of inspection	5,500	10,000
(2) Record contains insufficient information	2,500	5,000
238.305 Interior mechanical inspection of passenger cars:		
(a) Failure to perform inspection	[1] 5,500	10,000
(b) Failure to utilize properly qualified personnel	5,500	10,000
(c)(1) Failure to protect against personal injury	9,500	17,000
(c)(2) Floors not free of condition that creates hazard	9,500	17,000
(c)(3) Access to manual door release not in place	5,500	10,000
(c)(4) Emergency equipment not in place	5,500	10,000
(c)(5) Emergency brake valve not stenciled or marked	5,500	10,000
(c)(6) Door or cover plates not properly marked	5,500	10,000
(c)(7) Safety signage not in place or legible	5,500	10,000
(c)(8) Trap door unsafe or improperly secured	9,500	17,000
(c)(9) Vestibule steps not illuminated	5,500	10,000
(c)(10) Door does not safely operate as intended	9,500	17,000
(c)(11) Seat broken, loose, or not properly attached	9,500	17,000
(e) Record of inspection:		
(1), (4) Failure to maintain record of inspection	5,500	10,000
(2) Record contains insufficient information	2,500	5,000
(f) Record of inspection:		
(1), (4) Failure to maintain record of inspection	5,500	10,000
(2) Record contains insufficient information	2,500	5,000
238.307 Periodic mechanical inspection of passenger cars and unpowered vehicles:		
(a) Failure to perform periodic mechanical inspection	[1] 9,500	17,000
(b) Failure to utilize properly qualified personnel	9,500	17,000
(c)(1) Seat or seat attachment broken or loose	9,500	17,000
(c)(2) Luggage rack broken or loose	9,500	17,000
(c)(3) Bed, bunks, or restraints broken or loose	9,500	17,000
(c)(4) Emergency window exit does not properly operate	9,500	17,000
(c)(5) Emergency lighting not operational	9,500	17,000
(c)(6) Switches not in proper condition	9,500	17,000
(c)(7) Coupler not in proper condition	9,500	17,000
(c)(8) Truck not equipped with securing arrangement	9,500	17,000
(c)(9) Truck center casting cracked or broken	13,000	20,500
(c)(10) General conditions endangering crew, passengers	9,500	17,000
(c)(13) Hand or parking brake test not performed	9,500	17,000
(d)(1) Manual door release does not operate as intended	9,500	17,000
(d)(2) Hand or parking brake inspection not performed	9,500	17,000
(e)(1) Failure to maintain record of inspection	5,500	10,000
(i)–(iv) Record contains insufficient information	2,500	5,000
(f)(1) Record of inspection:		
(i) Failure to maintain record of inspection	5,500	10,000
(ii) Record contains insufficient information	2,500	5,000
238.309 Periodic brake equipment maintenance:		
(b) Failure to perform on MU locomotive	9,500	17,000
(c) Failure to perform on conventional locomotive	9,500	17,000
(d) Failure to perform on passenger coaches or other unpowered vehicle	9,500	17,000
(e) Failure to perform on cab car	9,500	17,000
(f) Record of periodic maintenance:		
(1), (2) Failure to maintain record or stencil	5,500	10,000
238.311 Single car tests:		
(a) Failure to test in accord with required procedure	9,500	17,000
(b) Failure to utilize properly qualified personnel	9,500	17,000
(c), (e) Failure to perform single car test	9,500	17,000
(f) Improper movement of car for testing	5,500	10,000
(g) Failure to test after repair or replacement of component	5,500	10,000
238.313 Class I brake test:		
(a) Failure to perform on commuter or short-distance intercity passenger train	[1] 19,500	25,000
(b) Failure to perform on long-distance intercity passenger train	[1] 19,500	25,000
(c) Failure to perform on cars added to passenger train	[1] 13,000	20,500
(d) Failure to utilized properly qualified personnel	13,000	20,500
(f) Passenger train used from Class I brake test with less than 100% operative brakes	13,000	20,500
(g) Partial failure to perform inspection on a passenger train	13,000	20,500
(3) Failure to adjust piston travel (per car)	9,500	17,000
(h) Failure to maintain record	5,500	10,000
(j) Failure to perform additional Class I brake test	13,000	20,500
(j)(3) Failure to maintain record	5,500	10,000
238.315 Class IA brake test:		

APPENDIX A TO PART 238—SCHEDULE OF CIVIL PENALTIES [1]—Continued

Section [2]	Violation	Willful violation
(a) Failure to perform inspection	[1] 13,000	20,500
(d) Failure to utilize properly qualified personnel	9,500	17,000
(e) Passenger train used from Class IA brake test with improper percentage of operative brakes	13,000	20,500
(f) Partial failure to perform inspection on passenger train	9,500	17,000
238.317 Class II brake test:		
(a) Failure to perform inspection	[1] 9,500	17,000
(b) Failure to utilize properly qualified personnel	9,500	17,000
(c) Improper use of defective equipment from Class II brake test	9,500	17,000
238.319 Running brake test:		
(a), (b) Failure to perform test	5,500	10,000
238.321 Out-of-service credit	5,500	10,000
Subpart E—Specific Requirements for Tier II Passenger Equipment		
238.403 Crash energy management	9,500	17,000
238.405 Longitudinal static compressive strength	9,500	17,000
238.407 Anti-climbing mechanism	9,500	17,000
238.409 Forward end structures of power car cabs:		
(a) Center collision post	9,500	17,000
(b) Side collision posts	9,500	17,000
(c) Corner posts	9,500	17,000
(d) Skin	9,500	17,000
238.411 Rear end structures of power car cabs:		
(a) Corner posts	9,500	17,000
(b) Collision posts	9,500	17,000
238.413 End structures of trailer cars	9,500	17,000
238.415 Rollover strength	9,500	17,000
238.417 Side loads	9,500	17,000
238.419 Truck-to-car-body and truck component attachment	9,500	17,000
238.421 Glazing:		
(b) End-facing exterior glazing	9,500	17,000
(c) Alternate glazing requirements	9,500	17,000
(d) Glazing securement	9,500	17,000
(e) Stenciling	5,500	10,000
238.423 Fuel tanks:		
(a) External fuel tanks	9,500	17,000
(b) Internal fuel tanks	9,500	17,000
238.425 Electrical system:		
(a) Circuit protection	9,500	17,000
(b) Main battery system	9,500	17,000
(c) Power dissipation resistors	9,500	17,000
(d) Electromagnetic interference and compatibility	9,500	17,000
238.427 Suspension system	9,500	17,000
238.429 Safety Appliances:		
(a) Couplers	13,000	20,500
(b) Hand/parking brakes	13,000	20,500
(d) Handrail or handhold missing	9,500	17,000
(d)(1)–(8) Handrail or handhold improper design	9,500	17,000
(e) Sill step missing	13,000	20,500
(e)(1)–(11) Sill step improper design	9,500	17,000
(g) Optional safety appliances	9,500	17,000
238.431 Brake system	9,500	17,000
238.433 Draft System	9,500	17,000
238.435 Interior fittings and surfaces	9,500	17,000
238.437 [Reserved].		
238.439 Doors:		
(a) Exterior side doors	9,500	17,000
(b) Manual override feature	9,500	17,000
(c) Notification to crew of door status	9,500	17,000
(d) Emergency back-up power	9,500	17,000
(f) End door kick-out panel or pop-out window	9,500	17,000
238.441 Emergency roof access	9,500	17,000
238.443 Headlights	9,500	17,000
238.445 Automated monitoring	9,500	17,000
238.447 Train operator's controls and power car cab layout	9,500	17,000
Subpart F—Inspection, Testing, and Maintenance Requirements for Tier II Passenger Equipment		
238.503 Inspection, testing, and maintenance requirements:		
(a) Failure to develop inspection, testing, and maintenance program or obtain FRA approval	19,500	25,000
(b) Failure to comply with provisions of the program	13,000	20,500
(c) Failure to ensure equipment free of conditions which endanger safety of crew, passengers, or equipment	9,500	17,000
(d) Specific safety inspections:		
(1)(i) Failure to perform Class I brake test or equivalent	19,500	25,000

APPENDIX A TO PART 238—SCHEDULE OF CIVIL PENALTIES [1]—Continued

Section [2]	Violation	Willful violation
(1)(ii) Partial failure to perform Class I brake test or equivalent	13,000	20,500
(2)(i) Failure to perform exterior mechanical inspection	[1] 9,500	17,000
(2)(ii) Failure to perform interior mechanical inspection	[1] 5,500	10,000
(g) Failure to perform scheduled maintenance as required in program	9,500	17,000
(h) Failure to comply with training, qualification and designation program	13,000	20,500
(i) Failure to develop or comply with standard procedures for performing inspection, tests, and maintenance	9,500	17,000
(j) Failure to conduct annual review	13,000	20,500
(k) Failure to establish or utilize quality control program	13,000	20,500
Subpart G—Specific Safety Planning Requirements for Tier II Passenger Equipment		
238.603 Safety plan:		
(a) Failure to develop safety operating plan	13,000	20,500
(b) Failure to develop procurement plan	13,000	20,500
(1)–(7) Failure to develop portion of plan	9,500	17,000
(c) Failure to maintain documentation	5,500	10,000

[1] A penalty may be assessed against an individual only for a willful violation. Generally when two or more violations of these regulations are discovered with respect to a single unit of passenger equipment that is placed or continued in service by a railroad, the appropriate penalties set forth above are aggregated up to a maximum of $25,000 per day. However, failure to perform, with respect to a particular unit of passenger equipment, any of the inspections and tests required under subparts D and F of this part will be treated as a violation separate and distinct from, and in addition to, any substantive violative conditions found on that unit of passenger equipment. Moreover, the Administrator reserves the right to assess a penalty of up to $100,000 for any violation where circumstances warrant. *See* 49 CFR part 209, appendix A. Failure to observe any condition for movement of defective equipment set forth in § 238.17 will deprive the railroad of the benefit of the movement-for-repair provision and make the railroad and any responsible individuals liable for penalty under the particular regulatory section(s) concerning the substantive defect(s) present on the unit of passenger equipment at the time of movement. Failure to observe any condition for the movement of passenger equipment containing defective safety appliances, other than power brakes, set forth in § 238.17(e) will deprive the railroad of the movement-for-repair provision and make the railroad and any responsible individuals liable for penalty under the particular regulatory section(s) contained in part 231 of this chapter or § 238.429 concerning the substantive defective condition. The penalties listed for failure to perform the exterior and interior mechanical inspections and tests required under § 238.303 and § 238.305 may be assessed for each unit of passenger equipment contained in a train that is not properly inspected. Whereas, the penalties listed for failure to perform the brake inspections and tests under § 238.313 through § 238.319 may be assessed for each train that is not properly inspected.

[2] The penalty schedule uses section numbers from 49 CFR part 238. If more than one item is listed as a type of violation of a given section, each item is also designated by a "penalty code," which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

PART 239—[AMENDED]

50. The authority citation for part 239 continues to read as follows:

Authority: 49 U.S.C. 20102–20103, 20105–20114, 20133, 21301, 21304, and 21311; 28 U.S.C. 2461, note; and 49 CFR 1.49(c), (g), (m).

51 Appendix A to Part 239 is advised to read as follows:

APPENDIX A TO PART 239—SCHEDULE OF CIVIL PENALITIES [1]

Section [2]	Violation	Willful violation
Subpart B—Specific Requirements		
239.101:		
(a) Failure of a railroad to adopt[3] a written emergency preparedness plan	$19,500	$25,000
(a)(1) Failure of the plan to provide for:		
(i) Initial or on-board notifications by an on-board crewmember	9,500	17,000
(ii) Notification of outside emergency responders by control center	9,500	17,000
(a)(2) Failure of the plan to provide for:		
(i) Initial or periodic training of on-board personnel	9,500	17,000
(ii) Initial or periodic training of control center personnel	9,500	17,000
(iii) Completion of initial training of all on-board and control center personnel by the specified date	9,500	17,000
(iv) Completion of initial training of all newly hired on-board and control center personnel by the specified date	9,500	17,000
(v) Adequate procedures to evaluate and test on-board and control center personnel for qualification under the emergency preparedness plan	9,500	17,000
(vi) Adequate on-board staffing	9,500	17,000
(a)(3) Failure of a host railroad involved in joint operations to coordinate applicable portions of the emergency preparedness plan with the railroad or railroads providing or operating a passenger train service operation	9,500	17,000
(a)(4) Failure of the plan to address:		
(i) Readiness procedures for emergencies in tunnels	9,500	17,000
(ii) Readiness procedures for emergencies on an elevated structure or in electrified territory	9,500	17,000
(iii) Coordination efforts involving adjacent rail modes of transportation	9,500	17,000
(a)(5) Failure of the plan to address relationships with on-line emergency responders by providing for:		
(i) The development and availability of training programs	9,500	17,000

APPENDIX A TO PART 239—SCHEDULE OF CIVIL PENALITIES [1]—Continued

Section [2]	Violation	Willful violation
(ii) Invitations to emergency responders to participate in emergency simulations	9,500	17,000
(iii) Distribution of applicable portions of the current emergency preparedness plan	9,500	17,000
(a)(6) Failure of the plan to provide for, or the railroad to include on board each train and maintain and replace:		
(i) Emergency equipment	9,500	17,000
(ii) First-aid kits	9,500	17,000
(iii) Emergency lighting	9,500	17,000
(a)(7) Failure of the plan to provide for emergency instructions inside each passenger car or to include additional safety awareness information	9,500	17,000
239.103 Failure to conduct a required full-scale simulation in accordance with the frequency schedule	9,500	17,000
239.105 Debriefing and critique:		
(a) Failure to conduct a debriefing and critique session after an emergency or full-scale simulation	9,500	17,000
(d)(1) Failure to maintain a record	5,500	10,000
(i) Failure to include date or location of the emergency or simulation	2,500	5,000
(ii) Failure to include date or location of the debriefing and critique session	2,500	5,000
(iii) Failure to include names of participants in the debriefing and critique session	2,500	5,000
(d)(2) Failure to make record available	2,500	5,000
239.107 Emergency exits:		
(a)(1), (a)(2):		
(i) Door not marked or instructions not posted	9,500	17,000
(ii) Door improperly marked or instructions improperly posted	9,500	17,000
(b)(1) Failure to provide for scheduled inspection, maintenance, and repair of emergency windows and doors	9,500	17,000
(b)(2):		
(i) Failure to test a representative sample of emergency windows	9,500	17,000
(ii) Emergency windows tested too infrequently	5,500	10,000
(b)(3) Failure to repair an inoperative emergency window or door exit	9,500	17,000
(c):		
(i) Failure to maintain a record	5,500	10,000
(ii) Failure to make record available	2,500	5,000
(d)(1) Insufficient limits or controls on accessibility to records	5,500	10,000
(d)(2) Missing terminal	2,500	5,000
(d)(3) Inability of railroad to produce information in a usable format for immediate review	2,500	5,000
(d)(4) Failure by railroad to designate an authorized representative	2,500	5,000
(d)(5) Failure to make record available	2,500	5,000
Subpart C—Review, Approval, and Retention of Emergency Preparedness Plans		
239.201 Filing and approval:		
(a):		
(i) Failure of a railroad to file a written emergency preparedness plan	13,000	20,500
(ii) Failure to designate a primary person to contact for plan review	2,500	5,000
(iii) Failure of a railroad to file an amendment to its plan	2,500	5,000
(b)(1), (b)(2):		
(i) Failure of a railroad to correct a plan deficiency	9,500	17,000
(ii) Failure to provide FRA with a corrected copy of the plan	2,500	5,000
(b)(3):		
(i) Failure of a railroad to correct an amendment deficiency	9,500	17,000
(ii) Failure to file a corrected plan amendment with FRA	2,500	5,000
239.203 Retention of emergency preparedness plan:		
(1) Failure to retain a copy of the plan or an amendment to the plan	9,500	17,000
(2) Failure to make record available	2,500	5,000
Subpart D—Operational (Efficiency) Tests; Inspection of Records and Recordkeeping		
239.301 Operational (efficiency) tests:		
(a) Failure to periodically conduct operational (efficiency) tests of its on-board and control center employees	9,500	17,000
(b)(1) Failure to maintain a record	5,500	10,000
(b)(2) Record improperly completed	2,500	5,000
(c)(1) Failure to retain a copy of the record	2,500	5,000
(c)(2) Failure to make record available	2,500	5,000
239.303 Electronic recordkeeping:		
(a) Insufficient limits or controls on accessibility to records	5,500	10,000
(b) Missing terminal	2,500	5,000
(c) Inability of railroad to produce information in a usable format for immediate review	2,500	5,000
(d) Failure by railroad to designate an authorized representative	2,500	5,000
(e) Failure to make record available	2,500	5,000

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $100,000 for any violation where circumstances warrant. *See* 49 U.S.C. 21301, 21304, and 49 CFR part 209, appendix A.

[2] The penalty schedule uses section numbers from 49 CFR part 239. If more than one item is listed as a type of violation of a given section, each item is also designated by a "penalty code," which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

[3] This section also requires each railroad (subject to part 239) to comply with the adopted emergency preparedness plan. As the severity of a violation for a railroad's failure to comply with an emergency preparedness plan varies depending upon the provision with which the railroad failed to comply, please see the guideline penalty for the particular section of the regulation requiring that provision.

PART 240—[AMENDED]

52. The authority citation for part 240 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20135, 21301, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.49.

53. Appendix A to part 240 is revised to read as follows:

APPENDIX A TO PART 240—SCHEDULE OF CIVIL PENALTIES [1]

Section [2]	Violation	Willful violation
Subpart B—Component Elements of the Certification Process		
240.101 Program failures:		
(a) Failure to have program	$19,500	$25,000
(b) Program that fails to address a subject	9,500	17,000
240.103 Failure to:		
(a) Follow Appendix B	2,500	5,000
(d) Resubmit, when directed by FRA	2,500	5,000
240.104 Allowing uncertified person to operate nontraditional locomotives	13,000	20,500
240.105 Failure to have or execute adequate procedure for selection of supervisors	9,500	17,000
240.107 Classes of service:		
(a) Failure to designate classes of service	9,500	17,000
240.109 Limitations on considering prior conduct records:		
(a) Failure to have procedure for determining eligibility	9,500	17,000
(e) Considering excluded data	9,500	17,000
(f), (g) Failure to provide timely review opportunity	9,500	17,000
240.111 Furnishing motor vehicle records:		
(a) Failure to action required to make information available	2,500	5,000
(b) Failure to request:.		
(1) Local record	2,500	5,000
(2) NDR record	2,500	5,000
(f) Failure to request additional record	2,500	5,000
(g) Failure to notify of absence of license	2,500	5,000
(h) Failure to submit request in timely manner	2,500	5,000
(i) Failure to report within 48 hours or railroad taking certification action for not reporting earlier than 48 hours	2,500	5,000
240.113 Furnishing prior employment information:		
(a) Failure to take action required to make information available	2,500	5,000
(b) Failure to request record	2,500	5,000
240.115 Criteria for considering prior motor vehicle conduct:		
(b) Considering excluded data	9,500	17,000
(c) Failure to:		
(1) Consider data	19,500	25,000
(3)–(4) Properly act in response to data	5,500	10,000
240.117 Consideration of operational rules compliance records:		
(a) Failure to have program and procedures	19,500	25,000
(b)–(j) Failure to have adequate program or procedure	9,500	17,000
240.119 Consideration of substance abuse/rules compliance records:		
(a) Failure to have program and procedures	19,500	25,000
(b)–(e) Failure to have adequate program or procedure	9,500	17,000
240.121 Failure to have adequate procedure for determining acuity	9,500	17,000
(f) Failure of engineer to notify	9,500	17,000
240.123 Failure to have:		
(b) Adequate procedures for continuing education	9,500	17,000
(c) Adequate procedures for training new engineers	9,500	17,000
240.125 Failure to have:		
(a) Adequate procedures for testing knowledge	9,500	17,000
(d) Adequate procedures for documenting testing	9,500	17,000
240.127 Failure to have:		
(a) Adequate procedures for evaluating skill performance	9,500	17,000
(c) Adequate procedures for documenting skills testing	9,500	17,000
240.129 Failure to have:		
(a)–(b) Adequate procedures for monitoring performance	9,500	17,000
Subpart C—Implementation of the Certification Process		
240.201 Schedule for implementation:		
(a) Failure to select supervisors by specified date	2,500	5,000
(c) Failure to issue certificate to engineer	2,500	5,000
(d) Allowing uncertified person to operate	19,500	25,000
(e)–(g) Certifying without complying with subpart C	9,500	17,000
(h)–(i) Failure to issue certificate to engineer	2,500	5,000
240.203		

APPENDIX A TO PART 240—SCHEDULE OF CIVIL PENALTIES [1]—Continued

Section [2]	Violation	Willful violation
(a) Designating a person as a supervisor without determining that		
(1) Person knows and understands this part	9,500	17,000
(2) Person can test and evaluate engineers	19,500	25,000
(3) Person has experience to prescribe remedies	9,500	17,000
(b) Certifying a person without determining that:		
(1) Person meets the eligibility criteria	19,500	25,000
(2) Person meets the medical criteria	9,500	17,000
(3) Person has demonstrated knowledge	9,500	17,000
(4) Person has demonstrated skills	9,500	17,000
(c) Certifying a person without determining that:		
(1) Person has completed training program	9,500	17,000
(2) Person meets the eligibility criteria	9,500	17,000
(3) Time has elapsed	9,500	17,000
240.205 Procedures for determining eligibility based on prior safety conduct:		
(a) Selecting person lacking eligibility	19,500	25,000
(d) Failure to have basis for taking action	9,500	17,000
240.207 Ineligibility based on medical condition:		
(a) Selecting person lacking proper acuity	13,000	20,500
(b) Failure to have basis for finding of proper acuity	2,500	5,000
(c) Acuity examinations performed by unauthorized person	2,500	5,000
(d) Failure to note need for device to achieve acuity	2,500	5,000
(e) Failure to use device needed for proper acuity	2,500	5,000
240.209 Demonstrating knowledge:		
(b) Failure to properly determine knowledge	13,000	20,500
(c) Improper test procedure	9,500	17,000
(d) Failure to document test results	2,500	5,000
(e) Allowing person to operate despite test failure	9,500	17,000
240.211 Demonstrating skills:		
(b) Failure to properly determine knowledge	9,500	17,000
(c) Improper test procedure	5,500	10,000
(d) Failure to document test results	2,500	5,000
(e) Allowing person to operate despite test failure	9,500	17,000
240.213 Completion of approved training program:		
(a) Failure to properly determine	9,500	17,000
(b) Failure to document successful program completion	5,500	10,000
240.215 Supporting information:		
(a), (f)–(h) Failure to have a record	2,500	5,000
(b) Failure to have complete record	2,500	5,000
(i) Falsification of record	.....	25,000
240.217 Time limits for making determinations:		
(a), (c) Exceeding time limit	5,500	10,000
240.219 Denial of certification:		
(a) Failure to notify or provide opportunity for comment	5,500	10,000
(c) Failure to notify, provide data, or untimely notification	5,500	10,000
240.221 Identification of persons:		
(a)–(c) Failure to have a record	5,500	10,000
(d) Failure to update a record	5,500	10,000
(e)–(f) Failure to make a record available	2,500	5,000
240.223 Certificate criteria:		
(a) Improper certificate	2,500	5,000
(b) Failure to designate those with signatory authority	2,500	5,000
(d) Falsification of certificate	.....	25,000
240.225 Railroad relying on determination of another:		
(a) Failure to address in program or failure to require newly hired engineer to take entire training program	19,500	25,000
(2) Reliance on wrong class of service	5,500	10,000
(3) Failure to familiarize person with new operational territory	5,500	10,000
(4) Failure to determine knowledge	5,500	10,000
(5) Failure to determine performance skills	5,500	10,000
240.227 Railroad relying on requirements of a different country:		
(a) Joint operator reliance:		
(1) On person not employed	2,500	5,000
(2) On person who fails to meet Canadian requirements	2,500	5,000
(b) Canadian railroad reliance:		
(1) On person not employed	2,500	5,000
(2) On person who fails to meet Canadian requirements	2,500	5,000
240.229 Requirements for joint operations territory:		
(a) Allowing uncertified person to operate	5,500	10,000
(b) Certifying without making determinations or relying on another railroad	13,000	20,500
(c) Failure of		
(1) Controlling railroad certifying without determining certification status, knowledge, skills, or familiarity with physical characteristics	19,500	25,000

APPENDIX A TO PART 240—SCHEDULE OF CIVIL PENALTIES [1]—Continued

Section [2]	Violation	Willful violation
(2) Employing railroad to determine person's certified and qualified status for controlling railroad	19,500	25,000
(3) Person to notify employing railroad of lack of qualifications	19,500	25,000
(d) Failure to provide qualified person	5,500	10,000
240.231 Persons qualified on physical characteristics in other than joint operations:		
(a) Person unqualified, no exception applies or railroad does not adequately address in program	19,500	25,000
(b) Failure to have a pilot:		
(1) For engineer who has never been qualified	19,500	25,000
(2) For engineer previously qualified	9,500	17,000
Subpart D—Administration of the Certification Programs		
240.301 Failure to have system for certificate replacement	5,500	10,000
240.303 Monitoring operations:		
(a) Failure to have program	19,500	25,000
(b) Failure to observe each person annually	2,500	5,000
(c) Failure to test each person annually	2,500	5,000
(d) Failure to test properly	2,500	5,000
240.305 Prohibited conduct:		
(a) Unlawful:		
(1) Passing of stop signal	19,500	25,000
(2) Control of speed	19,500	25,000
(3) Brake tests	19,500	25,000
(4) Occupancy of main track	19,500	25,000
(5) Tampering or operation with disabled safety device	19,500	25,000
(6) Supervisor, pilot, or instructor fails to take appropriate action	19,500	25,000
(b) Failure of engineer to:		
(1) Carry certificate	2,500	5,000
(2) Display certificate when requested	2,500	5,000
(c) Failure of engineer to notify railroad of limitations or railroad requiring engineer to exceed limitations	19,500	25,000
(d) Failure of engineer to notify railroad of denial or revocation	19,500	25,000
240.307 Revocation of certification:		
(a) Failure to withdraw person from service	13,000	20,500
(b) Failure to notify, provide hearing opportunity, or untimely procedures	5,500	10,000
(c)–(h) Failure of railroad to comply with hearing or waiver procedures	5,500	10,000
(j) Failure of railroad to make record	5,500	10,000
(k) Failure of railroad to conduct reasonable inquiry or make good faith determination	13,000	20,500
240.309 Oversight Responsibility Report:		
(a) Failure to report or to report on time	2,500	5,000
(b)–(h) Incomplete or inaccurate report	5,500	10,000

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $100,000 for any violation where circumstances warrant. *See* 49 CFR part 209, appendix A.

[2] The penalty schedule uses section numbers from 49 CFR part 240. If more than one item is listed as a type of violation of a given section, each item is also designated by a "penalty code," which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

PART 241—[AMENDED]

54. The authority citation for part 241 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 21301, 21304, 21311; 28 U.S.C. 2461, note; 49 CFR 1.49.

55. Appendix B to part 241 is revised to read as follows:

APPENDIX B TO PART 241—SCHEDULE OF CIVIL PENALTIES [1]

Section [2]	Violation	Willful violation
241.9:		
(a) Requiring or permitting extraterritorial dispatching of a railroad operation	$9,500	$17,000
(c) Failing to notify FRA about extraterritorial dispatching of a railroad operation in an emergency situation	5,500	10,000
241.11 Conducting a railroad operation that is extraterritorially dispatched:		
(a)(1) Generally	9,500	17,000
(c) In an emergency situation—where dispatching railroad fails to notify FRA of the extraterritorial dispatching	2,500	5,000
241.13 Requiring or permitting track to be used for the conduct of a railroad operation that is extraterritorially dispatched:		
(a)(1) Generally	9,500	17,000

APPENDIX B TO PART 241—SCHEDULE OF CIVIL PENALTIES [1]—Continued

Section [2]	Violation	Willful violation
(c) In an emergency situation—where dispatching railroad fails to notify FRA of the extraterritorial dispatching	2,500	5,000

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $100,000 for any violation where circumstances warrant. *See* 49 U.S.C. 21301, 21304 and 49 CFR part 209, appendix A.

[2] The penalty schedule uses section numbers from 49 CFR part 241. If more than one item is listed as a type of violation of a given section, each item is also designated by a "penalty code," which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

Issued in Washington, DC, on August 23, 2010.

Karen J. Rae,

Deputy Administrator.

[FR Doc. 2010–22141 Filed 9–20–10; 8:45 am]

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H.R. 511/P.L. 111–231
To authorize the Secretary of Agriculture to terminate certain easements held by the Secretary on land owned by the Village of Caseyville, Illinois, and to terminate associated contractual arrangements with the Village. (Aug. 16, 2010; 124 Stat. 2489)

H.R. 2097/P.L. 111–232
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H.R. 3509/P.L. 111–233
Agricultural Credit Act of 2010 (Aug. 16, 2010; 124 Stat. 2493)

H.R. 4275/P.L. 111–234
To designate the annex building under construction for the Elbert P. Tuttle United States Court of Appeals Building in Atlanta, Georgia, as the "John C. Godbold Federal Building". (Aug. 16, 2010; 124 Stat. 2494)

H.R. 5278/P.L. 111–235
To designate the facility of the United States Postal Service located at 405 West Second Street in Dixon, Illinois, as the "President Ronald W. Reagan Post Office Building". (Aug. 16, 2010; 124 Stat. 2495)

H.R. 5395/P.L. 111–236
To designate the facility of the United States Postal Service located at 151 North Maitland Avenue in Maitland, Florida, as the "Paula Hawkins Post Office Building". (Aug. 16, 2010; 124 Stat. 2496)

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